

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.53.113 pertaining to registration and)
registration maintenance fees: fee)
assessment)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

(HAZARDOUS WASTE)

TO: All Concerned Persons

1. On March 4, 2015, at 1:30 p.m., the Department of Environmental Quality will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The department 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., February 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.

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

17.53.113 REGISTRATION AND REGISTRATION MAINTENANCE FEES:
FEE ASSESSMENT (1) For the purposes of this rule, "as-generated waste" means hazardous waste generated from tanks, containers, and other process units in the course of regular, ongoing, and closure of commercial, production, or other industrial activities. "Remediation waste" means all hazardous waste, debris, and media, including ground water, surface water, soils, and sediments, that are managed for implementing cleanup.

(1) remains the same, but is renumbered (2).

~~(2)~~ (3) The department shall assess an annual registration maintenance fee, as provided in ~~(3)~~ (4), for the following hazardous waste generators:

(a) through (c) remain the same.

~~(3)~~ (4) The annual registration maintenance fee for a calendar year is \$200 plus a per-ton fee for all regulated hazardous waste generated during the previous calendar year of:

(a) \$5 15 per ton for all regulated ~~hazardous~~ remediation waste generated during the ~~2009~~ 2014 calendar year and each year thereafter;

(b) \$40 20 per ton for all regulated ~~hazardous~~ as-generated waste generated during the ~~2010~~ 2014 calendar year;

(c) \$45 25 per ton for all regulated ~~hazardous~~ as-generated waste generated during the ~~2011~~ 2015 calendar year; and

(d) \$20 30 per ton for all regulated ~~hazardous~~ as-generated waste generated during the ~~2012~~ 2016 calendar year; and each year thereafter.

(5) The total of the fees assessed pursuant to (4)(a) for a calendar year must not exceed twice the appropriated amount for the special revenue account as provided in 75-10-434, MCA, for that calendar year. The department shall refund, on a pro rata basis, the amount of the fees collected under (4)(a) that exceed twice the appropriated amount for the special revenue account for a calendar year to the persons who generated remediation waste during that calendar year.

~~(4)~~ (6) The per-ton fee in ~~(3)~~ (4)(a) through (d) is assessed only if the amount of regulated hazardous waste generated during the previous calendar year is equal to or greater than 1.3 tons.

(5) through (9) remain the same, but are renumbered (7) through (11).

AUTH: 75-10-404, 75-10-405, MCA

IMP: 75-10-405, MCA

REASON: The proposed rule amendment is necessary to provide adequate and stable funding to support the delegated hazardous waste program and also to provide an incentive for remedial action by reducing the per-ton fee assessed for remediation waste and by capping the amount of fees the department collects for remediation waste. The proposed rule amendment accomplishes both of these objectives by providing definitions that distinguish hazardous waste generated by remediation activities and hazardous waste generated by non-remedial activities, reducing the fee on remediation waste to \$15 per ton and providing for a step increase in the as-generated waste fee by increasing the as-generated waste fees from \$20 per ton to \$30 per ton over the next two years. As a further incentive to increase remedial action, the department is proposing to cap the fees assessed for remediation waste to twice the appropriated amount for the special revenue account as provided in 75-10-434, MCA, and to refund to the persons who generated the remediation waste, on a pro rata basis, any monies the department collects over this established cap. To establish a distinction between as-generated and remediation waste for the purposes of assessing hazardous waste generation fees, the department is proposing to add the definition of "as-generated waste."

The number of persons impacted by the proposal cannot be determined with precision. There are approximately 200 registered hazardous waste generators in Montana. Based on program experience, it is estimated that during any year a range of one to ten of those generators would engage in remediation activities. It is estimated that approximately \$250,000 (\$100,000 in as-generated waste fees and \$150,000 in remediation waste fees) would be generated in calendar year 2015. It is important to note that the department bills in arrears and therefore this \$250,000 figure would be for waste generated during calendar year 2014. Under the proposed rule amendments, an additional \$25,000 in as-generated waste fees would be paid in calendar year 2016 (\$125,000) and an additional \$50,000 in as-generated waste fees would be paid in calendar year 2017 and succeeding years (\$150,000). The remediation waste component revenue in any given year would be capped at approximately \$600,000.

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 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, no later than 5:00 p.m., March 12, 2015. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Carol Schmidt, attorney for the Department of Environmental Quality, has been designated to preside over and conduct the hearing.

6. 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 supplies; 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; or may be made by completing a request form at any rules hearing held by the department.

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

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will significantly and directly impact small businesses.

Reviewed by: DEPARTMENT OF ENVIRONMENTAL QUALITY

/s/ John F. North BY: /s/ Tom Livers
JOHN F. NORTH TOM LIVERS, Director
Rule Reviewer

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