

**BOARD OF ENVIRONMENTAL REVIEW  
AGENDA ITEM**

**EXECUTIVE SUMMARY FOR ACTION ON RULE INITIATION**

**Agenda #III.B.1.**

**Agenda Item Summary:** The department requests that the board initiate rulemaking to amend the air quality rules to make them consistent with changes that have been made to the Clean Air Act of Montana.

**List of Affected Rules:** This rulemaking would amend the Administrative Rules of Montana (ARM) 17.8.610, 17.8.612, 17.8.613, and 17.8.614, 17.8.615, 17.8.749, and 17.8.1210.

**Affected Parties Summary:** The proposed rule amendments will not affect any regulated sources. The proposed changes update the administrative rules to be consistent with existing statutory language.

**Scope of Proposed Proceeding:** The department requests that the board initiate rulemaking without a public hearing to consider the proposed amendments to the above-stated rules.

**Background:** Sections 75-2-211, 75-2-213, and 75-2-218, MCA, contain the procedures for appeals of permits for construction, installation, alteration, use, and operation of facilities under the Clean Air Act of Montana. As currently written, those statutes provide:

(1) that a person who is directly and adversely affected by the issuance or denial of a permit may request a hearing;

(2) that a request for hearing does not stay the department's decision on an application unless the board orders a stay;

(3) that depending on the applicable statute, an appellant must file an affidavit supporting the request for hearing either with the request or within 30 days after the issuance or denial of the permit; and

(4) that a separate process is available for challenges to energy development projects in 75-2-213, MCA.

The proposed amendments would modify the rules to incorporate these provisions and remove provisions implementing previous statutory procedures.

In addition, the proposed amendments would strike paragraphs of rule text that were lifted verbatim from 75-2-211, MCA. The Montana Administrative Procedure Act at 2-4-305(2), MCA, states that rules should not unnecessarily repeat statutory language. Doing so creates situations where rules must be amended whenever even the smallest changes are made to statute. The proposed amendments instead refer to the appeal process provided in 75-2-211, MCA.

In summary, the proposed amendments would address conflicts between the ARM and MCA that have resulted from legislative changes to the Clean Air Act of Montana.

**Hearing Information:** The department recommends the board propose to amend the rules without a public hearing.

**Board Options:** The board may:

1. Initiate rulemaking and issue the attached Notice of Proposed Amendment of Rules (No Public Hearing Contemplated);
2. Modify the Notice and initiate rulemaking; or
3. Determine that the amendment of the rules is not appropriate and deny the department's request to initiate rulemaking.

**DEQ Recommendation:** The department recommends that the board initiate rulemaking as described in the draft Notice of Proposed Amendment (No Public Hearing Contemplated).

**Enclosures:**

1. Draft Notice of Proposed Amendment (No Public Hearing Contemplated)

In summary, the proposed amendments would address conflicts between the ARM and MCA that have resulted from legislative changes to the Clean Air Act of Montana.

**Hearing Information:** The department recommends the board propose to amend the rules without a public hearing.

**Board Options:** The board may:

1. Initiate rulemaking and issue the attached Notice of Proposed Amendment of Rules (No Public Hearing Contemplated);
2. Modify the Notice and initiate rulemaking; or
3. Determine that the amendment of the rules is not appropriate and deny the department's request to initiate rulemaking.

**DEQ Recommendation:** The department recommends that the board initiate rulemaking as described in the draft Notice of Proposed Amendment (No Public Hearing Contemplated).

**Enclosures:**

1. Draft Notice of Proposed Amendment (No Public Hearing Contemplated)

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )  
17.8.610, 17.8.612, 17.8.613, 17.8.614, )  
17.8.615, 17.8.749, and 17.8.1210 )  
pertaining to major open burning source )  
restrictions, conditional air quality open )  
burning permits, Christmas tree waste )  
open burning permits, commercial film )  
production open burning permits,  
firefighter training, conditions for  
issuance or denial of permit, and general  
requirements for air quality operating  
permit content

NOTICE OF PROPOSED  
AMENDMENT

(AIR QUALITY)

NO PUBLIC HEARING  
CONTEMPLATED

TO: All Concerned Persons

1. On \_\_\_\_\_, 2016, the Board of Environmental Review  
proposes to amend the above-stated rules.

2. The board will make reasonable accommodations for persons with  
disabilities who wish to participate in this rulemaking process or need an alternative  
accessible format of this notice. If you require an accommodation, contact Elois  
Johnson, Paralegal, no later than 5:00 p.m., \_\_\_\_\_, 2016, to advise us of  
the nature of the accommodation that you need. Please contact \_\_\_\_\_  
at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-  
0901; phone (406) 444-\_\_\_\_\_; fax (406) 444-4386; or e-mail  
\_\_\_\_\_.@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter  
interlined, new matter underlined:

17.8.610 MAJOR OPEN BURNING SOURCE RESTRICTIONS

(1) through (2) remain the same.

(3) When the department approves or denies the application for a permit  
under this rule, a person who is ~~jointly or severally~~ directly and adversely affected by  
the department's decision may request a hearing before the board in the manner  
provided in 75-2-211, MCA. ~~The request for hearing must be filed within 15 days~~  
~~after the department renders its decision and must include an affidavit setting forth~~  
~~the grounds for the request. The contested case provisions of the Montana~~  
~~Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing~~  
~~before the board under this rule. The department's decision on the application is not~~  
~~final unless 15 days have elapsed from the date of the decision and there is no~~  
~~request for a hearing under this section. The filing of a request for a hearing~~  
~~postpones the effective date of the department's decision until the conclusion of the~~  
~~hearing and issuance of a final decision by the board.~~

MAR Notice No. 17-\_\_\_\_

(4) through (5) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, 75-2-211, MCA

17.8.612 CONDITIONAL AIR QUALITY OPEN BURNING PERMITS (1)  
through (9) remain the same.

(10) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally directly and adversely affected by the department's decision may request a hearing before the board in the manner provided in 75-2-211, MCA. ~~The request for hearing must be filed within 15 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final until 15 days have elapsed from the date of the decision. The filing of a request for a hearing does not stay the effective date of the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:~~

~~(a) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or~~

~~(b) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.~~

~~(11) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4), MCA, for undertakings on injunctions.~~

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, 75-2-211, MCA

17.8.613 CHRISTMAS TREE WASTE OPEN BURNING PERMITS (1)  
through (7)(b)(iii) remain the same.

(8) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally directly and adversely affected by the department's decision may request a hearing before the board in the manner provided in 75-2-211, MCA. ~~The request for hearing must be filed within 15 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final until 15 days have elapsed from the date of the decision. The filing of a request for a hearing does not stay the effective date of the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:~~

MAR Notice No. 17-\_\_\_\_



~~(a) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or~~

~~(b) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.~~

~~(9) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4), MCA, for undertakings on injunctions.~~

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, 75-2-211, MCA

#### 17.8.614 COMMERCIAL FILM PRODUCTION OPEN BURNING PERMITS

~~(1) through (7) remain the same.~~

~~(8) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally directly and adversely affected by the department's decision may request a hearing before the board in the manner provided in 75-2-211, MCA. The request for hearing must be filed within 15 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final until 15 days have elapsed from the date of the decision. The filing of a request for a hearing does not stay the effective date of the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:~~

~~(a) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or~~

~~(b) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.~~

~~(9) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4), MCA, for undertakings on injunctions.~~

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, 75-2-211, MCA

#### 17.8.615 FIREFIGHTER TRAINING (1) through (5) remain the same.

~~(6) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally directly and adversely affected by the department's decision may request a hearing before the board in the manner provided in 75-2-211, MCA. The request for hearing must be filed within 15 days~~

~~after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final until 15 days have elapsed from the date of the decision. The filing of a request for a hearing does not stay the effective date of the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:~~

~~(a) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or~~

~~(b) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.~~

~~(7) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4), MCA, for undertakings on injunctions.~~

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, 75-2-211, MCA

#### 17.8.749 CONDITIONS FOR ISSUANCE OR DENIAL OF PERMIT

(1) through (6) remain the same.

(7) If the department denies an application for a Montana air quality permit it shall notify the applicant in writing of the reasons for the permit denial and advise the applicant of the right to appeal the department's decision to the board as provided in 75-2-211 or 75-2-213, MCA, as applicable.

(8) remains the same.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-211, 75-2-113, MCA

#### 17.8.1210 GENERAL REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT (1) through (1)(e) remain the same.

(2) The following standard terms and conditions are applicable to each air quality operating permit issued pursuant to this subchapter:

(a) through (i) remain the same.

(j) The department's final decision regarding issuance, renewal, revision, denial, revocation, reissuance, or termination of a permit is not effective until 30 days have elapsed from the date of the decision. The decision may be appealed to the board by filing a request for hearing within 30 days after the date of the decision. A copy of the request shall be served on the department. The filing of a timely request for a hearing ~~postpones~~ does not stay the effective date of the department's decision ~~until the board issues a final decision.~~ However, the board may order a stay as provided in 75-2-218, MCA. If effective, the permit shield, or application shield, as appropriate, shall remain in effect until such time as the board has rendered a final

decision.

(k) through (5)(c) remain the same.

AUTH: 75-2-217, 75-2-218, MCA

IMP: 75-2-217, 75-2-218, MCA

REASON: Sections 75-2-211, 75-2-213, and 75-2-218, MCA, contain the procedures for appeals of permits for construction, installation, alteration, use, and operation of facilities under the Clean Air Act of Montana. As currently written, those statutes provide:

(1) that a person who is directly and adversely affected by the issuance or denial of a permit may request a hearing;

(2) that a request for hearing does not stay the department's decision on an application unless the board orders a stay;

(3) that depending on the applicable statute, an appellant must file an affidavit supporting the request for hearing either with the request or within 30 days after the issuance or denial of the permit; and

(4) that a separate process is available for challenges to energy development projects in 75-2-213, MCA.

The proposed amendments would modify the rules to incorporate these provisions and remove provisions implementing previous statutory procedures.

In addition, the proposed amendments would strike paragraphs of rule text that were lifted verbatim from 75-2-211, MCA. The Montana Administrative Procedure Act at 2-4-305(2), MCA, states that rules should not unnecessarily repeat statutory language. Doing so creates situations where rules must be amended whenever even the smallest changes are made to statute. The proposed amendments instead refer to the appeal process provided in 75-2-211, MCA.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to \_\_\_\_\_ at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-\_\_\_\_\_; fax (406) 444-4386; or e-mail \_\_\_\_\_@mt.gov, no later than \_\_\_\_\_, 2016. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to \_\_\_\_\_ at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-\_\_\_\_\_; fax (406) 444-4386; or e-mail \_\_\_\_\_@mt.gov, no later than \_\_\_\_\_, 2016.

6. If the board receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing

MAR. Notice No. 17-\_\_\_\_



will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25, based on the more than 250 persons who potentially could wish to appeal air quality permits and therefore could be affected by this rulemaking.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to \_\_\_\_\_, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to \_\_\_\_\_ at \_\_\_\_\_@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled by sending a letter by U.S. Mail to the bill sponsor on January 8, 2016.

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the proposed new rules will not significantly and directly impact small businesses.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

\_\_\_\_\_  
JOHN F. NORTH  
Rule Reviewer

BY: \_\_\_\_\_  
JOAN MILES, CHAIRMAN

Certified to the Secretary of State, \_\_\_\_\_, 2016.

**BOARD OF ENVIRONMENTAL REVIEW  
AGENDA ITEM  
EXECUTIVE SUMMARY  
FOR  
WATER QUALITY STANDARDS TRIENNIAL REVIEW**

**AGENDA # III.C.1**

**AGENDA ITEM SUMMARY:** Conduct a required triennial review of Montana's water quality standards.

**LIST OF POTENTIALLY AFFECTED RULES:** Any water quality standard found at ARM Title 17, chapter 30.

**AFFECTED PARTIES SUMMARY:** Anyone with an interest in water quality standards may provide comment during the triennial review comment period.

**BACKGROUND:** The Montana Water Quality Act and the Federal Clean Water Act require that the state of Montana review and, as appropriate, adopt new or revised water quality standards at least every three years. Public input is an important piece of the review process, and federal regulations require that a public hearing be held to review applicable water quality standards as part of the triennial review.

**BOARD OPTIONS:**

The Board may:

1. Hold a public hearing and accept public comments on Montana's water quality standards as part of a required triennial review of those standards; or
2. Determine that a triennial review is not appropriate at this time and deny the Department's request.

**DEQ RECOMMENDATION:**

The Department recommends that the Board hold a public hearing and accept public comments on Montana's water quality standards as part of a required triennial review of those standards.

**BOARD OF ENVIRONMENTAL REVIEW  
AGENDA ITEM**

**EXECUTIVE SUMMARY FOR ACTION ON RULE REPEAL**

**Agenda # III.C.2**

**Agenda Item Summary:** The department requests that the board act on MAR Notice No. 17-375, published on October 29, 2015, to repeal air quality rules in ARM Title 17, chapter 8, subchapters 3 and 7, pertaining to Aluminum Plants and Mercury Allowance Allocations under Cap and Trade Budget, respectively.

**List of Affected Rules:** This rulemaking would repeal ARM 17.8.334, 335, and 772.

**Affected Parties Summary:** This rulemaking will not affect any regulated sources. The rules proposed for repeal are either not currently enforced by the department or apply to facilities that no longer operate in Montana.

**Scope of Proposed Proceeding:** The board is considering final action on the repeal of the above-referenced rules. The repeal of these rules was proposed in Montana Administrative Register (MAR) notice No. 17-375, published on October 29, 2015 (Enclosure 1). The board received only one comment on the proposed rulemaking, a comment from the United States Environmental Protection Agency in support of the proposed repeal of ARM 17.8.334. The board is considering repealing the rules as proposed. See Draft Notice of Repeal of Rules (Enclosure 2).

**Background:**

Proposed repeal of ARM 17.8.334. Montana adopted this rule effective February 26, 1982, to establish emission standards for existing aluminum reduction plants. The Columbia Falls Aluminum Company (CFAC) plant was the only existing aluminum reduction plant in Montana, and discontinued operations in 2009, negating the need for these emissions standards. The rule should therefore be repealed. In addition, the federal Environmental Protection Agency (EPA) promulgated a State Implementation Plan (SIP) Call, on May 22, 2015, addressing the automatic exemption from applicable emission limitations during start-up, shutdown, and/or malfunction (SSM) events in ARM 17.8.334.

The SIP Call requires Montana to correct or remove the specific provision from the SIP within 18 months of the SIP Call, or November 22, 2016. If the board repeals this rule, the department would then propose to address the SIP Call by submitting a proposal to the EPA for withdrawal of the rule from the SIP.

Proposed repeal of ARM 17.8.335. The board adopted ARM 17.8.335, effective August 16, 2002. This rule, which applied to existing aluminum reduction plants only, allowed exceedances of emission limits during necessary scheduled maintenance of air pollution control equipment. CFAC was the only existing plant when this rule was adopted, and ceased operations in 2009. As a result, this rule is no longer necessary or appropriate, and should be repealed.

Proposed repeal of ARM 17.8.772. The board adopted ARM 17.8.772, effective October 27, 2006, in response to the federal Clean Air Mercury Rule (CAMR). CAMR established a federal mercury emissions trading budget and allowed states to adopt cap-and-trade rules modeled after EPA regulations. In response, Montana adopted ARM 17.8.772. Due to litigation related to CAMR that began before adoption of the rule, ARM 17.8.772(4) states, "The department is not required to submit mercury allowance allocations if the federal Clean Air Mercury Rule (CAMR) ... is invalidated by a court of competent jurisdiction." The federal D.C. Circuit Court of Appeals vacated CAMR on February 8, 2008. Because CAMR was invalidated, Montana is not required to submit mercury allowance allocations. Because there is no federal trading budget and no state allocations, the department has not been using or submitting such allocations, and will not do so in the future. As a result, it is requesting that the board repeal the rule. The department will continue to regulate emissions from mercury-emitting electrical generating units under ARM 17.8.771.

**Hearing Information:** The board did not set a public hearing and did not receive a request for a public hearing on the proposed action, so no hearing was held.

**Board Options:** The board may:

1. Adopt the proposed repeals as set forth in the attached Notice of Repeal;
2. Adopt the proposed repeals with revisions that the Board finds are appropriate and that are consistent with the scope of the Notice of Proposed Repeal of Rules and the record in this proceeding; or
3. Decide not to repeal the rules.

**DEQ Recommendation:** The department recommends that the board repeal the rules as proposed in the Draft Notice of Repeal of Rules.

**Enclosures:**

1. Notice of Proposed Repeal
2. Draft Notice of Repeal of Rules
3. HB 521 and 311 Analyses



BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the repeal of ARM )	NOTICE OF PROPOSED REPEAL
17.8.334, 17.8.335, and 17.8.772 pertaining )	
to emission standards for existing aluminum )	(AIR QUALITY)
plants--startup and shutdown, maintenance )	
of air pollution control equipment for )	NO PUBLIC HEARING
existing aluminum plants, and mercury )	CONTEMPLATED
allowance allocations under cap and trade )	
budget )	

TO: All Concerned Persons

1. On February 5, 2016, the Board of Environmental Review proposes to repeal the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., November 9, 2015, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail [ejohnson@mt.gov](mailto:ejohnson@mt.gov).

3. The rules proposed for repeal are as follows:

17.8.334 EMISSION STANDARDS FOR EXISTING ALUMINUM PLANTS--STARTUP AND SHUTDOWN (AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-203, MCA), located at page 17-334, Administrative Rules of Montana.

17.8.335 MAINTENANCE OF AIR POLLUTION CONTROL EQUIPMENT FOR EXISTING ALUMINUM PLANTS (AUTH: 75-2-111, MCA; IMP: 75-2-203, MCA), located at page 17-335, Administrative Rules of Montana.

17.8.772 MERCURY ALLOWANCE ALLOCATIONS UNDER CAP AND TRADE BUDGET (AUTH: 75-2-203, 75-2-204, 75-2-211, MCA; IMP: 75-2-211, MCA), located at page 17-469, Administrative Rules of Montana.

**REASON:** ARM 17.8.334, adopted by the board on February 26, 1982, established emission standards during startup and shutdown for existing aluminum reduction plants. Any plant not yet constructed and operating on that date is not "existing" and is not subject to this rule. The Columbia Falls Aluminum Company (CFAC) plant in Columbia Falls was the only existing aluminum reduction plant in Montana; it discontinued operations in 2009. Because there are now no existing aluminum reduction plants in Montana, no source is now or ever will be subject to ARM 17.8.334. Because there are no longer any existing aluminum reduction plants



in Montana, and no new plant will be subject to this rule, this rule is no longer necessary and should be repealed. If a new aluminum reduction plant is constructed in Montana, it will be subject to regulation under the federal new source performance standards in 40 CFR Part 60, subpart S, which is incorporated by reference in ARM 17.8.302(1)(a) and Montana's air quality permitting programs.

In addition, the federal Environmental Protection Agency (EPA) has determined that the provisions contained in this rule are impermissible because they interfere with enforcement of the federal Clean Air Act by providing an automatic exemption from applicable emission limitations during start-up, shutdown, and/or malfunction (SSM) events. To address this issue, on May 22, 2015, the EPA promulgated a State Implementation Plan (SIP) Call, finding that this rule makes Montana's SIP substantially inadequate to protect the National Ambient Air Quality Standards at all times, including during SSM events. The SIP Call requires Montana to correct or remove the specific provision from the SIP within 18 months after the SIP Call, which is by November 22, 2016. If the board repeals this rule, the Department of Environmental Quality (department) would then address the SIP Call by proposing to submit a proposal to the EPA to withdraw the rule from the SIP.

ARM 17.8.335, which also regulates existing primary aluminum reduction plants only, also applied only to the plant operated by CFAC, because it was the only existing such plant in Montana when the rule was adopted by the board on August 16, 2002. This rule allows exceedances of emission limits during necessary scheduled maintenance of air pollution control equipment at existing primary aluminum reduction plants. Before this rule was adopted, CFAC was required to apply to the board for a variance from rules governing emissions of air pollutants so the plant could continue to operate during maintenance of its control equipment. For the same reasons provided above for the repeal of ARM 17.8.334, this rule is no longer necessary or appropriate and should be repealed.

ARM 17.8.772 concerns the regulation of mercury-emitting electrical generating units through the creation and trading of mercury emissions allowances under a "cap-and-trade" program. The rule was adopted effective October 27, 2006, in response to the federal Clean Air Mercury Rule (CAMR). Promulgated in May 2005, CAMR established a federal mercury emissions trading budget and allowed states to adopt cap-and-trade rules modeled after EPA regulations. Montana's cap-and-trade allocations, described in ARM 17.8.772, anticipated legal challenges to CAMR. Due to litigation that began before adoption of the rule, ARM 17.8.772(4) states, "The department is not required to submit mercury allowance allocations if the federal Clean Air Mercury Rule (CAMR), adopted in 70 Fed. Reg. 28606 (May 18, 2005), is invalidated by a court of competent jurisdiction." Indeed, on February 8, 2008, the federal D.C. Circuit Court of Appeals vacated CAMR. As a result of that vacatur, there is no mercury trading budget in the federal regulations and no requirement for states to submit mercury allowance allocations under that budget. Under ARM 17.8.772(4), because the federal regulation was invalidated, Montana is not required to submit such allocations. Because there is no federal trading budget and there are no state allocations, the department has not been using or submitting such allocations and it will not do so in the future. As a result, the board is proposing to repeal the rule. The department will continue to regulate emissions from mercury-emitting electrical generating units under ARM 17.8.771.



4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail [ejohnson@mt.gov](mailto:ejohnson@mt.gov), no later than November 27, 2015. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail [ejohnson@mt.gov](mailto:ejohnson@mt.gov), no later than November 27, 2015.

6. If the board receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 1 based on no persons affected by this rulemaking.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at [ejohnson@mt.gov](mailto:ejohnson@mt.gov), or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the repeal of the above-referenced rules will not significantly and directly impact small businesses.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

/s/ John F. North

JOHN F. NORTH

Rule Reviewer

BY: /s/ Joan Miles

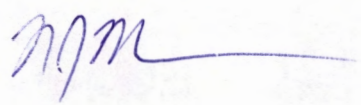
JOAN MILES, CHAIRMAN

Certified to the Secretary of State, October 19, 2015.



## Memo

**TO:** Board of Environmental Review

**FROM:** Norman J. Mullen, DEQ Staff Attorney 

**DATE:** January 19, 2016

**SUBJECT:** House Bill 521 (stringency) and House Bill 311 (takings) review of rulemaking concerning the repeal of ARM 17.8.334, 17.8.335, and 17.8.772, pertaining to emission standards for existing aluminum plants--startup and shutdown, maintenance of air pollution control equipment for existing aluminum plants, and mercury allowance allocations under cap and trade budget in ARM Notice No. 17-375 (publ. 10/29/15)

HB 521 REVIEW  
(Comparing Stringency of State and Local Rules  
to Any Comparable Federal Regulations or Guidelines)

Sections 75-2-111 and 207, MCA, codify the air quality provisions of House Bill 521, from the 1995 legislative session, by requiring that the Board of Environmental Review, prior to adopting a rule to implement the Clean Air Act of Montana that is more stringent than a comparable federal regulation or guideline that addresses the same circumstances, make certain written findings after a public hearing and receiving public comment.

In this proceeding, the Board is proposing the repeal of ARM 17.8.334, 17.8.335, concerning emissions during startup, shut down, and malfunction at aluminum plants, and the repeal of ARM 17.8.772, concerning mercury allowance allocations under a cap and trade budget.

None of the proposed repeals would make the state rules more stringent than comparable federal regulations or guidelines. Rather, the proposed amendments would update the Board's air quality rules to make them more consistent with federal air quality regulations and statutes. Therefore, no further House Bill 521 analysis is required.

(over, please)



House Bill 521 and House Bill 311 Memo for Repeals of  
Air Quality Rule Concerning Existing Aluminum Plants and  
Mercury Allowance Allocations under Cap and Trade  
ARM Notice No. 17-375  
January 19, 2016  
Page 2

HB 311 REVIEW  
(Assessing Impact on Private Property)

Sections 2-10-101 through 105, MCA, codify House Bill 311, the Private Property Assessment Act, from the 1995 legislative session, by requiring that, prior to taking an action that has taking or damaging implications for private real property, a state agency must prepare a taking or damaging impact assessment. Under Section 2-10-103(1), MCA, "action with taking or damaging implications" means:

a proposed state agency administrative rule, policy, or permit condition or denial pertaining to land or water management or to some other environmental matter that if adopted and enforced would constitute a deprivation of private property in violation of the United States or Montana constitution.

Section 2-10-104, MCA, requires the Montana Attorney General to develop guidelines, including a checklist, to assist agencies in determining whether an agency action has taking or damaging implications.

I reviewed the guidelines and determined that the proposed repeals would not constitute a deprivation of real property in violation of the federal or state constitution. I have completed an Attorney General's Private Property Assessment Act Checklist, which is attached to this memo. No further House Bill 311 assessment is required.



**PRIVATE PROPERTY ASSESSMENT ACT CHECKLIST**  
**(using form prepared by Montana Department of Justice, Jan. 2011)**

In the matter of the repeal of ARM 17.8.334, 335, pertaining to Aluminum Plants, and the repeal of and ARM 17.8.772, pertaining to Mercury Allowance Allocations under Cap and Trade Budget, in ARM Notice No. 17-375 (publ. 10/29/15)

**DOES THE PROPOSED AGENCY ACTION HAVE TAKINGS IMPLICATIONS UNDER THE  
PRIVATE PROPERTY ASSESSMENT ACT?**

**YES      NO**

- |       |                    |  |
|-------|--------------------|--|
| _____ | _____ <u>  √  </u> | 1. Does the action pertain to land or water management or environmental regulation affecting private real property or water rights?  |
| _____ | _____ <u>  √  </u> | 2. Does the action result in either a permanent or indefinite physical occupation of private property?   |
| _____ | _____ <u>  √  </u> | 3. Does the action deprive the owner of all economically beneficial use of the property?   |
| _____ | _____ <u>  √  </u> | 4. Does the action require a property owner to dedicate a portion of property or to grant an easement? [If the answer is NO, skip questions 4a and 4b and continue with question 5.]   |
| _____ | _____              | 4a. Is there a reasonable, specific connection between the government requirement and legitimate state interests?  |
| _____ | _____              | 4b. Is the government requirement roughly proportional to the impact of the proposed use of the property?  |
| _____ | _____ <u>  √  </u> | 5. Does the action deny a fundamental attribute of ownership?  |
| _____ | _____ <u>  √  </u> | 6. Does the action have a severe impact on the value of the property?  |
| _____ | _____ <u>  √  </u> | 7. Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public generally?<br>[If the answer is <b>NO</b> , do not answer questions 7a-7c.] |
| _____ | _____              | 7a. Is the impact of government action direct, peculiar, and significant?  |
| _____ | _____              | 7b. Has government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?   |
| _____ | _____              | 7c. Has government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question?                                 |

Taking or damaging implications exist if **YES** is checked in response to question 1 and also to any one or more of the following questions: 2, 3, 5, 6, 7a, 7b, 7c; or if **NO** is checked in response to questions 4a or 4b.

If taking or damaging implications exist, the agency must comply with Mont. Code Ann. § 2-10-105, to include the preparation of a taking or damaging impact assessment. Normally, the preparation of an impact assessment will require consultation with agency legal staff.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 Wynkoop Street  
Denver, CO 80202-1129  
Phone 800-227-8917  
www.epa.gov/region08

RECEIVED

Ref: 8P-AR

NOV 25 2015

NOV 30 2015

MT Dept  
Permitting & Compliance  
Air Quality Bureau

Dave Klemp, Bureau Chief  
Air & Waste Management Bureau  
Department of Environmental Quality  
P.O. Box 200901  
Helena, Montana 59620-0901

Dear Mr. Klemp:

The purpose of this letter is to provide comments on Montana's proposed rule-revisions regarding *Emission Standards for Existing Aluminum Plants – Startup and Shutdown* currently available for public comment.

The EPA supports the repeal of Administrative Rule of Montana, 17.8.334, *Emission Standards for Existing Aluminum Plants – Startup and Shutdown* from Montana's state implementation plan (SIP). The repeal of this provision should correct the inadequacies contained within it, which were described in the EPA's proposed startup, shutdown, or malfunction (SSM) SIP Call (2/22/13, 78 FR 12530) and the EPA's final SSM SIP Call (6/12/15, 80 FR 33970). Specifically, the provision had provided aluminum plants with exemptions from emission limits during periods of startup and shutdown. With the removal of this provision, the emission limits for aluminum plants in Montana should apply continuously, and therefore be consistent with the Clean Air Act. We will reach a final conclusion after the EPA conducts a notice-and-comment rulemaking on a formal submittal of the repeal.

Thank you for the opportunity to provide comments. If you have any questions, please contact Adam Clark in the EPA Region 8's Air Program at (303) 312-7104 or [clark.adam@epa.gov](mailto:clark.adam@epa.gov).

Sincerely,

Carl Daly, Director  
Air Program



Printed on Recycled Paper

**BOARD OF ENVIRONMENTAL REVIEW  
AGENDA ITEM  
EXECUTIVE SUMMARY FOR AMENDMENT AND REPEAL**

**Agenda # III.C.3**

**Agenda Item Summary:** Amendment and repeal of rules implementing the Opencut Mining Act.

**List of Affected Rules:** This request to initiate rulemaking would amend ARM 17.24.201, 17.24.202, 17.24.203, 17.24.206, 17.24.207, 17.24.212, 17.24.213, 17.24.214, 17.24.216, 17.24.217, 17.24.218, 17.24.219, 17.24.220, 17.24.221, 17.24.222, 17.24.223, 17.24.224, and 17.24.226 and repeal ARM 17.24.216 and 17.24.217.

**Affected Parties Summary:** The proposed rule amendments would affect persons who apply for or hold an opencut mining permit and landowners, persons who own land upon which opencut operations are conducted, and persons who live near opencut operations

**Background:** The opencut mining rules were last generally amended in 2004. Since that time, the Opencut Mining Act has been amended in three legislative sessions. In addition, experience with administering the rules has demonstrated that the rules are in need of amendment for clarification, to eliminate unnecessary provisions, and add or modify other provisions to make substantive improvements by adding necessary requirements and deleting unnecessary ones. The proposed amendments accomplish these purposes. The attached notice provides further detail.

**Hearing Information:** A hearing was held on December 11, 2015

**Board Options:** The Board may:

1. Amend and repeal the rules as provided in the attached Notice of Adoption;
2. Modify the Notice and adopt and repeal rules; or
3. Determine that the rules should not be amended or repealed.

**DEQ Recommendation:** The Department recommends that the Board adopt the attached Hearing Examiner Report, HB 311 analysis, and responses to comment contained in the attached Notice of Adoption, and amend and repeal the rules as provided in the attached Notice of Adoption.

**Enclosures:**

1. Notice of Public Hearing on Proposed Amendment and Repeal
2. Hearing Examiner Report
3. HB 311 Analysis
4. Proposed Notice of Adoption

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of )  
ARM 17.24.201, 17.24.202, )  
17.24.203, 17.24.206, 17.24.207, )  
17.24.212, 17.24.213, 17.24.214, )  
17.24.218, 17.24.219, 17.24.220, )  
17.24.221, 17.24.222, 17.24.223, )  
17.24.224, 17.24.225, and 17.24.226 )  
and the repeal of ARM 17.24.216 and )  
17.24.217 pertaining to rules and )  
regulations governing the Opencut )  
Mining Act )

HEARING EXAMINER REPORT

On December 11, 2015, the undersigned presided over and conducted the public hearing held in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to take public comment on the above-captioned proposed amendment of ARM 17.24.201, 17.24.202, 17.24.203, 17.24.206, 17.24.207, 17.24.212, 17.24.213, 17.24.214, 17.24.218, 17.24.219, 17.24.220, 17.24.221, 17.24.222, 17.24.223, 17.24.224, 17.24.225, and 17.24.226 and the repeal of ARM 17.24.216 and 17.24.217 pertaining to rules and regulations governing the Opencut Mining Act.

1. The Notice of Public Hearing on Proposed Amendment and Repeal (Reclamation), MAR Notice No. 17-356 was published on November 12, 2015. A copy of the Notice of Public Hearing on Proposed Amendment is attached to this report. (Attachments are provided in the same order as they are referenced in this report.)

2. The hearing began at 9:00 a.m., and was digitally recorded.



3. The undersigned announced that persons at the hearing would be given an opportunity to submit their data, views, or arguments concerning the proposed action, either orally or in writing. Details of where to submit written views or arguments were provided. At the hearing, the undersigned identified the MAR notice and read the Notice of Function of Administrative Rule Review Committee as required by Mont. Code Ann. § 2-4-302(7)(a). The rulemaking interested persons list and the opportunity to have names placed on that list were addressed. The Presiding Officer explained the order of presentation.

### **SUMMARY OF HEARING**

4. J.J. Conner, the Unit Coordinator of the Opencut Mining Program of the Montana Department of Environmental Quality (Department) gave a statement pertaining to the rationale behind the rule revisions. Specifically, these changes were in response to changes to the Act enacted in the 2007, 2009, and 2013 legislative sessions. Any other changes were to clarify and simplify the rules by reorganizing and streamlining them into similar sections, and to repeal two sections deemed to be redundant, and eliminate concepts that have been the source of confusion. The written statement is hereto attached.

5. At the hearing, Mr. Steve Wade provided comments as representative of the Montana Contractors' Association (MCA). Mr. Wade indicated that the changes in the rules had been made in a consultative fashion with the MCA, and that the MCA approved of the amendments.

### **SUMMARY OF WRITTEN MATERIALS**

6. Substantially prior to the hearing, written comments were received by the Department from the Montana bentonite mining industry, American Colloid Company, Wyo-ben Incorporated, and Bentonite Performance Materials, LLC.

The written comments of these individuals, attached, are appropriately summarized in the comment section of the Notice of Amendment and Adoption.

7. The Department also submitted a memorandum from Department staff attorney, Mr. Dana David, with HB 521 and HB 311 reviews of the proposed amendments and a Private Property Assessment Act Checklist. Mr. David's memorandum is attached to this report.

8. The period to submit comments ended at 5 p.m. on December 18, 2015.

### **HEARING EXAMINER COMMENTS**

9. The Board and the Department have jurisdiction to adopt, amend, or repeal the amendment pursuant to Mont. Code Ann. §§ 76-4-104 and 75-6-103.

10. House Bill 521 (1995) generally provides that the Board may not adopt a rule that is more stringent than comparable federal regulations or guidelines, unless the Board makes written findings after public hearing and comment. The proposed amendments are not more stringent than a comparable federal regulation or guideline. Therefore written findings are not necessary.

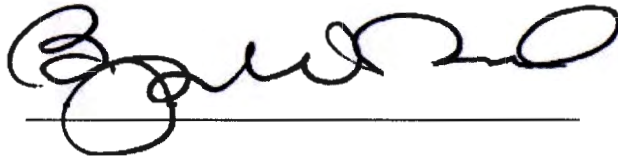
11. House Bill 311 (1995), the Private Property Assessment Act, codified as Mont. Code Ann. § 2-10-101 through -105, provides that a state agency must complete a review and impact assessment prior to taking an action with taking or damaging implications. The proposed amendments affect real property. A Private Property Assessment Act Checklist was prepared in this matter. The proposed amendments do not have taking or damaging implications. Therefore, no further HB 311 assessment is necessary.

12. The procedures required by the Montana Administrative Procedure Act, including public notice, hearing, and comment, have been followed.

13. The Board and Department may adopt the proposed rule amendment, reject it or adopt the rule amendment with revisions not exceeding the scope of the public notice.

14. Under Mont. Code Ann. § 2-4-305(7), for the rulemaking process to be valid, the Board must publish a notice of adoption within six months of the date the Board published the notice of proposed rulemaking in the Montana Administrative Register, or by May 12, 2016.

Dated this 21st day of January, 2016.

A handwritten signature in black ink, appearing to read "Benjamin Reed", written over a horizontal line.

Benjamin Reed  
Hearing Examiner

Mr. James Conner  
DEQ Opencut Program  
PO Box 200901  
Helena, MT 59620

September 30, 2014

**RE: Bentonite Industry Recommendations Regarding the Draft Proposed Rule Package for ARM 17.24 Reclamation Subchapter 2 Rules and Regulations Governing the Opencut Mining Act dated August 8, 2014 as emailed to Stakeholders September 9, 2014.**

Dear Mr. Conner:

On behalf of the Montana bentonite mining industry, American Colloid Company, Wyo-ben Incorporated, and Bentonite Performance Minerals, LLC submit the following recommendations for changes to ARM 17.24 Reclamation Subchapter 2 based on consideration of the marked up revision of the proposed draft rule changes emailed to us on September 9, 2014.

The bentonite industry proposes the following rule modifications (blue text) or similar modifications to address the stated concern:

- 1) **17.24.201(3):** ~~Contracts and permits in effect on February 13, 2004 before~~ [the effective date of this amendment] **and applications that were submitted prior to the effective date,** need not be amended to comply with rules and rule amendments adopted on ~~February 13, 2004~~ [the effective date of this amendment]. Applications for permits, permit amendments, and permit ~~transfers or assignments~~ **that were submitted the department determined to be complete** prior to ~~February 13, 2004~~ [the effective date of this amendment], remain subject to provisions of this subchapter relating to application requirements as they read on the date the ~~application was submitted~~ **department determined the application to be complete**

*Concern and comment: pending applications submitted but not deemed complete are not addressed by the current language.*

- 2) **17.24.201(6):** in addition to the requirements of (5) of this rule, an operator may not commence a limited opencut operation within 300 feet of a permitted operation until the department determines and notifies the operator in writing that:
  - (a) No part of the proposed opencut limited operation is on land affected by the permitted operation.
  - (b) Both operations can be reclaimed according to their respective requirements under the Act and this subchapter; and
  - (c) The principal amount of the new reclamation bond or other security, if required, is sufficient to cover the estimated costs of reclamation of the limited opencut operations under the Act and this subchapter.

*Concern and comment: how would this address the situation where one company may permit both company's mine plans and use castback into the other operator's pit.*



- 3) **17.24.218(a):** "a markers section that includes a statement that the operator has clearly marked on the ground **or provided to the MT DEQ in an agreed upon electronic format** all required boundaries and permitted access roads to be improved or constructed and will maintain the markings **or electronic files** as required by this rule..."

*Concern and comment: physical boundary markers as required 17.24.218 are not reasonable for large, long term permits. Requires modification to address alternative provision of required boundary identification in an agreed upon manner.*

- 4) **17.24.218(d):** "a soil and overburden characterization section that includes the average **estimated** soil and overburden thicknesses in the permit area determined on the basis of **visual analysis** of no less than three test holes spaced representatively to describe proposed permit areas of less than nine acres and one test hole per each 3-acre area for proposed permit areas of nine acres or more; with a maximum of 20 representatively spaced test holes for proposed permit areas that exceed 60 acres, **or as otherwise approved by the Department.**

*Concern and comment: the section does not reference whether each of the required test holes must be chemically analyzed or only visually analyzed; does this tie to 17.218.207(a)?*

*The referenced number of test holes is not logical in all cases, particularly for overburden. (exploration drill holes could be utilized but would not specify topsoil information or include photographs of the top 3 feet of material).*

- 5) **17.24.218(e)(iv):** "clear labeled photographs of the top three feet **(or entire topsoil/subsoil profile if less than three feet; not required for overburden)** with a visible scale must be taken and provided to the department for each test hole" **unless otherwise approved by the Department."**

*Concern and comment: professional judgment by qualified persons should be allowed. Distinguishing between topsoil/subsoil and overburden reporting needs may help clarify.*

*In some cases, if the proposed mine area is big enough, soil mapping may require 50 pedon descriptions or more. It is not practical to take and submit pictures for each pedon when that many are described. Representative pictures for each map unit should be allowed.*

- 6) **17.24.218(e)(i):** "upon commencing openpit operations, remove and stockpile all soil to the **estimated** depth specified in the permit **modified as appropriate based on field indicators of actual boundaries.**"

*Concern and comment: regardless of how tight a sampling grid is, natural variability will occur in soil depth that must be addressed during stripping. The depth reflected in the permit is an estimated average based on the collected data.*

- 7) **17.24.218(e)(vi):** "never stockpile overburden on areas where soil has not been stripped to the depth **(adjusted to site specific conditions as appropriate)** required by the permit"

*Concern and comment: site specific depth may vary from the estimated average identified in the permit.*

- 8) **17.24.218(e)(vii):** "use best management practices to prevent erosion, comingling, contamination, compaction, and unnecessary disturbance of soil and overburden stockpiles,



including but not limited to, at the first seasonal opportunity, shape and seed, with approved perennial species, the soil ~~and overburden~~ stockpiles that will remain in place for more than two years”.

*Concern and comment: seeding of overburden piles is not logical in bentonite areas. Suitable material is typically in limited supply and is salvaged separately; overburden is frequently heavy material with saline/sodic properties that are not conducive to vegetation establishment.*

- 9) 17.24.219(c)(iv): “record the average thickness of overburden replaced”.

*Concern and comment: this is a past tense statement, and replacement depth will vary depending upon post mine topography required to blend with surrounding areas. Providing an estimated pre-mine average based on estimated stripping depths won't provide any useful information, particularly with sequential mining and use of direct haul backfilling methods.*

- 10) 17.24.219(c)(vii): “(c) backfill and grading sections that contain a statement that the operator will... (vii) conduct post-mining monitoring of ground water levels to ensure that appropriate reclaimed surface elevations would be established”.

*Concern and comment: there seems to be a disconnect between groundwater and surface water statements here. What is this intended to say?*

- 11) 17.24.219(g)(i): “till replaced overburden, graded surfaces, and other ~~compacted~~ surfaces to a depth of at least 12 inches ~~if needed to alleviate compaction~~ prior to replacing soils”.

*Concern and comment: not all replaced overburden or other referenced surfaces have compaction issues; tilling should be conducted on an as-needed basis. Tilling prior to respread of limited suitable soil resources would cause mixing that could be detrimental to the reclamation goal.*

- 12) 17.24.219(g)(ii): “record the ~~estimated average~~ thickness of soil ~~available~~ for replacement on the permit areas”.

*Concern and comment: the statement as originally written is a past tense statement. This number will be an estimate; actual replacement will be affected by field adjustments to actual boundaries as well as direct haul influences.*

- 13) 17.24.219(g)(iii): “till through replaced soil and into the underlying backfill prior to seeding or planting ~~unless otherwise approved by the Department~~”.

*Concern and comment: tilling through replaced soil should generally not be done in bentonite mining operations. Suitable soil material is often limited and tilling would result in mixing of less suitable overburden with suitable soil material. This should only be done when warranted by other factors that would provide an overall enhanced benefit to reclamation.*

- 14) 17.24.219(i)(ii): “broadcast seeding must be done at a rate that is at least 100% higher than drill seeding rates and the surface dragged or pressed to cover the seed ~~unless otherwise approved by the Department~~”.

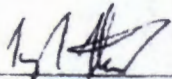
*Concern and comment: seeding rates and seedbed preparation methods that have a history of being effective in specific areas should be allowed consideration.*

151 17.24.221: "...Maps must fill an 8.5 x 11 or 11 x 17-inch sheet or as otherwise appropriate to show application information at a legible scale ..."

*Concern and comment: maps of the currently referenced size would be at an inappropriate scale for large operations.*

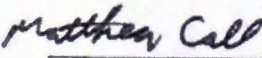
Thank you for the opportunity to provide comments in support of the Rule Change.

Sincerely,

  
Tyler Tetrault  
Bentonite Performance Minerals, LLC


9/30/2014

DATE

  
Matt Call  
Wyo-ben, Inc.


9/30/2014

DATE

  
Melody Smith  
American Colloid Company, Belle Colony Operations

9/30/2014

DATE

  
Matt Dillon  
American Colloid Company, Lovell Operations

9/30/2014

DATE



Mr. James Conner  
DEQ Opencut Program  
PO Box 200901  
Helena, MT 59620

September 30, 2014

**RE: Bentonite Industry Recommendations Regarding the Draft Proposed Rule Package for ARM 17.24 Reclamation Subchapter 2 Rules and Regulations Governing the Opencut Mining Act dated August 8, 2014 as emailed to Stakeholders September 9, 2014.**

Dear Mr. Conner:

On behalf of the Montana bentonite mining industry, American Colloid Company, Wyo-ben Incorporated, and Bentonite Performance Minerals, LLC submit the following recommendations for changes to *ARM 17.24 Reclamation Subchapter 2* based on consideration of the marked up revision of the proposed draft rule changes emailed to us on September 9, 2014.

The bentonite industry proposes the following rule modifications (blue text) or similar modifications to address the stated concern:

- 1) **17.24.201(3):** ~~Contracts and permits~~ in effect on ~~February 13, 2004~~ before [the effective date of this amendment] **and applications that were submitted prior to the effective date**, need not be amended to comply with rules and rule amendments adopted on ~~February 13, 2004~~ [the effective date of this amendment]. Applications for permits, permit amendments, and permit ~~transfers or assignments~~ that ~~were submitted the department determined to be complete~~ prior to ~~February 13, 2004~~ [the effective date of this amendment], remain subject to provisions of this subchapter relating to application requirements as they read on the date the ~~application was submitted~~ department determined the application to be complete

*Concern and comment:* pending applications submitted but not deemed complete are not addressed by the current language.

- 2) **17.24.201(6):** in addition to the requirements of (5) of this rule, an operator may not commence a limited opencut operation within 300 feet of a permitted operation until the department determines and notifies the operator in writing that:
  - (a) No part of the proposed opencut limited operation is on land affected by the permitted operation.
  - (b) Both operations can be reclaimed according to their respective requirements under the Act and this subchapter; and
  - (c) The principal amount of the new reclamation bond or other security, if required, is sufficient to cover the estimated costs of reclamation of the limited opencut operations under the Act and this subchapter.

*Concern and comment:* how would this address the situation where one company may permit both company's mine plans and use castback into the other operator's pit.



- 3) 17.24.218(a): "a markers section that includes a statement that the operator has clearly marked on the ground or provided to the MT DEQ in an agreed upon electronic format all required boundaries and permitted access roads to be improved or constructed and will maintain the markings or electronic files as required by this rule..."

*Concern and comment: physical boundary markers as required 17.24.218 are not reasonable for large, long term permits. Requires modification to address alternative provision of required boundary identification in an agreed upon manner.*

- 4) 17.24.218(d): "a soil and overburden characterization section that includes the average estimated soil and overburden thicknesses in the permit area determined on the basis of visual analysis of no less than three test holes spaced representatively to describe proposed permit areas of less than nine acres and one test hole per each 3-acre area for proposed permit areas of nine acres or more; with a maximum of 20 representatively spaced test holes for proposed permit areas that exceed 60 acres, or as otherwise approved by the Department.

*Concern and comment: the section does not reference whether each of the required test holes must be chemically analyzed or only visually analyzed; does this tie to 17.218.207(a)?*

*The referenced number of test holes is not logical in all cases, particularly for overburden. (exploration drill holes could be utilized but would not specify topsoil information or include photographs of the top 3 feet of material).*

- 5) 17.24.218(e)(iv): "clear labeled photographs of the top three feet (or entire topsoil/subsoil profile if less than three feet; not required for overburden) with a visible scale must be taken and provided to the department for each test hole" unless otherwise approved by the Department."

*Concern and comment: professional judgment by qualified persons should be allowed. Distinguishing between topsoil/subsoil and overburden reporting needs may help clarify.*

*In some cases, if the proposed mine area is big enough, soil mapping may require 50 pedon descriptions or more. It is not practical to take and submit pictures for each pedon when that many are described. Representative pictures for each map unit should be allowed.*

- 6) 17.24.218(e)(i): "upon commencing opencut operations, remove and stockpile all soil to the estimated depth specified in the permit modified as appropriate based on field indicators of actual boundaries."

*Concern and comment: regardless of how tight a sampling grid is, natural variability will occur in soil depth that must be addressed during stripping. The depth reflected in the permit is an estimated average based on the collected data.*

- 7) 17.24.218(e)(vi): "never stockpile overburden on areas where soil has not been stripped to the depth (adjusted to site specific conditions as appropriate) required by the permit"

*Concern and comment: site specific depth may vary from the estimated average identified in the permit.*

- 8) 17.24.218(e)(vii): "use best management practices to prevent erosion, comingling, contamination, compaction, and unnecessary disturbance of soil and overburden stockpiles,



including but not limited to, at the first seasonal opportunity, shape and seed, with approved perennial species, the soil ~~and overburden~~ stockpiles that will remain in place for more than two years”.

*Concern and comment: seeding of overburden piles is not logical in bentonite areas. Suitable material is typically in limited supply and is salvaged separately; overburden is frequently heavy material with saline/sodic properties that are not conducive to vegetation establishment.*

- 9) 17.24.219(c)(iv): “record the average thickness of overburden replaced”.

*Concern and comment: this is a past tense statement, and replacement depth will vary depending upon post mine topography required to blend with surrounding areas. Providing an estimated pre-mine average based on estimated stripping depths won't provide any useful information, particularly with sequential mining and use of direct haul backfilling methods.*

- 10) 17.24.219(c)(vii): “(c) backfill and grading sections that contain a statement that the operator will...(vii) conduct post-mining monitoring of ground water levels to ensure that appropriate reclaimed surface elevations would be established”.

*Concern and comment: there seems to be a disconnect between groundwater and surface water statements here. What is this intended to say?*

- 11) 17.24.219(g)(i): “till replaced overburden, graded surfaces, and other ~~compacted~~ surfaces to a depth of at least 12 inches if needed to alleviate compaction prior to replacing soils”.

*Concern and comment: not all replaced overburden or other referenced surfaces have compaction issues; tilling should be conducted on an as-needed basis. Tilling prior to respread of limited suitable soil resources would cause mixing that could be detrimental to the reclamation goal.*

- 12) 17.24.219(g)(ii): “record the ~~estimated average~~ thickness of soil ~~available for replacement~~ on the permit areas”.

*Concern and comment: the statement as originally written is a past tense statement. This number will be an estimate; actual replacement will be affected by field adjustments to actual boundaries as well as direct haul influences.*

- 13) 17.24.219(g)(iii): “till through replaced soil and into the underlying backfill prior to seeding or planting ~~unless otherwise approved by the Department~~”.

*Concern and comment: tilling through replaced soil should generally not be done in bentonite mining operations. Suitable soil material is often limited and tilling would result in mixing of less suitable overburden with suitable soil material. This should only be done when warranted by other factors that would provide an overall enhanced benefit to reclamation.*

- 14) 17.24.219(i)(ii): “broadcast seeding must be done at a rate that is at least 100% higher than drill seeding rates and the surface dragged or pressed to cover the seed ~~unless otherwise approved by the Department~~”.

*Concern and comment: seeding rates and seedbed preparation methods that have a history of being effective in specific areas should be allowed consideration.*

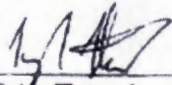


151 17.24.221: "...Maps must fill an 8.5 x 11 or 11 x 17-inch sheet or as otherwise appropriate to show application information at a legible scale ..."

*Concern and comment: maps of the currently referenced size would be at an inappropriate scale for large operations.*

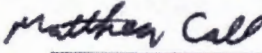
Thank you for the opportunity to provide comments in support of the Rule Change.

Sincerely,

  
Tyler Tetrault  
Bentonite Performance Minerals, LLC

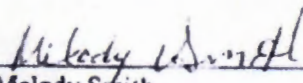
9/30/2014

DATE

  
Matt Call  
Wyo-ben, Inc.


9/30/2014

DATE

  
Melody Smith  
American Colloid Company, Belle Colony Operations

9/30/2014

DATE

  
Matt Dillon  
American Colloid Company, Lovell Operations

9/30/2014

DATE

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )	NOTICE OF PUBLIC HEARING ON
17.24.201, 17.24.202, 17.24.203, )	PROPOSED AMENDMENT AND
17.24.206, 17.24.207, 17.24.212, )	REPEAL
17.24.213, 17.24.214, 17.24.218, )	
17.24.219, 17.24.220, 17.24.221, )	(RECLAMATION)
17.24.222, 17.24.223, 17.24.224, )	
17.24.225, and 17.24.226 and the repeal) )	
of ARM 17.24.216 and 17.24.217 )	
pertaining to rules and regulations )	
governing the Opencut Mining Act )	
)	

TO: All Concerned Persons

1. On December 11, 2015, at 9:00 a.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., November 23, 2015, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail [ejohnson@mt.gov](mailto:ejohnson@mt.gov).

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.24.201 APPLICABILITY (1) remains the same.

(2) An operator conducting ~~a sand, gravel, bentonite, clay, or scoria~~ mining opencut operations pursuant to must comply with the provisions of a reclamation contract or permit issued under the ~~Montana Opencut or Strip Mined Land Reclamation Act~~ and this subchapter of 1971 is recognized as being in compliance with Montana law. ~~However, should that operator begin a new opencut operation as defined in 82-4-431, MCA, or expand an opencut operation beyond the existing contract area, the operator shall be responsible for first obtaining a permit under the provisions of the Act as amended.~~ Except as provided in (5), a permit is required before an operator commences the following:

(a) an opencut operation that results in the removal of more than 10,000 cubic yards of materials and overburden;

(b) more than one opencut operation where each operation results in the removal of less than 10,000 cubic yards of materials and overburden, but the several

operations result in the removal of a total of 10,000 cubic yards or more of materials and overburden; or

(c) an opencut operation where overburden and materials are removed from a previously mined site and the amount mined, combined with the amount of previously removed materials and overburden, exceeds 10,000 cubic yards.

(3) Contracts and permits in effect on February 13, 2004 before [the effective date of this amendment], need not be amended to comply with rules and rule amendments adopted on February 13, 2004 [the effective date of this amendment]. Applications for permits, permit amendments, and permit transfers assignments that were submitted the department determined to be complete prior to February 13, 2004 [the effective date of this amendment], remain subject to provisions of this subchapter relating to application requirements as they read on the date the application was submitted department determined the application to be complete.

(4) Except as provided in (5) and ARM 17.24.226, a permit amendment is required before taking an action that expands or changes a permitted opencut operation.

(5) Except as provided in ARM 17.24.226(5), an operator holding a permit issued under the Act may commence a limited opencut operation that meets the criteria in ARM 17.24.226 and 82-4-431, MCA, after the operator has submitted the limited opencut operation form to the department.

AUTH: 82-4-422, MCA

IMP: 82-4-431, MCA

REASON: The proposed amendments to ARM 17.24.201 would implement Sec. 5, Ch. 198, Laws of 2013. The proposed amendments to (2) would restate the statutory threshold for obtaining an operating permit and are appropriate for restatement in the rule to notify applicants and operators that failure to obtain a permit before exceeding the 10,000 cubic-yard permit threshold is a violation of the Act.

The proposed amendments to (3) would notify permitted operators and applicants that the proposed amendments to the subchapter do not apply to permits and applications determined to be complete as of the effective date of these amendments.

New (4) would implement Sec. 5, Ch. 198, Laws of 2013 and would exclude limited opencut operations from the requirement to obtain a permit or an amended permit. In addition, new (4) would clarify that any action that expands or changes a permitted opencut operation requires an amended permit except when the action qualifies as a limited opencut operation.

New (5) would implement Sec. 5, Ch. 198, Laws of 2013 and would require an operator to submit the limited opencut information form to the department before commencing a limited opencut operation. Submittal of the information form to the department before commencing operations is necessary to afford the department the opportunity to notify the applicant soon after operations commence in the event that the operation does not meet the requirements for a limited opencut operation. New (5) would also notify operators that a limited opencut operation must meet the



criteria set forth in ARM 17.24.226 and 82-4-431, MCA.

17.24.202 DEFINITIONS When used in this subchapter, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Access road" means an existing or proposed non-public road used in connection with that connects an opencut operations operation to a public road or highway. The term includes the roadbed, cut and fill slopes, ditches, and other structures and disturbances related to the construction, use, and reclamation of the access road establishment, use, and reclamation.

(2) "Bonded area" means a portion of the permit area that is subject to a reclamation bond or other security approved by the department under this subchapter.

(3) "Clean fill" means soil, overburden, fines, dirt, sand, gravel, rocks, and rebar-free concrete that have not been made impure by contact, commingling, or consolidation with organic compounds such as petroleum hydrocarbons, inorganic metals, or contaminants that meet the definition of hazardous waste under ARM Title 17, chapter 53, or regulated PCB (polychlorinated biphenyls). "Rebar-free concrete" means pieces of concrete that may contain rebar, but from which no rebar protrudes beyond the concrete.

(2) (4) "Department" means the Department of Environmental Quality provided for in Title 2, chapter 15, part 35 2-15-3501, MCA;

(3) "Facility-level area" means ~~access roads and areas where parking, equipment and material storage, soil and overburden stockpiling, fuel storage, mine material processing and stockpiling, other product production and storage, and water system and control structures are situated.~~

(4) "Main permit area" means ~~facility-level areas and mine-level areas, except access roads.~~

(5) "Mine-level area" means ~~areas where excavating, grading, and excess overburden and fines disposal occur.~~

(6) (5) "Mine material Materials" means sand, gravel, scoria, bentonite, clay, soil, and peat has the meaning given in 82-4-403, MCA.

(6) "Non-bonded area" means the portion of a permit area that is not covered by a reclamation bond or other security approved by the department under this subchapter.

(7) "Opencut operation" means ~~the areas and activities related to opencut mine site preparation, access road use, mine material mining and processing, and reclamation has the meaning given in 82-4-403, MCA.~~

(8) "Overburden" means ~~the material below the soil and above the mine material has the meaning given in 82-4-403, MCA.~~

(9) "Pattern of violations" means three or more violations of the Act or this subchapter that harm or have the potential to harm human health or the environment. A violation does not contribute to a pattern of violations:

(a) until such time as the opportunity for administrative review, judicial review, or appeal have passed for the violation; or

(b) after the violator demonstrates compliance with all the terms of an administrative or judicial order in an action taken by the department under authority of the Act and this subchapter because of the violation.

(10) "Permit area" means the areas subject to a permit granted under this

subchapter.

(11) "Removal" means excavation of soil, overburden, and material from its natural condition.

(12) "Slope" means the measure of an incline by means of a ratio of horizontal to vertical distance indicated by a pair of numbers separated by a colon, for example, 3:1, which means one foot of rise over three horizontal feet.

(9) (13) "Soil" means the dark or root-bearing surface material, which is typically the O, A, E, and B horizons in soil profile descriptions has the meaning given in 82-4-403, MCA.

(14) "Tilling" means breaking up the substrate or soil before seeding to a depth of at least one foot to improve conditions for plant growth.

AUTH: 82-4-422, MCA

IMP: 82-4-403, 82-4-422, 82-4-431, 82-4-432, 82-4-434, MCA

REASON: The proposed amendments to ARM 17.24.202 are necessary to update definitions and bring them into compliance with changes to the Opencut Mining Act made by Sec. 2, Ch. 198, Laws of 2013.

The proposed amendments would revise the definition of "access road" in (1) because Sec. 2, Ch. 198, Laws of 2013 excludes "private roads" from the definition of "affected lands" that require reclamation. The amended definition is necessary to identify the elements of an access road that would be subject to reclamation at the request of the landowner. The other amendments are necessary to improve syntax and readability.

New (2), (6), and (10) are necessary to clarify the distinction within a "permit area" between a "bonded area" where opencut operations are allowed, because the area is covered by a reclamation bond, and a "non-bonded area" where opencut operations are prohibited, because the area is not covered by a reclamation bond. The proposed new terms codify the department's practice of allowing an operator to bond only a portion of the permit area thereby limiting the burden of bond costs.

The proposed deletion of (3), (4), and (5) would eliminate the definitions of "facility level area," "main permit area," and "mine level area" that are proposed to be deleted throughout the subchapter because they are regulatory concepts that operators have found confusing. Elimination of these terms would improve regulatory clarity.

The proposed amendment of existing (6), (8), and (9) and proposed new (14) would substitute the restatement of those definitions that are currently in the rule in favor of reference to the definitions set forth in the Act. The proposed amendments improve clarity and avoid confusion that results from restatement of terms that are defined in statute. The proposed amendment of existing (6) substitutes "materials" as set forth in the statute for "mine materials" in order to eliminate a distinction in terminology that is unnecessary.

New (9) would implement considerations that the department would use to determine whether it could refuse to approve an application under 82-4-431(5), MCA, for an operator who has engaged in a "pattern of violations." It would establish three violations, the minimum number to establish a pattern, as the threshold for disqualification. New (9)(a) would maximize due process protections



for alleged violators by excluding a violation that is the subject of pending administrative or judicial review from consideration from counting as a pattern violation. New (9)(b) is necessary to exclude from consideration, as a pattern of violations, a violation described in an administrative or judicial order for which the operator has demonstrated compliance. The board has determined that having three unabated violations that harm public health or the environment indicates a lack of diligence sufficient to withhold permit issuance.

New (11) would add a definition for "removal" to clarify when opencut activities, which are not subject to the permit exclusion for limited opencut operations, reach the 10,000-cubic-yard permit threshold. The new definition implements Sec. 5, Ch. 198, Laws of 2013, which amends 82-4-431(1)(c), MCA, to require a permit for an operator who "removes materials and overburden at a previously mined site where the removal, combined with the amount of previously mined materials and overburden, exceeds 10,000 cubic yards." (emphasis added) That provision, construed in conjunction with the definition of "opencut operation" to include "mining directly from natural deposits of materials" in 82-4-403(7)(c), MCA, demonstrates the intent of the Legislature that disturbance, rather than removal from the site of soil, overburden, or materials, triggers the obligation to obtain a permit. The proposed definition would mean that volumes of soil and overburden that have been removed from their natural condition and stockpiled at the site will not be deducted from the volume of the excavation for the purposes of determining whether the 10,000-cubic-yard threshold in 82-4-431(1), MCA, has been exceeded. The new definition would recognize the remedial intent of the Opencut Mining Act to provide for reclamation of sites where opencut operations have occurred.

New (13) would codify terminology used on opencut forms for determining the steepness of a slope. The definition is necessary to avoid confusion when a slope is described by a simple ratio.

New (15) would clarify "tilling," a term used in ARM 17.24.219, and is necessary to establish a minimum depth for preparation of land prior to seeding. The one-foot tillage depth is generally considered to be the minimum necessary to achieve successful revegetation.

17.24.203 BOND OR OTHER SECURITY (1) An application for a permit by a non-government operator must be accompanied by a bond or other security acceptable to the department under 82-4-433, MCA, ~~of at least \$200 for each acre of affected land as defined in 82-4-403, MCA and this subchapter. After the department has evaluated the site it may require an increase in the amount of bond or other security in accordance with 82-4-433, MCA.~~

(2) The department may adjust the amount of the bond or other security levels:

(a) based on information available to the department; and

(b) yearly when necessary to secure the department's estimate of costs to reclaim the affected land. Should the department determine that additional bond or other security is required, the operator shall submit it a bond or security in the increased amount within 30 days of notification by the department.

(3) The operator shall immediately notify the department if the bond or other security is canceled or becomes ineffective. If the bond or other security is canceled

or otherwise becomes ineffective, the operator shall reinstate it or replace it the canceled or ineffective bond or security with another bond or other security acceptable to the department under 82-4-433, MCA, and this subchapter, within 30 days of notification by the department of the cancellation that the canceled or ineffective bond or other security must be replaced. Upon failure of In the event that the operator fails to reinstate or replace such bond or other security within that time the time provided in this rule, the department may suspend the any permit(s) secured by such the canceled or ineffective bond or other security until its reinstatement or replacement in accordance with 82-4-442, MCA. The operator shall immediately cease opencut operations, except reclamation activities, on lands covered by a suspended permit.

(4) An operator may apply for release of the bond in phases as follows:

(a) upon completion of phase I reclamation, which includes completion of all the requirements in ARM 17.24.219(1), except the requirements of ARM 17.24.219(1)(h)(ii)(K), (L), and (M). Any phase I reclamation bond or security release must leave sufficient bond or security to secure the estimated cost of completion of phase II reclamation;

(b) upon completion of phase II reclamation, which includes completion of all the requirements of ARM 17.24.219(1).

(4) (5) Requests An application for full phase I or partial phase II bond release of bond or release of other security must be submitted on forms provided by the department, and must include:

(a) a site map that shows:

(i) the existing permit area and release request area;

(ii) the landowner material stockpile area and remaining soil stockpile, if applicable;

(iii) roads; and

(iv) other pertinent mapping items as required by ARM 17.24.221(5);

(b) at least four photographs taken from the north, south, west, and east corners of the release request area; and

(c) for applications for release of bond amounts for phase II reclamation, at least three photographs taken at three different locations in the permit area showing typical vegetation within an area approximately five feet wide and including an object to define scale.

(6) The department may release a portion of the bond or security when the operator demonstrates completion of a reclamation phase, as defined in (4), for a discrete portion of the permit area if:

(a) the remaining reclamation can be accomplished without disturbance of completed reclamation; and

(b) the remaining amount of bond or security is sufficient to cover estimated cost to complete reclamation of the affected land.

(7) Release of a portion of the bond or security after completion of phase I reclamation does not relieve the operator from responsibility for any reclamation or any increased costs of reclamation necessary to comply with the Act, this subchapter, and the permit until phase II bond release.

(8) State and federal agencies and counties, cities, and towns are not required to post a bond or security. These government operators may request

release from responsibility for reclamation in the same manner as nongovernmental operators request bond or security release in accordance with this rule, including release of a portion of the permitted area, except that government operators may not request release of responsibility for phase I reclamation.

AUTH: 82-4-422, MCA

IMP: 82-4-432, 82-4-433, MCA

**REASON:** The proposed amendments to ARM 17.24.203 would implement changes to the Act by Sec. 12, Ch. 385, Laws of 2007 for determination of the amount of a reclamation bond or other security. The proposed amendments to (1) would clarify that the requirement to post a reclamation bond or security only applies to nongovernment operators and deletes the provision for the \$200 per acre minimum bond amount that was specifically repealed by Sec. 12, Ch. 385, Laws of 2007.

The proposed amendments to (2)(a) would provide notice to applicants, in the rule, of the authority of the department under 82-4-432(2)(a), MCA, to withhold issuance of a permit pending increase in the bond amount, if the department determines, based on available information, that the amount of the bond submitted with the permit application is inadequate. The amendments would ensure that the amount of the bond is adequate before opencut operations may begin, thereby reducing the risk that the state would need to rely on public funds to reclaim the site. The proposed amendments to (2)(b) are necessary to notify operators that exercise by the department of its authority to require an operator to provide additional bond would be based on the department's determination of estimated reclamation costs. Otherwise the amendments to (2)(b) are necessary to improve the syntax and readability of the rule.

The proposed amendments to (3) would improve the syntax and readability of the rule. In addition, the amendments would require the operator, as well as the insurer or other guarantor, to immediately notify the department in the event that a reclamation bond is canceled or becomes ineffective. This would ensure that the department has the opportunity to immediately suspend the operation or take other action to make sure that there is coverage of a bond or other security sufficient for reclamation of all disturbances. Amended (3) would also reference the department's suspension authority under 82-4-442, MCA, to notify operators that suspension of a permit under the rule must follow the procedures set forth in the statute.

New (4) would codify the department's practice of allowing an applicant to apply for phased bond release. New (4) also accommodates proposed amendments to ARM 17.24.219, which would provide more flexibility for an operator applying for bond release. New (4) would follow ARM 17.24.219 by establishing two phases of bond release, phase I and phase II. New (4) would make an operator eligible for phase I bond release upon completion of all reclamation activities that would presumably be completed in the first season after opencut activities cease, i.e., all activities except demonstration of successful revegetation. New (4) would make demonstration of revegetative success during the second growing season the benchmark for phase II or full bond release. Providing for phased bond release is necessary to allow an operator to release a portion of the bond after backfilling,



grading, and revegetation have been completed and avoid the costs of maintaining the full bond amount pending demonstration of revegetative success.

Revised (5), previously numbered (4), would codify the department's practice regarding the information required for an application for bond release. Revised (5) would allow an operator to request partial bond release when all reclamation is complete, except demonstration of revegetative success. The submittal requirements set forth in (5)(a) and (b) are the minimum necessary to demonstrate reclamation in accordance with ARM 17.24.219. Revised (5)(b) and (c) would facilitate timely processing of bond release applications by requiring the operator to provide pictorial evidence of successful reclamation in advance of the site inspection, so that the department may address any problems in advance of the inspection.

New (6) would codify the considerations that the department uses to evaluate an application for partial bond release, meaning release of a reclamation bond for only a portion of the permit area. The considerations are necessary and practical in that they would ensure that full reclamation is possible without disturbing areas where the bond has been released and that the amount of the bond remaining after partial release is sufficient to cover the costs of reclamation of the unreclaimed portion of the site.

New (7) provides that partial release of a reclamation bond does not prohibit the department from increasing the amount of the remaining bond in the event that the department concludes that the amount of the remaining bond is insufficient to cover estimated reclamation costs. The provision will ensure that the amount of the remaining bond will be sufficient to cover the costs of reclamation, thereby reducing the risk that the department would resort to public funds to complete reclamation.

New (8) would allow government operators, who are exempt from the requirement to obtain a reclamation bond, to apply for a release of responsibility for reclamation in the same manner that a nongovernmental operator would apply for partial bond release. New (8) would deny government operators the opportunity to apply for phased bond release based on vegetative success in recognition of the limited financial incentive for a government operator to do so. Phased bond release is intended to relieve operators from the holding costs for a reclamation bond or other security. Therefore, phased bond release is not applicable to government operators because they are not required to post reclamation security.

#### 17.24.206 LANDOWNER CONSENT FOR RECLAMATION

CONSULTATION (1) ~~An operator shall secure the consent of the owner of the land to be affected by open-cut operations to allow the operator, the department, or agents or contractors of the department to enter and reclaim the affected land as provided in the plan of operation. An application for a permit or for an amendment to add acreage, for an asphalt or concrete plant, to change postmining land use, or to extend the reclamation date must demonstrate that the applicant consulted with the~~ The landowner consent must be submitted on a ~~about the proposed open-cut operations by supplying a form provided by the department. No application for a permit, or an amendment to add acreage or change the postmining land use, may be approved unless accompanied by a landowner consent form.~~

(2) The landowner consultation form must require the landowner to:



(a) acknowledge receipt of a copy of the application for a permit or amendment submitted to the department;

(b) affirm ownership of the property that is described in the application;

(c) affirm that the operator consulted with the landowner about the opencut operations described in the application;

(d) indicate whether access roads, haul roads, or other roads used in opencut operations are on affected land and are subject to the reclamation requirements of this subchapter;

(e) acknowledge the exclusive right of the operator, its agent, or assignee to conduct opencut operations on the property that is identified in the application; and

(f) acknowledge and consent to entry and enforcement of the Act and this subchapter by the department on all landowner property affected by opencut operations.

(3) The landowner consultation form also must require the operator and the landowner to consent to entry at reasonable times by the department and its employees, agents, or contractors to inspect the property and complete reclamation of all affected lands in accordance with the permit and the plan of operation in the event that the operator fails to do so.

AUTH: 82-4-422, MCA

IMP: 82-4-422, 82-4-423, 82-4-432, 82-4-434, MCA

**REASON:** The proposed amendments to ARM 17.24.206 would implement the changes to the Act enacted under Sec. 11, Ch. 385, Laws of 2007. The proposed amendment to (1) would specify when landowner consultation is required. The proposed amendment would recognize that every change to a permit is not worthy of revised landowner consultation. However, the proposed amendment would require an operator to consult with the landowner for permit amendments that would result in an increase in permitted acreage, a change to postmining land use, an extension of the deadline for reclamation, or to add an asphalt or a concrete plant, which are all changes considered to be material to the interest of the landowner.

New (2)(a) would specify the information that the department currently requires on the landowner consultation form. It has been the experience of the department that some landowners do not understand the implications of permitted opencut operations on their land. Accordingly, new (2)(a) would require the landowner to acknowledge receipt of a copy of the opencut permit application submitted to the department.

New (2)(b) and (c) would require the landowner to acknowledge: 1) ownership of the subject lands; and 2) that the applicant has consulted with the landowner. This is being proposed in order to ensure that the landowners consultation requirement has been met.

New (2)(d) would also notify the landowner of elections he or she must make with regard to reclamation of roads. The information required is necessary, as it is the minimum needed to inform the landowner of the implications of landowner consent.

New (2)(e) is proposed to notify the landowner of the operator's exclusive

right to conduct opencut operations under the permit to avoid conflicts between the operator and the landowner about the use and control of the permitted area.

New (2)(f) also would require the landowner and the operator to consent to entry of department staff to inspect property where an opencut operation is located and to inspect or complete reclamation of the property as permitted by 82-4-442, 82-4-445, and 82-4-446, MCA. This would facilitate the department's performance of its regulatory functions without interference.

17.24.207 ADDITIONAL REQUIREMENTS FOR BENTONITE MINES (1) In addition to the requirements imposed by ARM 17.24.203, 17.24.206, and ~~17.24.246~~ 17.24.218 through 17.24.222, the department may require the following information as part of the plan of operation for a bentonite mining operation:

(a) an analysis of the soil and each major stratum in the overburden, ~~including that includes~~ determinations of:

- (i) saturation percentage;<sub>i</sub>
- (ii) pH;<sub>i</sub>
- (iii) electrical conductivity;<sub>i</sub>
- (iv) sodium adsorption ratio;<sub>i</sub>
- (v) texture;<sub>i</sub> and
- (vi) additional characteristics the department may require.

(2) A soil analysis required under (1)(a) must describe:

~~(i) In submitting this information, the operator shall also list:~~

- ~~(A) (a) the identifying number and depth of each samples taken;~~
- ~~(B) (b) the methods by which they were the samples were taken;~~
- ~~(C) the location and depths from which they were taken;~~
- (D) remains the same, but is renumbered (c).
- ~~(E) (d) the analytical methods of analysis used; and~~
- (F) remains the same, but is renumbered (e).

(ii) (3) The A soil analysis required by (1)(a) must be accompanied by a map that describes delineating:

- ~~(A) (a) the soil types identified;~~
- ~~(B) (b) the location and depth of each sample taken site locations;~~
- (C) remains the same, but is renumbered (c).
- ~~(D) (d) the dominant vegetative species present on each soil type; and~~
- ~~(b) (4) The department may also require that the plan of operation contain a~~

description of the location and method of disposal of bentonite cleanings, stray bentonite seams, and overburden that are unsuitable for plant growth. Such materials must be buried under at least three feet of material suitable for sustaining the postmining vegetation, but if suitable burial material is not available, then the material that is unsuitable for plant growth must be laid and graded to a condition that is as good or better than the pre-mine condition, minimizes adverse impacts to plant growth, and blends into the surrounding area.

AUTH: 82-4-422, MCA

IMP: 82-4-432, 82-4-434, MCA



REASONS: The amendments to ARM 17.24.207 are proposed to improve the syntax and readability of the rule. No substantive amendments are proposed, except that the language to be added to (1)(d) would provide flexibility for operations where the pre-mine conditions do not permit burial of materials unsuitable for plant growth beneath three feet of suitable material.

17.24.212 APPROVAL OR DISAPPROVAL REVIEW OF AN APPLICATION FOR A PERMIT (1) Upon receipt of ~~an a~~ permit application to conduct opencut operations and within the time limits provided in 82-4-432(4), MCA, the department shall ~~inspect the proposed site and~~ evaluate the application to determine if the requirements of the Act and this subchapter ~~will be~~ are satisfied. If the department is ~~unable to evaluate a permit application because weather or other field conditions prevent an adequate site inspection, then the application must be~~ disapproved.

(2) Except as provided in 75-1-208(4)(b), MCA, within five working days of receipt of an application to conduct opencut operations, the department shall determine and notify the applicant whether the application is complete. A complete application must be submitted on forms provided by the department and must contain the materials and information required by 82-4-432(1) and (2), MCA, and the plan of operation required by ARM 17.24.218 through 17.24.223.

(3) If the department determines that an application is complete, the applicant shall comply with the public notice requirements required by 82-4-432, MCA, and the department shall review the application for acceptability.

(2) (4) ~~The department shall approve a~~ A permit application is acceptable if it determines that: the materials and information provided to the department demonstrate that the proposed opencut operation complies with requirements of 82-4-432(1) and (2), MCA, and contains a plan of operation that meets the requirements of this subchapter.

(a) ~~the application contains the following:~~

(i) ~~\$50 application fee, if required;~~

(ii) ~~a completed copy of the permit application form provided by the~~ department;

(iii) ~~plan of operation submitted on a form provided by the department;~~

(iv) ~~bond or other security, if required;~~

(v) ~~a completed copy of the landowner consent form; and~~

(vi) ~~a completed copy of the zoning compliance form; and~~

(b) ~~the application materials satisfy the requirements of the Act and this subchapter.~~

(3) (5) Before approving determining that an operator's permit application for a permit is acceptable, the department shall submit a copy of the plan of operation, including site and area maps ~~map(s)~~, to the state historic preservation office for evaluation of possible cultural resources in the proposed permit area. ~~If the site is likely to contain significant cultural resources~~ Based on information provided by the state historic preservation office and as required by law, the department may require that the operator sponsor a cultural resources survey by a competent an archaeological professional authority prior to approving the application and provide a plan to protect archeological and historical values on affected lands. Unless

prohibited by law, the department shall make available a response received from the state historic preservation office.

(4) (6) A permit must provide that the operator shall comply with the requirements of the Act and this subchapter. Before determining that an application for a permit or amendment is acceptable, the department may condition a permit as necessary to accomplish the requirements of the Act and this subchapter including, but not limited to, requiring surface water and ground water quality and quantity monitoring before, during, and after opencut operations inside and outside the permit area.

(5) (7) A permit does not become operative until issued by the department, and an applicant may not begin opencut operations until a permit is issued becomes effective when the department notifies the applicant in writing that the information and materials provided to the department meet all the requirements of the Act and this subchapter and that the permit is approved and issued by the department.

AUTH: 82-4-422, MCA

IMP: 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-432, 82-4-434, MCA

REASON: The proposed amendments to ARM 17.24.212 would implement the amendments enacted by Sec. 11, Ch. 385, Laws of 2007 and Sec. 7, Ch. 477, Laws of 2009. The proposed amendments to (1) are necessary to improve syntax and readability of the rule. The last sentence of (1) would be deleted in favor of proposed new (5).

New (2) and (3) would restate the requirements of 82-4-432, MCA, in order to consolidate all necessary information for applicants in one place in the rule. The proposed last sentence of (2) is necessary to notify applicants which rules are relevant to an application for a permit.

New (4) would restate current (2) and would substitute terms that follow the applicable statute, 82-4-432, MCA, for clarity. New (4) would also delete the provisions of (2)(a) and (b) because they have been invalidated by changes enacted by Sec. 11, Ch. 385, Laws of 2007, and otherwise merely paraphrase the statute.

The proposed amendments to (5), currently (3), would improve syntax and readability of the rule and articulate the department's understanding of the legal requirements arising from the Montana antiquities laws provided in 22-3-421, MCA, et seq. and 82-4-434(3)(h), MCA. The last sentence of (5) would respond to concerns of applicants that they are unable to review communications from the State Historic Preservation Office to the department.

The proposed amendment to (6), currently (4), would allow the department to condition a permit as necessary to accomplish the requirements of the Act or rules. This amendment would provide a process to ensure compliance that is less drastic, time-consuming, and costly than permit denial and reapplication. Revised (6) would add language that is proposed to be deleted from current ARM 17.24.218(1)(e) and (i). The language would be relocated to improve the logic and flow of the rule.

The proposed amendments to (7), currently (5), are proposed to improve the syntax and clarity of the rule. The proposed amendments would establish a clear time when opencut operations may commence after approval of a permit and prevent operations from commencing before the permit has been issued.



17.24.213 AMENDMENT OF PERMITS (1) An operator may apply for an amendment to its permit by submitting an amendment application to on a form provided by the department. Upon receipt of an amendment application and within the time limits provided in 82-4-432(4), MCA, the department shall, if it determines that site inspection is necessary to adequately evaluate the application, inspect the proposed site and evaluate the amendment application to determine if the requirements of the Act and this subchapter will be satisfied. If the department determines that a site inspection is necessary and it is unable to evaluate an application because weather or other field conditions prevent an adequate site inspection, the department shall disapprove the application.

(2) ~~The department shall approve an amendment application if it determines that~~ An application to amend a permit is acceptable if it meets the requirements of ARM 17.24.212 and includes the following:

(a) ~~the application contains a completed copy of the amendment application form provided by the department, a new or additional bond if necessary, or other security sufficient to cover additional estimated costs of reclamation required by ARM 17.24.203 and 17.24.220;~~

(b) ~~a new landowner consent~~ consultation form if required under ARM 17.24.206(1);

(c) ~~a new zoning compliance form if required under ARM 17.24.223;~~

(d) ~~a revised plan of operation revisions, if necessary; and~~

~~(b) the application and plan of operation revisions satisfy the requirements of the Act and this subchapter.~~

(3) For an amendment application solely to extend the reclamation date for a period of no more than five years that is submitted no later than five years after the first approval date of the permit, the applicant shall apply to extend the reclamation date on a form provided by the department and provide an updated landowner consultation form.

~~(3) (4) An amendment does not become operative until approved becomes effective when the department notifies the applicant in writing that the information and materials provided to the department meet all the requirements of the Act and this subchapter and that the amendment is approved and issued by the department. Once approved, an amendment becomes part of the original permit.~~

~~(4) An amendment application does not require the payment of an additional fee.~~

AUTH: 82-4-422, MCA

IMP: 82-4-432, 82-4-433, 82-4-434, 82-4-436, MCA

REASON: The proposed amendments to ARM 17.24.213 would implement the changes to the Act enacted by Sec. 11, Ch. 385, Laws of 2007 and Sec. 7, Ch. 477, Laws of 2009. The proposed strikeouts in (1) delete provisions for mandatory inspections in accordance with the amendments enacted by Sec. 7, Ch. 477, Laws of 2009.

The proposed amendments to (2) would recognize that the procedures for amendment of a permit generally follow the procedures for application for an original

permit set forth in ARM 17.24.212. See 82-4-432(12), MCA. Accordingly, descriptions of procedures are stricken in favor of reference to the applicable rule. Current (2)(b) would be deleted for regulatory clarity because it generally repeats language set forth in (1). The proposed amendments to (2) would improve syntax and readability of the rule and conform the rule to language proposed elsewhere in the subchapter.

New (3) would provide an expedited procedure in the event that an operator only desires to extend the reclamation date within five years of having obtained the original permit. The expedited procedure is justified because the information provided in the original application is unlikely to have materially changed within the five-year period.

The proposed amendments to (4), currently (3), are necessary to inform the applicant that a permit amendment does not become effective until the department notifies the applicant in writing that the amendment application is approved and the amendment is issued. The proposed amendments are necessary to establish a clear time when opencut operations may commence pursuant to amendments to a permit and prevent the operator from commencing operations under the amended permit until it is issued. The new language in (4) is proposed so that the rule more closely follows proposed ARM 17.24.212(7). The language proposed in ARM 17.24.212(7) would be restated in (4) to notify operators that expanded operations under an amended permit may only commence after the department provides written notice of approval.

17.24.214 ANNUAL PROGRESS PRODUCTION REPORT (1) An operator ~~who possesses one or more permits~~ shall submit one annual progress production report for that addresses all opencut operations during the previous calendar year to the department on or before March 1 of each year.

(2) The annual progress production report must be submitted on a form provided by the department. ~~In addition to the requirements in 82-4-403, MCA,~~ the report must list all of the operator's permitted sites and provide the information required by the department for each of those sites where the operator engaged in permitted, unpermitted, or limited opencut operations and describe the amount of materials removed for each site.

(3) The annual production report must be accompanied by payment of the annual fee, in accordance with 82-4-437, MCA, for the sites listed according to (2).

(4) The department may require an operator to provide documentation of materials removed for the purpose of verifying the amounts reported under this rule.

AUTH: 82-4-422, MCA

IMP: 82-4-402, 82-4-434, MCA

REASON: The proposed amendments to ARM 17.24.214 would implement changes to annual reporting requirements enacted by Sec. 9, Ch. 477, Laws of 2009 and Sec. 8, Ch. 198, Laws of 2013. The proposed revision of the title of the rule provides regulatory clarity because "production" more accurately describes the subject matter of the report. The proposed amendments to (1) would implement Sec. 8, Ch. 198, Laws of 2013, to expand the applicability of the annual report



requirement to unpermitted as well as permitted operators.

The proposed amendments to (2) would also implement Sec. 8, Ch. 198, Laws of 2013, to expand the applicability of the annual report requirement to unpermitted as well as permitted operators. The proposed deletion of the reference to 82-4-403, MCA, is necessary because the reference was made obsolete by enactment of 82-4-437, MCA, in 2007. In addition, the proposed amendments to (2) would clarify that the annual report must include production from limited opencut operations.

New (3) would implement Sec. 9, Ch. 477, Laws of 2009, which enacted the \$0.025 per cubic yard production fee and to inform operators that the fee, if applicable, must be submitted along with the annual report.

New (4) would provide a means of verifying the accuracy of annual production reports submitted to the department.

17.24.218 PLAN OF OPERATION--(SITE CHARACTERIZATION, SITE PREPARATION, SOIL AND OVERBURDEN HANDLING, MINING, AND PROCESSING PLANS--) AND PERFORMANCE STANDARDS (1) The plan of operation must include the following ~~site preparation, mining, and processing plan commitments and information:~~

~~(a) an access road and main permit area boundary a markers section, including that includes a statement that the operator has clearly marked on the ground all required boundaries and the permitted access road segments roads to be improved or constructed and the main permit area boundary segments that require marking, and will maintain the markings as required by this rule. Boundary and Road markers segments to be improved or constructed must be marked at every corner and along each segment placed so that the no less than two consecutive markers are easily readily visible with the naked eye from in any direction from any point on a line one to the next and no more than approximately 300 feet apart. The following requirements apply to marking boundaries and permitted access roads to be improved or constructed:~~

~~(i) markers must be in place prior to submitting an application for a permit or an amendment;~~

~~(ii) markers should be durable stout steel, wood, or similar quality posts and painted or flagged to be readily visible, except that a prominent, permanent feature such as a pole, tree, or large rock, flagged or painted, may serve as a marker;~~

~~(iii) road markers may be removed as the road is constructed, but each boundary marker must be maintained in place and readily visible until the adjacent permit area is reclaimed and released;~~

~~(iv) the following areas and features must be marked according to this rule:~~

~~(A) proposed permit or proposed amended permit boundaries;~~

~~(B) non-bonded areas;~~

~~(C) proposed permitted access roads to be improved or constructed;~~

~~(D) phase 1 release areas previously approved by the department; and~~

~~(E) prior to submission of an application for bond release, areas that are the subject of an application for phase I or phase II bond release;~~



(v) Those portions of the boundary defined by definite topographic changes, natural barriers, or man-made structures, or located in the requirements of (1)(a) do not apply to active hayland, or cropland, need not be marked or existing roads to be permitted. Other boundary segments must be marked at every corner and along each segment so that the markers are easily visible with the naked eye from one to the next and no more than approximately 300 feet apart. Acceptable road and boundary markers include brightly colored, brightly painted, or brightly marked fenceposts, rocks, trees, and other durable objects. A boundary marker must remain functional until the beginning of final reclamation of the area next to that marker;

(b) an access road establishment construction, and use, and reclamation section that is consistent, including with the landowner's acknowledgements contained in the landowner consultation form required by ARM 17.24.206;

(i) a statement that the operator will appropriately establish, use, and reclaim access roads, and downsize to the premine condition or totally reclaim these roads by retrieving and properly handling surfacing materials; backfilling and grading road locations in a manner that leaves stable surfaces blended into the surrounding topography and drainageways; and ripping, resoiling, reconditioning, and seeding or planting the locations with the approved vegetative species, unless the landowner requests in writing that specific roads or portions thereof remain open and the department approves the request; and

(ii) a description of the access roads or portions thereof to be improved or constructed, including their locations, lengths, widths, drainageway crossings, and surfacing; and of the roads or portions thereof proposed to remain open, per landowner request, at the conclusion of open-cut operations, including their locations, intended uses, and final widths. Some or all of this information may be presented on the site or area map. Improvements include, but are not limited to, blading, widening, and surfacing. A road or portion thereof may remain open for a reasonable postmining use and must be left in a condition suitable for that use;

(c) a soil and overburden characterization section that includes the average soil and overburden thicknesses in the permit area determined on the basis of no less than three test holes spaced representatively to describe proposed permit areas of less than nine acres and one test hole per each three-acre area for proposed permit areas of nine acres or more, with a maximum of 20 representatively spaced test holes for proposed permit areas that exceed 60 acres, or as otherwise approved by the department in the permit;

(i) for the purposes of this subsection:

(A) test holes must be of sufficient depth to measure the thicknesses of soil and overburden;

(B) representative test holes must be located in both bonded and non-bonded areas;

(C) exposures of the soil and overburden profile, such as a roadcut, may be used in lieu of a test hole; and

(D) clearly labeled photos showing the top three feet of the soil profile with a visible scale must be taken and provided to the department for each test hole;

(d) a soil and overburden handling section that includes a statement that the operator shall:



(i) upon commencing opencut operations, strip and stockpile overlying soil to the depth specified in the permit before excavating overburden and materials;

(ii) before mining, remove and stockpile overburden separately from soil and designate soil and overburden stockpiles with signage that is legible, readily visible, and placed so that equipment operators and inspectors may readily identify the type of stockpile for the life of the stockpile;

(iii) never stockpile overburden or soil on slopes greater than 3:1 or in drainages or in a manner that will cause pollution to state waters;

(iv) remove all soil and overburden from a minimum ten-foot-wide strip along the crest of a highwall;

(v) haul soil and overburden directly to areas prepared for backfill and grading or resoiling or to separate stockpiles;

(vi) never stockpile overburden on areas where soil has not been stripped to the depth required by the permit; and

(vii) use best management practices to prevent erosion, commingling, contamination, compaction, and unnecessary disturbance of soil and overburden stockpiles including, but not limited to, at the first seasonal opportunity, shape and seed, with approved perennial species, the soil and overburden stockpiles that remain in place for more than two years and maintain the accessibility of all overburden and soil stockpiles in the permit area prior to reclamation in accordance with the plan of operation;

(e) (e) a construction, mining, processing, and hauling section, including that includes:

(i) a description of the materials to be sold or used by the operation;

(ii) a construction project plan that describes the locations and construction schedules for all areas to be disturbed and location of all facilities including offices, parking, vehicle staging areas, roads designated by the landowner as affected land, and processing plants;

(iii) a description of the methods and equipment to be used to mine, haul, and process mine material, and to haul it and the products made from it. The department may require;

(iv) a description of the anticipated general mining progression, including where the location of the first stripping and excavation will occur, the direction of mining will progress, and other relevant information. The anticipated location and timing for the installation mobilization and setup of processing facilities such as a screen, crusher, asphalt plant, wash plant, batch plant, pug mill, and other facilities may also be required; and

(v) other information necessary to fully describe the nature and progress of opencut operations;

(d) (f) a section describing the an hours of operation section, including a description of the proposed hours of operation of the proposed opencut operation. The department may reasonably limit hours to reduce adverse impacts on residential areas. A The department may require an operator to keep and maintain a complete and accurate log that lists general on-site activities and the dates and times they occurred must be maintained for an opencut operation subject to restricted hours. Log information must be presented to the department upon request record of the hours operated. The operator shall submit the record to the department within two

work days after receipt of a request from the department;

(g) a water resources section that includes:

(i) the depths, water levels, and uses of water wells in and within 1,000 feet of the permit area;

(ii) identification of the sources of the information reported, such as landowners, field observations, and water well logs;

(iii) copies of all available well logs;

(iv) the estimated seasonal high and seasonal low water table levels in the permit area and the information sources used, such as landowners, field observations, and water well logs; and

(v) in the event that the proposed opencut operation involves or may result in the diversion, capture, or use of water, acknowledgement that the operator consulted with the regional office of the Department of Natural Resources and Conservation, Water Resources Division, concerning the requirements to obtain water rights and possible adverse impacts to existing water rights;

(e) (h) a water quality protection and management section, including that includes:

(i) a statement that the operator will take appropriate measures to protect on- and off-site surface water and ground water from deterioration of water quality and quantity that could be caused by opencut operations; take appropriate measures to prevent, minimize, or mitigate adverse impacts to on- and off-site surface water and ground water systems and structures that could be caused by opencut operations; a description of the source, quantity, storage, use, and discharge of water to be used for opencut operations;

(ii) an explanation of measures to prevent pollution of state waters or impairment of a water right including, but not limited to:

(A) an explanation of water management and erosion control plans for stormwater, ground water, and surface disturbances that discharge off-site or intercept any waterway with a defined channel; and

(B) an explanation of proposed measures to protect the water rights of other parties or to replace an adversely affected water source that has a beneficial use;

(iii) a statement that the operator will keep non-mobile equipment above the ordinary seasonal high water level of surface water and ground water; appropriately establish, use, and reclaim opencut-operation-related hydrologic systems and structures;

(i) a spill prevention and management section that includes a statement that the operator will:

(i) install or construct fuel storage containment structures in accordance with the current codes adopted by the state fire marshal for each single-wall, non-mobile, fuel storage tank placed and used in and within 500 feet of access roads and 1,000 300 feet of the main permit area; and

(ii) routinely inspect and maintain these tanks to prevent leaks and spills; retrieve and discard spilled fuel and contaminated materials in a lawful manner; and report to the department a fuel spill that reaches state waters, as defined in 75-5-103, MCA, or that is greater than 25 gallons. The department may require on- and off-site surface water and ground water quality and quantity monitoring before, during, and after opencut operations. When opencut operations will cause the



diversion, capture, or use of water, the operator shall consult with the regional office of the department of natural resources and conservation, water resources division, concerning water rights and submit a summary of that consultation with the plan of operation; and

(ii) ~~a description of the source, quantity, storage, use, and discharge of water to be used for opencut operations; special measures to be used to protect on- and off-site surface water and ground water from deterioration of water quality and quantity; special measures to be used to prevent, minimize, or mitigate on- and off-site impacts on surface water and ground water systems and structures; water management and erosion control plans for surface disturbances that will intercept a drainageway, significant runoff, or ground water; measures to be used to protect the water rights of other parties or to replace an adversely affected water source that had a beneficial use; and fuel storage containment structures to be installed or constructed;~~

(f) ~~a mine material handling section, including:~~

(i) ~~a statement that the operator will keep mine material stockpiles out of drainage bottoms and off of slopes greater than 3:1, and a statement that, at the conclusion of opencut operations, the operator will, except as provided in (ii), remove from the permit area or bury all excavated or processed mine material, unless the landowner requests on the landowner consent form that specific types, grades, and quantities of mine material remain stockpiled; consolidate mine materials to remain stockpiled into piles of similar type and grade; and leave the quantity of soil that was stripped from the unreclaimed area under and around a mine material stockpile in a shaped and seeded pile within 100 feet of that stockpile. The operator remains liable for the unreclaimed area under and around a mine material stockpile until the mine material is removed and the site reclaimed, or ownership of the stockpile or possession of the permit is transferred to the landowner or another party; and~~

(ii) ~~a description of the types, grades, and quantities of mine material proposed to remain stockpiled, per landowner request, at the conclusion of opencut operations, and justifications for the quantities based on current and expected demand for the materials. The department shall reject a landowner's request that certain mine materials remain stockpiled if adequate justification is not provided;~~

(g) ~~a mined-area backfill section, including:~~

(i) ~~a statement that the operator will use only clean fill from any source, on-site-generated asphaltic pavement as mined-area backfill; dispose of other wastes in compliance with applicable state laws and rules; bury on-site-generated asphaltic pavement, coarse clean fill, and other clean fill unsuitable for plant growth under at least three feet of material suitable for sustaining the postmining vegetation; and, at the conclusion of opencut operations, remove stockpiled asphaltic pavement, concrete with protruding metal, and clean fill from the permit area. Clean fill consists of dirt, sand, fines, gravel, oversize rock, and concrete with no protruding metal. On-site-generated asphaltic pavement must be disposed of at least 25 feet above the ordinary high water table. The operator may propose that excess on-site-generated overburden and fines be disposed of at a site outside of the mined area but within the permit area. Fines consist of natural or crushed rock that is 1/4 inch or smaller; and~~



~~(ii) a description of the material types, estimated quantities, and fill designs for mined area backfill, and of the plan for stockpiling and recycling imported asphaltic pavement and concrete;~~

~~(i) a statement by the operator that:~~

~~(i) opencut operations may not occur within a prohibited area described in the permit for purposes that include, but are not limited to, reclamation of a highwall or protection of an easement, a right of way, a drainage, or a waterway area;~~

~~(ii) no opencut operations will occur within an easement unless written permission to do so is obtained from the holder of the dominant estate; and~~

~~(iii) before commencing opencut operations, the operator, on a form provided by the department, notified the weed board in the county or counties in which the proposed operation is located. A copy of the form that the applicant submitted to the weed board must be attached to the application;~~

~~(h) (k) an additional impacts section, including that includes:~~

~~(i) a description of the methods and materials to be used to minimize impacts, as necessary, on the residential areas and structures identified under ARM 17.24.217(1)(e) 17.24.221(4)(h);~~

~~(ii) repair or replacement of man-made structures affected by opencut operations within the permit area; and~~

~~(iii) address identification of other opencut operation impacts not addressed in other sections of the plan of operation; and~~

~~(i) (l) an additional commitments section, including that includes a statement that the operator will:~~

~~(i) inform key personnel and subcontractors involved in opencut operations of the requirements of the plan of operation;~~

~~(ii) take proper precautions to prevent wildfires;~~

~~(iii) provide appropriate protection for cultural resources that could be affected by opencut operations; and~~

~~(iv) promptly notify the state historic preservation office should such resources be found; and submit an annual progress report to the department.~~

~~(2) Approval of an application does not relieve the operator from the requirements of any applicable federal, state, county, or local statute, regulation, rule, or ordinance, including requirements to obtain any other permit, license, approval, or permission necessary for the actions described in or required by the application and the permit.~~

~~(2) remains the same, but is renumbered (3).~~

AUTH: 82-4-422, MCA

IMP: 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-432, 82-4-434, MCA

**REASON:** The proposed amendments to ARM 17.24.218 implement changes enacted by Sec. 13, Ch. 385, Laws of 2007. The proposed amendments would also restate language proposed for deletion in ARM 17.24.217 to include all requirements relevant to mining operations in one rule. Similarly, language in ARM 17.24.218 that would be more appropriately included in ARM 17.24.219, which provides for the reclamation portion of the plan of operations, has been deleted and added to the latter rule in order to improve regulatory clarity and the logic and flow of

the rules.

The proposed deletion of language in (1) is necessary for regulatory clarity because it partially restates the requirements for a mining plan that are serially set forth in the rule. Otherwise, the proposed amendments to (1)(a) would improve syntax and readability of the rule.

More specifically, the proposed amendments to (1)(a) would implement the deregulation of access and other roads enacted by Sec. 2, Ch. 198, Laws of 2013, by deleting the requirement that an applicant or operator mark the location of proposed access roads outside the permit boundary. The new language proposed at (1)(a) and (1)(a)(i) would require placement of markers so that boundaries may be readily located during site inspections and during operations. The new language proposed at (1)(a)(ii) would ensure that the materials used for boundary markers are durable and readily visible in the field. The new language proposed at (1)(a)(iii) relieves operators from the obligation to maintain road markers after the road is constructed. The new language proposed at (1)(a)(iv) restates each requirement for marking boundaries in separate statements to improve the syntax of the rule. New (1)(a)(iv) also proposes marker requirements for phased bond release in order to minimize the time required to perform site inspections for bond release. The proposed amendments at new (1)(a)(v) would delete language that has been revised and restated elsewhere in the rule as explained above.

The proposed amendments to (1)(b) would implement the deregulation of access and other roads enacted by Sec. 2, Ch. 198, Laws of 2013, by deleting the requirement that a plan of operation explain construction, use, and reclamation of access roads except as necessary to achieve the expectations of the landowner about the reclamation of roads constructed on affected land.

New (1)(c) would combine and restate requirements for characterization of soil and overburden currently set forth in ARM 17.24.217(1)(d) and 17.24.219(1)(b) in one place in the rule. The proposed amendments to (1)(c) are necessary to improve the logic and flow of the rule by combining all requirements relevant to site characterization and mining operations into the provisions for the plan of operation. The proposed provision for test holes generally restates the current provisions of ARM 17.24.217(1)(d) and would notify applicants of the department's practice regarding the number of test holes that are necessary to represent the depths of soil and overburden. New (1)(c)(i)(D) would require an applicant to provide labeled photos showing the top three feet of the soil profile which is necessary to reduce the time required for preapproval site visits by allowing the department to identify in advance specific test holes that should be inspected.

New (1)(d) would restate requirements for explaining how soil and overburden will be handled during mining that are currently set forth in (1)(f)(i) and the requirements for the reclamation plan in ARM 17.24.219(1)(b). The proposed amendment is necessary to improve the logic and flow of the rule relating to soil and overburden handling because it gathers all related provisions at one place in the rule. Also, soil and overburden handling has a stronger nexus to operations as opposed to reclamation and logically should be addressed as part of the plan of operation. The restated requirements for soil and overburden handling would generally follow the current requirements of (1)(f)(i) and ARM 17.24.219(1)(b), but are restated such that each requirement is a separate subsection to improve

readability. New (1)(d)(ii) would require operators to post signs identifying soil and overburden stockpiles and is necessary as a best management practice to avoid commingling of soil and overburden during mining. The requirement is necessary to ensure that soil stockpiles are not contaminated with other materials because the availability of soil on site is critical to keeping the costs of reclamation within the principal amount of the reclamation bond.

The proposed amendments to (1)(e), currently numbered as (1)(c), would restate requirements for explaining the proposed mining and material handling operations. The proposed amendments are necessary to improve the syntax of the rule. Otherwise, new (1)(e)(ii) would implement the requirement for a construction project plan that is set forth in 82-4-403(7)(g)(ii), MCA.

The proposed amendments to (1)(f), currently numbered as (1)(d), would restate the provision for regulation of the hours of operation in the event that an operation is proposed in the vicinity of a residential area. The proposed amendments are necessary to improve the syntax of the rule. The proposed last sentence of (1)(f) is necessary so that the department may inspect an operating record outside of a site inspection.

New (1)(g) would combine and restate the requirements currently set forth in ARM 17.24.217(1) and 17.24.218(1)(e)(i) that relate to identification of water resources. New (1)(g) is necessary to improve regulatory clarity by consolidating regulations addressing water resources under a single rule and by distinguishing the requirement that the plan of operation address water resources in and within 1000 feet of the proposed permit area from the requirement to address water quality protection and management proposed in (1)(h). New (1)(g)(v) would move language currently located in (1)(e)(i) to consolidate all provisions concerning water resources to a single location in the rule.

The proposed amendments to (1)(h), currently numbered as (1)(e), would restate the provision for water quality protection and management. The proposed amendments to (1)(h) would include restatement of the requirements currently located at (1)(e)(ii) for the purpose of gathering all provisions specifically relevant to water quality under a single subsection. Also, the requirements of the rule would be restated in terms that follow the Montana water quality laws to avoid confusion and enhance regulatory certainty.

The proposed amendments to (1)(i), currently numbered as (1)(e)(i), would restate requirements for the plan of operation regarding spill prevention and control. The proposed amendment would restate these requirements in a separate subsection to avoid confusion and improve the logic and flow of the rule.

New (1)(j) would gather and restate at one location in the rule prohibitions against mining necessary to ensure reclamation of highwalls and to avoid impairment of other property rights, such as easements and rights of way, and to protect drainages and waterways. New (1)(j) restates these requirements to improve syntax and readability. New (1)(j)(iii) is necessary to simplify and clarify the obligation of an applicant or an operator to notify the county weed board, if any, of the proposed operation.

The proposed amendments to (1)(k), currently numbered (1)(h), are necessary to improve syntax and readability of the rule and correct references to rules as they would be amended by the proposed amendments to this subchapter.



New (2) is necessary to inform applicants and operators that approval of an application under the Act and this subchapter does not relieve the applicant or operator from the requirements of other applicable laws.

17.24.219 PLAN OF OPERATION,--RECLAMATION PLAN,--AND PERFORMANCE STANDARDS (1) The plan of operation must include the following site reclamation plan commitments and information:

(a) a postmining land uses section, ~~including that includes~~ a description of the type, location, and size of each postmining land use area in the main permit area. Postmining land use types include, but are not limited to, internal roads, material stockpile areas, water source pond, wetland, fish pond, riparian area, grassland, rangeland, shrubland, woodland, special-use pasture, hayland, cropland, wildlife habitat, livestock protection site, recreation site, and residential, commercial, and industrial building sites;

~~(b) a soil and overburden handling section, including:~~

~~(i) a statement that the operator will strip soil before other opencut operation disturbances occur; strip, stockpile, and replace soil separately from overburden; strip a minimum of six inches of soil, if available, from accessible facility-level areas; strip all soil from accessible mine-level areas; strip and retain enough overburden, if available, from mine-level areas so that up to an 18-inch thickness of overburden and soil can be replaced on dryland mine-level reclamation, and up to a 36-inch thickness of overburden and soil can be replaced on cropland and irrigated mine-level reclamation; maintain at least a 10-foot buffer stripped of soil and needed overburden along the edges of highwalls; haul soil and overburden directly to areas prepared for resoiling, or stockpile them and protect them from erosion, contamination, compaction, and unnecessary disturbance; at the first seasonal opportunity, shape and seed to an approved perennial species mix the soil and overburden stockpiles that will remain in place for more than two years; and keep all soil on site and accessible until the approved postmining land uses are assured to the department's satisfaction. Only initial setup activities and soil stockpiling may occur on unstripped areas. The department may require that more than a six-inch thickness of soil be stripped from facility-level areas in order to protect soil quantity or quality for certain postmining land uses; and~~

~~(ii) a description of the average thicknesses of overburden and soil to be replaced on mine-level areas. Resoiled surfaces must be seeded to a cover crop, or seeded or planted to the approved vegetative species, at the first seasonal opportunity after resoiling;~~

~~(c) (b) a surface cleanup and grading section, including:~~

~~(i) that includes a statement that the operator will retrieve and properly use, stockpile, or dispose of all refuse, surfacing, and spilled materials found on and along access roads and in the main permit area, and leave reclaimed surfaces in:~~

~~(i) at the conclusion of opencut operations, except as provided in (1)(b)(ii), use or haul away from the permit area all excavated or processed material for backfill as provided in (1)(c);~~

~~(ii) upon the request by the landowner, on the landowner consultation form, segregate specific types, grades, and quantities of material into stockpiles maintained in one location, along with a separate stockpile of the quantity of soil required to reclaim the area where the material is stockpiled, shaped, and seeded~~

and placed within 100 feet of a material stockpile;

(iii) a stockpile of materials for the landowner as provided by (1)(b)(ii) must be free of excess fines or other waste materials that would render the material unsuitable for commercial use;

(iv) provide a description of the types, grades, and quantities of material proposed to remain stockpiled as provided by (1)(b)(ii) and (iii), and justify the quantities stockpiled for landowner use based on current and expected demand for the materials;

(v) at the conclusion of open-cut operations, haul away and properly dispose of all refuse, oiled surfacing, contaminated materials, concrete that is not clean-fill, and unused clean fill from affected lands;

(vi) haul away all asphaltic pavement from the permit area, except on-site-generated asphaltic pavement may be used as mined-area backfill in accordance with (1)(b)(vii) and with the consent of the landowner;

(vii) place on-site-generated asphaltic pavement, coarse clean fill, and other clean fill unsuitable for plant growth under at least three feet of material suitable for sustaining the postmining vegetation;

(viii) place on-site generated asphaltic pavement in an unsaturated condition at least 25 feet above the seasonal high water table; and

(ix) for the purposes of (1)(b)(ii) and (iii), the operator remains responsible for reclamation of the areas occupied and affected by material and soil stockpiles until the department has approved phase II reclamation for the areas where the stockpiles are located or assignment of the permit to the landowner or another party;

(c) a backfill and grading section that includes a statement that the operator will:

(i) use only overburden and materials from the permit area, or otherwise only clean fill from any source, to reclaim affected land to a stable condition and with 5:1 or flatter slopes for hayland and cropland, 4:1 or flatter slopes for sandy surfaces, and 3:1 or flatter slopes for other sites and surfaces appropriate to the designated postmine land use;

(ii) reclaim premine drainage systems to blend into the surrounding topography and drainages;

(iii) ~~leave them graded~~ to drain off-site or concentrate water in low areas identified in the permit;

(iv) backfill and grade to ~~leave them~~ at least three feet above the ordinary seasonal high water table level for dryland reclamation and at approved depths below the ordinary seasonal low water table level for pond reclamation; and blend them into the surrounding topography and drainageways.

(v) record the average thickness of overburden replaced and never cover soil with overburden;

(vi) replace all soil, and overburden if sufficient soil is unavailable, to a minimum depth of 24 inches or to another depth approved in writing by the department and record the average thicknesses of soil replaced;

(vii) ~~The applicant may propose the establishment of~~ for the purposes of (1)(c)(i) and (ii), the department may consider steeper slopes for certain postmining land uses and ~~the construction of seasonal ponds. The department may require water table level based on a design or a slope stability analysis prepared by a~~



professional engineer licensed in accordance with Title 37, chapter 67, part 3, MCA, or a geologist with five years of post-graduate academic or professional work experience in the field of soil or rock mechanics;

(viii) if required by the department, conduct postmining monitoring of ground water levels to ensure that appropriate reclaimed surface elevations are established; and

(ii) (d) a description of the locations and designs for any special reclamation features such as drainageways, ponds, waterways with defined channels, and building sites. Reclaimed drainageways waterways with defined channels must be located in their approximate premine locations and have channel and floodplain dimensions and gradients that approximate premine conditions, unless otherwise approved by the department. Reclaimed drainageways waterways with defined channels must connect to undisturbed drainageways waterways in a stable manner that avoids disruption or accelerated erosion of the reclaimed waterway or adjoining areas;

(e) an access road reclamation section describing:

(i) reclamation of access, haulage, or other roads included on affected land with the landowner's consent; and

(ii) for private roads to remain open at the request of the landowner, reclamation of the road to a width appropriate to the landowner's anticipated use or as may otherwise be required by applicable land use regulations;

(f) a section that explains how the operator will reclaim water diversion, retention, discharge, and outflow structures constructed for opencut operations;

(d) (g) an overburden and soil reconditioning conditioning section, including that includes a statement that the operator will:

(i) alleviate overburden and soil compaction by deep tilling till replaced overburden, graded surfaces, and other compacted surfaces:

(A) to a depth of at least 12 inches, before resoiling, and by deep tilling or to another depth required by the department prior to replacing soil, except that:

(I) tillage is not required for relatively non-compactible materials such as sands, materials with a rock fragment content of 35% or more by volume, or bedrock; and

(II) tilling deeper than the soil thickness is not required when cobbly material or bedrock underlies the soil;

(B) on the contour and when the overburden and soil are dry enough to shatter; and

(C) in a manner that protects tilled areas from recompaction;

(ii) record the thicknesses of soil replaced on the permit areas as required by the permit;

(iii) till through the replaced soil and into the surface of the underlying material after resoiling. Deep tillage must be done on the contour and when the overburden and soil are dry enough to shatter. Deep tilled areas must be protected from recompaction. Deep tillage is not required for relatively non-compactible materials such as sands, materials with a rock fragment content of 35% or more by volume, and bedrock. Tilling deeper than the soil thickness is not required when cobbly material or bedrock underlies the soil backfill prior to seeding or planting unless otherwise required by the department; and



(iv) the soil surface must be free of rocks that are not characteristic of the soil prior to disturbance;

(e) (h) a revegetation section, including that:

(i) describes the types and rates of fertilizer and other soil amendment applications, methods of seedbed preparation, and methods, species, and rates of seeding or planting; and

(ii) includes a statement that the operator will:

(i) (A) a statement that the operator will establish vegetation to protect the soils from erosion and that is capable of sustaining the designated postmining land uses;

(B) seed all affected land for vegetation species that are consistent with the premining species composition, cover, production, density, and diversity, or otherwise as appropriate for the designated postmining land use;

(C) ensure that areas seeded or planted to perennial species will be appropriately are adequately protected and managed from the time of seeding or planting through two consecutive growing seasons or until the vegetation is established, whichever is longer;

(D) use seed that is as weed free as is reasonably possible; and comply with the noxious weed control plan approved by the respective weed district for the open-cut operation. Revegetation success on

(E) ensure that seedbed preparation and drill seeding is done on the contour;

(F) apply drill seeding at the rate of no less than ten pounds per acre or at another rate approved by the department;

(G) apply broadcast seeding at a rate that is at least 100 percent higher than drill seeding rates and drag or press the surface to cover the seed unless otherwise required by the department;

(H) provide seeding rates as pounds of pure live seed per acre;

(I) seed during the late fall or early spring seeding seasons;

(J) apply cover crop seeding and mulch as needed to help stabilize an area or establish vegetation;

(K) achieve revegetation of a non-cropland area is achieved when by establishing vegetation capable of sustaining the designated postmining land use has established;

(L) Revegetation success on achieve revegetation of a cropland area is achieved when a crop has been harvested from the entire area and the yield is comparable to those of crops grown on similar sites under similar growing conditions; and

(M) A copy of the approved noxious weed control plan must be submitted with the plan of operation; and agree that reclamation for cropland areas will be considered complete upon inspection by the department or notification by the landowner to the department in writing that the crop yield on the reclaimed land is acceptable.

(ii) a description of the types and rates of fertilizer and other soil amendment applications; methods of seedbed preparation; and methods, species, and rates of seeding or planting. When the postmining land use is hayland or cropland, the soil surface must be left free of rocks that could impede agricultural equipment. Seedbed preparation and drill seeding must be done on the contour. Broadcast

~~seeding must be done at rates at least 100% higher than drill seeding rates and the surface dragged or pressed to cover the seed. Seeding rates must be given as pounds of pure live seed per acre. Seeding must occur during the late fall or early spring seeding seasons. Cover crop seeding and mulch application may be needed to help stabilize an area or establish vegetation;~~

~~(f) (i) a reclamation timeframes schedule section, including that includes:~~

~~(i) a statement that the operator will complete all phase I and phase II reclamation work on an area no longer needed for opencut operations, or on areas that the operator no longer has the right to use for opencut operations, within one year after the cessation of such operations or termination of such right. If it is not practical for the operator to reclaim a certain area until other areas are also available for reclamation, the operator may propose an alternate reclamation deadline schedule for that area; and~~

~~(ii) a reasonable estimate of the month and year by which final phase II reclamation will be completed considering the estimated mine demand for material demand, expected rate of production, and accessible mine material reserves, and the time required to complete revegetation as required by (1)(g) and (h). Final reclamation must be completed by the date given.~~

~~(2) remains the same.~~

AUTH: 82-4-422, MCA

IMP: 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-432, 82-4-434, MCA

REASON: The proposed amendments to ARM 17.24.219 would implement amendments to the Opencut Mining Act enacted by Sec. 13, Ch. 385, Laws of 2007. In addition, language in ARM 17.24.218, the provision for an operating plan, which more appropriately applies to reclamation plans, would be moved to ARM 17.24.219 in order to improve regulatory clarity and the logic and flow of the rules. For the same reason, language in ARM 17.24.219 that would have a stronger nexus to a plan of operation is proposed to be deleted and restated in ARM 17.24.218.

The proposed amendments to (1)(a) are necessary to improve the syntax and readability of the rule. The terms "internal roads" and "material stockpile areas," which are proposed to be added to the second sentence of (1)(a), are necessary to incorporate postmining land-use concepts that are addressed elsewhere in the rule and would be relevant to a narrative statement explaining proposed postmining land uses. The proposed amendments would also substitute "rangeland" in favor of "livestock protection site" because the common meaning of the former term clarifies the rule for applicants.

ARM 17.24.219(1)(b) would be stricken and moved to ARM 17.24.218(1)(d) to improve the logic and flow of the rule.

The proposed amendments to (1)(b), currently (1)(c), would separate "surface cleanup" from "backfilling and grading," which is a distinct subject matter that has been restated at (1)(c). The new language at (1)(b)(ii), (iii), and (iv) would be restated from ARM 17.24.218(1)(f)(ii) and provides for the operator to leave stockpiled materials for the landowner's use. The restated provision for landowner stockpiles adds language to ensure that the material left for the landowner is useable and free of fines and provides for stockpiling of a sufficient amount of soil to



provide for reclamation of the stockpiled area after the stockpile is removed. The new language would ensure that the practice of leaving material for use of the landowner is not used as a means of avoiding reclamation requirements. New (1)(b)(v), (vi), and (vii) would restate the provision currently found at ARM 17.24.218(1)(g)(i) that provides for backfill using on-site generated asphalt and coarse clean fill. The new language at (1)(b)(ix) is a restatement of ARM 17.24.218(1)(f)(i), which provides for reclamation of areas where stockpiles are maintained.

Proposed amendments to (1)(c) would incorporate and restate the backfill and grading requirements currently found at ARM 17.24.218(1)(g) and 17.24.219(1)(c) in one location in the rule. New language at (1)(c)(i) would ensure that maximum allowable slopes for reclamation backfill are commensurate with the postmine land use. Proposed amendments to (1)(c)(iv) would substitute "seasonal high water table" and "seasonal low water table" for the term "ordinary water table" which is imprecise. New (1)(c)(v) would require an operator to record the average thickness of overburden replaced and is necessary to allow the department to ensure that backfill and grading reasonably follow the reclamation plan.

In the event that soil cannot be replaced to the 24-inch depth that is generally considered to be the amount necessary to achieve revegetative success, new (1)(c)(vi) would require an operator to obtain written approval from the department for replacement of soil at another depth. The general provision for replacement of soil to a depth of 24 inches for all affected lands is a necessary improvement to the current rule, which specifies different depths of soil for "facility level areas" and "mine-level areas" -- those terms being obsolete regulatory concepts that would be deleted from the rule.

Proposed amendments to (1)(c)(vii) would provide for postmine reclamation to slopes steeper than the requirements set forth in (1)(c)(i) as may be appropriate for site conditions. To ensure stability and safety, a proposal for reclamation to a steeper slope would have to be supported by a slope stability analysis prepared by a professional engineer or qualified geologist.

The proposed amendments to (1)(c)(viii) are necessary to improve the syntax and readability of the rule because the term "water table level monitoring" is not a term that is commonly used in the groundwater hydrology field.

The proposed amendments to (1)(d) are necessary to improve the syntax and readability of the rule by substituting the term "waterways with defined channels" for "drainageways," which provides more precision. The new language at the end of (1)(d) would improve regulatory certainty by explaining that "in a stable manner" means "that avoids disruption or accelerated erosion of the reclaimed waterway or adjoining areas."

The proposed amendments to (1)(e) would restate the requirements set forth in ARM 17.24.218(1)(b)(i) and revise the requirement to implement the changes enacted by Sec. 2, Ch. 198, Laws of 2013, which release operators from the requirement to reclaim access roads on affected land if the landowner consents to the road remaining unreclaimed.

The proposed new language at (1)(f) would require an operator to explain how water diversion or storage structures constructed for opencut operations will be reclaimed. The proposed new language ensures that reclamation of or incorporation



of such structures into the postmine land use is explained in the permit application and approved by the department.

The proposed amendments to (1)(g), currently (1)(d), would improve the syntax and readability of the rule. The proposed amendment to (1)(g)(i) would substitute the commonly understood term "till" for the rather nebulous term "alleviate soil and overburden." The language proposed at the end of (1)(g) would allow for approval of tillage to a depth other than the 12-inch optimum tillage depth to accommodate specific site conditions.

New language proposed at (1)(g)(ii) would require the operator to record the thickness of soil replaced and is necessary to ensure that the postmine land use is achieved.

The proposed amendments at (1)(g)(iv), currently part of ARM 17.24.219(1)(d), would improve syntax and readability of the rule. The proposed amendments would strike the term "deep tillage," which is undefined, for "tilling," which would be defined in the proposed amendments to ARM 17.24.202(15).

The proposed amendments at (1)(h)(i), currently part of ARM 17.24.219(1)(e)(ii), would improve syntax and readability of the rule. New (1)(h)(ii)(A) through (D) restate some of the provisions of current ARM 17.24.219(1)(e)(i) and would improve syntax and readability of the rule. The proposed new language at (1)(h)(ii)(E) through (I) would also incorporate language currently located at ARM 17.24.219(1)(e)(ii) to improve syntax and readability of the rule. The requirement to provide seed cover and mulch that is proposed in new (1)(h)(ii)(J) is a best management practice designed to achieve stabilization of a resoiled and revegetated area. Proposed new (1)(h)(ii)(K) and (L) are part of current (1)(e)(i), and the language has been amended to improve syntax and clarity for the process of verifying whether reseeding operations comply with the requirements for phase II bond release. Proposed new (1)(h)(ii)(M) would facilitate the department's determination of revegetative success by allowing the department to rely on a written statement from the landowner that crop yields on reclaimed land are acceptable.

The proposed amendments to (1)(i), currently numbered ARM 17.24.219(1)(f), would improve the syntax and readability of the rule. The proposed reference to "phase I and phase II" reclamation in (1)(i)(i) would improve clarity because the reclamation schedule section of the reclamation plan would use the same terminology as the proposed amendments to ARM 17.24.203(4).

#### 17.24.220 PLAN OF OPERATION--RECLAMATION BOND CALCULATION

(1) A proposed reclamation bond calculation must be submitted as part of the plan of operation on a form provided by the department. The bond amount must be based on a reasonable estimate of what it would the cost for the department to procure the services of a third-party contractor to reclaim, in accordance with this subchapter and the plan of operation, the anticipated maximum disturbance during the life of the bonded opencut operation, including equipment mobilization, contractor profit, and administrative overhead costs. The department shall review the proposed bond calculation and make a final determination.

(2) The estimate of the reclamation costs must address the following considerations:

(a) the requirements for reclamation provided in ARM 17.24.219 and 82-4-

434, MCA:

(b) replacement of all soil (and overburden if sufficient soil is unavailable) to a minimum depth of 24 inches or to another depth approved in writing by the department;

(c) the plan of operation and the permit application; and

(d) postmining site conditions and any other site-specific considerations.

(3) An application for a permit under this subchapter is deficient if the proposed amount of the reclamation bond is insufficient to cover the estimated costs of reclamation required by this rule.

(2) (4) Federal agencies, the state of Montana, counties, cities, and towns are exempt from bond requirements not required to post a bond or other security.

AUTH: 82-4-422, MCA

IMP: 82-4-405, 82-4-431, 82-4-432, 82-4-433, 82-4-434, MCA

REASON: The proposed amendments to ARM 17.24.220 would implement changes to the Act enacted by Sec. 12, Ch. 385, Laws of 2007, authorizing the department to determine the amount of the reclamation bond based on the cost of reclamation in all cases. The proposed amendments to (1) would require the applicant to submit the estimate of the reclamation bond amount on a form supplied by the department. Addition of "procure the services of a third-party contractor" would establish, as the basis for the estimate, the costs that the department would incur to procure a third-party contractor to reclaim the site in accordance with the permit, including mobilization, general overhead, and profit. Addition of the word "bonded" to (1) would avoid confusion arising from the distinction between "bonded" and "non-bonded" permit areas that are articulated throughout the proposed amendments to the subchapter. The proposed amendments to (1) would improve the clarity of the rule by substituting "contractor profit and overhead" costs for the more nebulous term "administrative" cost.

New (2) is necessary to notify the applicant of specific provisions of the subchapter that are relevant to calculation of reclamation costs for the purpose of bonding.

New (3) is necessary to notify the applicant of the department's authority to deny an application for a permit if the amount of the reclamation bond or other security is insufficient to cover the estimated costs of reclamation pursuant to 82-4-433(1), MCA.

New (4) would restate the provision, currently in (2), exempting government operators from the requirement to obtain a bond or other security for reclamation. The section has been amended to improve syntax and readability.

17.24.221 PLAN OF OPERATION--MAPS (1) A An application must include a site map, area map, reclamation map, location map, and other maps necessary to describe the proposed opencut operation. Except as provided in (6), maps submitted to the department in accordance with this subchapter must be legible, at a scale of 400 feet to one inch or larger and on a topographic map or an air-photo base, must be submitted as part of the plan of operation and in a scale sufficient to clearly describe the subject matter. An application supported by a map submitted in



an electronic format that is incompatible with the department's systems, that cannot be reviewed, or that is otherwise illegible is not acceptable. A map submitted in other than electronic format must fill an 8 1/2- by 11- or 11- by 17-inch sheet leaving margins of approximately 1/2 inch. A smaller scale area map drawn on a topographic map or air photo base may also be submitted as part of the plan.

(2) The following existing and proposed main permit area features items must be shown and labeled on the site each map submitted to the department:

(a) main permit area boundary operator name;

(b) staging, processing facility, and mining areas site name;

(c) soil, overburden, and mine material stockpile areas legal description of the proposed permit area;

(d) mined area backfill and excess overburden and fines disposal sites bar scale;

(e) soil and overburden test hole locations date of drafting; and

(f) water system and control structure locations north arrow; and

(g) sight and sound barrier locations.

(3) The locations of existing and proposed access roads must be shown and labeled on the site or an area map Site maps must show and identify the following existing and proposed features as applicable-:

(a) permitted access roads, including the location, width, waterway crossings, and surfacing;

(b) permit boundaries;

(c) bonded area boundary;

(d) non-bonded area boundary;

(e) excess overburden and fines disposal sites;

(f) sedimentation ponds and other water quality control structures;

(g) staging areas;

(h) heavy equipment parking areas;

(i) fuel storage areas;

(j) sight and sound barriers and berms;

(k) soil stockpile areas;

(l) overburden and excess overburden stockpile areas;

(m) material stockpile areas;

(n) processing facilities, including approximate locations of:

(i) crusher;

(ii) asphalt plant;

(iii) wash plants; and

(iv) concrete plant;

(o) detention ponds;

(p) concrete and asphalt recycling stockpile area;

(q) soil and overburden test hole and observation point locations;

(r) existing and proposed monitoring well locations;

(s) water system and structures, including:

(i) supply wells;

(ii) water recycling and settling ponds;

(iii) surface water extraction points;

(iv) discharge points for water used in opencut operations; and



(v) all surface waters including, but not limited to, ponds, lakes, wetlands, and defined and/or eroded channels of waterways including, but not limited to, rivers, creeks, intermittent streams, drainages, ditches, and other waterways;

(t) above and below ground utilities and easements;

(u) roads crossing areas where opencut activities are prohibited by ARM 17.24.218(1)(j) at a 90-degree angle or as close to a 90-degree angle as site conditions allow;

(v) erosion controls;

(w) historic disturbances within or adjacent to permit area boundary;

(x) the data point and map identification number for each pair of coordinates the operator provided on the boundary coordinate table; and

(y) any other pertinent features that are necessary to ensure compliance with the Act and rules.

~~(4) The following existing features in and within 500 feet of access roads and 1,000 feet of the main permit area must be shown and labeled on the site or an area map:~~

~~(a) premine land uses including, but not limited to:~~

~~(i) water source pond;~~

~~(ii) wetland;~~

~~(iii) fish pond;~~

~~(iv) riparian area;~~

~~(v) grassland;~~

~~(vi) shrubland;~~

~~(vii) woodland;~~

~~(viii) special use pasture;~~

~~(ix) hayland;~~

~~(x) cropland;~~

~~(xi) wildlife habitat;~~

~~(xii) livestock protection site;~~

~~(xiii) recreation site; and~~

~~(xiv) residential, commercial, and industrial sites;~~

~~(b) reclaimed and unreclaimed surface disturbances;~~

~~(c) surface water features, as described in ARM 17.24.217(1)(a);~~

~~(d) vegetative types including, but not limited to:~~

~~(i) wetland;~~

~~(ii) riparian;~~

~~(iii) grassland;~~

~~(iv) shrubland;~~

~~(v) woodland;~~

~~(vi) special use pasture;~~

~~(vii) hayland; and~~

~~(viii) cropland;~~

~~(e) fish and wildlife habitats of special concern, including, but not limited to:~~

~~(i) lakes;~~

~~(ii) ponds;~~

~~(iii) streams;~~

~~(iv) wetlands;~~

- ~~(v) riparian areas;~~
- ~~(vi) unique cover areas;~~
- ~~(vii) travel lanes;~~
- ~~(viii) migration routes;~~
- ~~(ix) raptor cliff and nest areas; and~~
- ~~(x) reproductive, nursery, and wintering areas;~~
- ~~(f) residential areas and structures that could be impacted by opencut operations, as described in ARM 17.24.217(1)(e); and~~
- ~~(g) non-access roads, fences, utilities, and buffer zones.~~
- (4) Area maps must show and identify the following features within 1,000 feet outside of the permit boundary:
  - (a) roads leading to the site;
  - (b) access roads from the public road turnoff to the permit area (if roads go beyond the area map, show the full extent on the location map) including the location, width, waterway crossings, and surfacing;
  - (c) water wells;
  - (d) natural and man-made drainage features including, but not limited to, ephemeral, intermittent, and perennial streams, wetlands, ponds, springs, ditches, and impoundments in and within 500 feet of access roads and show the defined and/or eroded channel of any such feature and any setback areas, along with a description of the use of any man-made feature;
  - (e) other opencut operations;
  - (f) above and below ground utilities;
  - (g) significant geographical features;
  - (h) residential areas and structures that could be impacted by opencut operations, such as inhabitable dwellings and commercial and industrial facilities; and
  - (i) any other pertinent features that are necessary to ensure compliance with the Act and this subchapter.
- (5) The locations of existing and proposed water wells in and within 1,000 feet of the main permit area must be shown and labeled on the site or an area map. Reclamation maps must show and identify all the following existing and proposed features in accordance with the plan of operation:
  - (a) all postmining land uses;
  - (b) mined area backfill sites;
  - (c) landowner material stockpile areas to remain;
  - (d) all roads or portions of roads proposed to remain open, at the request of the landowner, at the conclusion of opencut operations, including road locations, intended use, final width, and surfacing;
  - (e) long and short axis cross-sections of any pond or depression in which water is expected to collect;
  - (f) arrows depicting the anticipated direction of water flow across the reclaimed site; and
  - (g) any other pertinent features that are necessary to ensure compliance with the Act and this subchapter.
- (6) The operator name, site name, legal description, scale, date of drafting, and north arrow must be shown on all plan of operation maps. Location map may be

on an aerial or topo base and must show the site's location in relation to the nearest town, city, or major intersection and be sufficient to allow the public to locate the proposed site.

(7) Complete and accurate maps must be submitted. The department may require that part or all of the area in and within 500 feet of permitted access roads and 1,000 feet of the main permit area be surveyed to provide sufficient map detail and accuracy.

AUTH: 82-4-422, MCA

IMP: 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-434, MCA

REASON: The proposed amendments to ARM 17.24.221 would generally update the requirements for submittal of maps and reconcile the rule with the other proposed amendments to the subchapter. The proposed amendments would clarify what is required to be displayed on a map. Otherwise, the proposed amendments improve the syntax and readability of the rule.

The proposed amendments to (1) specify the types of maps addressed in the rule. In addition to the site and area maps called for in the current rule, the proposed amendments to (1) require submittal of two new maps, a reclamation map and a location map, as explained below. Proposed amendments to (1) also provide formatting standards for maps submitted in electronic and non-electronic formats. Imposition of the standards is necessary to ensure that submittals are legible and in a format that is compatible with the department's hard copy and electronic records retention systems. Finally, definitions are being proposed for each type of map for clarity.

The proposed amendments to (2) would restate the general requirements for all maps that are currently set forth in (6). The proposed amendments would improve clarity by avoiding unnecessary repetition. The required information would ensure that the maps are usable and retrievable in the department's record management systems.

Proposed new (3) generally restates the requirements currently found in existing (4) and identifies them as requirements for "site maps" that primarily describe the area proposed for permitting under the Act. The required items are consistent with, and would pictorially explain, regulatory terms and concepts set forth in the proposed amendments to the subchapter and other relevant environmental laws. Proposed new (3)(h) and (i) would require depiction of features generally included as "staging areas" under the current rule.

Proposed new (3)(j) would require depiction of "sight and sound barriers and berms" to assist the department in determining the sufficiency of measures to mitigate impacts to residential areas and dwellings.

Proposed new (4) generally restates the requirements currently found in (4) and (5) and identifies them as requirements for "area maps" that depict areas outside the proposed permit area. The items identified as requirements for area maps are necessary to depict conditions outside the permit area that may be adversely impacted by the proposed operation. The required items are consistent with and would pictorially explain regulatory terms and concepts set forth in the proposed amendments to the subchapter and other relevant environmental laws.



New (5) would require applicants to prepare a reclamation map that is necessary to facilitate application review. The list of items required for the reclamation maps are regulatory terms and concepts set forth in the proposed amendments to this subchapter. The requirement to provide cross-sections is typical of as-built maps commonly used in the construction and mining industries.

The proposed amendments to (6) would revise the provision to direct applicants to provide a location map that shows the location of the proposed operation in relation to the principal means of access. The map is necessary to enable program staff to find their way to a proposed mine site for site inspections. The deleted language in (6) would be restated in (2).

The proposed amendments to (7) would conform the language of the rule to the other amendments proposed to this subchapter.

17.24.222 PLAN OF OPERATION--ADDITIONAL INFORMATION AND CERTIFICATION (1) The department may require that an operator provide additional ~~plan of operation~~ information, ~~including for the plan of operation that includes,~~ but ~~is~~ not limited to:

(a) through (2) remain the same.

(3) The plan of operation must ~~conclude with~~ include a statement signed and dated by the operator certifying that ~~the statements, descriptions, and information provided apply to the proposed permit area, applicable adjacent areas, and proposed opencut operations, and that the requirements of the plan of operation will be followed unless officially amended through the department.;~~

(a) the operator has read and understands the application, the information contained in the application, and all documents submitted in support of the application;

(b) under penalty of 45-7-203, MCA, all the statements, descriptions, information, and documents provided to the department for the application are true and accurate to the best of the operator's knowledge and belief based upon the exercise of due diligence; and

(c) the operator will follow and adhere to the plan of operation and all other requirements of the operator described in the application and the permit and as the permit may be amended by the department in accordance with the Act and this subchapter.

AUTH: 82-4-422, MCA

IMP: 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-432, 82-4-434, 82-4-436, MCA

REASON: The proposed amendments to ARM 17.24.222(1) would improve the syntax and readability of the rule. The proposed amendments to (3) would explain, with greater specificity, the certifications that the department requires of applicants. The certifications would ensure that the applicant, rather than a consultant, has read, understands, and will comply with the statements in the application.

17.24.223 ZONING COMPLIANCE FOR SAND OR GRAVEL MINING (1) ~~h~~

~~order to ensure that a proposed sand or gravel operation will be in compliance with local zoning regulations, permit Permit applications for sand or gravel opencut operations, including and amendment applications for sand or gravel operations that add acreage or change the postmining land use or add an asphalt or concrete plant, must include a statement from the appropriate local governing body certifying, on a form provided by the department, that the proposed mine site and plan of operation comply with local zoning regulations. No application for a permit or such amendment to mine sand or gravel may be approved by the department unless accompanied by such a statement submitted on a form provided by the department.~~

AUTH: 82-4-422, MCA

IMP: 82-4-431, 82-4-432, MCA

REASON: The proposed amendments to ARM 17.24.223 would revise the rule to more closely follow the language of the Act and to improve syntax and clarity. The proposed amendments would require certification of compliance with zoning requirements when an operator adds an asphalt plant to ensure that the scope of zoning compliance matches the acknowledgements required of a consulting landowner in ARM 17.24.206. The provision for certifying compliance of the proposed project with local zoning regulations is proposed to be deleted because the provision duplicates the requirements for a complete application set forth in ARM 17.24.212 and 82-4-432(2)(b), MCA.

17.24.224 ASSIGNMENT OF PERMITS (1) A person may assume a permit from an operator by submitting an assignment application to the department. Upon receipt of an assignment application, the department shall inspect the permitted site, if necessary, and evaluate the application and existing permit to determine if the requirements of the Act and this subchapter ~~will be~~ are satisfied.

(2) The department shall approve an assignment application if it ~~determines that for assignment of a permit that meets the following requirements:~~

(a) ~~the application contains~~ includes a completed copy of the application for assignment ~~and assignment forms on a form~~ provided by the department, and, if required by the department, necessary revisions to an application to amend the permit;

(b) ~~The the application for assignment form shall include a statement includes an acknowledgment that:~~

(i) the assignee has reviewed and understands the terms of the permit that is effective at the time of the assignment;

(ii) the assignee agrees to assume all the obligations set forth in the permit, including the plan of operation, the Act, and this subchapter; and

(iii) the applicant assignee assumes responsibility for outstanding permit and site issues to reclaim the site in accordance with the terms of the permit, the Act, and this subchapter and for any violations or issues of noncompliance in existence at the time of the assignment;

~~(b) (c)~~ the assignment application materials, any necessary permit amendment application, and any necessary revisions to the permit satisfy the requirements of the Act and this subchapter; and

~~(c) (d) the application includes a reclamation adequate bond has been submitted. To be adequate, the bond must meet the requirements of ARM 17.24.220 and must include the cost to the department of reclaiming all previously disturbed lands within the permit area or other security that meets the requirements of 82-4-433, MCA, this subchapter, and the plan of operation.~~

~~(3) An assignment does not become effective until approved by the department becomes effective when the department notifies the applicant in writing that the information and materials provided to the department meet all the requirements of the Act and this subchapter and that the assignment is approved and issued by the department. The assignee must ensure that it has a complete copy of the approved permit and assignment materials. The Upon notification of the department's approval of the assignment, the assignee is becomes responsible for complying with all terms of the permit, including all provisions of the plan of operation all the obligations described in (2)(b).~~

~~(4) An assignment application does not require the payment of an additional fee.~~

AUTH: 82-4-422, MCA

IMP: 82-4-402, 82-4-432, 82-4-433, 82-4-434, MCA

REASON: The proposed amendments to ARM 17.24.224 would more closely follow the language of the Act and improve syntax and clarity. The proposed amendment to (2)(a) would improve the rule for syntax and clarity. It would also state that the department may require the applicant to submit "an application to amend the permit" instead of the current language using the phrase "revisions to the permit." This phrase is not used elsewhere in the rule. Amendment of the permit may be necessary if the department determines that deviations from the requirements of the permit or the Act by the assigning operator must be corrected before the permit may be assigned or transferred. The proposed amendments to (2)(b) are necessary to ensure that the applying assignee has reviewed and understands the application and agrees to assume all the obligations set forth in the permit, including correction of any violations of the Act. The proposed amendments to (2)(b) also are necessary to state with more precision the duties and obligations that would be undertaken by the assignee. The proposed amendments to (2)(c), currently (2)(b), would incorporate the permit amendment language stated in (2)(a) for clarity. The proposed amendments to (2)(d), currently (2)(c), are necessary to improve syntax and readability. The proposed amendments to (2)(d) are necessary to clarify the requirements for bonding when a permit is assigned by providing references to the applicable statute and to the subchapter instead of the incomplete list of the requirements for reclamation security currently stated in (2)(c).

The proposed amendments to (3) are necessary to inform the applicant that a permit assignment does not become effective until the department notifies the applicant in writing that the assignment application is approved and issued by the department. The proposed amendments are necessary to establish a clear time when opencut operations may commence pursuant to an assigned permit. Current (4) would be deleted because Sec. 11, Ch. 385, Laws of 2007 repealed the authority of the department to charge a fee for submittal of permit applications.



17.24.225 PERMIT COMPLIANCE (1) An operator shall comply with the provisions of its permit, this subchapter, and the Act. ~~The department may issue an order requiring abatement of a violation within a reasonable time. The applicant may request an extension of the deadline, giving the reason the extension is necessary, and the department may grant the extension upon finding that good cause for the extension has been shown. The permittee shall comply with the abatement order within the time set in the order or extension.~~

(2) A permittee may allow another person to mine and process mine materials at the permitted operator's site, only if the permittee retains control over that person's activities and ensures that no violations of the Act, this subchapter, or the permit occur. ~~If the person violates~~ a violation of the provisions of the Act, this subchapter, or the permit; occurs, the permittee is responsible for the violation; and the department may require abatement pursuant to (1) or initiate an enforcement action under the Act.

~~(3) A person who conducts opencut operations at a nonpermitted site and who was obligated to obtain a permit is in violation of 82-4-431, MCA, and the department may issue an order requiring cessation of the operation and may also order abatement of the violation, including reclamation of the site, within a reasonable time. The person may request an extension of the deadline, giving reasons why the extension is necessary, and the department may grant extensions upon a finding that good cause for the extension has been shown. The person shall comply with the abatement order within the time required by the order or extension.~~

AUTH: 82-4-422, MCA

IMP: 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-432, MCA

REASON: The proposed amendments to ARM 17.24.225 would more closely follow the language of the Act and improve syntax and clarity. The deleted language merely repeats language contained in the Act and does not need to be repeated in the rule.

17.24.226 ADMINISTRATIVE REQUIREMENTS FOR LIMITED OPENCUT OPERATIONS (1) through (4) remain the same.

(5) An operator may not commence a limited opencut operation within 300 feet of a permitted operation until the operator submits a written statement to the department that:

(a) no part of the proposed limited opencut operation is on land affected by the permitted operation;

(b) both operations can be reclaimed according to their respective requirements under the Act and this subchapter; and

(c) the principal amount of the new reclamation bond or other security, if required, is sufficient to cover the estimated costs of reclamation of the limited opencut operations under the Act and this subchapter.

AUTH: 82-4-422, MCA

IMP: 82-4-431, MCA

REASON: New ARM 17.24.226(5) is necessary to ensure that an operator considers the implications and constraints of locating a limited opencut operation within 300 feet of a permitted operation and communicates them to the department. The explanations required by the rule would ensure that reclamation may be achieved according to the different standards that apply to each type of operation. The 300-foot threshold in (5)(b) would follow the distance requirements for processing facilities set forth in 82-4-403(7)(c) and (d), MCA.

4. The rules proposed to be repealed are as follows:

17.24.216 GENERAL APPLICATION CONTENT AND PROCEDURES (AUTH: 82-4-422, MCA; IMP: 82-4-402, 82-4-422, 82-4-431, 82-4-432, MCA), located at page 17-1930, Administrative Rules of Montana. The board proposes repeal of this rule for conciseness and regulatory clarity, because it generally restates requirements proposed for ARM 17.24.212 and 17.24.213.

17.24.217 PLAN OF OPERATION--PREMINE INFORMATION (AUTH: 82-4-422, MCA; IMP: 82-4-402, 82-4-422, 82-4-431, 82-4-432, 82-4-434, MCA), located at page 17-1931, Administrative Rules of Montana. The board proposes deletion of ARM 17.24.217 for conciseness and regulatory clarity because it generally restates requirements proposed for ARM 17.24.218.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to [ejohnson@mt.gov](mailto:ejohnson@mt.gov), no later than 5:00 p.m., December 18, 2015. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. Ben Reed, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered

to Elois Johnson, Paraiegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North

JOHN F. NORTH

Rule Reviewer

BY: /s/ Joan Miles

JOAN MILES

Chairman

Certified to the Secretary of State, November 2, 2015.



BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )	NOTICE OF AMENDMENT AND
17.24.201, 17.24.202, 17.24.203, )	REPEAL
17.24.206, 17.24.207, 17.24.212, )	
17.24.213, 17.24.214, 17.24.218, )	(RECLAMATION)
17.24.219, 17.24.220, 17.24.221, )	
17.24.222, 17.24.223, 17.24.224, )	
17.24.225, and 17.24.226 and the repeal )	
of ARM 17.24.216 and 17.24.217 )	
pertaining to rules and regulations )	
governing the Opencut Mining Act )	

TO: All Concerned Persons

1. On November 12, 2015, the Board of Environmental Review published MAR Notice No. 17-376 regarding a notice of proposed amendment and repeal of the above-stated rules at page 1951, 2015 Montana Administrative Register, Issue Number 21.

2. The board has amended ARM 17.24.201, 17.24.202, 17.24.203, 17.24.206, 17.24.207, 17.24.212, 17.24.213, 17.24.214, 17.24.219, 17.24.222, 17.24.223, 17.24.224, 17.24.225, and 17.24.226 and repealed ARM 17.24.216 and 17.24.217 exactly as proposed. The board has amended ARM 17.24.218, 17.24.220, and 17.24.221 as proposed, but with the following changes, stricken matter interlined, new matter underlined:

17.24.218 PLAN OF OPERATION--(SITE CHARACTERIZATION, SITE PREPARATION, SOIL AND OVERBURDEN HANDLING, MINING, AND PROCESSING PLANS--) AND PERFORMANCE STANDARDS (1) The plan of operation must include the following:

(a) unless otherwise approved in writing by the department, a markers section that includes a statement that the operator clearly marked on the ground all required boundaries and permitted access roads to be improved or constructed and will maintain the markings as required by this rule. Boundary and road markers must be placed so that no less than two consecutive markers are readily visible in any direction from any point on a line. The following requirements apply to marking boundaries and permitted access roads to be improved or constructed:

(i) through (c)(i)(D) remain as proposed.

(d) a soil and overburden handling section that includes a statement that the operator shall:

(i) through (vi) remain as proposed.

(vii) use best management practices to prevent erosion, commingling, contamination, compaction, and unnecessary disturbance of soil and overburden stockpiles including, but not limited to, at the first seasonal opportunity, shape and seed, with approved perennial species, the soil and overburden stockpiles that are

capable of sustaining plant growth, and that remain in place for more than two years and maintain the accessibility of all overburden and soil stockpiles in the permit area prior to reclamation in accordance with the plan of operation;

(e) through (3) remain as proposed.

17.24.220 PLAN OF OPERATION--RECLAMATION BOND CALCULATION

(1) A proposed reclamation bond calculation must be submitted as part of the plan of operation on a form provided by the department or in another format approved by the department in writing. The bond amount must be based on a reasonable estimate of the cost for the department to procure the services of a third-party contractor to reclaim, in accordance with this subchapter and the plan of operation, the anticipated maximum disturbance during the life of the bonded opencut operation, including equipment mobilization, contractor profit, and overhead costs. The department shall review the proposed bond calculation and make a final determination.

(2) through (4) remain as proposed.

17.24.221 PLAN OF OPERATION--MAPS (1) and (2) remain as proposed.

(3) Site maps must show and identify the following existing and proposed features as applicable:

(a) through (w) remain as proposed.

(x) the data point and map identification number for each pair of coordinates the operator provided on the boundary coordinate table that is required by ARM 17.24.221(8); and

(y) through (7) remain as proposed.

(8) Marker, road, and boundary locations that must be marked in the field under ARM 17.24.218(1)(a) and markers, roads, and boundaries located in hayland or cropland must be provided on a boundary coordinate table form or through another method approved by the department.

3. The following comments were received and appear with the board's responses:

COMMENT NO. 1: The proposed amendments to ARM 17.24.221 should provide flexibility in the means of submitting coordinates for permit and boundary and other information other than a boundary coordinate table.

RESPONSE: The board agrees with the comment and has modified the rule in (3)(x) and by adding (8).

COMMENT NO. 2: ARM 17.24.218(1)(a) should provide flexibility in the means of marking permit and other boundaries in the field.

RESPONSE: The board agrees with the comment and has so modified the rule.

COMMENT NO. 3: ARM 17.24.220(1) should provide flexibility in the means of calculating the amount of the reclamation bond.



RESPONSE: The board agrees with the comment and has amended the rule accordingly.

COMMENT NO. 4: The proposed amendments should provide for submittal of maps in a size and scale appropriate to the project area.

RESPONSE: The board acknowledges the commenter's concern and responds that the change suggested by the commenter is already included in the proposed rules and is applicable to all operators. See proposed amendments to ARM 17.24.221(1).

COMMENT NO. 5: The proposed amendments should allow the department to consider steeper slopes for post mining land uses based on demonstrated success.

RESPONSE: The board acknowledges the added flexibility that the suggested change would afford operators, but declines to adopt the suggested change. The proposed amendments provide that an applicant may propose reclamation to a slope that is in a stable condition and steeper than 5:1 for hay land and cropland, 4:1 for sandy surfaces, and 3:1 for other sites and surfaces that are appropriate to the designated postmine as long as the steeper slope is based on the design of a licensed professional engineer. See ARM 17.24.219(1)(c)(i), (vii). The board is concerned that a historical consideration such as "demonstrated success" is an inadequate substitute for engineering analysis to protect the public from unstable slopes.

COMMENT NO. 6: The proposed amendments should allow for use of materials other than soils to establish the final grade for reclamation if the material used for final grade was present at the surface before mining began.

RESPONSE: The board acknowledges the concern articulated in the comment. The board believes that the proposed amendments to the rules already provide the flexibility that the commenter seeks. See ARM 17.24.219(1)(c)(vi), which provides for substitution of overburden for soil in the event that soil is unavailable.

COMMENT NO. 7: The proposed amendments should allow an operator to retain land that has been approved for Phase II bond release in the approved permit area as a non-bonded area.

RESPONSE: The board acknowledges the added flexibility that the suggested change would afford operators, but declines to adopt the suggested change. The Opencut Mining Act provides that release of the bond coincides with release of the operator from further obligation regarding any affected land. See 82-4-433(7), MCA. Also, adopting the commenter's suggested change has the potential of confusing the due process rights of the landowner and other interested parties to administrative review of a decision on an application to release a reclamation bond. See 82-4-427(3), MCA.



COMMENT NO. 8: ARM 17.24.218(1)(d)(vii) should be amended to provide an exception to the seeding requirement for overburden stockpile that are not capable of sustaining plant growth.

RESPONSE: The board agrees with the comment and has amended the rule accordingly.

COMMENT NO. 10: The title of ARM 17.24.207 should be amended as follows: "ADDITIONAL REQUIREMENTS AND EXCEPTIONS FOR BENTONITE MINES."

RESPONSE: The comment proposes an amendment to the title of ARM 17.24.207. Because the board is not amending ARM 17.24.207 in this adoption notice, revision of the title of the rule is not necessary.

4. No other comments or testimony were received.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

\_\_\_\_\_  
JOHN F. NORTH  
Rule Reviewer

By: \_\_\_\_\_  
JOAN MILES  
Chairman

Certified to the Secretary of State, \_\_\_\_\_, 2016.



## MEMO

To: The Board of Environmental Review

From: Dana David  
DEQ Staff Attorney

Re: HB 521 Stringency Analysis and HB311 Takings Checklist

MAR Notice No. 17-376

In the matter of the amendment of ARM 17.24.201, 17.24.202, 17.24.203, 17.24.206, 17.24.207, 17.24.212, 17.24.213, 17.24.214, 17.24.218, 17.24.219, 17.24.220, 17.24.221, 17.24.222, 17.24.223, 17.24.224, 17.24.225, and 17.24.226 and the repeal of ARM 17.24.216 and 17.24.217 pertaining to rules and regulations governing the Opencut Mining Act.

Date: December 11, 2015

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On behalf of the Montana Department of Environmental Quality, Industrial Energy Materials Bureau, Opencut Mining Section, I submit the following in support of the above referenced rulemaking.

The HB521 requirement that the rule is no more stringent than federal regulations does not apply to the Opencut Mining Act.

The Private Property Assessment checklist required by HB 311 is attached to this Memo as Attachment A and indicates that the proposed rule results in no takings or damaging implications.

STATE OF MONTANA, DEPARTMENT OF  
ENVIRONMENTAL QUALITY

By: 

Dana David  
Special Assistant Attorney General

## ATTACHMENT A

### PRIVATE PROPERTY ASSESSMENT ACT CHECKLIST

In the matter of the amendment of ARM 17.24.201, 17.24.202, 17.24.203, 17.24.206, 17.24.207, 17.24.212, 17.24.213, 17.24.214, 17.24.218, 17.24.219, 17.24.220, 17.24.221, 17.24.222, 17.24.223, 17.24.224, 17.24.225, and 17.24.226 and the repeal of ARM 17.24.216 and 17.24.217 pertaining to rules and regulations governing the Opencut Mining Act

DOES THE PROPOSED AGENCY ACTION HAVE TAKINGS IMPLICATIONS  
UNDER THE PRIVATE PROPERTY ASSESSMENT ACT?

Yes	No	
√		1. Does the action pertain to land or water management or environmental regulation affecting private real property or water rights?
	√	2. Does the action result in either a permanent or indefinite physical occupation of private property?
	√	3. Does the action deprive the owner of all economically viable uses of the property?
	√	4. Does the action deny a fundamental attribute of ownership?
	√	5. Does the action require a property owner to dedicate a portion of property or to grant an easement? [If the answer is NO, skip questions 5a and 5b and continue with question 6.]
	N/A	5a. Is there a reasonable, specific connection between the government requirement and legitimate state interests?
	N/A	5b. Is the government requirement roughly proportional to the impact of the proposed use of the property?
	√	6. Does the action have a severe impact on the value of the property?
	√	7. Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public generally? [If the answer is NO, do not answer questions 7a through 7c.]
	N/A	7a. Is the impact of government action direct, peculiar, and significant?
	N/A	7b. Has government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?
	N/A	7c. Has government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question?



Attachment A

Page 2

Taking or damaging implication exist if YES is checked in response to question 1 and also to any one or more of the following questions: 2, 3, 4, 6, 7a, 7b, 7c; or if NO is checked in response to questions 5a or 5b.

If taking or damaging implication exists, the agency must comply with §5 of the Private Property Assessment Act, to include the preparation of a taking or damaging impact assessment.

Normally, the preparation of an impact assessment will require consultation with agency legal staff.

**BOARD OF ENVIRONMENTAL REVIEW  
AGENDA ITEM**

**EXECUTIVE SUMMARY FOR RULE REPEAL**

**Agenda #III.C.4.**

**Agenda Item Summary:** The Department requests that the Board repeal rules in ARM Title 17, chapters 4, 30, and 38, pertaining to water pollution rules, radiological criteria, state and EPA coordination, pretreatment, definitions, enforcement actions for administrative penalties, purpose, definitions, enforcement procedures and suspended penalties. These rules repeat statutory language, no longer reflect current federal requirements, or were adopted to implement statutory enforcement provisions that were superseded by legislation enacted in 2005.

**List of Affected Rules:** This rulemaking would repeal ARM 17.4.201, 17.30.645, 17.30.1386, 17.30.1401, 17.30.1402, 17.30.1405, 17.30.1406, 17.30.1407, 17.30.1410, 17.30.1411, 17.30.1412, 17.30.1413, 17.30.1414, 17.30.1419, 17.30.1420, 17.30.1421, 17.30.1425, 17.30.1426, 17.30.1602, 17.30.2001, 17.30.2003, 17.38.601, 17.38.602, 17.38.603, and 17.38.607.

**Affected Parties Summary:** This rulemaking will not affect any regulated sources. The rules proposed for repeal either repeat statutory language, were never used, or are not currently used by the Department.

**Background:**

Proposed repeal of ARM 17.4.201 and 17.30.645. These rules pertaining to water pollution rules and radiological criteria unnecessarily repeat statutory language.

Proposed repeal of ARM 17.30.1386. This rule sets forth reporting requirements from the Department to the EPA regarding MPDES permitting. The rule implemented EPA regulations in 1989. These reporting requirements have been superseded by newer EPA reporting requirements that are set forth in annual agreements executed by EPA and the Department.

Proposed repeal of ARM 17.30.1401, 1402, 1405, 1406, 1407, 1410, 1411, 1412, 1413, 1414, 1419, 1420, 1421, 1425, and 1426. These rules were adopted in anticipation of the Department receiving delegation from the EPA for the federal pretreatment program. The delegation did not take place, however, because of a lack of funding. As a result, the pretreatment program in Montana continues to be administered by the EPA. These rules, which were never implemented, do not reflect current EPA requirements.

Proposed repeal of 17.30.2001 and 2003 and 17.38.601, 602, 603, and 607.  
Legislation passed in 2005 established a set of penalty factors that must be considered in penalty calculations. In May 2006, the Board promulgated new rules, ARM 17.4.301 through 17.4.308, to establish a penalty calculation process using those factors. Upon promulgation of the new penalty rules, some of the existing Water Quality Act and Public Water Supply Act penalty calculation rules (old rules) were repealed. The definition and procedural sections of the remaining old rules were not repealed to help guide the department's implementation of the new rules. After nine years of implementation of the new penalty rules, the remaining portions of the old rules are no longer needed.

**Hearing Information:** A hearing was held on January 14, 2016. No member of the public submitted testimony or attended the hearing. The comment period closed on January 21, 2016. No public comments were received.

**Board Options:** The Board may:

1. Repeal the rules as provided in the Notice of Repeal;
2. Repeal some of the rules; or
3. Repeal none of the rules.

**DEQ Recommendation:** The Department recommends that the adopt the Hearing Examiner Report and the HB 311 and 521 analyses and repeal the rules as provided in the attached Notice of Repeal.

**Enclosures:**

1. Notice of Public Hearing on Proposed Repeal
2. HB 311 and 521 Analyses
3. Hearing Examiner's Report
4. Notice of Repeal



BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the repeal of ARM	)	NOTICE OF REPEAL
17.4.201, 17.30.645, 17.30.1386,	)	
17.30.1401, 17.30.1402, 17.30.1405,	)	(PROCEDURAL RULES)
17.30.1406, 17.30.1407, 17.30.1410,	)	(WATER QUALITY)
17.30.1411, 17.30.1412, 17.30.1413,	)	(PUBLIC WATER SUPPLY AND
17.30.1414, 17.30.1419, 17.30.1420,	)	SEWAGE SYSTEM
17.30.1421, 17.30.1425, 17.30.1426,	)	REQUIREMENTS)
17.30.1602, 17.30.2001, 17.30.2003,	)	
17.38.601, 17.38.602, 17.38.603, and	)	
17.38.607 pertaining to water pollution	)	
rules, radiological criteria, state and EPA	)	
coordination, pretreatment, definitions,	)	
enforcement actions for administrative	)	
penalties, purpose, definitions, enforcement)	)	
procedures, and suspended penalties	)	

TO: All Concerned Persons

1. On December 24, 2015, at 9:30 a.m., the Board of Environmental Review published MAR Notice No 17-378 pertaining to the public hearing on the proposed repeal of the above stated rules at page 2182 of the 2015 Montana Administrative Register, Issue Number 24.

2. The board has repealed the rules as proposed.

3. The only testimony received supported repeal of the rules.

Reviewed by: DEPARTMENT OF ENVIRONMENTAL  
QUALITY

BY: \_\_\_\_\_  
JOHN F. NORTH JOAN MILES, CHAIRMAN  
Rule Reviewer

Certified to the Secretary of State, December 14, 2015.



**MEMO**

TO: Board of Environmental Review

FROM: John F. North, Chief Legal Counsel  
Department of Environmental Quality *J.F.N.*

DATE: January 19, 2015

SUBJECT: HB 521 Stringency and SB 311 Takings Analyses for MAR Notice No. 17-378

HB 521, which is codified at 75-5-203 and 75-6-116, MCA, requires that the Board make certain findings before it may adopt water quality or public water supply rules that are more stringent than comparable federal regulations or guidance that address the same circumstances.

In MAR Notice No. 17-378, the Board is proposing to repeal rules providing enforcement procedures. Because this notice does not propose adoption of substantive requirements, the rulemaking would not adopt rules that are more stringent than comparable federal regulations or guidance that address the same circumstance. Therefore, no HB 521 findings are necessary before adoption of the proposed rule repeals.

SB 311 is codified as Title 2, Chapter 10, MCA. That chapter requires an agency to conduct a takings impact assessment for actions, including adoption of rules, with taking or damaging implications. It directs that the Attorney General provide a checklist for agencies to use in determining whether actions have taking or damaging implications. Attached is a checklist for these rule amendments. It indicates that adoption of these rule amendments does not have taking or damaging implications.

Attachment

PRIVATE PROPERTY ASSESSMENT ACT CHECKLIST: MAR Notice No. 17-378

DOES THE PROPOSED AGENCY ACTION HAVE TAKINGS IMPLICATIONS  
UNDER THE PRIVATE PROPERTY ASSESSMENT ACT?

Yes

No

- |               |               |  |
|---------------|---------------|--|
| <u>X</u>      | <u>      </u> | 1. Does the action pertain to land or water management or environmental regulation affecting private real property or water rights?  |
| <u>      </u> | <u>X</u>      | 2. Does the action result in either a permanent or indefinite physical occupation of private property?   |
| <u>      </u> | <u>X</u>      | 3. Does the action deprive the owner of all economically viable uses of the property?  |
| <u>      </u> | <u>X</u>      | 4. Does the action deny a fundamental attribute of ownership?  |
| <u>      </u> | <u>X</u>      | 5. Does the action require a property owner to dedicate a portion of property or to grant an easement? [If the answer is NO, skip questions 5a and 5b and continue with question 6.]                           |
| <u>      </u> | <u>X</u>      | 5a. Is there a reasonable, specific connection between the government requirement and legitimate state interests?  |
| <u>      </u> | <u>      </u> | 5b. Is the government requirement roughly proportional to the impact of the proposed use of the property?  |
| <u>      </u> | <u>X</u>      | 6. Does the action have a severe impact on the value of the property?  |
| <u>      </u> | <u>X</u>      | 7. Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public generally? [If the answer is NO, do not answer questions 7a |



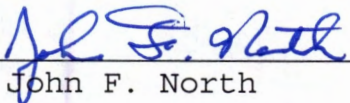
through 7c.]

\_\_\_\_\_ 7a. Is the impact of government action  
direct, peculiar, and significant?

\_\_\_\_\_ 7b. Has government action resulted in the  
property becoming practically inaccessible,  
waterlogged, or flooded?

\_\_\_\_\_ 7c. Has government action diminished  
property values by more than 30% and  
necessitated the physical taking of adjacent  
property or property across a public way  
from the property in question?

Taking or damaging implication exist if YES is checked in  
response to question 1 and also to any one or more of the  
following questions: 2, 3, 4, 6, 7a, 7b, 7c; or if NO is checked  
in response to questions 5a or 5b.

  
John F. North

January 19, 2016

## BOARD OF ENVIRONMENTAL REVIEW

### EXECUTIVE SUMMARY REGARDING ACTION ON BUTTE-SILVER BOW AIR POLLUTION CONTROL PROGRAM REVISIONS TO ORDINANCE 12-1 "AIR QUALITY CONTROL"

**Agenda Item Summary:** The Butte-Silver Bow Council of Commissioners requests that the Board of Environmental Review (Board) approve amendments to the Butte-Silver Bow local air quality control ordinance.

**List of Affected Rules:** The amendments are generally described as follows:

- Add definition of "Federal Regulations" to mean the applicable requirements of Title 40, part 60, subparts AAA or QQQQ of the Code of Federal Regulations, as codified July 1, 2015.
- Remove definitions of "EPA HH Phase 2 Program," "EPA HH Phase 2 Program Qualified Model," and "New Outdoor Wood Furnace."
- Require that outdoor wood furnaces installed in the air pollution control district after December 31, 2015, comply with federal regulations.
- Require that solid fuel burning devices installed in the air pollution control district after December 31, 2015, comply with federal regulations.

**Background:** The following is a summary of the amendments adopted by Butte Silver Bow local government and the Town Council of Walkerville. The Butte Silver Bow Health Department, in cooperation with the State of Montana's Department of Environmental Quality Air Quality Bureau, started this process in October of 2015. The amendments to the local "Air Quality Control" Ordinance were a joint effort by the State of Montana's Department of Environmental Quality and Butte Silver Bow.

On February 3, 2015, the Environmental Protection Agency (EPA) published New Source Performance Standards (NSPS) for New Residential Wood Heaters (40 CFR part 60 subpart AAA) and New Residential Hydronic Heaters and Forced Air Furnaces (40 CFR part 60 subpart QQQQ). The NSPS strengthened the emission standards for new wood stoves and established the first ever regulatory standards for devices such as outdoor wood boilers, wood-fired forced air furnaces, and single burn-rate wood stoves.

Since 2012, Butte Silver Bow has implemented and enforced an ordinance regulating the installation of residential wood heaters, including outdoor wood furnaces and other solid fuel burning devices such as wood stoves. The regulations required that only EPA Phase 1 or Phase 2 *certified* wood stoves and Phase 2 *qualified* outdoor wood furnaces could be installed in the Air Pollution Control District.

With the publication of the NSPS, EPA changed the language regarding certification of devices under the program. The phrases "Phase 1" and "Phase 2" are no longer used. The NSPS required that, as of May 15, 2015, new devices had to be manufactured to meet "Step One" emission standards. As of January 1, 2016, retailers and vendors can only sell Step One compliant residential wood heating devices.

These amendments ensure that the Butte Silver Bow ordinance references the new language required in the NSPS. Without the amendments, the ordinance would require the installation of wood heating devices that meet Phase 2 standards, a now out-of-date standard.

The amendments achieve this goal by adding a definition of "Federal Regulations," meaning the applicable subpart of the Code of Federal Regulations (AAA or QQQQ) as codified on July 1, 2015, and requiring that only those devices meeting federal regulations may be installed in the Air Pollution Control District. The amendments are summarized in the attached documentation.

The amendments were passed by the Butte Silver Bow Council of Commissioners on November 18<sup>th</sup> 2015 at the regular Council of Commissioners meeting. They were formally adopted 30 days later, December 18<sup>th</sup> 2015, which is the effective date for the amendments to Ordinance 12-1. The following timeline is the process Butte Silver Bow used when establishing these amendments and corresponds to the attached documentation of public meetings.

- October 14, 2015: Butte Silver Bow Judiciary Committee Meeting
  - Section 2 Communication No. 15-467  
  
Butte Silver Bow Environmental Health Staff, requesting Council's authorization for the County Attorney to make proposed amendments to Chapter 8.16 of the Silver Bow Municipal code entitled "Air Pollutants."
  - Recommendation: Ask County Attorney to make revisions to Ordinance and Hold in Judiciary Committee
- October 21, 2015: Butte Silver Bow Council of Commissioners Regular Meeting
  - Section 5 Ordinances and Resolutions Referred to Judiciary
    - Item 1 Council Bill No. 15-17  
  
Ordinance 15-17  
  
An Ordinance Amending Chapter 16 Entitled "Air Quality Control", Specifically Amending Sections 8.16.30, 8.16.220, 8.16.300 And Providing For An Effective Date Herein.
- October 28, 2015: Butte Silver Bow Judiciary Committee Meeting
  - Section 1 Communication No. 15-467  
  
Butte Silver Bow Environmental Health Staff, requesting Council's authorization for the County Attorney to make proposed amendments to Chapter 8.16 of the Butte Silver Bow Municipal code entitled "Air Pollutants."
  - Recommendation: Cross Reference with Ordinance No. 15-17 and Place on File.
- November 4, 2015: Butte Silver Bow Council of Commissioners Regular Meeting
  - Section 3 Ordinances (Second Reading)
    - Item 2 Council Bill No. 15-17  
  
Ordinance No. 15-17



An Ordinance Amending Chapter 16 Entitled "Air Quality Control"  
Specifically Amending Sections 8.16.030, 8.16.220, 8.16.300, And  
Providing For An Effective Date Herein.

- November 10, 2015: Butte Silver Bow Judiciary Committee Meeting
  - Section 3 Council Bill No. 15-17  
  
Ordinance No. 15-17  
  
An Ordinance Amending Chapter 16 Entitled "Air Quality Control"  
Specifically Amending Sections 8.16.030, 8.16.220, 8.16.300, And  
Providing For An Effective Date Herein.
  - Recommendation: Move to Final Reading.
- November 18, 2015: Butte Silver Bow Council of Commissioners Regular Meeting
  - Section 6 Ordinances and Resolutions (Final Reading)  
  
Item 2 Council Bill No. 15-17  
  
Ordinance No. 15-17  
  
An Ordinance Amending Chapter 16 Entitled "Air Quality Control"  
Specifically Amending Sections 8.16.030, 8.16.220, 8.16.300, And  
Providing For An Effective Date Herein.
  - It was moved by Commissioner Shaw and Seconded by Commissioner Morgan that Council Bill No. 15-17, Ordinance No. 15-17 be placed on final reading and be passed, having been deemed read at length. The motion passed by roll call vote of 10 yea and 0 nay.
- January 8, 2016:
  - The enclosed letter from the Walkerville Town Council acknowledges and authorizes the changes to the "Air Quality Control" ordinance

**Board Options:** The Board may:

1. Approve the proposed amendments;
2. Disapprove the proposed amendments; or
3. Request additional information from the Butte-Silver Bow Council of Commissioners and consider the amendments at a future date.

**Enclosures:** The following information is attached to this executive summary:

1. BSB Amended Regulations
2. Stringency Statement
3. Record of Cities' Concurrence

COUNCIL BILL NO. 12-1

ORDINANCE NO. 12-1

1 AN ORDINANCE REPEALING CHAPTER 16 OF TITLE 8 OF THE BUTTE-  
2 SILVER BOW MUNICIPAL CODE ENTITLED "AIR POLLUTANTS" AND  
3 REPLACING IT WITH A NEW CHAPTER 16 TO BE ENTITLED "AIR QUALITY  
4 CONTROL", ESTABLISHING REGULATIONS FOR THE CONTROL AND  
5 MANAGEMENT OF AIR QUALITY; ESTABLISHING AN AIR POLLUTION  
6 CONTROL DISTRICT; ESTABLISHING A SOLID FUEL BURNING DEVICE AND  
7 CONTROL PROGRAM; REGULATING THE USE OF OUTDOOR WOOD FURNACES;  
8 ESTABLISHING DUST CONTROL REGULATIONS; REGULATING OPEN BURNING  
9 IN SILVER BOW COUNTY; PROVIDING FOR PERMITS; PROVIDING  
10 PENALTIES FOR VIOLATION; PROVIDING FOR SEVERABILITY; AND  
11 PROVIDING FOR AN EFFECTIVE DATE HEREIN.  
12 NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF COMMISSIONERS  
13 OF THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA:

14

15 SECTION 1: 8.16.010 Intent. The purpose of this chapter is  
16 to achieve and maintain levels of air quality  
17 that will protect human health and safety and,  
18 to the greatest degree practicable, prevent  
19 injury to plant and animal life and property,

1 foster the comfort and convenience of the  
2 people, promote economic and social development,  
3 and facilitate the enjoyment of the natural  
4 attractions within Butte-Silver Bow as provided  
5 in Section 75-2-102(2) MCA.

6  
7 8.16.020 Scope. Unless otherwise indicated,  
8 this chapter applies to all persons, agencies,  
9 institutions, businesses, or government entities  
10 living or located within the Air Pollution  
11 Control District except for sources exempt from  
12 local government regulation under 75-2-301(5),  
13 MCA.

14  
15 8.16.030 Definitions: As used in this chapter,  
16 unless indicated otherwise, the following  
17 definitions apply:

18 (1) "Air Contaminant" means dust, fumes, mist,  
19 smoke, or any particulate matter vapor, gas,  
20 odorous substances, or any combination thereof



1           (2) "Air Pollution Control District" means the  
2           real property described as follows:

3           Beginning at the northwest corner of Section 2,  
4           Township 3 North, Range 8 West; thence easterly  
5           to the northeast corner of Section 5, T3N R7W;  
6           thence southerly to the northwest corner of  
7           Section 9, T3N, R7W; thence easterly to the  
8           northeast corner of Section 10, T3N, R7W; thence  
9           southerly to the southeast corner of Section 22,  
10          T2N, R7W; thence westerly to the southwest  
11          corner of Section 19, T2N, R7W; thence northerly  
12          to the northwest corner of Section 19, T2N, R7W;  
13          thence westerly to the southwest corner of  
14          Section 14, T2N, R8W; thence northerly to the  
15          southwest corner of Section 35, T3N, R8W; thence  
16          westerly to the southwest corner of Section 34,  
17          T3N, R8W; thence northerly to the northwest  
18          corner of Section 27, T3N, R8W; thence westerly  
19          to the southwest corner of Section 20, T3N, R8W;  
20          thence northerly to the northwest corner of  
21          Section 17, T3N, R8W; thence easterly to the

1 northwest corner of Section 14, T3N, R8W; thence  
2 northerly to the point of beginning.

3 A map of the above-described geographical area  
4 is available and on file in the City-County's  
5 Clerk and Recorder's office.

6  
7 (3) "Air Quality Categories" means: "Good",  
8 "Poor", and "Alert" categories correlating with  
9 measured PM-2.5 concentrations.

10 a. "Good Air Quality" means Ambient  
11 particulate matter (PM) concentrations averaged  
12 over an eight hour period that are equal to or  
13 less than 40 percent of the most current  
14 NAAQS/MAAQS (24 hour standard).

15 b. "Poor Air Quality" means Ambient  
16 particulate matter (PM) concentrations averaged  
17 over an eight hour period that are between 40-75  
18 percent of the most current NAAQS/MAAQS (24 hour  
19 standard).

20 c. "Alert Air Quality" means Ambient  
21 particulate matter (PM) concentrations averaged

1 over an eight hour period that are equal to or  
2 greater than 75 percent of the most current  
3 NAAQS/MAAQS (24 hour standard).

4 (4) "Best Available Control Technology" (BACT)  
5 means those techniques and methods of  
6 controlling emissions of pollutants from an  
7 existing or proposed open burning source which  
8 limit those emissions to the maximum degree  
9 which the department determines, on a case-by-  
10 case basis, is achievable for that source,  
11 taking into account impacts on energy use, the  
12 environment, and the economy, and any other  
13 costs, including cost to the source.

14 (5) "Burn Barrel" means any metal, ceramic, or  
15 other non-combustible devices, including, but  
16 not limited to, 55 gallon drums used for  
17 burning.

18 (6) "Department" means the Butte-Silver Bow  
19 County Health Department.

20 (7) "DEQ" means the Montana Department of  
21 Environmental Quality.



1 (8) "Emission" means a release into the outdoor  
2 atmosphere of an air contaminant.

3 (9) "EPA" means the US Environmental Protection  
4 Agency.

5 (10) "EPA Federal Reference Method 9" means  
6 Title 40 CFR 60. Appendix A to Part 60.

7 (11) "Government" means the local government of  
8 Butte-Silver Bow.

9 (12) "Federal Regulation" means the applicable  
10 requirements in Title 40, part 60, subparts AAA  
11 or QQQQ of the Code of Federal Regulations, as  
12 codified July 1, 2015.

13 (a) For solid fuel burning devices, the  
14 requirements of subpart AAA apply.

15 (b) For outdoor wood furnaces, the requirements  
16 of subpart QQQQ apply.

17 (13) "MAAQS" means the Montana Ambient Air  
18 Quality Standards.

19 (14) "NAAQS" means the National Ambient Air  
20 Quality Standards.

1 (15) "Opacity" means a measurement of visible  
2 emissions defined as the degree expressed in  
3 percent to which emissions reduce the  
4 transmission of light and obscures the view of  
5 an object in the background.

6 (16) "Pellet Fuel Burning Device" means a solid  
7 fuel burning device that burns only  
8 automatically fed biomass or pelletized fuels.

9 (17) "Outdoor Wood Furnace" means a residential  
10 hydronic heater or forced-air furnace as defined  
11 in 40 CFR part 60, subpart QQQQ.

12 (18) "Person" means an individual, partnership,  
13 firm, association, municipality, public or  
14 private corporation, the state or a subdivision  
15 or agency of the state, trust, estate,  
16 interstate body, federal government or an agency  
17 of the federal government, or any other legal  
18 entity.

19 (19) "PM-10" means particulate matter with an  
20 aerodynamic diameter of less than or equal to a  
21 nominal 10 micrometers.

1 (20) "PM-2.5" means particulate matter with an  
2 aerodynamic diameter of less than or equal to a  
3 nominal 2.5 micrometers.

4 (21) "Remodel" means an addition or upgrade to  
5 an existing structure which utilizes a solid  
6 fuel burning device for heating purposes.

7 (22) "Solid Fuel Burning Device" means a  
8 residential wood heater as defined in 40 CFR  
9 part 60, subpart AAA.

10  
11 8.16.040 Compatibility with other Regulations.

12 In any case where a provision of these  
13 regulations is found to be in conflict with a  
14 provision of any zoning, building, fire, safety,  
15 or code of Butte-Silver Bow, the provision which  
16 establishes the higher standard for the  
17 promotion and protection of the health and  
18 safety of the people shall prevail.

19  
20  
21 SECTION 2: 8.16.100 Solid Fuel Burning Device Control  
22 Program.



1                   (1) Operating and Emission Requirements: No  
2 person may burn any material in a solid fuel  
3 burning device except uncolored newspaper,  
4 untreated wood and lumber, and products  
5 manufactured for the sole purpose of use as a  
6 solid fuel. Products manufactured or processed  
7 for use as solid fuels must conform to any other  
8 applicable provisions of this subchapter.

9                   (2) The burning of the following materials in any  
10 solid fuel burning device is prohibited at all  
11 times:

- 12                   a. any waste moved from the premises from  
13                   where it was generated;
- 14                   b. food wastes;
- 15                   c. styrofoam and other plastics;
- 16                   d. wastes generating noxious odor;
- 17                   e. wood or wood by-products that have been  
18                   treated, coated, painted, stained, or  
19                   contaminated by a foreign material such as  
20                   papers, cardboard, or painted or stained  
21                   wood;

1 f. poultry litter;  
2 g. animal droppings;  
3 h. dead animals or dead animal parts;  
4 i. tires;  
5 j. rubber materials;  
6 k. asphalt shingles;  
7 l. tar paper;  
8 m. automobile or aircraft bodies or  
9 interiors and bodies or interiors of  
10 recreational vehicles and atv's;  
11 n. insulated wire;  
12 o. oil or petroleum products;  
13 p. treated lumber or timbers;  
14 q. pathogenic wastes;  
15 r. hazardous wastes as defined by 40 CFR,  
16 Part 261;  
17 s. trade wastes;  
18 t. any materials resulting from a salvage  
19 operation;  
20 u. chemicals;  
21 v. Christmas tree waste;

- 1 w. Asbestos or asbestos containing  
2 materials;  
3 x. Standing or demolished structures; and  
4 y. Paint  
5 z. Colored news print or magazine print.  
6

7 (3) The use of coal as a fuel in a solid fuel  
8 burning device is prohibited within the Air  
9 Pollution Control District.  
10

11 8.16.110 Liability. Neither the provisions of  
12 this Chapter nor the compliance with the  
13 provisions of this Chapter shall relieve any  
14 person from the responsibility for damage to any  
15 person or property otherwise imposed by law, nor  
16 shall it impose any liability upon Butte-Silver  
17 Bow for damage to any person or property.  
18

19 SECTION 3: 8.16.200 Outdoor Wood Furnaces (Outdoor Wood  
20 Boilers, Outdoor Wood-Fired Hydronic Heaters  
21 and/or Other Outdoor Hydronic Heaters.



1           (1) This program is aimed at reducing levels of  
2 particulate matter to, or below, the current  
3 NAAQS/MAAQs.

4           (2) This program is necessary to preserve,  
5 protect, improve, achieve, and maintain such  
6 levels of air quality as will protect the health  
7 and welfare of the citizens of Butte-Silver Bow.

8           8.16.210 Requirements: Outdoor Wood Furnaces  
9 must be constructed, established, installed,  
10 operated, and maintained in conformance with the  
11 following conditions:

12           (1) After December 31 2015, only Outdoor Wood  
13 Furnaces that meet federal regulations may be  
14 installed in the Air Pollution Control District.

15           (2) Only the following fuels may be burned in  
16 any new or existing Outdoor Wood Furnace:  
17 natural, untreated wood, wood pellets, corn  
18 products, biomass pellets, or other listed fuels  
19 specifically permitted in the manufacturer's  
20 instructions such as fuel oil, natural gas, or  
21 propane backup.

1 (3) After December 31, 2015 any outdoor wood  
2 furnace must be located on the property in  
3 compliance with the manufacturer's setback  
4 recommendations and/or testing and listing  
5 requirements for clearance of combustible  
6 materials.

7 (4) After December 31, 2015 required chimney  
8 heights for outdoor wood furnaces installed;

9 a. If located within 300 feet of any  
10 residence not served by the furnace, the  
11 chimney must be at least 2 feet higher than  
12 the peak of the residence served.

13 b. If located within 100 feet of any  
14 residence not served by the furnace, the  
15 chimney must be at least 2 feet higher than  
16 the peak of the residence served or not  
17 served, whichever is higher.

18  
19 8.16.300 Solid Fuel Burning Devices

20 (1) The following regulations apply to solid  
21 fuel burning devices:

1           a. After December 31, 2015 only wood burning  
2           devices that meet federal regulations may be  
3           installed in the Air Pollution Control District.

4           b. Within the air pollution control district, no  
5           person owning or operating a solid fuel burning  
6           device may cause, allow, or discharge emissions  
7           from such device which are of any opacity  
8           greater than twenty five (25) percent.

9           c. The provisions of this subsection do not  
10          apply to emissions during the building of a new  
11          fire, for a period or periods aggregating no  
12          more than thirty (30) minutes in any four hour  
13          period.

14          d. Within the Air Pollution Control District, no  
15          person owning or operating a solid fuel burning  
16          device for which a Class 1 or Special Needs  
17          Permit has been issued may cause, allow or  
18          discharge any emissions from such device which  
19          are of an opacity greater than ten (10) percent  
20          during an Air Pollution Alert declared by the  
21          Government. The provisions of this paragraph do



1 not apply to emissions during the building of a  
2 new fire or for refueling for a period or  
3 periods aggregating no more than thirty (30)  
4 minutes in any four (4) hour period.

5 e. For the purpose of this section, the  
6 Government may declare an Air Pollution Alert to  
7 be in effect whenever the ambient concentration  
8 of PM-2.5 within the Air Pollution Control  
9 District equals or exceeds 75 percent of the  
10 "NAAQS/MAAQS" averaged over any eight (8) hour  
11 period and when scientific and meteorological  
12 data indicate the average PM-2.5 concentrations  
13 will remain at or above the NAAQS/MAAQS if an  
14 Air Pollution Alert is not called.

15 f. Every person operating or in control of a  
16 solid fuel burning device within the Air  
17 Pollution Control District has a duty to know  
18 when an air pollution alert has been declared by  
19 the Government.  
20

1 SECTION 5: 8.16.400 Permits: The following permits are  
2 required for solid fuel burning devices:

3 (1) Class One Permit: The government may issue a  
4 Class I Permit for a solid fuel burning device  
5 if the emissions do not exceed the federal EPA  
6 most current standard of grams per hour weighted  
7 average.

8 (2) Special Needs Permit: A person who  
9 demonstrates an economic need to burn solid fuel  
10 for residential space heating purposes by  
11 qualifying for energy assistance according to  
12 economic guidelines established by the U.S.  
13 Office of Management and Budget under the Low  
14 Income Energy Assistance Program (L.I.E.A.P.) as  
15 administered in the City and County of Butte-  
16 Silver Bow by the District 12 Human Resource  
17 Development Council, is eligible for a special  
18 needs permit issued by the Department. This  
19 includes a person who has been determined to be  
20 eligible for Families Achieving Independence

1 (FAIM) or Supplemental Security Income (SSI)  
2 benefits.

3 (a) Application for a Special Needs Permit may  
4 be made to the Department at any time, and a  
5 Special Needs Permit is valid for a period of  
6 not more than one (1) year from the date it is  
7 issued. A Special Needs Permit may be renewed if  
8 the applicant meets the applicable need and  
9 economic guidelines at the time of application  
10 for renewal. A Special Needs Permit is not  
11 transferable to another residence or person.

12 SECTION 6: 8.16.500 Dust Control Regulations: No person  
13 may place any sanding or chip seal material on  
14 any road, alley or commercial yard/lot which has  
15 durability as defined by the Montana Modified LA  
16 Abrasion Test, of greater than 7, and a fines  
17 content of material smaller than 200 mesh, as  
18 determined by standard wet sieving methods, that  
19 exceeds 3 percent oven dry weight. Add language  
20 for resolution 1307 and ordinance 468 for  
21 clarity.



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SECTION 7:        8.16.600 Open Burning:    the following  
regulations shall apply to any open burning  
conducted in the City-County of Butte-Silver  
Bow, Montana.  
  
      (1) Prior to open burning, a person must obtain  
an Open Burning Permit from the Butte Silver Bow  
Fire Department.  
  
      (2)    Open    Burning    must    comply    with    "Best  
available control technology" (BACT)  
  
      (3) Open Burning is not allowed from December 1<sup>st</sup>  
through the last day of February.  
  
      (4) Open Burning may be allowed from March 1<sup>st</sup>  
through August 31<sup>st</sup>, if the Department determines  
there is proper dispersion in the Air Pollution  
Control District.  
  
      (5) Open Burning is also allowed from September  
1<sup>st</sup> through November 30<sup>th</sup> when the Department  
reports good ventilation.  
  
      (6) The burning of the following materials is  
prohibited at all times:

- a. any waste moved from the premises from where it was generated;
- b. food wastes;
- c. styrofoam and other plastics;
- d. wastes generating noxious odor;
- e. wood or wood by-products that have been treated, coated, painted, stained, or contaminated by a foreign material such as papers, cardboard, or painted or stained wood;
- f. poultry litter;
- g. animal droppings;
- h. dead animals or dead animal parts;
- i. tires;
- j. rubber materials;
- k. asphalt shingles;
- l. tar paper;
- m. automobile or aircraft bodies or interiors, and bodies or interiors of recreational vehicles and atv's;
- n. insulated wire;

1                   o. oil or petroleum products;  
2                   p. treated lumber or timbers;  
3                   q. pathogenic wastes;  
4                   r. hazardous wastes as defined by 40 CFR,  
5                   Part 261;  
6                   s. trade wastes;  
7                   t. any materials resulting from a salvage  
8                   operation;  
9                   u. chemicals;  
10                  v. Christmas tree waste;  
11                  w.    Asbestos    or    asbestos    containing  
12                  materials;  
13                  x. Standing or demolished structures; and  
14                  y. Paint;  
15                  z. Colored news print or magazine print.

16                  (7)   Allowing burning stumps, grass clippings,  
17                  leaves, or other similar materials that may be  
18                  burned under this chapter, to smolder overnight  
19                  is prohibited.

20                  (8)   The use of burn barrels, or other such  
21                  devices, is prohibited.



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SECTION 8:        8.16.700    Enforcement: The provisions of this ordinance shall be enforced as follows:

(1) The Department, Butte Silver Bow Fire Department, and the appropriate law enforcement officials shall be responsible for enforcement of this ordinance.

(2) Class I Permits and Special Needs Permits for residential solid fuel burning devices may be issued, denied, suspended or revoked.

SECTION 9:        8.16.800 Penalties: The penalties for violations of this chapter are as follows:

- (1) First Violation -        Written  
educational warning by the Department
- (2) Second Violation -        Twenty                    Five  
Dollars (\$25.00)
- (3) Third Violation -        Fifty                    Dollars  
(\$50.00)

1           (4) A fourth or subsequent violation of  
2           this Ordinance constitutes a MISDEMEANOR  
3           punishable by a fine not to exceed \$500.00  
4           or imprisonment in the county jail for a  
5           term not to exceed six (6) months, or by  
6           both a fine and imprisonment.

7           (a) No person or entity may be cited for a  
8           violation of this Ordinance more than once  
9           in any Calendar Day. However, each Calendar  
10          Day of violation may be considered a  
11          separate offense.

12          (b) Only those violations of this Ordinance  
13          by a person or entity which have occurred  
14          within one (1) year of a present offense  
15          may be considered as prior violations.

16          (c) Jurisdiction shall be in the City Court  
17          of the City-County of Butte Silver Bow,  
18          Montana.

1 SECTION 10: Severability: If any provision of this  
2 Ordinance or any section thereof, in any  
3 circumstances is held invalid, the validity  
4 of the remainder of the Ordinance and of  
5 the application of any of the other  
6 provisions or sections shall not be  
7 affected.  
8

9 SECTION 11: Repealer: All ordinances and resolutions in  
10 conflict herewith are repealed.

11 SECTION 12: Effective Date: This Ordinance shall be in  
12 full force and effect from and after thirty  
13 (30) days after its passage and approval.  
14  
15  
16

17 PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.  
18  
19  
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22

23 \_\_\_\_\_  
24 DAVID PALMER  
25 CHAIRMAN OF THE COUNCIL OF COMMISSIONERS



1  
2 APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.  
3  
4

5 \_\_\_\_\_  
6 PAUL DAVID BABB  
7 CHIEF EXECUTIVE

8 ATTEST:  
9

10 SALLY J. HOLLIS  
11 CLERK AND RECORDER  
12  
13  
14

15 \_\_\_\_\_  
16 BY \_\_\_\_\_  
17 ITS \_\_\_\_\_  
18

19 APPROVED AS TO FORM:  
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24 \_\_\_\_\_  
25 EILEEN JOYCE  
26 COUNTY ATTORNEY

27 \_\_\_\_\_  
28 JOHN P. MORGAN  
29 CHAIRMAN, JUDICIARY COMMITTEE  
30



## Butte-Silver Bow Health Department

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25 W. Front St., Butte, MT 59701-2801  
(406) 497-5020 Fax: (406) 497-5096  
<http://www.co.silverbow.mt.us/135/Health>  
Prevent. Promote. Protect.

January 19, 2016

State of Montana  
DEQ / Air Quality Division  
Metcalf Building  
Helena, Mt.

Re: Butte Silver Bow Air Quality Amendments Ordinance 12-1

Board Members:

**Review under § 75-2-301(4), MCA, Concerning Stringency for Approval by the Montana Board of Environmental Review of Amendments to the Butte-Silver Bow County Air Quality Control Regulations.**

Section 75-2-301(3)(b), MCA, requires that the Montana Board of Environmental Review (Board) fulfill the provisions of Section 75-2-301(4), MCA, when approving a rule, ordinance, or local law that is more stringent than a comparable state rule or federal regulation or guideline.

Section 75-2-301(4), MCA, allows the Board to adopt a rule more stringent than comparable state law if it makes a written finding after a public hearing and public comment and based on evidence that the proposed local standard or requirement:

- (A) Protects public health or the environment of the area;
- (B) Can mitigate harm to the public health or the environment; and
- (C) Is achievable with current technology.

The written finding must reference information and peer-reviewed scientific studies contained in the record that form the basis for the Board's conclusion. The written finding must also include information from the hearing record regarding the cost to the regulated community that is directly attributable to the proposed local standard or requirement.

If there is no comparable state law or rule, Section 75-2-301(4), MCA, does not apply.

The proposed amendments are not subject to the additional stringency provisions because there is no comparable state or federal regulation. The federal regulations in question govern the *manufacture and sale* of new residential wood heaters whereas the proposed amendments regulate the *installation* of such devices within the Butte-Silver Bow Air Pollution Control District. The requirements of 75-2-301(4), MCA, do not apply.

Sincerely,  
Paul A. Riley  
Butte Silver Bow  
Environmental Health Department  
Butte, Mt. 59701

# JUDICIARY COMMITTEE MEETING REPORT

## OCTOBER 14, 2015

TO THE HONORABLE CHIEF EXECUTIVE AND MEMBERS OF THE BUTTE-SILVER BOW COUNCIL OF COMMISSIONERS

Ladies and Gentlemen,

We, your Judiciary Committee, respectfully recommend as follows:

### SECTION 1 COMMUNICATION NO. 15-390

Matt Moore, Metro Operations Manager, Butte-Silver Bow Public Works Department, requesting Council authorize the County Attorney to revise sections of the Butte-Silver Bow Municipal Code regarding wastewater treatment systems.

*Recommendation: Cross Reference with Ordinance 15-16 and Place on File.*

\*

### SECTION 2 COMMUNICATION NO. 15-467

Dan Powers, Interim Health Officer, Butte-Silver Bow Health Department, requesting Council's authorization for the County Attorney to make proposed amendments to Chapter 8.16 of the Butte Silver Bow Municipal code entitled "Air Pollutants."

*Recommendation: Ask County Attorney to make revisions to Ordinance and Hold in Judiciary Committee.*

### SECTION 3 COUNCIL BILL NO. 15-15 ORDINANCE NO. 15-15

AN ORDINANCE AMENDING CHAPTER 10.52 OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC), ENTITLED "PARKING", SPECIFICALLY AMENDING SECTION 10.52.460 ENTITLED "TWO-HOUR CONTINUOUS PARKING ZONES - DESIGNATED AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. Redline

*Recommendation: Move to Final Reading*

### SECTION 4 COUNCIL BILL NO. 15-16 ORDINANCE NO. 15-16 (File too large to hyperlink - Please Ask Council Secretary for Hard-Copy to Review)

AN ORDINANCE REPEALING TITLE 13, CHAPTER 4 ENTITLED "WASTEWATER TREATMENT SYSTEM", OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC), AND REPLACING IT WITH A NEW TITLE 13, CHAPTER 4 TO STILL BE ENTITLED "WASTEWATER TREATMENT SYSTEM", OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC), AND PROVIDING FOR N EFFECTIVE DATE HEREIN.

*Recommendation: Schedule Public Hearing and Hold in Judiciary Committee.*





## SECTION 5 CLAIM APPROVAL

NAME	AMOUNT	RECOMMENDATION
Jeffrey Rustad	\$492.00	<i>Approved</i>
Garner Contracting	\$1,000.00	<i>Approved</i>
Ken Rustad	\$492.00	<i>Approved</i>

### Committee Members:

Bud Walker, Chairman	Present
Bill Andersen, Vice-Chairman	Absent
Dave Palmer	Absent
John Sorich	Absent
Cindy Perdue-Dolan	Absent
Brendan McDonough	Present
*Dan Foley	Present
*Sheryl Ralph	Present

**BUTTE-SILVER BOW COUNCIL OF COMMISSIONERS  
REGULAR MEETING AGENDA  
OCTOBER 21, 2015  
7:30 P.M. COURTHOUSE COUNCIL CHAMBERS**

ROLL CALL

PRAYER

PUBLIC COMMENT ON ANY ITEMS ON THE CONSENT AGENDA

APPROVAL OF THE MINUTES OF THE SPECIAL MEETING OF SEPTEMBER 23, 2015  
AND THE REGULAR MEETING, OCTOBER 7, 2015.

ITEMS NOT ADDRESSED ON THE AGENDA

CHIEF EXECUTIVE'S REPORT

**SECTION 1 BID OPENING  
COMMUNICATION NO. 15-451**

PAT HOLLAND, MANAGER, BUTTE-SILVER BOW GOVERNMENT BUILDINGS, REQUESTING COUNCIL'S AUTHORIZATION FOR A BID OPENING ON OCTOBER 21, 2015 REGARDING THE BUSINESS DEVELOPMENT CENTER BOILER REPLACEMENT.

**SECTION 2 BID OPENING  
COMMUNICATION NO. 15-461**

KAREN BYRNES, COMMUNITY DEVELOPMENT DIRECTOR, REQUESTING COUNCIL'S AUTHORIZATION TO OPEN THE 2016 ECONOMIC MILL LEVY FUND PROPOSALS ON OCTOBER 21, 2015.

**SECTION 3 PUBLIC HEARING  
COMMUNICATION NO. 15-462**

LORI CASEY, ASSISTANT PLANNING DIRECTOR, BUTTE-SILVER BOW PLANNING BOARD, REQUESTING COUNCIL'S AUTHORIZATION TO HOLD A PUBLIC HEARING REGARDING ZONE CHANGE APPLICATION NO. 173 ON OCTOBER 21, 2015.

**SECTION 4 CONSENT AGENDA**

- A. 1. COMMITTEE OF THE WHOLE MEETING REPORT
2. JUDICIARY COMMITTEE MEETING REPORT
3. PUBLIC WORKS COMMITTEE MEETING REPORT
4. FINANCE AND BUDGET COMMITTEE MEETING REPORT
5. ECONOMIC DEVELOPMENT COMMITTEE MEETING REPORT

## B. COMMUNICATIONS

1. 15-480 Dan Dennehy, Director, Emergency Management Agency, requesting Council's approval to accept a grant from Homeland Security and authorization for the Chief Executive to sign the agreement. Grant Agreement *Recommendation: Concur and Place on File.*
2. 15-481 Dan Dennehy, Director, Emergency Management Agency, requesting Council's approval to accept a grant from Homeland Security and authorization for the Chief Executive to sign the agreement. Grant Agreement *Recommendation: Concur and Place on File.*
3. 15-482 Jim Fisher, Butte-Silver Bow Commissioner, District No. 6, requesting a study for the possible need of stop signs at the intersection of Longfellow and Gaylord Streets. *Recommendation: Refer to the Public Works Committee.*
4. 15-483 Linda Sajor, Manager, Butte-Silver Bow Information Technology and Services, requesting Council's authorization for the Chief Executive to sign an agreement with CenturyLink. Agreement *Recommendation: Concur and Place on File.*
5. 15-484 David Schultz, Director, Butte-Silver Bow Public Works Department, requesting Council's concurrence with a speed study performed by the Montana Department of Transportation on Highway 2. Speed Study *Recommendation: Concur and Place on File.*
6. 15-485 David Schultz, Director, Butte-Silver Bow Public Works Department, requesting Council's authorization for the Chief Executive to sign an agreement with McGree Trucking. Agreement *Recommendation: Concur and Place on File.*
7. 15-486 Ronald Stormer, Director, Butte-Silver Bow Human Resources Department, requesting Council's authorization for the Chief Executive to sign a bargaining agreement with the International Union of Painters and Allied Trades, District Council 82. Agreement *Recommendation: Concur and Place on File.*
8. 15-487 David Schultz, Director, Butte-Silver Bow Public Works Department, requesting Council's authorization for the Chief Executive to sign an agreement with Water and Environmental Technologies including Exhibit A. Agreement *Recommendation: Concur and Place on File.*
9. 15-488 Karen Byrnes, Director, Butte-Silver Bow Urban Revitalization Agency, to give a Presentation on October 28, 2015 regarding the marketing efforts and information related to the Property at 40 E Broadway. This Presentation will be given jointly by NEW and Butte-Silver Bow. *Recommendation: Schedule a Presentation for October 28, 2015 and Hold in the Committee of the Whole.*
10. 15-489 R. Edward Banderob, Interim Facilitator, Greeley Neighborhood Community Coalition, to give Council a Petition to call for, authorize and recognize Community Councils. Petition *Recommendation: Note and Place on File*
11. 15-490 Karen Byrnes, Director, Butte-Silver Bow Community Development Department, requesting Council's recommendation to approve Council Communication # 15-460 request from Blain Brown to purchase City-County property under the adjacent Landowner Policy. Map *Recommendation: Concur with Request, Wait for Survey to be Completed and then Send to County Attorney to Draft a Resolution and Deed.*





12. 15-491 Chief Executive Matt Vincent, requesting Council's concurrence with an appointment and reappointment to the Friend of the Urban Forest Board. *Recommendation: Concur and Place on File*
13. 15-492 Chief Executive Matt Vincent, requesting Council's concurrence with an appointment to the Superfund Advisory and Redevelopment Trust Authority. *Recommendation: Concur and Place on File*
14. 15-493 Chief Executive Matt Vincent, requesting Council's concurrence with appointments to the Historic Perseveration Commission. *Recommendation: Concur and Place on File*
15. 15-494 Danette L. Gleason, Director, Butte-Silver Bow Finance and Budget Department, to give a Presentation with Pat Callaghan, Treasurer, on the acceptance of credit cards for payment of property taxes, motor vehicle licenses, and business licenses. *Recommendation: Schedule a Presentation on October 28, 2015 and Hold in the Committee of the Whole*



## SECTION 5 ORDINANCES AND RESOLUTIONS REFERRED TO JUDICIARY

### 1. COUNCIL BILL NO. 15-17 ORDINANCE NO. 15-17

AN ORDINANCE AMENDING CHAPTER 16 ENTITLED "AIR QUALITY CONTROL", SPECIFICALLY AMENDING SECTIONS 8.16.030, 8.16.220, 8.16.300, AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. Redline

### 2. RESOLUTION NO. 15-45

A RESOLUTION ESTABLISHING THE BUTTE-SILVER BOW MENTAL HEALTH LOCAL ADVISORY COUNCIL AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

## SECTION 6 ORDINANCES AND RESOLUTIONS FINAL READING

### I. COUNCIL BILL NO. 15-15 ORDINANCE NO. 15-15

AN ORDINANCE AMENDING CHAPTER 10.52 OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC), ENTITLED "PARKING", SPECIFICALLY AMENDING SECTION 10.52.460 ENTITLED "TWO-HOUR CONTINUOUS PARKING ZONES - DESIGNATED AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. Redline



PUBLIC COMMENT ON ANY PUBLIC MATTER NOT ON THE AGENDA

CALENDAR OF OTHER MEETINGS AND EVENTS

October 27	Port of Montana	12:00 PM	Hub Center, Silver Bow
October 28	Urban Revitalization	8:30 AM	1 <sup>st</sup> Floor Conference Rm., Courthouse
October 28	Local Emergency Planning	12:00 PM	1 <sup>st</sup> Floor Conference Rm., Courthouse
October 29	Planning Board	5:30 PM	Council Chambers, Courthouse
November 3	Historic Preservation	5:30 PM	Council Chambers, Courthouse
November 4	Board of Health	7:00 AM	Health Department
November 4	Airport Authority	12:00 PM	Bert Mooney Airport Authority Admin Office
November 4	Butte AIDS Support Services	7:00 PM	Community Center

ADJOURN\_\_\_\_\_



JUDICIARY COMMITTEE MEETING  
OCTOBER 28, 2015  
7:00 PM COURTHOUSE COUNCIL CHAMBERS

SECTION 1 COMMUNICATION NO. 15-467

Dan Powers, Interim Health Officer, Butte-Silver Bow Health Department, requesting Council's authorization for the County Attorney to make proposed amendments to Chapter 8.16 of the Butte Silver Bow Municipal code entitled "Air Pollutants."

SECTION 2 COUNCIL BILL NO. 15-16  
ORDINANCE NO. 15-16

AN ORDINANCE REPEALING TITLE 13, CHAPTER 4 ENTITLED "WASTEWATER TREATMENT SYSTEM", OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC), AND REPLACING IT WITH A NEW TITLE 13, CHAPTER 4 TO STILL BE ENTITLED "WASTEWATER TREATMENT SYSTEM", OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC), AND PROVIDING FOR N EFFECTIVE DATE HEREIN.

X

SECTION 3 COUNCIL BILL NO. 15-17  
ORDINANCE NO. 15-17

AN ORDINANCE AMENDING CHAPTER 16 ENTITLED "AIR QUALITY CONTROL", SPECIFICALLY AMENDING SECTIONS 8.16.030, 8.16.220, 8.16.300, AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

SECTION 4 RESOLUTION NO. 15-45

A RESOLUTION ESTABLISHING THE BUTTE-SILVER BOW MENTAL HEALTH LOCAL ADVISORY COUNCIL AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.





# JUDICIARY COMMITTEE MEETING REPORT

## OCTOBER 28, 2015

TO THE HONORABLE CHIEF EXECUTIVE AND MEMBERS OF THE BUTTE-SILVER BOW COUNCIL OF COMMISSIONERS

Ladies and Gentlemen,

We, your Judiciary Committee, respectfully recommend as follows:

### SECTION 1 COMMUNICATION NO. 15-467

Dan Powers, Interim Health Officer, Butte-Silver Bow Health Department, requesting Council's authorization for the County Attorney to make proposed amendments to Chapter 8.16 of the Butte Silver Bow Municipal code entitled "Air Pollutants."

*Recommendation: Cross Reference with Ordinance No. 15-17 and Place on File.*

### SECTION 2 COUNCIL BILL NO. 15-16

ORDINANCE NO. 15-16 (File too large to hyperlink)

AN ORDINANCE REPEALING TITLE 13, CHAPTER 4 ENTITLED "WASTEWATER TREATMENT SYSTEM", OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC), AND REPLACING IT WITH A NEW TITLE 13, CHAPTER 4 TO STILL BE ENTITLED "WASTEWATER TREATMENT SYSTEM", OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC), AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

*Recommendation: Move to Second Reading.*

### SECTION 3 COUNCIL BILL NO. 15-17

ORDINANCE NO. 15-17

AN ORDINANCE AMENDING CHAPTER 16 ENTITLED "AIR QUALITY CONTROL", SPECIFICALLY AMENDING SECTIONS 8.16.030, 8.16.220, 8.16.300, AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

*Recommendation: Move to Second Reading.*

### SECTION 4 RESOLUTION NO. 15-45

A RESOLUTION ESTABLISHING THE BUTTE-SILVER BOW MENTAL HEALTH LOCAL ADVISORY COUNCIL AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

*Recommendation: Move to Final Reading.*

#### Committee Members:

Bud Walker, Chairman  
Bill Andersen, Vice-Chairman  
Dave Palmer  
John Sorich  
Cindy Perdue-Dolan  
Brendan McDonough

*\*Attendance of Committee members not noted at this meeting.*



BUTTE-SILVER BOW COUNCIL OF COMMISSIONERS  
REGULAR MEETING AGENDA  
NOVEMBER 4, 2015  
7:30 P.M. COURTHOUSE COUNCIL CHAMBERS

ROLL CALL

PRAYER

PUBLIC COMMENT ON ANY ITEMS ON THE CONSENT AGENDA

APPROVAL OF THE MINUTES OF THE REGULAR MEETING, OCTOBER 21, 2015.

ITEMS NOT ADDRESSED ON THE AGENDA

CHIEF EXECUTIVE'S REPORT

SECTION 1 CONSENT AGENDA

- A. 1. COMMITTEE OF THE WHOLE MEETING REPORT  
2. JUDICIARY COMMITTEE MEETING REPORT  
3. PUBLIC WORKS COMMITTEE MEETING REPORT  
4. FINANCE AND BUDGET COMMITTEE MEETING REPORT  
5. PERSONNEL COMMITTEE MEETING REPORT  
6. ECONOMIC DEVELOPMENT COMMITTEE MEETING REPORT
- B. COMMUNICATIONS
1. 15-495 Jeannie Moylan, 1455 Hidden Valley Road, Bozeman, MT., requesting Council's authorization to purchase city owned property at 57 West Broadway Street. *Recommendation: State Law Requires a City-County to offer Tax Deed Property for sale twice at Public Auction. This Property is on the next scheduled Tax Sale Auction (February 2016). Note and Place on File.*
2. 15-496 Julia Crain, Special Projects Manager, Planning Department, requesting Council's authorization for the Chief Executive to sign a location and property release with Zero Point Zero Productions, Inc. Release *Recommendation: Concur and Place on File.*
3. 15-497 Lori Casey, Assistant Planning Director, Butte-Silver Bow Planning Board, requesting Council's approval for Zone Change Application No. 173 and to ask the County Attorney to prepare an ordinance for adoption. *Recommendation: Concur with Request, Ask the County Attorney to Prepare an Ordinance and Hold in the Committee of the Whole.*



4. 15-498 Jeffrey L. Miller, Director, Butte-Silver Bow Fire Services, requesting Council's authorization to hold a Public Hearing on November 18, 2015 regarding the proposed sole source purchase of twenty self-contained breathing apparatus for the Butte-Silver Bow Fire Department. *Recommendation: Schedule a Public Hearing for November 18, 2015 and Hold in the Committee of the Whole.*
5. 15-499 Jeffrey L. Miller, Director, Butte-Silver Bow Fire Services, requesting Council's authorization to hold a Bid Opening on November 18, 2015 regarding the 2016 1500 GPM Pumper/Tender for the Big Butte Volunteer Fire Department. *Recommendation: Schedule a Bid Opening for November 18, 2015 and Hold in the Committee of the Whole.*
6. 15-500 Jeffrey L. Miller, Director, Butte-Silver Bow Fire Services, requesting Council's authorization for the Chief Executive to sign an agreement with Western States Equipment Company. Agreement *Recommendation: Concur and Place on File.*
7. 15-501 Edward Pape, 1714 Harrison Avenue, Butte, MT., requesting Council and the Chief Executive develop a means to answer questions presented by the public. *Recommendation: Refer to the Committee of the Whole.*
8. 15-502 Brian Wilkins, Water Operations Manager, Public Works Department, requesting Council's authorization for the Chief Executive to sign an agreement to purchase land from Mark Matheny to build a new pump station for the Basin Creek Water Treatment Plant. Agreement *Recommendation: Concur and Place on File.*

## SECTION 2 COMMUNICATIONS TO BE READ AND ACTED UPON

- 15-503 Dave Palmer, Butte-Silver Bow Commissioner, District No. 12, requesting a solution on how to report street light outages to the proper agencies for repairs to be done in a timely manner.

## SECTION 3 ORDINANCES SECOND READING

1. COUNCIL BILL NO. 15-16  
ORDINANCE NO. 15-16 (File too large to hyperlink)

AN ORDINANCE REPEALING TITLE 13, CHAPTER 4 ENTITLED "WASTEWATER TREATMENT SYSTEM", OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC), AND REPLACING IT WITH A NEW TITLE 13, CHAPTER 4 TO STILL BE ENTITLED "WASTEWATER TREATMENT SYSTEM", OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC), AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

2. COUNCIL BILL NO. 15-17  
ORDINANCE NO. 15-17

AN ORDINANCE AMENDING CHAPTER 16 ENTITLED "AIR QUALITY CONTROL", SPECIFICALLY AMENDING SECTIONS 8.16.030, 8.16.220, 8.16.300, AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.





SECTION 4 ORDINANCES AND RESOLUTIONS  
FINAL READING

1. RESOLUTION NO. 15-45

A RESOLUTION ESTABLISHING THE BUTTE-SILVER BOW MENTAL HEALTH LOCAL ADVISORY COUNCIL AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

PUBLIC COMMENT ON ANY PUBLIC MATTER NOT ON THE AGENDA

CALENDAR OF OTHER MEETINGS AND EVENTS

November 5	Civic Center	12:00 PM	Civic Center Hospitality Rm.
November 9	Archives	12:00 PM	Archives Center
November 10	Fire Advisory Council	5:00 PM	1 <sup>st</sup> Floor Conference Rm., Courthouse
November 10	Weed Board	7:00 PM	Weed Department
November 12	SW MT Regional Juvenile Det. Board	8:30 AM	Conference Call
November 12	Greenway Service Dist. Board	4:30 PM	1 <sup>st</sup> Floor Conference Rm., Courthouse
November 13	TIFID	12:00 PM	Business Development Center
November 17	Urban Forestry Board	1:00 PM	Business Development Center
November 17	Technical Review Committee	1:30 PM	3 <sup>rd</sup> Floor, Water Building
November 17	Housing Authority	5:00 PM	New Deal Community Center
November 17	Parks & Recreation	5:00 PM	1 <sup>st</sup> Floor Conference Rm., Courthouse
November 18	Parking Commission	3:00 PM	Chief Executive Conference Rm., Courthouse

ADJOURN \_\_\_\_\_

## JUDICIARY COMMITTEE MEETING REPORT NOVEMBER 10, 2015

TO THE HONORABLE CHIEF EXECUTIVE AND MEMBERS OF THE BUTTE-SILVER BOW  
COUNCIL OF COMMISSIONERS

Ladies and Gentlemen,

We, your Judiciary Committee, respectfully recommend as follows:

### SECTION 1 COMMUNICATION NO. 15-8

Brendan McDonough, Butte-Silver Bow Commissioner, District No. 8, requesting the County Attorney draft a "Vacant Property Registration" ordinance for Butte-Silver Bow.

*Recommendation: Hold in Judiciary Committee.*

### SECTION 2 COUNCIL BILL NO. 15-16 ORDINANCE NO. 15-16

AN ORDINANCE REPEALING TITLE 13, CHAPTER 4 ENTITLED "WASTEWATER TREATMENT SYSTEM", OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC), AND REPLACING IT WITH A NEW TITLE 13, CHAPTER 4 TO STILL BE ENTITLED "WASTEWATER TREATMENT SYSTEM", OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC), AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

*Recommendation: Move to Final Reading.*

### SECTION 3 COUNCIL BILL NO. 15-17 ORDINANCE NO. 15-17

AN ORDINANCE AMENDING CHAPTER 16 ENTITLED "AIR QUALITY CONTROL", SPECIFICALLY AMENDING SECTIONS 8.16.030, 8.16.220, 8.16.300, AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

*Recommendation: Move to Final Reading.*

### SECTION 4 CLAIM APPROVAL

NAME	AMOUNT	RECOMMENDATION
Westmoreland Co Inc.	\$76,254.50	<i>Approved</i>
Leroy Coles	\$200.00	<i>Approved</i>
Logan Dunlap	\$200.00	<i>Approved</i>
Westmoreland	\$28,038.80	<i>Approved</i>

#### Committee Members:

Bud Walker, Chairman	<i>Present</i>
Bill Andersen, Vice-Chairman	<i>Absent</i>
Dave Palmer	<i>Present</i>
John Sorich	<i>Present</i>
Cindy Perdue-Dolan	<i>Present</i>
Brendan McDonough	<i>Present</i>



BUTTE-SILVER BOW COUNCIL OF COMMISSIONERS  
REGULAR MEETING AGENDA  
NOVEMBER 18, 2015  
7:30 P.M. COURTHOUSE COUNCIL CHAMBERS

ROLL CALL

PRAYER

PUBLIC COMMENT ON ANY ITEMS ON THE CONSENT AGENDA

APPROVAL OF THE MINUTES OF THE REGULAR MEETING, NOVEMBER 4, 2015.

ITEMS NOT ADDRESSED ON THE AGENDA

CHIEF EXECUTIVE'S REPORT

SECTION 1 BID OPENING  
COMMUNICATION NO. 15-499

JEFFREY L. MILLER, DIRECTOR, BUTTE-SILVER BOW FIRE SERVICES, REQUESTING COUNCIL'S AUTHORIZATION TO HOLD A BID OPENING ON NOVEMBER 18, 2015 REGARDING THE 2016 1500 GPM PUMPER/TENDER FOR THE BIG BUTTE VOLUNTEER FIRE DEPARTMENT.

SECTION 2 PUBLIC HEARING  
COMMUNICATION NO. 15-498

JEFFREY L. MILLER, DIRECTOR, BUTTE-SILVER BOW FIRE SERVICES, REQUESTING COUNCIL'S AUTHORIZATION TO HOLD A PUBLIC HEARING ON NOVEMBER 18, 2015 REGARDING THE PROPOSED SOLE SOURCE PURCHASE OF TWENTY SELF-CONTAINED BREATHING APPARATUS FOR THE BUTTE-SILVER BOW FIRE DEPARTMENT.

SECTION 3 CONSENT AGENDA

- A. 1. COMMITTEE OF THE WHOLE MEETING REPORT
- 2. JUDICIARY COMMITTEE MEETING REPORT
- 3. PUBLIC WORKS COMMITTEE MEETING REPORT
- 4. FINANCE AND BUDGET COMMITTEE MEETING REPORT
- 5. PERSONNEL COMMITTEE MEETING REPORT
- 6. ECONOMIC DEVELOPMENT COMMITTEE MEETING REPORT

B. COMMUNICATIONS

- 1. 15-504 J.P. Gallagher, Director of Butte-Silver Bow Parks & Recreation Department, requesting Council's authorization to hold a Bid Opening on December 2, 2015 regarding sports field lighting system for Miner's Field at Copper Mountain Sports Park. Bid Invitation  
*Recommendation: Schedule a Bid Opening on December 2, 2015 and Hold in the Committee of the Whole.*





2. 15-505 Ronald Stormer, Director, Butte-Silver Bow Human Resources Department, requesting Council's concurrence and authorization to begin the recruitment process to hire an additional safety and risk management position authorized in the FY 2016-16 budget. Documents *Recommendation: Concur and Place on File.*
3. 15-506 Nondys Mason, Vice-President, Columbia Gardens Carousel Project, requesting Council's authorization to display a carousel horse with a donation box in the courthouse rotunda. *Recommendation: Refer to the Committee of the Whole.*
4. 15-507 Ed Randall, Community Enrichment/Animal Service Department, requesting Council's concurrence in the John McClernan kennel license request. Application *Recommendation: Concur and Place on File.*
5. 15-508 Nick Sandford, Road Operations Manager, Butte-Silver Bow Public Works Department, requesting Council's authorization for the Chief Executive to sign a Memorandum of Agreement with the Montana Department of Transportation. Memorandum of Agreement *Recommendation: Concur and Place on File.*
6. 15-509 Cindi Shaw, Butte-Silver Bow Commissioner, District No. 11, requesting the Public Works Committee review the possible need of speed limit signs, school zone signs and a designated painted crosswalk in the 1200 block of West Granite. *Recommendation: Refer to Public Works Committee.*
7. 15-511 Kristen Manson, Silver Bow Montessori School, requesting Council's authorization to hold a Turkey Trot Fun Run on November 26, 2015 in Uptown Butte. *All Approvals have been Received Recommendation: Concur and Place on File.*
8. 15-512 Dan Dennehy, Director, Emergency Management Agency, requesting Council's authorization for the Chief Executive to sign an agreement with Michael Holmes, LLC. Agreement *Recommendation: Concur and Place on File.*
9. 15-513 George Everett, Executive Director, Mainstreet Uptown Butte, requesting Council's authorization to hold the 25<sup>th</sup> Annual Christmas Stroll on December 4, 2015. *All Approvals have been Received Recommendation: Concur and Place on File.*
10. 15-515 Kristen Rosa, Administrator, Tax Increment Financing Industrial District (TIFID), requesting Council's authorization for the Chief Executive to sign a permit transfer notification. Permit Transfer Notification *Recommendation: Concur and Place on File.*
11. 15-516 Karen Sullivan, Health Officer, Butte-Silver Bow Health Department, requesting Council's authorization for the Chief Executive to sign an agreement between the Butte-Silver Bow Health Department and Julie Coyne, R.D. Agreement *Recommendation: Concur and Place on File.*
12. 15-517 Jon Sesso, Director, Butte-Silver Bow Planning Board, requesting Council's authorization for the Chief Executive to sign an agreement with Columbia Basin, LLC. Agreement *Recommendation: Concur and Place on File.*



13. 15-518 Dave Palmer, Butte-Silver Bow Commissioner, District No. 12, requesting Council's concurrence of the recommendations by the Economic Development Standing Committee regarding the Economic Development Mill Levy Funds. *Recommendation: Concur and Place on File.*
14. 15-519 Kristen Rosa, Administrator, Tax Increment Financing Industrial District (TIFID), requesting Council's authorization for the Chief Executive to sign a Memorandum of Understanding with Nelson Engineering Construction. Memorandum of Understanding *Recommendation: Concur and Place on File.*
15. 15-520 Kristen Rosa, Administrator, Tax Increment Financing Industrial District (TIFID), requesting Council's authorization for the Chief Executive to sign two (2) easements with NorthWestern Energy. Easement 1 Easement 2 *Recommendation: Concur and Place on File.*
16. 15-521 Roxella Lyons, Executive Director, Butte Rescue Mission, requesting Council's authorization for a business license exemption. *Recommendation: Concur and Place on File.*

#### SECTION 4 COMMUNICATIONS TO BE READ AND ACTED UPON

- 15-510 David Schultz, Director, Butte-Silver Bow Public Works Department, requesting an opportunity to provide information to the Council regarding the relocation of the County shop complex.
- 15-514 Ronald Stormer, Director, Butte-Silver Bow Human Resources Department, informing Council of the status of union negotiations to date.

#### SECTION 5 ORDINANCES AND RESOLUTIONS REFERRED TO JUDICIARY

1. COUNCIL BILL NO. 15-18  
ORDINANCE NO. 15-18

AN ORDINANCE AMENDING ORDINANCE NO. 53 AND 325, ALSO KNOWN AS THE "ZONING ORDINANCE" AND TITLE 17 OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB) WHICH SECTION ADOPTED THE ZONING REGULATIONS OF BUTTE-SILVER BOW, STATE OF MONTANA; AMENDING CHAPTER 17.10 ENTITLED "R-1 ONE FAMILY RESIDENCE ZONE"; SPECIFICALLY AMENDING SECTION 17.10.020 AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. Redline

2. RESOLUTION NO. 15-46

RESOLUTION OF INTENTION TO ISSUE TAX INCREMENT URBAN RENEWAL REVENUE BONDS (BUTTE UPTOWN URBAN RENEWAL DISTRICT), SERIES 2016.

SECTION 6 ORDINANCES AND RESOLUTIONS  
FINAL READING

1. COUNCIL BILL NO. 15-16  
ORDINANCE NO. 15-16 *(File too large to hyperlink)*

AN ORDINANCE REPEALING TITLE 13, CHAPTER 4 ENTITLED "WASTEWATER TREATMENT SYSTEM", OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC), AND REPLACING IT WITH A NEW TITLE 13, CHAPTER 4 TO STILL BE ENTITLED "WASTEWATER TREATMENT SYSTEM", OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC), AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

2. COUNCIL BILL NO. 15-17  
ORDINANCE NO. 15-17

AN ORDINANCE AMENDING CHAPTER 16 ENTITLED "AIR QUALITY CONTROL", SPECIFICALLY AMENDING SECTIONS 8.16.030, 8.16.220, 8.16.300, AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

PUBLIC COMMENT ON ANY PUBLIC MATTER NOT ON THE AGENDA

CALENDAR OF OTHER MEETINGS AND EVENTS

November 19	Animal Service Dept Board	5:30 PM	1 <sup>st</sup> Floor Conference Rm., Courthouse
November 24	Port of Montana	12:00 PM	Hub Center, Silver Bow
November 25	Urban Revitalization	8:30 AM	1 <sup>st</sup> Floor Conference Rm., Courthouse
November 25	Local Emergency Planning	12:00 PM	1 <sup>st</sup> Floor Conference Rm., Courthouse
December 1	Historic Preservation	5:30 PM	Council Chambers, Courthouse
December 2	Board of Health	7:00 AM	Health Department
December 2	Airport Authority	12:00 PM	Bert Mooney Airport Authority Admin Office
December 2	Butte AIDS Support Services	7:00 PM	Community Center

ADJOURN \_\_\_\_\_





# MINUTES OF THE REGULAR MEETING OF THE BUTTE-SILVER BOW COUNCIL OF COMMISSIONERS FOR NOVEMBER 18, 2015

The Regular Meeting of the Council of Commissioners was called to order Wednesday, November 18, 2015, in the Council Chambers, Third Floor, Room 312, Courthouse Building, 155 West Granite Street, Butte, Montana by the Chief Executive, Matt Vincent.

## ROLL CALL

Commissioner Morgan, *present*

Commissioner Palmer, *absent*

Commissioner Andersen, *present*

Commissioner Walker, *present*

Commissioner Foley, *present*

Commissioner Ralph, *present*

Commissioner Shaw, *present*

Commissioner McDonough, *present*

Commissioner Henderson, *present*

Commissioner Fisher, *absent*

Commissioner Perdue-Dolan, *present*

Commissioner Sorch, *present*

## STAFF PRESENT

Eileen Joyce, Butte-Silver Bow County Attorney

Laura Sargent, Deputy Clerk & Recorder

Kareniesa Kohn, Council Secretary

## PRAYER

Commissioner Henderson said the prayer.

## PUBLIC COMMENT ON ANY ITEMS ON THE CONSENT AGENDA

Dave Jennings, 4200 S. Rocker Road, Butte, MT., stated the following:

- ❖ He objects to the kennel license being applied for by a neighbor.
- ❖ The last 5 years there has been constant barking.
- ❖ He can hear the barking inside his house.
- ❖ He is afraid the barking will worsen.

John McClernan stated the following:

- ❖ He has lived at his current address for 19 years.
- ❖ He has owned hunting dogs the entire time.
- ❖ It is 1,160 feet to the closest residence from his house.
- ❖ 3 out of 4 neighbors approve of the license.
- ❖ He sleeps 50 yards from the dog kennel and the dogs are quiet.
- ❖ He is applying for the license to be able to own more than three dogs at once.
- ❖ The Zoning Board and neighbors have signed off on the application.



SECTION 6 ORDINANCES AND RESOLUTIONS  
FINAL READING

1. COUNCIL BILL NO. 15-16  
ORDINANCE NO. 15-16 (File too large to hyperlink)

AN ORDINANCE REPEALING TITLE 13, CHAPTER 4 ENTITLED "WASTEWATER TREATMENT SYSTEM", OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC), AND REPLACING IT WITH A NEW TITLE 13, CHAPTER 4 TO STILL BE ENTITLED "WASTEWATER TREATMENT SYSTEM", OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC), AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

*It was moved by Commissioner Shaw and seconded by Commissioner Morgan that Council Bill No. 15-16, Ordinance No. 15-16 be placed on final reading and be passed, having been deemed read at length. The motion passed by a roll call vote of 10 yea and 0 nay.*

2. COUNCIL BILL NO. 15-17  
ORDINANCE NO. 15-17



AN ORDINANCE AMENDING CHAPTER 16 ENTITLED "AIR QUALITY CONTROL", SPECIFICALLY AMENDING SECTIONS 8.16.030, 8.16.220, 8.16.300, AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

*It was moved by Commissioner Shaw and seconded by Commissioner Morgan that Council Bill No. 15-17, Ordinance No. 15-17 be placed on final reading and be passed, having been deemed read at length. The motion passed by a roll call vote of 10 yea and 0 nay.*

PUBLIC COMMENT ON ANY PUBLIC MATTER NOT ON THE AGENDA

None.

ADJOURN

*It was moved by Commissioner Shaw, seconded by Commissioner Morgan and passed with a unanimous verbal vote to Rise to the Call of the Chair.*

The meeting adjourned at 9:16 p.m.

\_\_\_\_\_  
MATT VINCENT  
CHIEF EXECUTIVE

ATTEST:

\_\_\_\_\_  
CLERK & RECORDER



January 8, 2016

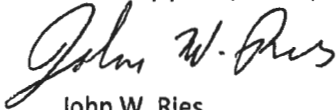
Town of Walkerville  
40 West Daly St.  
Walkerville, Montana

Mr. Riley,

This is to inform you that the Walkerville Town Council discussed our participation for the air quality control changes that BSB is about to make. The Council wants to be a part of the changes and adopt whatever BSB adopts now and in the future. Our next meeting will be January 13, 2016 and we will formally adopt the changes that are put in place.

If you have any further need for anything from the Town of Walkerville please feel free to contact me at any time. Thank you for your help in this matter.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "John W. Ries".

John W. Ries  
Mayor of Walkerville