

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF AMENDMENT  
17.53.113 pertaining to registration and )  
registration maintenance fees: fee ) (HAZARDOUS WASTE)  
assessment )

TO: All Concerned Persons

1. On February 12, 2015, the Department of Environmental Quality published MAR Notice No. 17-368 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 101, 2015 Montana Administrative Register, Issue Number 3. On March 26, 2015, the Department of Environmental Quality published MAR Notice No. 17-368 regarding a notice of extension of comment period on proposed amendment of the above-stated rule at page 298, 2015 Montana Administrative Register, Issue Number 6.

2. The department has amended the rule as proposed, but with the following changes, 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. Hazardous waste generated at, and as a result of, final closure of the entire facility is remediation waste.

(2) and (3) remain the same.

(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) \$15 per ton for all regulated remediation waste generated during the 2014 calendar year and each year thereafter, subject to an annual cap of \$25,000; and

(b) \$20 per ton for all regulated as-generated waste generated during the 2014 calendar year and each year thereafter;

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

~~(d) \$ 30 per ton for all regulated as-generated waste generated during the 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.~~

(6) through (11) remain as proposed, but are renumbered (5) through (10).

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

COMMENT NO. 1: The proposed rule conflicts with the newly enacted statute (Senate Bill 136), Mont. Code Ann. 75-10-405 (2015) because it conflicts with the statute's \$25,000 cap per facility for remediation fees.

RESPONSE: The department agrees. Section (5) has been deleted and the \$25,000 cap from Chapter 360, Laws of 2015 (SB 136) has been added to (4)(a).

COMMENT NO. 2: The definition of "as-generated" and "remediation waste" should be coordinated with the newly enacted statute (Senate Bill 136), Mont. Code Ann. 75-10-405 (2015) to provide consistency. The term "and closure of" should be eliminated from the definition of "as-generated waste," because wastes encountered in closure more properly fit under "remediation."

RESPONSE: The department agrees and has amended (1) to treat facility closure waste as "remediation waste." The department has also corrected a grammatical error in the rule.

COMMENT NO. 3: Justification is needed as to why it is necessary to increase the per ton rates 50 percent in light of the increases totaling 2000% in the last six years.

RESPONSE: In the rule amendments adopted in this notice, the department has not increased the rate for as-generated waste and has reduced the rate for remediation waste from \$20/ton to \$15/ton.

COMMENT NO. 4: One commenter stated the proposed rule is unfair because as-generated waste would be responsible for an unbalanced share of the hazardous waste program costs.

RESPONSE: In Chapter 360, the Legislature has instituted a mandatory cap on the fee for remediation waste. The department has not adopted the proposed increase on the fee for as-generated waste.

COMMENT NO. 5: One commenter stated that, in light of declining hazardous waste generation rates and a decline in the number of large quantity generators, the program must reduce its operating expenses in proportion to hazardous waste generation rates.

RESPONSE: The department notes that the number of large quantity generators and small quantity generators are the highest they have been in a decade. The department also notes that waste generation rates can vary greatly annually. For example, in the 33-year history of the program, the annual waste generation rate has exceeded 20 tons in ten, or nearly one-third of the time, of those years, but in other years the amount of waste generated is only five tons. The department does not believe it must reduce its operating budget. The department reduced program staff to its current level ten years ago. The department has determined that this staffing level is necessary to operate an effective hazardous

waste program.

COMMENT NO. 6: One commenter stated that a different funding mechanism is needed.

RESPONSE: In order to implement the cap on remediation waste fees contained in Chapter 360 and to eliminate the increase in the as-generated fee, the department has secured other funding for a portion of the program.

COMMENT NO. 7: The incentive to reduce waste generation is significantly reduced when the department increases fees.

RESPONSE: The department understands the comment. With Chapter 360 and the amendment to ARM 17.53.113(4)(a) in this notice, any disincentive has been eliminated or significantly reduced.

COMMENT NO. 8: The reason for the proposal -- that per ton fees are decreasing -- is faulty.

RESPONSE: This rationale was limited to remediation waste and referred to the lower per ton rate and the cap that the proposed rule provided for remediation waste.

COMMENT NO. 9: The definitions of "as-generated waste" and "remediation waste" should be coordinated with Senate Bill 136. The commenter also stated that the fee increases for "as-generated" and "remediation waste" conflict with the fee cap in SB 136.

RESPONSE: The department agrees that the definitions should be coordinated with Senate Bill 136 and has done so with the amendments to ARM 17.53.113(1) it has adopted. The fee cap in SB 136 applies only to remediation wastes. The cap has been inserted in ARM 17.53.113(4)(a). In the rule amendments adopted today, fees for remediation waste have been reduced and the proposed increase in fees for as-generated waste have not been adopted.

COMMENT NO. 10: In light of Senate Bill 136 and the large fee increase proposed, the amendment should not be promulgated.

RESPONSE: The department agrees. However, it is necessary to amend the rule to conform to Chapter 360. Those amendments have been made.

4. No other comments or testimony were received.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

/s/ John F. North

JOHN F. NORTH

Rule Reviewer

By: /s/ Tom Livers

TOM LIVERS, DIRECTOR

Certified to the Secretary of State, August 3, 2015.