

~~(9)~~(10) "Owns a 10 percent or greater share of the wind generation facility" means having ownership of 10 percent or greater in capital stock of the corporation that owns the facility or having a 10 percent or greater ownership interest in a partnership, or limited liability ~~corporation~~ company that owns the facility:

~~(i)~~(a) for a wind generation facility that commenced commercial operation on or before May 3, 2017, on May 3, 2017, and thereafter; ~~and~~

~~(ii)~~(b) for a wind generation facility that commenced commercial operation after May 3, 2017, at commencement of commercial operation and thereafter.;

(c) for a solar facility that commenced commercial operation on or before May 7, 2019, on May 7, 2019, and thereafter; and

(d) for a solar facility that commenced commercial operation after May 7, 2019, at commencement of commercial operation and thereafter.

~~(10)~~(11) "Person" has the same meaning as defined in 75-26-301, MCA.

(12) "Private bonding" means the terms and conditions of a lease agreement between a landowner and an owner that incorporate bonding requirements for decommissioning a facility.

~~(11)~~(13) "Repurposed" has the same meaning as defined in 75-26-301, MCA.

~~(12)~~(14) "Significant investment" means a capital investment in property an equipment project associated with a ~~wind generation~~ facility that the owner has demonstrated to the department will extend the useful life of the ~~wind generation~~ facility by more than 5 five years. The equipment project must be completed in three years or less. Should If a wind generation facility removes all wind turbines and existing pads and installs new wind turbines on new pads, the facility is a new facility and not a repurposed facility. If a solar facility is removed and a new solar facility is installed in the same location, the facility is a new facility and not a repurposed facility.

(15) "Solar facility" has the same meaning as in 75-26-301, MCA.

~~(13)~~(16) "Surety bond" means an indemnity agreement in a certain sum, payable to the department, executed by the owner, that which is supported by the performance payment guarantee of a corporation licensed authorized to do business as a surety in Montana.

~~(14)~~(17) "Wind generation facility" or "~~facility~~" has the same meaning as defined in 75-26-301, MCA.

AUTH: 75-26-310, MCA

IMP: 75-26-301, 75-26-304, MCA

REASON: In the 2019 Legislative Session, the Montana Legislature enacted SB 93 to extend to solar facilities decommissioning requirements that previously applied only to wind generation facilities. Section (4) is proposed to be amended to provide a new definition of the term "commenced commercial operation" as that term applies to solar facilities and to provide that the existing definition of "commenced commercial operation" applies to wind generating facilities, implementing SB 93. The date commercial operation commences starts the clock on the 15 or 16 years a facility has before bonding must be secured in accordance with 75-26-304(6), MCA.

Proposed amendments to (5), (9), (11), and (13) more clearly state that the

terms are defined by statute.

The proposed amendment in (7) implements SB 93 by defining "facility" to include both wind generating facilities and solar facilities.

The proposed amendment in (8) is necessary to clarify the property interest that qualifies a person as a "landowner" is the ownership of the real property on which the wind generating facility or solar facility is located.

Section (10) is proposed to be amended to implement SB 93 by adding solar facilities to the exemption from bonding for facilities in which the entire facility is on a single landowner's property and the landowner owns at least 10 percent of the facility. To be eligible for the exemption, an existing solar facility owner must have met the minimum share requirement by the time SB 93 was signed into law, May 7, 2019. A solar facility built after May 7, 2019 is eligible for the exemption if it meets the ownership requirement at the time it commences commercial operation.

The proposed amendment in (12) is reasonably necessary to provide a definition of "private bonding," the existence of which exempts the owner from the requirement to submit a decommissioning bond to the department under ARM 17.86.107.

The proposed amendments to (14) are necessary to apply the definition of "significant investment" to wind generating facilities and solar facilities, implementing SB 93. In addition, a new provision would be added to distinguish between new solar facilities and repurposed solar facilities. New and repurposed solar facilities would have delayed bonding schedules under ARM 17.86.107. The existing distinction between new facilities and repurposed facilities would be amended to make the existing distinction applicable to wind generating facilities. Finally, the proposed amendment to (14) replacing "property" with "equipment project" is necessary to remove the confusion caused by the current rule's use of both terms to refer to the improvements to a facility that are subject to a significant investment.

Section (15) would be added to provide the definition of solar facilities.

In (16), the definition of "surety bond" is proposed to be amended to provide that the department accepts payment bonds only. The department's experience with performance bonds is that it can be time-consuming and difficult to negotiate performance with a surety. The department believes that on default of the owner, the department will be able to complete decommissioning more efficiently with a payment bond.

The proposed amendments would also clarify that Montana authorizes surety corporations and does not license surety corporations doing business in Montana.

17.86.102 OWNER RESPONSIBILITIES (1) ~~An owner is responsible for of~~ a facility shall:

(a) decommissioning its facility according to this subchapter and pay for all costs associated with decommissioning;

(b) commence decommissioning activities within 90 days after abandonment, unless the owner receives department approval of an alternative written plan for decommissioning;

(c) complete decommissioning must be completed within 24 months of after abandonment, or according to a reasonable alternative schedule proposed by the owner and approved by the department upon a showing of good cause for the

extension-;

~~(2)(d)~~ The owner of a facility must notify the department in writing within 30 days of after abandonment-; and

~~(3)(e)~~ An owner shall notify the department in writing within 30 days after beginning onsite decommissioning activities.

~~(4)(2)~~ The owner of a ~~wind generation~~ facility that commenced commercial operation on or before ~~July 1, 2018~~ May 7, 2019, shall submit in writing the following to the department on or before ~~July 1, 2018~~ 2020. The department may, but is not required to, review these initial decommissioning plans and information for completeness:

(a) remains the same.

(b) a decommissioning plan in accordance with the requirements of ARM 17.86.105 regardless of any bond exemptions allowed under ARM 17.86.107(4) or (5);

(c) identification of the each landowner ~~on which the wind generation facility is located~~; and

(d) if the landowner or landowners identified pursuant to ~~(4)(2)~~(c) are not governmental entities, whether the landowner or landowners have an ownership interest in the ~~wind generation~~ facility and, if so, a detailed description of the interests.

~~(5)(3)~~ The owner of a facility that commences commercial operation after ~~July 1, 2018~~ May 7, 2019, shall submit to the department the information required in ~~(42)~~ within six 12 months of after commencing commercial operation. The department may, but is not required to, review these initial submissions for completeness.

~~(6)(4)~~ The owner of a facility shall submit an updated decommissioning plan at least 12 months before a bond is required by ARM 17.86.107(2) or (3), and at least 12 months before a bond is reviewed by the department in ARM 17.86.112(2). Updated plans must include an updated cost estimate and address expansions and modification, if any. Within 90 days of after receipt, the department shall notify the owner of any deficiencies in the decommissioning plan. Within 90 days of after receiving the deficiency notice, the owner shall address all deficiencies and resubmit the decommissioning plan.

(5) Within 12 months after purchasing a facility, the owner shall submit an updated decommissioning plan to the department. The updated plan must include an updated cost estimate and address expansions and modifications, if any.

~~(7)(6)~~ The owner shall allow access in a timely manner and accompany the department for an inspection of the facility to verify the adequacy of a new or updated decommissioning plan for purposes of determining the bond amount. The department shall propose in writing, the scope and schedule of any such inspection at least two weeks in advance of the inspection. Department representatives shall comply with site safety and general access restrictions while at the facility. The department and the owner shall confer and arrange a time for an inspection. The department shall confirm the scope, date, and time of the inspection to the owner in writing at least ten business days prior to the inspection. At the date and time arranged, a representative of the department may enter and inspect a facility to evaluate the adequacy of a new or updated decommissioning plan and the

associated bond amount. The owner shall allow the department's representative to inspect the facility and shall accompany the representative.

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: The department's proposed amendment to (1) is reasonably necessary because owners must fulfill the responsibilities listed in the rule, justifying use of mandatory language. The proposed amendments to (1)(a) are reasonably necessary to tie the owner's obligation to decommission a facility to the requirements of the applicable administrative rules and affirmatively provide that the cost of doing so must be borne by the owner. The department is proposing to amend (1)(b) to include decommissioning responsibility that was previously set forth in ARM 17.86.122(3) but is more appropriately included in ARM 17.86.102. The department is proposing to amend (1)(c), (d), and (e) to create a more logical structure and eliminate the use of passive voice.

DEQ is proposing to amend (2) to conform with the enactment of SB 93. That legislation made solar facilities subject to decommissioning requirements, necessitating deletion of "wind generation" as a modifier to "facility." Additionally, the proposed amendment reflects a change in a date set forth in 75-26-304(1), MCA, that was enacted by passage of SB 93. May 7, 2019, is the date SB 93 was signed into law. Facilities operating before the law became effective are required by statute to submit their initial decommissioning plans and additional required information to the department on or before July 1, 2020, if they have not already submitted them. The proposed amendment to (2)(b) clarifies that, to be consistent with 75-26-304(8), MCA, each wind generation or solar facility is required to submit a decommissioning plan, even if it qualifies for a bond exemption.

The proposed amendment to (3) reflects amendments to 75-26-304(1), MCA, enacted by SB 93. The statutory amendments established the timeframe for a new facility to submit a decommissioning plan and the additional information required in (2) to the department.

The department is proposing to add (5) to require a new owner to submit an updated decommissioning plan that represents the new owner's practices for decommissioning and reflects the associated cost to the new owner. Submission of an updated decommissioning plan with associated cost calculations ensures that an adequate bond is in place to pay for decommissioning purposes.

Section (6) currently requires the department to provide an owner with written notice of a proposed date and scope of an inspection prior to the inspection. The proposed amendment to (6) would require the department to confer with the owner and arrange the date of an inspection and to confirm the date and scope of the inspection in writing sent to the owner prior to the inspection. This change is necessary to ensure that the owner has agreed to the date of the inspection.

17.86.105 DECOMMISSIONING PLAN (1) A decommissioning plan must include:

(a) and (b) remain the same.

(c) a detailed estimate of the cost of decommissioning the facility with

supporting calculations:

(c) remains the same but is renumbered (d).

~~(d)~~(e) a description of the manner in which the facility will be decommissioned and a proposed decommissioning schedule, which, except as provided in (1)~~(e)~~(d), must include:

(i) dismantling and removal of all overhead electrical transmission lines and structures, transformers, buildings, and all other ancillary equipment and debris from operation of the facility that is not associated with interconnecting the ~~wind generation~~ facility into the electric grid;

(ii) remains the same.

(iii) removal of wind turbine and solar foundations and other concrete foundations and slabs to a minimum depth of 36 inches below natural grade or an alternative depth as approved by the department if appropriate for the post operation land use;

(iv) through (f) remain the same.

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: The proposed amendment adds the requirement that a decommissioning plan include a detailed cost calculation for decommissioning found in (1)(d). A decommissioning plan is a detailed plan that a qualified contractor could follow that accounts for each step required to decommission a wind generation or solar facility, with extensive calculations of the cost for each decommissioning task. The detailed cost calculation is necessary to assist the department in determining the amount of bond required under ARM 17.86.106.

17.86.106 DETERMINATION OF BOND AMOUNT (1) The department shall set the bond amount at the estimated amount for the department to perform the decommissioning ~~and reclamation~~ work required of an owner.

(2) remains the same.

(3) In determining the amount of a bond required in accordance with ARM 17.86.107, the department shall provide the owner with a preliminary bond determination, consult with the owner, and consider:

(a) remains the same.

(b) the current market salvage value of the ~~wind generation~~ facility, as ~~determined by an evaluator who is not an employee of the owner~~ as set forth in the decommissioning plan.

(4) remains the same.

(5) The department shall notify the owner of the facility by mail of any modification to the decommissioning plan and bond amount. The owner of the facility may appeal the modification of the plan to the board within 60 days after the notice of the modification of the plan was mailed.

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: The proposed amendment deletes the reference to "reclamation" in (1) because the definition of decommissioning includes reclamation.

The proposed amendment to (3)(b) deletes "wind generation" because, after the enactment of SB 93, both wind generation facilities and solar facilities are subject to the bonding requirements. Deleting "by an evaluator who is not an employee of the owner" and adding the reference to ARM 17.86.105 prevents unnecessarily repeating statutory language in the rule.

Section (5) would be added to reflect statute changes in 75-26-304(3)(b), MCA.

17.86.107 BONDING DEADLINE (1) Except as provided in (3) and (4) through (5), and in accordance with ARM 17.86.110, the owner shall submit to the department a bond payable to the state of Montana in a form acceptable by the department as provided in ARM 17.86.115 and in a sum determined by the department in accordance with ARM 17.86.106, conditioned on the faithful decommissioning of the facility an owner shall submit a bond payable to the state of Montana in a form acceptable to the department under ARM 17.86.115 and in a sum determined by the department under ARM 17.86.106, conditioned on the faithful decommissioning of the facility. The owner shall submit the bond by the applicable deadline in (2).

(2) Except as provided in (3) and (4) through (5):

(a) if a ~~wind generation~~ facility commenced commercial operation on or before January 1, 2007, the owner shall submit the decommissioning bond to the department prior to the conclusion of the 16th year after commencing commercial operation; or

(b) if a ~~wind generation~~ facility commenced commercial operation after January 1, 2007, the owner shall submit the decommissioning bond to the department prior to the conclusion of the 15th year of commencing commercial operation.

(3) If a ~~wind generation~~ facility is repurposed, as determined by the department in consultation with the owner, the owner is not required to provide a bond and any existing bond must be released until the repurposed facility reaches its fifth year of operation. The owner shall submit all revised information required in ARM 17.86.102(42)(b) within six months of finishing repurposing activities after a facility is repurposed. Within five years of repurposing after a facility is repurposed, the facility owner shall submit to the department a bond payable to the state of Montana in a form acceptable by the department ~~as provided in~~ under ARM 17.86.115 and in a sum determined by the department ~~in accordance with~~ under ARM 17.86.106, conditioned on the faithful decommissioning of the facility.

~~(4) The owner is exempt from the requirements of this rule if:~~

~~(a) the owner posts a bond with a federal agency, with a state agency for the lease of state land, or with a tribal, county, or local government; or~~

~~(b) a private landowner on whose land the wind generation facility is located owns a 10 percent or greater share of the wind generation facility, as determined by the department.~~

(4) An owner is exempt from submitting a bond when a private landowner on whose land the entire facility is located owns a 10 percent or greater share of the

facility, as determined by the department.

(5) An owner is exempt from submitting a bond for the facility or portion of the facility for which the owner:

(a) posts a bond with a federal agency, the Department of Natural Resources and Conservation for the lease of state land, or with a tribal, county, or local government; or

(b) provides documents to the department that demonstrate the owner has private bonding.

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: The proposed amendments in (1) through (3) would expand the rule to apply to solar facilities, be more concise, and eliminate rule repetition.

The amendments proposed in (4) and (5) are necessary to clarify which exemptions apply only to an entire facility, and which exemptions apply to either an entire facility or a portion of a facility. Proposed (5) is necessary to ensure that portions of a facility that do not qualify for an exemption from bonding in (5)(a) or (5)(b) must be bonded with the department. The amendment to (5)(b) is necessary to include the new private bonding exemption allowed in 75-26-304(8), MCA.

17.86.110 PENALTIES FOR FAILURE TO SUBMIT BOND (1) If an owner does not submit the ~~full bond amount required~~ bond in the amount determined by the department ~~within the timeframe required by~~ under ARM 17.86.107 or replace a bond by the deadlines set forth in ARM 17.86.116 or 17.86.117, the department shall mail written notice to the owner that the bond is overdue. If the owner does not submit the bond within 30 days after the department mailed the notice, the department may assess an administrative penalty in an amount provided in 75-26-304(9)(a), MCA.

(2) An owner may appeal the department's penalty assessment to the board within 20 days after ~~receipt of~~ the department mails the owner written notice of the penalty.

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: The proposed amendment to (1) authorizes the department to take enforcement action if an owner does not timely submit a replacement bond for a surety that the department determines is unable to comply with the terms of the surety bond or for a letter of credit for which the department determines that the issuing bank is unable to fulfill the terms. The enforcement authority is necessary to ensure that facilities maintain the required decommissioning bonds. The proposed amendment also includes provisions regarding notice to reflect statutory changes to 75-26-304(9), MCA, enacted by passage of SB 93.

In (2), the proposed amendment would revise the time for filing an appeal to start on the mailing of the department's written notice of penalty. The amendment is reasonably necessary to clearly establish the date that the period for appeal begins

to run. The date of mailing is more appropriate as a starting date because some entities do not check their mail on a regular basis, and receipt can be avoided and is difficult to ascertain.

17.86.111 REPLACEMENT OF BOND (1) If the owner transfers ownership of the facility to a successor owner, the department shall release the bond posted by the owner in accordance with this rule within 90 ~~calendar~~ days. The successor owner shall, within 90 days of after the transfer, provide a bond that meets the requirements of this subchapter.

(2) remains the same.

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: The proposed amendment to this rule is necessary to clarify that a new owner must submit a replacement bond within 90 days after the transfer of the ownership of a facility. As currently written, it could be read as requiring submission of a replacement bond within 90 days either before or after the transfer of ownership of a facility.

17.86.112 ADJUSTMENT OF BOND AMOUNT (1) Once every five years, an owner may request a reduction of the required bond amount by submitting to the department an amended decommissioning plan. If the department finds that the amended decommissioning plan reduces the estimated cost to the department to complete decommissioning, the department may approve reducing the bond upon submission of evidence to the department proving that decommissioning work, reclamation, or other circumstances will reduce the maximum estimated cost to the department to complete decommissioning and therefore warrant a reduction of the bond amount. Prior to denying the request in whole or in part, the department shall consult with the owner.

(2) The department shall review each decommissioning plan and bond amount every five years after a facility is bonded, or when a new owner submits a revised decommissioning plan. The department may increase the amount of the bond if the facility has expanded or the cost to decommission a facility has otherwise ~~increases~~ increased. The department shall notify the owner of any proposed bond increase and provide the owner an opportunity for an informal conference on the proposal. If the department determines that the bond amount must be increased, it shall ~~provide mail to~~ provide mail to the owner ~~with~~ a written justification for the increase. The owner shall increase the bond amount within 90 days of ~~receiving~~ after the date the department's revised bond amount written justification was mailed.

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: The proposed amendment to (1) would incorporate changes in 75-26-304(11), MCA, enacted by the passage of SB 93. The proposed amendments to (2) would require the department to review decommissioning plans and their

associated costs every five years after a facility has been initially bonded. This would ensure that the amount of the bond would be sufficient to pay for decommissioning a facility. The proposed amendments to (2) would also require the department to review a decommissioning plan and bond amount when submitted by a new owner. This is reasonably necessary to provide a new owner with the opportunity to adjust the decommissioning plan and bond amount to reflect that owner's practices and any changed circumstances.

17.86.115 FORM OF BOND (1) ~~The form for the bond must be as provided by the department.~~ The department owner shall allow for submit either a surety bond or a collateral bond in a form acceptable to the department by the deadline in ARM 17.86.107.

(2) Liability under any bond, including separate bond increments ~~and indemnity agreements or bonds~~ applicable to a single facility, ~~must extend~~ to the owner's entire facility.

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: The proposed amendment to (1) puts the language of the rule in active voice, affirmatively placing the bonding responsibility on the owner, including the requirement to submit a bond by the applicable deadline. Finally, the proposed amendment to (2) would replace "indemnity agreements" with "bond" because that term is redundant with "bond." Bonds are defined in ARM 17.86.101 as indemnity agreements.

17.86.116 SURETY BONDS (1) ~~Surety bonds are subject to the following requirements~~ An owner may satisfy the bonding requirements of this subchapter by submitting a surety bond that:

(a) ~~the department may not accept a surety bond is in excess of an amount that does not exceed~~ 10 percent of the ~~surety company's~~ surety's capital surplus account as shown on a balance sheet certified by a certified public accountant and submitted to the department;

(b) ~~the department may not accept a surety bond from a surety company for any owner is in excess an amount that does not exceed~~ of three times the surety's maximum single obligation;

(c) ~~the department may not accept a surety bond from a surety company for any owner unless that is issued by a surety is registered with~~ authorized by the Montana state auditor and ~~is listed in the United States Department of the Treasury Circular 570 as revised;~~

(d) ~~has a power of attorney must be attached to the surety bond;~~ The power of attorney must state that the surety has authorized the person issuing the bond to bind it to the bond's terms;

(e) ~~the surety bond must provides~~ a requirement and a mechanism for the surety ~~company~~ to give prompt notice to the department and the owner of:

(i) any action alleging bankruptcy or insolvency of the surety or a violation that would result in suspension or revocation of the ~~license of the~~ surety's

authorization:

(ii) and (iii) remain the same.

(f) upon a written determination by the department that a surety is unable to comply with the terms of the bond, the owner ~~of a facility must be~~ is deemed to be without bond ~~coverage~~. The owner shall replace the bond ~~coverage~~ within 90 days ~~of notice from~~ after the written determination is mailed by the department.

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: The proposed amendments to (1)(a) through (c) are needed for consistency with other rules that state affirmative requirements that must be met before the department accepts a bonding instrument rather than criteria that disallows the department from accepting the bonding instrument. Proposed amendments to (1)(c) and (e) are necessary to accurately reflect that the state auditor authorizes companies to do business in Montana rather than registering them.

The proposed amendment to (1)(d) provides what must be stated in the power of attorney so that the department may rely on the signature of the surety's representative as binding the surety.

The proposed amendment to (1)(f) deletes the word "coverage" to reduce redundancy; the word "bond" already connotes coverage. Finally, proposed amendments would require the department's determination that a surety is unable to comply with the terms of a surety bond to be in writing and that the owner submit replacement bond within 90 days after the written determination is mailed by the department. These requirements are necessary to establish a clear date on which the 90-day period within which an owner is required to submit replacement bond begins.

17.86.117 LETTERS OF CREDIT (1) ~~The department may accept as a bond a letter of credit subject to the following conditions~~ An owner may satisfy the bonding requirements of this subchapter by submitting a letter of credit that:

(a) ~~the letter must be~~ is issued by a bank organized or authorized to do business in the United States;

(b) ~~the letter must be~~ is irrevocable prior to ~~the~~ being released by the department;

(c) ~~the letter must be~~ is payable to the department in part or in full upon demand and receipt from the department of a notice of forfeiture issued in accordance with ARM 17.86.122;

(d) ~~the letter of credit must~~ provides that, upon expiration, if the department has not notified the bank in writing that a substitute bond has been provided or is not required, the bank shall immediately pay the department the full amount of the letter of credit less any previous drafts;

(e) ~~the letter must~~ is not be for an amount in excess of 10 percent of the bank's capital surplus account as shown on a balance sheet certified by a certified public accountant and submitted to the department with the letter of credit;

(f) ~~the amount of the letter of credit may~~ is for an amount that does not

exceed three times the bank's maximum single obligation; and

(g) is automatically renewable annually on the letter of credit anniversary date.

~~(g)(2)~~ The department shall review a bank's qualifications ~~must be reviewed by the department yearly prior to the time the~~ annually before a letter of credit is renewed. If the department determines that ~~the~~ a bank has become unable to fulfill its obligations under the letter of credit, the department shall, in writing, notify the owner and specify a reasonable period, not to exceed 90 days, ~~to~~ in which the owner shall replace the bond coverage.

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: The department is proposing to amend (1)(a) through (f) to delete redundant language. The proposed amendment to (1)(e) also would require the owner to submit a certified balance sheet to the department with a letter of credit. Submission of the balance sheet is reasonably necessary for the department to apply the financial test in (1)(e). The department is proposing a new (1)(g) to make this rule consistent with administrative rules governing letters of credit adopted by the department under other state laws. Requiring a letter of credit to be renewable annually provides the mechanism under which the issuing bank is required to provide the department with written advance notice of a decision by the bank not to renew the letter of credit for another one-year term. The department is proposing a renumbering of the current (1)(g) as (2) because it does not describe a condition that must be met for the department to accept a letter of credit as do (1)(a) through the new proposed (g). The proposed amendment to (2) uses "shall" to characterize the department's responsibility to annually evaluate the issuing bank's ability to fulfill its obligations under the letter of credit and the owner's responsibility to submit a replacement bond if the department determines the bank is unable to fulfill its obligations to be consistent with accepted rule drafting practices.

17.86.120 CERTIFICATES OF DEPOSIT (1) ~~The department may accept as~~ An owner may satisfy the bonding requirements of this subchapter by submitting proof acceptable to the department that the certificate of deposit (CD):

~~(a) bond an assignment of a certificate of deposit from was issued by a single institution in a denomination not in excess of \$250,000, or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation (FDIC), whichever is less. The department may not accept a combination of certificates of deposit CDs from a facility an owner in excess of that limit from a single institution. If the issuing institution uses a system in which the issuing institution serves as custodian for the payees of multiple CDs and arranges for one or more additional institutions to issue CDs not in excess of each institution's FDIC limit, and submits those CDs to the department with proof determined acceptable to the department that the issued CDs are insured by the FDIC, the department may accept those CDs;~~

~~(2)(b) The department may only accept is~~ automatically renewable certificates of deposit issued by a bank insured by the FDIC or a credit union insured

by the National Credit Union Administration (NCAU). annually on the CD's anniversary date:

~~(3)(c) The department shall require the owner to deposit in combination with all CDs, is in a sufficient amounts of certificates of deposit, to assure that the department will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of the bond required by ARM 17.86.106 and 17.86.112. ensure that funds in the amount of the bond required in this subchapter will be paid to the department by the issuing bank if the department forfeits the bond and liquidates the CDs before maturity;~~

~~(4)(d) The department shall require that each certificate of deposit be is made payable to or assigned to the owner and the department, and the owner has assigned its interest in the CD to the department, both in writing and in the records of the bank or credit union issuing the certificate CD-;~~

~~(e) The certificate of deposit assignment must expressly prohibits the owner from withdrawing funds until the department has released the CD and assignment-; and~~

~~(5)(f) The department shall require banks or credit unions issuing these certificates to waive all rights of the issuer to a setoff or liens against these certificates CDs.~~

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: The department is proposing to amend this rule to restructure it as a list of conditions that must be met in order for the department to accept a certificate of deposit as a decommissioning bond. Restructuring the rule as a list allows deletion of surplus language stating "the department may only accept," "the department shall require the owner to deposit," or similar language that is currently used throughout the current rule.

The department is proposing to amend (1) to clarify that the owner rather than the facility is the entity that must submit a CD as a decommissioning bond. In addition, the proposed amendments to (1)(a) add a mechanism under which a single issuing institution may pool CDs issued by multiple other institutions to achieve the required level of bonding. This is reasonably necessary because the amount of decommissioning bonds is likely to exceed the \$250,000 FDIC insurance limit. This system is available under the Certificate of Deposit Account Registry Service (CDARS) and is referred to for other purposes in 7-6-206(3), MCA.

The department is proposing to amend current (2), (3), and (6) to remove reference to credit unions. The Banking and Financial Services Division of the Montana Department of Administration has recently informed the department that credit unions are unable to issue certificates of deposit with a third-party obligee, so a credit union certificate of deposit may not be used as a bond that satisfies this subchapter. The proposed amendment to current (2) also deletes the FDIC insurance requirement because it is redundant to (1).

The department is proposing to amend current (3) to ensure that the amount of a CD is sufficient even if a penalty is incurred because the department causes bond forfeiture prior to the CD's maturity date.

The department is proposing to amend current (4) to remove confusion created by the current rule's use of the language "made payable to or assigned to the department." Similarly, the proposed amendment to current (5) is necessary because, to release a CD bond, the department is required to release its interest as a payee of the CD as well as the interest of the owner that has been assigned to the department.

17.86.121 FORFEITURE OF BOND (1) If an owner fails to decommission a facility in either the manner or schedule set forth in the decommissioning plan under ARM 17.86.105 and did not commence action to rectify deficiencies within 90 days after the department's notification was mailed, the department may cause the bond to be forfeited for the entire facility. The department shall notify the owner and the surety by certified mail. The department may forfeit any or all bonds deposited for an entire facility. Liability under any bond, including separate bond increments or indemnity agreements applicable to a single owner must extend to the owner's entire facility.

(2) ~~A written determination to forfeit all or part of the bond,~~ The notification in (1):

(a) must include including the reasons for forfeiture and the amount to be forfeited; and

(b) is a final decision by of the department.

AUTH: 75-26-310, MCA

IMP: 75-26-309, MCA

REASON: The department proposes to amend (1) to state the circumstances under which the department may cause forfeiture of a decommissioning bond. Statement of the circumstances is reasonably necessary to provide DEQ clear authority for causing forfeiture of decommissioning bonds. The proposed amendment requires DEQ's determination that bond forfeiture is appropriate to be in writing in order to create a record of the bond forfeiture. The department is proposing to delete the last sentence of (1) to remove language duplicative to that in ARM 17.86.115(2). The department is proposing to amend (2) to remove duplicative language and to improve readability of the provision.

17.86.122 RELEASE OF BOND; USE OF BOND BY DEPARTMENT

(1) The department shall release a bond if the department is satisfied that an owner has ~~properly decommissioned~~ completed decommissioning of a facility in accordance with the decommissioning plan or as otherwise agreed to by the department in consultation with the ~~land owner~~ landowner.

(2) At any time, an owner or any person authorized to act on behalf of the ~~facility owner~~ may petition make a written request to the department for release of all or a portion of a the bond ~~or a portion thereof~~, and the department shall reply with a determination within 90 days unless the ~~weather does~~ conditions do not permit access to the facility or a representative of the owner is not available within the 90-day period. The owner ~~must~~ shall allow and accompany the department in an inspection of the facility to verify the adequacy of decommissioning ~~and reclamation~~

proposed for bond release.

~~(3) An owner shall commence decommissioning and reclamation activities within 90 days of abandonment, unless the owner receives department approval of an alternative written plan for decommissioning and reclamation.~~

~~(4) The department may forfeit a bond in part or in full if the department finds that the owner fails to decommission the facility in accordance with the decommissioning plan and has not commenced action to rectify deficiencies within 90 days after notification by the department.~~

(5) remains the same but is renumbered (3).

~~(6)~~(4) Before decommissioning is considered complete, each wind generation facility owner shall file record a map with the local county recorder showing the location of any remaining wind turbine foundation and its depth. The owner shall submit Aa copy of the map showing that it was stamped by the recorder, and associated documents, shall be sent to the department.

AUTH: 75-26-310, MCA

IMP: 75-26-308, 75-26-309, MCA

REASON: The proposed amendments to (2) would: clarify that the owner needs to make the request for bond release in writing; replace "weather" with "conditions," which better covers possible situations that could prevent a department representative from making a site visit; and remove "reclamation" because it is included in the definition of "decommissioning." The department proposes to move the language in (3) to ARM 17.86.102(1)(b) because decommissioning is an action the owner is responsible to complete.

The department proposes to delete (4) because proposed amendments to ARM 17.86.121 address the same matter and it is unnecessary to repeat that language.

The proposed amendments to (5) would clarify that it only applies to wind generation facilities because it addresses decommissioning of wind turbine foundations. The proposed amendment places the responsibility on the owner for demonstrating that the owner has recorded the proper documents with the county recorder. That recording is a requirement for completion of decommissioning. Completion of decommissioning must occur before the department may release a bond.

4. 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 Sandy Scherer, Legal Secretary, 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 sscherer@mt.gov, no later than 5:00 p.m., March 18, 2020. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. The department 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; wind energy, 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 Sandy Scherer, Legal Secretary, 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 Sandy Scherer at sscherer@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

6. Norm Mullen, attorney for the department, has been designated to preside over and conduct the hearing.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply. The bill sponsor was notified by letter on October 22, 2019.

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

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ Edward Hayes

EDWARD HAYES

Rule Reviewer

BY: /s/ Shaun McGrath

SHAUN McGRATH

Director

Certified to the Secretary of State February 4, 2020.