

ENVIRONMENTAL QUALITY

CHAPTER 80

TAX CERTIFICATION - POLLUTION CONTROL
EQUIPMENT AND ENERGY FACILITIES

Subchapter 2

Tax Abatement and Classification

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Subchapter 2

Tax Abatement and Classification

17.80.201 DEFINITIONS As used in this subchapter, unless indicated otherwise, the following definitions apply:

(1) "Carbon dioxide" means a substance that is comprised of no less than 90% carbon dioxide by volume. All calculations of carbon dioxide purity must be made at the location of transfer from the carbon dioxide pipeline to the carbon sequestration point.

(2) "Catastrophic circumstances," within the meaning of 15-6-158(2)(e), MCA, means a great and sudden, extraordinary, unexpected, and unforeseeable disaster or failure of equipment that is beyond the control of the owner and operator of a closed-loop enhanced oil recovery operation, that could not have been prevented, and that substantially interferes with the owner and operator's ability to retain injected carbon dioxide.

(3) "Department" means the Department of Environmental Quality provided for in Title 2, chapter 15, part 39, MCA.

(4) "Location," within the meaning of 15-6-158(2)(d), MCA, means the injection well field, the pipeline terminus, the pipeline header, or the equipment related to a closed-loop enhanced oil recovery operation.

(5) "Retains," within the meaning of 15-6-158(2)(e), MCA, means that the carbon dioxide is controlled by the operator underground, within the closed-loop system or in some other manner.

(6) "Unforeseen circumstances," within the meaning of 15-6-158(2)(e), MCA, means circumstances beyond the control of the owner and operator of a closed-loop enhanced oil recovery operation that could not reasonably have been foreseen and that substantially interfere with the owner and operator's ability to retain injected carbon dioxide. (History: 15-24-3116, MCA; IMP, 15-24-3112, MCA; NEW, 2008 MAR p. 1027, Eff. 5/23/08; AMD, 2011 MAR p. 233, Eff. 2/25/11.)

17.80.202 CERTIFICATION OF ELIGIBILITY FOR TAX ABATEMENT OR CLASSIFICATION AS CLASS FOURTEEN OR FIFTEEN PROPERTY

(1) A taxpayer who wishes to obtain a certificate of eligibility for abatement of property tax liability under 15-24-3111, MCA, for classification of property as class fourteen property under 15-6-157, MCA, or for classification of property as class fifteen property under 15-6-158, MCA, shall submit to the department a completed application for certification on a form available from the department.

(2) Within 30 days of receipt of an application pursuant to (1), the department shall determine whether the application is complete and notify the applicant in writing of its determination. The time for this determination may be extended upon written consent of the applicant. If the department determines that the application is incomplete, the department shall also describe the deficiencies. The applicant may then supplement the application or submit a new application.

(3) Within 60 days of a determination of completeness pursuant to (2), the department shall issue a certification or deny the application and notify the applicant of its decision in writing. The time for this determination may be extended upon written consent of the applicant. If the department denies the application, it shall include in the notice a statement of the reasons that the application was denied and a notification of the applicant's right to review of the denial pursuant to 15-24-3112, MCA. If the department grants the certification, it shall also notify the Department of Revenue in writing.

(4) A certification remains in effect until revoked pursuant to this subchapter. (History: 15-24-3116, MCA; IMP, 15-6-157, 15-6-158, 15-6-3112, MCA; NEW, 2008 MAR p. 1027, Eff. 5/23/08; AMD, 2011 MAR p. 233, Eff. 2/25/11.)

17.80.203 APPLICATION REQUIREMENTS AND DECISION CRITERIA:
ALTERNATING CURRENT TRANSMISSION LINES UNDER 15-6-157(1)(q), MCA

(1) A person who wishes to obtain a certification of the qualified portion of an alternating current transmission line pursuant to 15-6-157(1)(q), MCA, shall file an application on a form provided by the department pursuant to ARM 17.80.201. The application must contain the following information:

(a) the name and address of the applicant;

(b) a description of the line for which certification is sought, including its associated equipment and structures, including interconnections;

(i) for lines still under construction at the end of a tax year, this would be a general description of the complete line, with a more detailed description of that portion for which certification is sought;

(c) a listing of all wage rates paid for construction of the transmission line in Montana, including its associated equipment and structures, including interconnections;

(d) the date construction of the transmission line, as defined in 15-24-3102, MCA, was commenced in Montana;

(e) the total transfer capability of the transmission line established through the Western Electricity Coordinating Council (WECC) path rating process, or for transmission lines which are not covered by the WECC path rating process, by the capability determined by the balancing authority under whose jurisdiction the line is;

(f) a list of the Montana electricity generating facilities that are, or will be, class fourteen property under 15-6-157, MCA, for which a firm contract for transmission service, available throughout each year of the contract, has been obtained, including:

(i) the location, or proposed location, of each generating facility;

(ii) the period for which each facility has secured firm contract for transmission service throughout each year;

(iii) documentation of the amount of firm transmission on the line that has been secured for each generating facility throughout each year. If this amount is not the same throughout the year, the applicant shall describe the different amounts and the length of periods during which those amounts apply; and

(iv) name, address, and telephone number of contact person for each facility.

(2) The qualified portion of a transmission line will be based on the contracts for firm transmission in place at the time of application for the initial ten years of commercial operation, according to the following criteria:

(a) The qualified portion of a line for which the amount of rated transfer capacity under firm contract for electricity generated at class fourteen generating facilities is constant throughout the year is that amount divided by the total transfer capability of that line established through the applicable path rating process conducted either by WECC or the balancing authority;

(b) The qualified portion of a line for which the amount of rated transfer capacity under firm contract for electricity generated at class fourteen generating facilities varies throughout the year is the weighted average determined according to the following formula: (amount for first period x number of days in period + amount for next period x number of days in period . . .)/365;

(c) For deliveries to load on the line using firm transmission contracts for a blend of power from multiple generating facilities, the amount that is deemed to come from class fourteen facilities is the percentage of a delivery equaling the percentage of the annual energy portfolio of the commodity provider that is generated from class fourteen facilities located in Montana;

(d) For lines with a mix of contracts of different length, the qualified portion is the average rated transfer capacity under firm contract determined by the following formula: (annual amount for first contract x contract length during averaging period + annual amount of next contract x contract length during averaging period . . .) /length of averaging period. The averaging period for the initial certification will be the ten years following start of commercial operation.

(3) In making its certification determination, the department shall use the application materials and also may use any other credible information available to the department.

(4) Ten years after a transmission line becomes commercially operational, the taxpayer shall submit to the department an update of the information required in (1)(e) and (f). Based on this information and any other credible information available to the department, the department shall determine the current qualified portion of the transmission line and reissue a certificate at that percentage.

(5) If the transmission line no longer has contracts for firm transmission of electricity operated at class fourteen facilities, the department shall revoke the certification. (History: 15-24-3116, MCA; IMP, 15-6-157, 15-24-3116, MCA; NEW, 2008 MAR p. 1027, Eff. 5/23/08; AMD, 2011 MAR p. 233, Eff. 2/25/11.)

17.80.204 APPLICATION REQUIREMENTS AND DECISION CRITERIA: CARBON DIOXIDE PIPELINES (1) A taxpayer who wishes to obtain a certificate of eligibility for classification of a carbon dioxide pipeline as class fifteen property under 15-6-158, MCA, or for abatement of property tax liability under 15-24-3111, MCA, shall file an application on a form provided by the department pursuant to ARM 17.80.202. The application must contain the following information:

- (a) the name and address of the applicant;
 - (b) the name, address, telephone number, and e-mail address of a contact person for the application;
 - (c) a description of the pipeline for which certification is sought, including its associated equipment, structures, interconnections, and injection points;
 - (i) for pipelines still under construction at the end of a tax year, this would be a general description of the complete pipeline, with a more detailed description of that portion for which certification is sought;
 - (d) a map or drawing showing the location of the pipeline and its associated equipment, structures, and interconnections and all injection points;
 - (e) the date construction of the pipeline commenced;
 - (f) certification that the standard prevailing rate of wages for heavy construction were, or will be, paid during construction of the pipeline in Montana;
 - (g) a list of the carbon sequestration points meeting the requirements of 15-6-158, MCA, and this subchapter to which the carbon dioxide is, or will be, transported, including:
 - (i) the location, or proposed location, of each sequestration point; and
 - (ii) documentation of the amount of carbon dioxide that is expected to be transported to each sequestration point throughout each year;
 - (h) certification that each source of the carbon dioxide transported in the pipeline is, or will be, a plant or facility that produces or captures carbon dioxide, within the meaning of 15-6-158(2)(g), MCA, and is not, or will not be, a well from which the primary product is carbon dioxide;
 - (i) a list of all plants or facilities that produce or capture, or will produce or capture, the carbon dioxide transported, or to be transported, in the pipeline;
 - (j) certification that the pipeline transports, or will transport, carbon dioxide to one or more underground injection wells for which the Montana Board of Oil and Gas Conservation has issued, or will have issued, a final underground injection control (UIC) permit, including specification of the American Petroleum Institute number and UIC permit number for each well. If some or all permits have not been issued at the time of the application, the taxpayer shall update the certification annually, pursuant to ARM 17.80.225(2), by providing the department with the information required under this subsection for permits issued after the date of the application; and
 - (k) documentation of the purity level of the carbon dioxide transported, or to be transported, in the pipeline. For pipelines that are not operational at the time of the application, the applicant shall submit this documentation within 60 days after commencing commercial operation.
- (2) Upon request of the department, an applicant shall submit to the department documentation supporting any certification required under this rule.

(3) If any information required under this rule already has been submitted to another Montana state agency, in lieu of submitting the information to the department in the application, the applicant may specify the agency that has the information. If, after reasonable efforts, the department is unable to obtain the information from the other agency, the applicant shall submit the information to the department, upon its request.

(4) The equipment eligible for certification by the department under this rule includes the pipeline and its associated equipment, structures, and interconnections downstream from each meter used to measure the carbon dioxide received from each carbon dioxide source but does not include equipment downstream of the meter to the injection well field served by the pipeline.

(5) In making its certification determination, the department shall use the application materials and may also use any other credible information available to the department.

(6) The department shall revoke a certification issued under this rule, if the taxpayer no longer uses, or no longer will use, the pipeline to transport carbon dioxide to a carbon dioxide sequestration point, including a closed-loop enhanced oil recovery operation. (History: 15-24-3116, MCA; IMP, 15-6-158, 15-24-3112, MCA; NEW, 2011 MAR p. 233, Eff. 2/25/11.)

17.80.205 APPLICATION REQUIREMENTS AND DECISION CRITERIA:
CLOSED-LOOP ENHANCED OIL RECOVERY OPERATION EQUIPMENT (1) A taxpayer who wishes to obtain a certificate of eligibility for classification of equipment used in a closed-loop enhanced oil recovery operation as class fifteen property under 15-6-158, MCA, or for abatement of property tax liability under 15-24-3111, MCA, shall file an application on a form provided by the department pursuant to ARM 17.80.201. The application must contain the following information:

- (a) the name and address of the applicant;
- (b) the name, address, telephone number, and e-mail address of a contact person for the applicant;
- (c) a description of the equipment for which certification is sought;
 - (i) for a project still under construction at the end of a tax year, this would be a general description of the complete equipment, with a more detailed description of that portion for which certification is sought;
- (d) a map or drawing showing the location of the equipment;
- (e) the date construction of the project commenced;
- (f) certification that the standard prevailing rate of wages for heavy construction were, or will be, paid during the construction phase;
- (g) the location of each well in which carbon dioxide is injected, or is to be injected, as part of the closed-loop enhanced oil recovery operation;
- (h) a map or drawing showing the location of each well and injection point at the time of the application;
- (i) certification that each source of the carbon dioxide to be injected in the operation is, or will be, a plant or facility that produces or captures carbon dioxide, within the meaning of 15-6-158(2)(g), MCA, and is not, or will not be, a well from which the primary product is carbon dioxide;

(j) a list of all plants or facilities that produce or capture, or will produce or capture, the carbon dioxide for the operation;

(k) certification that a final UIC permit has been issued, or will be issued, by the Montana Board of Oil and Gas Conservation for each well in which carbon dioxide is injected, or is to be injected, as part of the closed-loop enhanced oil recovery operation, including specification of the American Petroleum Institute number and UIC permit number for each well. If some or all permits have not been issued at the time of the application, the taxpayer shall update the certification annually, pursuant to ARM 17.80.225(2), by providing the department with the information required under this subsection for permits issued after the date of the application;

(l) documentation of the purity level of the carbon dioxide received by the operation. For facilities that have not commenced operation of the closed-loop enhanced oil recovery equipment at the time of the application, the applicant shall submit this documentation within 60 days after commencing commercial operation; and

(m) documentation that the closed-loop enhanced oil recovery operation retains, or will retain, as much of the injected carbon dioxide as is practicable, but not less than 85% of the carbon dioxide injected each year. Demonstrations may include, but are not limited to, modeling data, monitoring data, or engineering calculations sufficient to make the demonstration;

(i) all demonstrations must be accompanied by a protocol describing how the data was obtained and describing all quality control and quality assurance procedures followed in gathering or producing the data.

(2) Upon request of the department, an applicant shall submit to the department documentation supporting any certification required under this rule.

(3) If any information required under this rule already has been submitted to another Montana state agency, in lieu of submitting the information to the department in the application, the applicant may specify the agency that has the information. If, after reasonable efforts, the department is unable to obtain the information from the other agency, the applicant shall submit the information to the department, upon its request.

(4) The equipment eligible for certification by the department under this rule includes the equipment used to inject and/or maintain carbon dioxide in a closed-loop enhanced oil recovery operation that is downstream of the pipeline meter used to measure the amount of carbon dioxide delivered to the closed-loop enhanced oil recovery operation. Pipelines eligible for certification under ARM 17.80.204 are not considered enhanced oil recovery operation equipment.

(5) In making its certification determination, the department shall use the application materials and may also use any other credible information available to the department.

- (6) The department shall revoke a certification issued under this rule if:
- (a) at any time after commencement of construction, the equipment no longer will be used to inject carbon dioxide for enhanced oil recovery;
 - (b) after construction, installation, and testing has been completed and the enhanced oil recovery process has commenced, equipment certified under this rule no longer is used for enhanced oil recovery; or
 - (c) the taxpayer no longer holds a valid underground injection control permit for each well served by the operation. (History: 15-24-3116, MCA; IMP, 15-6-158, 15-24-3112, MCA; NEW, 2011 MAR p. 233, Eff. 2/25/11.)

17.80.206 CLOSED-LOOP ENHANCED OIL RECOVERY OPERATION EQUIPMENT COMPLIANCE DEMONSTRATION (1) If a taxpayer, who receives certification by the department of equipment used in a closed-loop enhanced oil recovery operation, does not substantially comply with the requirements specified in each underground injection control permit, issued by the Montana Board of Oil and Gas Conservation for the operation, or specified in the applicable rules adopted by the Montana Board of Oil and Gas Conservation, the department may revoke the certification.

(2) If monitoring of a closed-loop enhanced oil recovery operation demonstrates that the equipment fails to maintain substantial compliance with eligibility requirements for tax classification or abatement, the department may revoke the certificate of eligibility, or a portion of the certificate of eligibility. (History: 15-24-3116, MCA; IMP, 15-24-3112, MCA; NEW, 2011 MAR p. 233, Eff. 2/25/11.)

Rules 17.80.207 through 17.80.224 reserved

17.80.225 REVOCATION OF CERTIFICATE (1) Pursuant to 15-6-157(5)(a), MCA, the department shall review certification of a transmission line ten years after the line is operational and, if the property no longer meets the requirements of 15-6-157, MCA, the department shall revoke the certification. Within the 30-day period preceding January 1 of the tenth year after the line is operational, the owner of a transmission line who has received certification of eligibility for tax classification or abatement from the department under this subchapter shall submit to the department a certified statement as to whether there have been any substantial changes that could affect eligibility for the classification or abatement. If there have been any substantial changes that could affect eligibility, the taxpayer shall fully describe those changes.

(2) A taxpayer, other than the owner of a transmission line, who has received certification of eligibility for tax classification or abatement from the department under this subchapter shall submit to the department, by January 31 of each subsequent calendar year, a certified statement as to whether there have been in the last tax year, or will be in the present tax year, any substantial changes to the facility or equipment, or to operation of the facility or equipment. If there have been, or will be, any substantial changes, the taxpayer shall fully describe those changes. Substantial changes include, but are not limited to:

- (a) decreases in the purity of carbon dioxide transported or injected during the last tax year, or expected to be transported or injected during the next tax year;
- (b) changes in the source(s) of carbon dioxide transported or injected;
- (c) for closed-loop enhanced oil recovery operations, changes in numbers and locations of injection wells associated with the operation.

(3) If the department becomes aware of any changes that could affect the value of a facility or equipment certified under this subchapter, the department shall notify the Department of Revenue.

(4) If a taxpayer fails to submit a ten-year or annual statement required under this rule, or if the department believes that a facility or equipment certified under this subchapter otherwise has failed to maintain substantial compliance with certification eligibility requirements, the department shall notify the taxpayer in writing of the noncompliance. In determining whether a facility or equipment has failed to maintain substantial compliance with certification eligibility requirements, the department shall consider the circumstances, extent, and duration of the noncompliance.

(5) If a taxpayer fails to correct substantial noncompliance within 60 days after receipt of a notice of noncompliance, the department shall notify the taxpayer in writing of the department's intent to revoke the certificate or a portion of the certificate. The department's decision becomes final when 30 days have elapsed after the taxpayer's receipt of the notice unless the taxpayer requests a hearing before the department.

(6) When the department revokes a certificate, or a portion of a certificate, under this rule, the taxpayer may request a hearing before the department. A hearing request must be in writing and must be filed with the department, addressed to the department director, within 30 days after receipt of the department's revocation notice. Filing a request for a hearing postpones the effective date of the department's decision until issuance of a final decision by the department.

(7) Pursuant to 15-24-3112(5), MCA, a hearing under this rule is governed by the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA.

(8) Pursuant to 15-24-3112(2), MCA, within 30 days after revocation of a certificate, the department shall report the revocation to the Department of Revenue. (History: 15-24-3116, MCA; IMP, 15-6-157, 15-6-158, 15-24-3112, MCA; NEW, 2011 MAR p. 233, Eff. 2/25/11.)

