

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.74.350, 17.74.352, 17.74.355,)
17.74.359, and 17.74.364; the repeal of)
17.74.401, 17.74.402, 17.74.403, and)
17.74.404; and the adoption of New)
Rules I through IV pertaining to)
incorporation by reference, definitions,)
asbestos project permits, training)
provider requirements, fees, and refunds)

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT,
REPEAL, AND ADOPTION

(ASBESTOS)

TO: All Concerned Persons

1. On March 24, 2020, at 2:00 p.m., the Department of Environmental Quality (department) will hold a public hearing in Room 111 of the Metcalf Building, 1520 E. Sixth Avenue, Helena, Montana to consider the proposed amendment, repeal, and adoption of the above-stated rules. Before the hearing, on the same day, at 1:00 p.m., the department will conduct an informal public meeting to discuss the proposed rules and answer questions pertaining to these rules.

2. The department 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 Sandy Scherer, Legal Secretary, no later than 5:00 p.m., March 17, 2020, to advise us of the nature of the accommodation that you need. Please contact Sandy Scherer 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 sscherer@mt.gov.

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

17.74.350 INCORPORATION BY REFERENCE -- PUBLICATION DATES

(1) Unless expressly provided otherwise, whenever there is a reference in this subchapter to a federal regulation, the reference is to the July 1, ~~2019~~2010, edition of the Code of Federal Regulations (CFR).

(2) Copies of the CFR are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 512-1800. The CFR may also be accessed electronically at: <https://www.gpo.gov>. Materials adopted and incorporated by reference in this subchapter are also available for public inspection and copying at DEQ, 1520 East 6th Avenue, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-2-503, MCA
IMP: 75-2-503, MCA

REASON: It is necessary that the department adopt the most current version of the CFR to maintain parity with federal regulations so that the Asbestos Control Program meets federal stringency requirements and maintains state program authorization. Additionally, it is necessary to adopt the most current version of the CFR to protect human health and the environment consistent with 40 CFR Part 61, subparts A and M. It is necessary to adopt (2) to inform the public where it can access regulations incorporated by reference in this subchapter.

17.74.352 DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) remains the same.

(2) "Annual base amount" means the amount of regulated asbestos-containing material, up to 25,000 square, 25,000 linear, or 25,000 cubic feet or any combination thereof, that an annual asbestos project permit holder may disturb or remove under an annual asbestos project permit during the year the annual permit is in effect.

(2) through (12) remain the same but are renumbered (3) through (13).

(14) "Asbestos unit measurement (AUM)" means each unit of asbestos-containing material that may be disturbed or removed either in square, linear, or cubic feet or any combination thereof.

(13) and (14) remain the same but are renumbered (15) and (16).

(17) "Cubic foot" means a unit of volume for three-dimensional materials, such as insulation, equal to one foot in length, width, and height. This measurement may only be used when the depth of the material exceeds three inches or cannot be otherwise calculated.

(15) through (23) remain the same but are renumbered (18) through (26).

(27) "Homogenous materials" means materials that are uniform in color, texture, and age.

(24) remains the same but is renumbered (28).

(29) "Layered homogenous materials" means materials in which the elements making up the composition are in the form of layers. This term may only be applied to flooring systems, wallboard systems, or roofing systems.

(30) "Linear foot" means a unit of length equal to one foot and may only be used for pipe measurement.

(25) through (28) remain the same but are renumbered (31) through (34).

(35) "Square foot" means a unit of area for two-dimensional materials, such as flooring, equal to the area of a square that is one foot in length and width.

(29) through (31) remain the same but are renumbered (36) through (38).

AUTH: 75-2-503, MCA

IMP: 75-2-503, MCA

REASON: The 2015 Legislature passed House Bill 434 (HB 434) directing the department to convene an Asbestos Advisory Group (AAG) to advise the agency on matters relating to asbestos regulation. Pursuant to HB 434, the AAG submitted recommendations for the department's consideration. The department is proposing

adding new definitions in accordance with AAG Recommendation #2. AAG Recommendation #2 states, "DEQ should revise state regulatory definitions to allow for more administrative flexibility while not causing harm to health or the environment."

The department is proposing to adopt (2) to add a definition of "annual base amount" to provide a consistent way for the department to track the amount of asbestos removed under an annual asbestos project permit and to assess fees for annual asbestos project permits that are sufficient to support the program. The annual base amount will provide an annual asbestos project permit holder the ability to disturb or remove a specific amount of regulated asbestos containing material during the permit term, will provide a method for the department and the permit holder to track the amount of asbestos containing materials removed under an annual asbestos project permit, and will allow for fee assessments based upon the amount of regulated asbestos containing material removed during the term of an annual asbestos project permit. Adding this definition provides coordination with the proposed fee changes in NEW RULE I. See reason statement for NEW RULE I.

Under ARM 17.74.352 and NEW RULE I, the department is proposing an annual base amount of up to 25,000 square, 25,000 linear, or 25,000 cubic feet or any combination thereof consistent with the asbestos unit measurement (AUM) fees in proposed NEW RULE I, Table 2. Under these proposed amendments, an annual project permit holder would pay the same amount as an asbestos project permit holder based upon the amount of AUMs that are removed or disturbed. The department is proposing this change in response to stakeholder concerns that there should not be a significant difference in cost for an annual project permit versus a project permit. See reason statement for NEW RULE I. The department will collect additional fees from an annual asbestos project permit holder when the annual base amount exceeds 25,000 AUMs.

The department is proposing to adopt (14) to define "asbestos unit measurement (AUM)" as a basis for collecting a flat fee based on the AUM range that may be disturbed or removed. The department is proposing to use AUMs to more accurately track how much material is disturbed or removed during an asbestos project. Adding this definition corresponds with the proposed fee changes in NEW RULE I. See reason statement for NEW RULE I.

The department is proposing to adopt new definitions in (17) "cubic foot," (30) "linear foot," and (35) "square foot," to define measurement terms that are used in proposed fee rule changes in NEW RULE I. The proposed definitions are necessary to avoid confusion and provide clarity for assessing fees. The proposed definition of "linear foot" in (30) will only be used for pipe measurement in accordance with EPA Applicability Determination Index Control Number: A06003, referencing the asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) 61.145(a)(1)(i) and 61.145(a)(4)(i).

The department is proposing new definitions in (27) and (29) to coordinate proposed changes in the fee rules at NEW RULE I(6). The department is proposing these changes to implement AAG and stakeholder input that multiple adjacent homogenous layers within a building material be considered as one layer for the purpose of fee assessment. The department believes the proposed definitions in (27) and (29) will encourage more accurate reporting of the presence of multiple layered building materials and proper treatment, removal, and disposal of these

materials. Not assessing each layer separately will reduce fees paid to the department for asbestos projects involving removal of layered homogenous building materials, but will result in greater compliance with the Montana Asbestos Control Act.

17.74.355 ASBESTOS PROJECT PERMITS (1) through (6) remain the same.

(7) A copy of the asbestos project permit application, permit, project design, and sketch must be posted and maintained on site in a conspicuous location during the asbestos project and made available for examination by department employees or representatives upon request. ~~A copy of the asbestos project contract must be maintained on site and be made available for examination by department employees or representatives.~~

(8) remains the same.

AUTH: 75-2-503, MCA

IMP: 75-2-503, 75-2-511, MCA

REASON: The department is proposing to eliminate the requirement that asbestos project contracts be maintained onsite and made available for examination by the department. Asbestos project contracts do not reflect asbestos volumes and do not provide information necessary for the department to review the assessment of permit fees or project design. Asbestos project permit fees are based on "asbestos unit measurement," as further described in the reason statement for proposed NEW RULE I.

17.74.359 ANNUAL ASBESTOS PROJECT PERMITS (1) An annual asbestos project permit authorizes a facility to conduct asbestos projects within the confines of the facility's controlled area during the ~~period~~ year for which the permit is in force. After July 1, 2020, the annual asbestos project permit period is January 1 through December 31.

(2) through (4) remain the same.

(5) An annual asbestos project permit expires ~~one~~ on December 31 of the year after issuance in which the permit is issued, unless the facility owner applies for renewal a new annual permit at least 45 days before the expiration date by November 15 of the year the current annual permit was issued, and the department approves the application.

(6) An application for ~~renewal of an annual asbestos project permit must address in detail only the portions of the permit application that require revision, updating, supplementation, or deletion, and:~~

(a) indicate the amount of regulated asbestos-containing material proposed to be disturbed or removed during the permit period;

(b) require the permittee to report any amount of regulated asbestos-containing material disturbed or removed during the annual asbestos project period that exceeds the amount in (a);

(c) require the permittee to revise the annual asbestos project permit in accordance with (7); and

(d) may incorporate by reference any required information that has been previously submitted.

(7) An amendment revision to the an annual asbestos project permit is required as soon as possible or within 10 calendar days of the following when there is:

(a) a change in project contractor, or owner;

(b) a change in demolition/renovation contractor, transporter, or disposal site facility;

(c) an alternate work practice request is submitted for department approval in accordance with ARM 17.74.353(1)(e);

(d) the amount of regulated asbestos-containing material being disturbed exceeds the amount in (6)(a) by 20 percent or more; or

(e) any significant other change of similar in scope or magnitude of asbestos projects conducted at the facility during the project period.

AUTH: 75-2-503, MCA

IMP: 75-2-503, 75-2-504, MCA

REASON: The department is proposing to establish a standard annual asbestos project permit cycle, beginning January 1 and ending December 31, and to set a specific date of November 15, by which annual asbestos project permit holders must submit necessary information for department approval of a new annual permit. Setting a specific deadline to apply for a new annual asbestos project permit allows the department to eliminate the 45-day submission requirement, and provides an adequate review period before the new annual asbestos project permit period begins.

Adopting a standard permit year would allow the department to better stage the workload associated with approving facility annual permits. It would also provide annual permit applicants with a consistent and stable planning period. The fee associated with annual permits is proposed as a flat rate, which allows the removal or disturbance of 25,000 asbestos unit measurement (AUM) (See NEW RULE I(2)(Table 1)). The application for an annual asbestos permit must document the amount of asbestos-containing material proposed for removal during the annual permit term to ensure the correct fee is assessed.

The proposed amendments would also provide the department with a consistent method for tracking asbestos-containing material identified during inspections, removed during projects, and ultimately disposed during an annual asbestos project permit period to ensure compliance with the Montana Asbestos Control Act and protect human health and the environment.

The department is proposing to strike "renewal of" from (6) because a permittee would be required to apply for an annual asbestos project permit every year. The department is proposing (6)(a) to assist the department in tracking the amount of asbestos-containing material being identified during inspections, removed during projects, and ultimately disposed of during an annual asbestos project permit period to protect human health and the environment.

The department is proposing (6)(b) and (c) to require annual permit holders to report amounts that exceed the proposed amount of asbestos-containing material in

(6)(a) and revise the annual asbestos project permit when the amount of asbestos-containing material removed or disturbed during the term of the annual permit exceeds the amount in (6)(a) by 20 percent or more. The permittee will not be charged a permit revision fee unless cumulative quantities exceed 25,000 AUMs pursuant to the proposed rule amendment at NEW RULE I(2).

The department is proposing (6)(d) to save the permittee and the department time in submitting and processing applications by not requiring the permittee to re-enter previously submitted information if it is still accurate.

The department is proposing to strike "demolition" from (7) because demolition notices are handled separately from annual asbestos project permits. Demolition notices only pertain to non-regulated asbestos containing material. If the asbestos were to become regulated during a demolition, then the permittee would have to apply for an asbestos project permit or modify the amount of regulated asbestos-containing material proposed to be disturbed or removed during the permit period in the existing annual permit.

The proposed amendments at (7)(a) and (b) are necessary to require revision of an annual asbestos project permit when there is a change in project contractor, project owner, change in renovation contractor, transporter, disposal facility, or a request for approval of alternate work practice. These revisions are necessary to enable the department to track the handling and removal of asbestos-containing material during an annual asbestos project permit period.

The department is proposing (7)(c) to align the rule with the Asbestos NESHAP notification requirements. Under the proposed change, an annual asbestos project permit holder must notify the department when the amount of asbestos-containing material disturbed during the annual permit period exceeds the asbestos containing material identified in the original permit application by 20 percent or more. The proposed amendments are necessary to align this rule with fee rule amendments being proposed in NEW RULE I.

The proposed amendment at (7)(d) is necessary to require revision of an annual asbestos project permit when there are significant changes in scope or magnitude of asbestos projects conducted at a permitted facility during the annual asbestos project period.

17.74.364 TRAINING PROVIDER REQUIREMENTS (1) through (4) remain the same.

(5) All training course materials and examinations must be submitted to the department ~~in advance~~ for the department's approval. Upon department approval, the training course is approved for a two-year period, beginning January 1 of the year following approval. The department may not accept applications for training course approval before October 1 of the year preceding the two-year training course approval period. A person may apply for approval as a training course provider of a training course beginning January 1 of the year following training course approval by submitting ~~all of the following~~ to the department ~~at least 45 calendar days prior to the proposed date of course presentation:~~ by November 15 of the preceding year:

(a) through (d) remain the same.

(e) a list of the proposed instructors who will teach the course along with their resume and or other documentation supporting of the instructors' qualifications,

which must include significant academic and/or field experience in the asbestos control disciplines to be instructed;

(f) remains the same.

(g) a course schedule indicating the time allotted for each topic and the instructor for each subject;

(h) through (6) remain the same.

(7) ~~The department must be notified~~ A training course provider shall notify the department at least 45 days in advance of implementing any proposed changes in the content of approved training courses, examinations, or instructors during the two-year course approval period in (5). The department shall approve, or deny, in writing or request additional information regarding any proposed changes in training course, or examination contents, or change in instructor(s) within 45 working days of receiving the notification.

(8) remains the same.

~~(9) The department may audit an approved training course and examination and may audit a training course following any change in the course.~~

~~(10) Following an audit conducted under this rule, the course provider shall pay the audit fee specified in ARM 17.74.404.~~

(149) Department personnel may audit evaluate any training course offered for accreditation in an asbestos-related occupation without paying tuition or the cost of materials.

(12) remains the same but is renumbered (10).

(11) Training provider course approval expires at the end of the two-year approval period established in (5), unless the training provider applies for renewal by November 15 of the year the approval period expires.

(12) A training provider seeking to renew course approval shall provide the department with the information listed in (5) and pay the appropriate fee as provided in [NEW RULE III].

AUTH: 75-2-503, MCA

IMP: 75-2-511, MCA

REASON: The department is proposing to amend (5) to require submitting training course renewals by a specific date. This amendment allows the department to allocate staff resources more effectively during the winter months in a business cycle when asbestos projects are generally in the planning phase and prior to the traditional construction season. Additionally, the summer months are the busy time for the regulated community, so having the training provider renewal period during the winter will equally benefit persons working, or training to work, in asbestos related occupations.

Through this proposed rule change and NEW RULE III, the department is proposing a renewal fee for all initial and refresher courses to be paid prior to the end of the two-year course approval period established in (5). These rule amendments are necessary to establish a consistent two-year timeframe for training course approvals, which will allow the department and training providers to plan and complete course review work more efficiently.

The proposed rule amendments at (5)(e) are necessary to clarify training

provider requirements so that training providers have notice of the documentation required to support training course instructor's qualifications for course approval by the department.

The department is proposing amendments to (7) to set timeframes for course providers to notify the department of any changes to approved courses. This change is necessary to ensure efficient processing of proposed changes and timely course review and approval. Additionally, the department is proposing amendments to (7) to ensure that the department approves, denies, or requests additional information regarding proposed changes in approved courses in a timely fashion so that training providers can be confident they are providing training that meets department approval and supports asbestos work that is protective of human health and the environment.

The department is proposing to delete (9) and (10) to replace the course audits with evaluations as set forth in proposed amendments to former (11), which is proposed to be renumbered (9). The department has determined that auditing approved training courses and examinations is not efficient or cost effective for the department or training providers. The department will retain the ability to evaluate training courses to ensure courses meet the accreditation requirements in 75-2-511, MCA, and verify that courses are taught, and examinations are administered, in a manner that protects human health and the environment. Additionally, with these rule amendments, the department is proposing repeal of ARM 17.74.404 (Course Audit Fees).

The department is proposing new (11) to set a deadline for training course providers to renew their course approvals. This amendment is necessary to maintain an established, consistent timeframe for the department to approve course renewals.

The department is proposing new (12) to ensure training providers provide the department with relevant information and pay the department course approval and renewal fees that are commensurate with costs associated with the department's resources dedicated to reviewing training course providers qualifications and course content.

4. The rules proposed for repeal, effective June 30, 2020, are as follows:

17.74.401 PERMIT FEES

AUTH: 75-2-503, MCA

IMP: 75-2-503, 75-2-504, MCA

REASON: The department is proposing to repeal ARM 17.74.401 effective June 30, 2020, and to adopt NEW RULE I effective July 1, 2020. The repeal of ARM 17.74.401 and subsequent replacement of ARM 17.74.401 with NEW RULE I is necessary to adopt a new schedule of asbestos permit fees with time to phase in data base support for the proposed new fee structure. See reason statement for NEW RULE I.

The proposed repeal of ARM 17.74.401 will eliminate the requirement that contracts be submitted because it will not be necessary for the department to review

contracts, and estimate contract volumes, for the assessment of fees under proposed NEW RULE I.

The proposed repeal will also eliminate the department's fee for inspections of an asbestos project, which is unnecessary because the department no longer conducts asbestos inspections upon request by a project owner, operator, or permittee. Instead, asbestos project owners and operators may hire accredited asbestos inspectors to conduct asbestos inspections.

17.74.402 ACCREDITATION AND ACCREDITATION RENEWAL FEES

AUTH: 75-2-503, MCA

IMP: 75-2-503, MCA

REASON: The department is proposing to repeal ARM 17.74.402 effective June 30, 2020, and to adopt NEW RULE II effective July 1, 2020. The repeal of ARM 17.74.402 and subsequent replacement of ARM 17.74.402 with NEW RULE II is necessary to adopt a new schedule of asbestos accreditation and accreditation renewal fees with time to phase in data base support for that new fee structure. See reason statement for NEW RULE II.

17.74.403 COURSE APPROVAL FEES

AUTH: 75-2-503, MCA

IMP: 75-2-503, MCA

REASON: The department is proposing to repeal ARM 17.74.403 effective June 30, 2020, and to adopt NEW RULE III effective July 1, 2020. The repeal of ARM 17.74.403 and subsequent replacement of ARM 17.74.403 with NEW RULE III is necessary to adopt a new schedule of asbestos course approval and course renewal fees with time to phase in data base support for that new fee structure. See reason statement for NEW RULE III.

17.74.404 COURSE AUDIT FEES

AUTH: 75-2-503, MCA

IMP: 75-2-503, MCA

REASON: The department is proposing to repeal this rule because audits conducted by the department are expensive, time consuming, and may result in dual assessment of training providers. The department described the reason for increasing course approval fees and adding the ability to assess renewal fees in the reason statements associated with ARM 17.74.364 and NEW RULE III.

The department believes that conducting a thorough review for initial course approval and implementing the additional recordkeeping requirements proposed in the amendments to ARM 17.74.364 will ensure training providers meet the regulatory requirements for training course content, materials, and exams, obviating the need for a course audit.

Additionally, the department's proposed two-year course approval period in ARM 17.74.364(5) will ensure that necessary and current information is provided in training courses.

5. Proposed new rules, effective July 1, 2020, provide as follows:

NEW RULE I PERMIT AND OTHER PROJECT FEES (1) The applicable fee, provided in (2) Table 1 and (3) Table 2, shall be submitted to the department with submittal of an asbestos project permit application, an annual asbestos project permit application, or a demolition notice.

(2) Table 1 - Permit Fees:

Permit Fee	Amount of Permit Fee
Asbestos project permit	Fees are calculated by AUMs using Table 2
Annual asbestos project permit, authorizes the removal or disturbance of up to 25,000 AUMs during the annual project permit period	\$4,000
Annual asbestos project permit revision authorizes cumulative removal or disturbance that exceeds 25,000 AUMs	\$700 plus AUM fees in Table 2 for regulated asbestos-containing material that exceeds 25,000 AUMs
Demolition notice	\$100
Demolition revisions	\$100
Project permit revision	\$100 plus the additional AUM fees (If there is a change in the AUM range, a person would pay the difference between the two ranges in Table 2)
Emergency renovation notification (ARM 17.74.352)	\$300 plus AUM fees in Table 2
Submission of alternate work practice request (ARM 17.74.353)	\$100
Voluntary registration for a non-regulated asbestos abatement project (as in (4))	\$100 plus AUM fees in Table 2 if the project becomes regulated and exceeds 100 AUMs
Ordered demolition	\$300
Transportation and disposal permit	\$100

(3) Table 2 - AUM Fees:

AUM Range	AUM Fee Amount
up to 100	\$100
101 to 300	\$150
301 to 500	\$200

501 to 750	\$300
751 to 1,500	\$600
1,501 to 3,000	\$1,000
3,001 to 5,000	\$2,000
5,001 to 10,000	\$3,000
10,001 to 25,000	\$4,000
25,001 to 50,000	\$6,000
50,001 to 100,000	\$8,000
100,001 or more	\$16,000

(4) Abatement contractors may voluntarily register a non-regulated asbestos project on a department-approved form upon payment of the \$100 voluntary registration fee in Table 1 at (2). If non-regulated materials are rendered regulated because of a voluntarily registered project, the abatement contractor shall notify the department and submit the appropriate fee for any disturbed regulated asbestos-containing material in accordance with Table 2 in (3).

(5) The total fee may not exceed \$16,000 per asbestos project permit or annual asbestos project permit.

(6) For fee assessment, layered homogenous materials may be treated as one layer if a department-accredited asbestos inspector determines and documents the layered homogenous character of the material during an inspection conducted in accordance with ARM 17.74.354.

AUTH: 75-2-503, MCA
IMP: 75-2-503, 75-2-504, MCA

REASON: The department is proposing to adopt NEW RULE I to specify the amount of permit and other project fees that must be paid to the department. Applicants for permits and notices will submit a department-approved form with the fee for consistency and to aid the department in efficient permit processing. The department is proposing Table 1 Permit Fees in NEW RULE I(2) and Table 2 AUM Fees in NEW RULE I(3) to set forth the basis for applicable fees. Proposed NEW RULE I(2) Table 1 and NEW RULE I(3) Table 2 are necessary to support fee amounts assessed for project permits, permit revisions and amendments, and other required notices and services provided by the department.

By adoption of NEW RULE I, the department proposes to increase asbestos project permit fees, annual asbestos project permit fees, and to add new fee categories to reflect the time and costs to the department associated with administering the Asbestos Control Act and the Federal Asbestos NESHAP. Under NEW RULE I, the department is proposing to set a flat fee for an asbestos project permit at \$100 for up to 100 square, 100 linear, or 100 cubic feet or any combination thereof. Demolition notices do not include AUMs because such notices are for non-regulated asbestos-containing material. If the non-regulated asbestos-containing material were to become regulated during a demolition, the permittee would have to apply for an asbestos project permit or revise an existing annual project permit, and pay a fee based on the disturbed or removed AUMs.

The department is proposing NEW RULE I(3) Table 2 to provide a flat fee structure for disturbed amounts. The department based this approach upon stakeholder feedback that large projects should not have to pay an asbestos project cost more than 10-12 percent of the total project cost.

Under NEW RULE I, the department is proposing to increase the annual asbestos project permit fee to \$4,000 and annual asbestos project permit revision fee to \$700 plus the permittee will pay for additional AUMs that exceed the allotted 25,000 AUMs under the proposed fee structure in NEW RULE I(3) Table 2. NEW RULE I is necessary to even the playing field between annual asbestos project permit holders and regular project permit holders. The department is proposing to set a cap for project fees at \$16,000 to avoid assessing excessive amounts for asbestos projects.

The department is proposing to delete "contract volume" in NEW RULE I(2) and replace it with "asbestos unit measurement" to set a specific amount of asbestos-containing material a permit holder will pay for during a project.

The term "annual base amount" is being proposed to establish the amount of asbestos-containing material an annual asbestos project permit holder may remove or disturb during the year the permit is in effect, without a permit revision and associated fees. Adding this definition will allow facility owners and operators to remove or disturb up to 25,000 square, linear, or cubic feet of permitted asbestos-containing material under the \$4,000 annual permit fee. If the total amount of asbestos-containing material exceeds the 25,000 square, linear, or cubic-foot measurement, an annual asbestos permit holder must pay for the additional AUMs in accordance with NEW RULE I(3) Table 2. Additionally, and consistent with the notification requirements in the Federal Asbestos NESHAP, a revised annual asbestos permit is required when the amount of asbestos-containing material removed or disturbed exceeds 20 percent of the total amount originally noticed, or, in this case, proposed in the annual permit application.

The current fee structure was adopted in 2008. The department has determined it is necessary to amend the fee rules to establish sufficient accreditation, training course provider, and regulated asbestos project fees to enable the department to effectively operate and implement its federal and state regulatory obligations. This fee proposal is intended to simplify the existing fee structure, apply the fees equitably across the regulated community, provide predictability, be commensurate with costs as required by 75-2-503(1)(k), MCA, and generate sufficient revenue to meet department mandates.

In addition, the department is addressing stakeholder concerns that fees should not exceed 10-12 percent of the contract value for an asbestos project. The department is proposing the current fee structure in order not to penalize bigger projects, but provide enough revenue for the department to administer its program. Stakeholders suggested that the department fund the program through increased penalties for violations of the Asbestos Control Act. However, administrative and civil penalties are set forth in the Montana Asbestos Control Act, 75-2-501, MCA, and are deposited to the state general fund, where the funds are not available to fund the Asbestos Control Program. This may only be changed through statutory amendment.

Average revenue per year for 2016 through 2018 for asbestos project permits

and annual project permits was \$129,436. Under the proposed fee structure, the projected amount for asbestos projects and annual project permits is \$286,550. Adoption of these rules will raise asbestos project permit and annual project fees in the approximate aggregate amount of \$157,114 (\$286,550 minus \$129,436) annually.

The department has not increased fees in eleven years. Federal grant money has decreased over the years and the department is working to be a self-sufficient program. Increased fees are necessary to support the department goals to increase compliance assistance, educational and training programs, and to fill the current full-time vacancy in the program. For more information, contact the department at (406) 444-5300 for the Small Business Impact Analysis.

Additionally, without these new fee categories, the department does not meet the provisions of 75-2-503, MCA, and is not assessing fees commensurate with the administrative costs associated with review and approval of training courses; approval of applications for and approval of renewal applications for accreditation of persons seeking to pursue asbestos-related occupations; and issuance and administration of asbestos project permits including annual asbestos project permits.

The new fee categories being proposed in Table 1 represent specific administrative services that department staff have provided for the regulated community since the existing fee structure was adopted in 2008, such as demolition notices, revisions to permits, requests for emergency permits, and requests for alternative work practices. Requests for these activities had been processed by the department without fee. For example, the department processed 146 demolition notifications in 2018. The proposed new fee categories will allow the department to collect fees to fulfill its obligations, to provide compliance assistance to the regulated community, and to ensure asbestos-containing materials are handled in a manner that is protective of human health and the environment.

Pursuant to HB 434 and AAG Recommendation #8, the department is proposing (4). AAG Recommendation #8 states, "DEQ should adopt a voluntary low-cost registration process for abatement contractors when they perform non-permitted asbestos projects, allowing them to proceed without delay if a non-regulated project becomes regulated." This recommendation provides an "insurance policy" so work is not delayed if asbestos is discovered or non-friable asbestos becomes friable. Currently, when regulated asbestos-containing material is discovered and an asbestos project permit is necessary, the contractor must wait the NESHAP-mandated ten working days before resuming work.

The department is proposing (5) to set maximum project fees for two reasons. First, the amount represents the maximum permit fees for projects permitted by the department over the last three fiscal years based on records submitted by permit holders. That revenue has allowed the department to assign staff to meet the statutory and administrative functions of the Asbestos Control Act and as a result comply with the "commensurate with costs" provisions of 75-2-503, MCA. Second, a maximum fee avoids the possibility that the department would receive a financial windfall from an unusually large asbestos project. Under the current fee structure, an asbestos contractor would pay ten percent of the total contract price, minus unassociated costs for activities that do not disturb asbestos-containing material. A large renovation project could result in an assessed fee more than the proposed

maximum fees. Compliance assistance services would not cost more than the maximum fee being proposed in (5).

The department is proposing (6) in accordance with stakeholder input that multiple adjacent layers within the same structure should be assessed as one layer and not as multiple layers. The department is proposing this change to encourage reporting of multiple layers and holistic treatment of these materials. This proposed amendment will reduce fees paid to the department for layered homogenous materials, but result in better management of these materials to protect human health and the environment.

Example fee calculation: A person wants to remove 1,000 AUMs. The person would pay \$600 for a project permit in accordance with Table 2. Later, the person determines that an additional 600 AUMs needs to be removed. The person would pay a project revision fee of \$100 plus the difference between the total AUM fees for the project (\$1,000) less the AUM fees already paid (\$600). Thus, the total revision fee would be \$100 (permit revision fee) plus \$400 (additional AUM fees) for a total project revision fee of \$500.

NEW RULE II ACCREDITATION AND ACCREDITATION RENEWAL FEES

(1) A person seeking accreditation or renewal of accreditation in an asbestos-related occupation shall pay a fee to the department. The fees for accreditation or renewal of accreditation are:

- (a) asbestos project worker.....\$200
- (b) asbestos project contractor/supervisor\$200
- (c) asbestos inspector.....\$200
- (d) asbestos management planner\$200
- (e) asbestos project designer.....\$200
- (f) out-of-state reciprocity\$250

(2) For accreditation based on completion of an initial training course that has been approved by another state having accreditation requirements at least as stringent as Montana's, a person shall pay the out-of-state reciprocity accreditation fee in (1)(f).

(3) A person seeking accreditation or renewal of accreditation in more than one asbestos-related occupation, on the same renewal application, shall pay a fee of \$385. This discount is not available for accreditation based on out-of-state reciprocity.

AUTH 75-2-503, MCA
IMP: 75-2-503, MCA

REASON: The department is proposing to increase the accreditation and accreditation renewal fees for asbestos-related occupations. The proposed increase is necessary to cover the increase to the department in the cost of reviewing and issuing accreditations and maintaining the related online services.

Pursuant to HB 434 and AAG Recommendation #7, the department is proposing to keep the discount for multiple accreditations or accreditation renewals when requested in a single application. AAG members expressed that

the discount promotes professional development for those involved in asbestos-related occupations.

The department is proposing that the discount for multiple accreditations not apply when the accreditation is based on out-of-state reciprocity. This encourages persons seeking accreditation to use in-state training. It also reflects increased costs to the department in monitoring compliance with state laws by persons that have been accredited in other states with different and potentially less stringent requirements.

NEW RULE III COURSE APPROVAL AND RENEWAL FEES (1) After July 1, 2020, a person shall pay to the department \$2,000 per course for approval of an initial training course for accreditation in an asbestos-related occupation, pursuant to ARM 17.74.362, or for approval of a refresher course for renewal of accreditation in an asbestos-related occupation, pursuant to ARM 17.74.363.

(2) A person shall pay a renewal fee of \$300 per course to the department when the person has received department approval of an initial training course for accreditation in an asbestos-related occupation on or before July 1, 2020 that the person intends to continue to provide after July 1, 2020. The initial course renewal fee is due two years from the training course approval date.

(3) A person shall pay a refresher course renewal fee of \$200 per course to the department when the person has received department approval of a refresher course for accreditation in an asbestos-related occupation on or before July 1, 2020 that the person intends to continue to provide after July 1, 2020. The refresher course renewal fee is due two years from the refresher course approval date.

AUTH: 75-2-503, MCA

IMP: 75-2-503, MCA

REASON: The proposed new rule is necessary to increase the course approval fees from \$1,100 to \$2,000 for each course approved after July 1, 2020, the effective date of these rules. The proposed new rule is also necessary to allow a training course renewal fee from a person who received approval of a training course prior to July 1, 2020, the effective date of these rules, and plans to continue providing the course after July 1, 2020. Payment of the renewal fees set forth in the new rule at (2) and (3) allows the training provider to continue to offer a department-approved course.

Fees for course approval have not been changed since 2007. The department has determined that it is necessary to increase course approval and renewal fees to enable the department to set fees that are commensurate with costs as required by 75-2-503(1)(k), MCA, and generate sufficient revenue to meet department mandates.

The department is proposing a smaller fee for course renewals, compared to the \$2,000 course approval fee, because it takes the department less work and time to renew courses that the department has already approved. The proposed new rule is necessary to require course renewal every two years. The department believes that a two-year approval period is reasonable to ensure courses are up to date, meet the accreditation requirements in 75-2-511, MCA, and protect human

health and the environment. The proposed renewal fees are commensurate with costs for the department to review and renew a course.

NEW RULE IV REFUNDS (1) The department shall not refund any fee except as provided in this rule. The department shall review all applicable information in evaluating refund requests.

(2) The department may refund fees unnecessarily paid by an applicant receiving an incorrect permit or accreditation due to an error by the department.

(3) The director, or the director's designee, may authorize a refund of fees due to extenuating circumstances causing the permit or accreditation holder to be unable to use the accreditation or permit because of:

(a) declaration of war or police action; or

(b) catastrophic or major natural disaster or man-made event that requires assistance from a state or federal emergency management agency.

(4) The department may request documentation from a permit or accreditation holder seeking a refund under this rule.

AUTH: 75-2-503, MCA

IMP: 75-2-503, MCA

REASON: NEW RULE IV is necessary to establish criteria justifying the refund of fees submitted to the department under the Montana Asbestos Control Act and these rules. The department is proposing to issue a refund only in the event the department makes an error or extenuating circumstances exist that are outside the control of the permittee or accreditation holder and make use of the permit or accreditation impossible. A refund policy is necessary to save the department time and costs incurred in processing refunds. On average, the department processes 25 refunds a year. Currently, the program must pay Montana Interactive (the financial software used by the program to charge fees) twice when processing refunds. The department has based this proposed refund policy on Montana Fish, Wildlife and Parks Department ARM 12.3.402 refund policy for hunting, fishing, and trapping licenses.

6. 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 27, 2020. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

7. 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.

8. Kirsten Bowers, attorney for the department, has been designated to preside over and conduct the hearings.

9. The bill sponsor contact requirements of 2-4-302, MCA, do apply. The sponsor was notified by mail on February 12, 2019.

10. Regarding the requirements of 2-4-111, MCA, the department has determined that the amendment, repeal, and adoption of the above-referenced rules will significantly and directly impact small businesses.

These proposed rules are applicable to asbestos project workers, including contractors and consultants, who are employed by small businesses. These individuals are required to obtain department accreditation in each asbestos-related profession. Asbestos contractors include workers, inspectors, contractor/supervisors, and project designers in the asbestos industry. Asbestos consultants include management planners who develop plans for schools obligated to identify and manage asbestos-containing materials in their buildings in accordance with the Asbestos Hazard Emergency Response Act (AHERA). Approximately 300 Montana individuals, employed by 30 Montana small businesses, are required to obtain asbestos accreditation and thus would be affected by these rules. Among these small businesses are ten asbestos course providers. The rules are also applicable to asbestos contractors who must obtain asbestos permits on behalf of their clients. Approximately 250 annual and project permits are issued annually.

Overall, the department estimates that the total increase in revenue with the proposed fee structure would be \$207,085 per year compared to the average project permit, annual permit, and accreditation revenue generated for the program in 2016 through 2018. For more information, contact the department at (406) 444-5300 and request the Small Business Impact Analysis. The department has not increased fees in eleven years. Federal grant money has decreased over the years and the department is working to be a self-sufficient program. The department would also like to increase compliance assistance, enforcement, educational training programs, and fill the current full-time vacancy in the program.

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 18, 2020.