

STATE OF MONTANA

RECORD OF ADOPTION

Administrative Rules of Montana:

17.8.610, 17.8.612, 17.8.613, 17.8.614, 17.8.615, 17.8.749, and
17.8.1210

Pertaining to major open burning source restrictions, conditional air quality open burning permits, Christmas tree waste open burning permits, commercial film production open burning permits, firefighter training, conditions for issuance or denial of permit, and general requirements for air quality operating permit content

Date of Final Adoption by the Board of Environmental Review:

June 3, 2016

RECORD OF ADOPTION

TABLE OF CONTENTS

- (1) BER agenda granting rulemaking authority
- (2) MAR notice of public hearing on proposed rulemaking, as published on state electronic access system
- (3) MAR notice to Interested Parties, including address list
- (4) MAR notice as posted on DEQ website
- (5) Department HB 311 and 521 analyses
- (6) Written public comments
- (7) BER agenda from rule adoption meeting
- (8) Transcript from BER rule adoption meeting
- (9) Final MAR notice of amended rule, as published on state electronic access system
- (10) SIP public notice statement
- (11) SIP notice to Interested Parties, including address list
- (12) SIP notice as posted on DEQ website
- (13) Public Comments and/or Request for Hearing

TELECONFERENCE AGENDA
FRIDAY FEBRUARY 5, 2016
METCALF BUILDING, ROOM 111
1520 EAST 6th AVENUE, HELENA, MONTANA

NOTE: It is expected that most available Board members will be participating telephonically. The Board attorney and secretary, along with any Board members who so choose, will be present at the location stated above. Interested persons, members of the public, and the media are welcome to attend at the location stated above. Members of the public and press also may join Board members with prior arrangement. Contact information for Board members is available on the Board's Website (<http://www.deq.mt.gov/ber/index.asp>) or from the Board Secretary (406-444-2544). The Board will make reasonable accommodations for persons with disabilities who wish to participate in this meeting. Please contact the Board Secretary by telephone or by e-mail at hhoule@mt.gov no later than 24 hours prior to the meeting to advise her of the nature of the accommodation needed.

NOTE: The Board will make reasonable accommodations for persons with disabilities who wish to participate in this meeting. Please contact the Board Secretary by telephone (406-444-2544) or by e-mail (hhoule@mt.gov) no later than 24 hours prior to the meeting to advise her of the nature of the accommodation needed.

9:00 A.M.

I. ADMINISTRATIVE ITEMS

A. REVIEW AND APPROVE MINUTES

1. The Board will vote on adopting the December 4, 2015, meeting minutes
2. The Board will vote on adopting the December 29, 2015 meeting minutes.
3. The Board will vote on adopting the January 12, 2016 meeting minutes.

II. BRIEFING ITEMS

A. CONTESTED CASE UPDATE

1. Enforcement cases assigned to the Hearing Examiner
 - a. **In the matter of violations of the Public Water Supply Laws by Rene Requa at Highlander Bar and Grill, PWISD MT0004764, Lewis and Clark County (FID 2299, Docket No. PWS-14-08), BER 2014-09 PWS. Scheduling Order was issued on December 23, 2015.**
 - b. **In the matter of violations of the Water Quality Act by Reflections at Copper Ridge, LLC at Reflections at Copper Ridge Subdivision, Billings, Yellowstone County (MTR105376), BER 2015-01 WQ. On November 16, 2015 an Order was issued Granting Request for Stay and Vacating the Scheduling Order. The parties have until March 4, 2016 to reach a settlement of this appeal or to submit a joint proposed revised hearing schedule in the matter. .**
 - c. **In the matter of violations of the Water Quality Act by Copper Ridge Development Corporation at Copper Ridge Subdivision, Billings, Yellowstone County (MTR105377), BER 2015-02 WQ On November 16, 2015 an Order was issued Granting Request for Stay and Vacating the Scheduling Order. The parties have until March 4, 2016 to reach a**

settlement of this appeal or to submit a joint proposed revised hearing schedule in the matter.

- d. **In the matter of violations of the Water Quality Act by Buscher Construction and Development, Inc., at Poly Vista Estates, Trailhead, and Falcon Ridge II Subdivisions, Billings, Yellowstone County, BER 2015-03 WQ.** A Scheduling Order was issued on November 16, 2015.
2. Non-enforcement cases assigned to the Hearings Examiner
 - a. **In the matter of the notice of appeal and request for hearing by Yellowstone Energy Limited Partnership (YELP) regarding issuance of MPDES Permit NO. MT0030180 for YELP's facility in Billings, MT, BER 2014-01 WQ.** Continuing the Stay until February 1, 2016.
 - b. **In the matter of Phillips 66 Company's appeal of Outfall 006 Arsenic Limits in Montana Pollution Discharge Elimination System Permit No. MT0000256, Billings, Yellowstone County, MT, BER 2014-05 WQ.** On March 11, 2015, the parties filed a Stipulation to Stay Appeal until December 31, 2017. On March 25, 2015, the hearing examiner issued Order approving the stipulation and ordered the parties to comply with the terms or the stipulation.
 - c. **In the matter of Columbia Falls Aluminum Company's (CFAC) appeal of DEQ's modification of Montana Pollutant Discharge Elimination System Permit No. MT0030066, Columbia Falls, Flathead County, MT, BER 2014-06 WQ.** On January 20, 2016, an Order on Motion to Extend Briefing Schedule was issued.
 - d. **In the matter of the revocation of Montana Air Quality Permit No. MAQP# 2554-05, issued to Eureka Pellet Mills (Inc.), Eureka, Lincoln County, MT, BER 2015-04a AQ; the revocation of Montana Air Quality Permit No. MAQP 3039-02, issued to Eureka Pellet Mills (Inc.), Superior, Mineral County, MT, BER 2015-04b AQ; and the revocation of Montana Air Quality Permit No. MAQP# 4057-00, issued to Montana Renewable Resources (LP), Eureka, Lincoln County, MT, BER 2015-04c AQ.** On October 13, 2015, a Stipulation to Dismiss the Case was filed and signed by both parties in Case No. BER 2015-04c AQ. On October 16, 2015 a Notice of Filing of Exhibit 1 to Department's Motion to Dismiss was filed in Case No. BER 2015-04a and b.
 - e. **In the matter of Heart K Land & Cattle Co.'s appeal of its final 401 Certification with conditions, BER 2015-05 WQ, application No. MT4010948; MWO-2013-00590-MTB-Addendum, issued by DEQ for the Yellowstone River, Park County, MT.** The Board received the appeal on July 17, 2015. On December 4, 2015, an Order Granting Motion for Pro Hac Vice Admission was issued.
 - f. **In the matter of Westmoreland Resources, Inc.'s, BER 2015-06 WQ, appeal of final MPDES permit No. MT0021229 issued by DEQ for the Absaloka Mine in Hardin, Big Horn County, MT.** On January 11, 2016, a First Prehearing Order was issued.

- g. **In the matter of the notice of appeal of final MPDES Permit No. MT0000264 Issued by DEQ for the Laurel Refinery in Laurel, Yellowstone County, Montana, BER 2015-07 WQ.** On January 7, 2016 a Stipulated Scheduling Order was submitted by both parties.
 - h. **In the matter of termination by DEQ of the application by Payne Logging, Inc. Requesting to move boundaries of the Payne Logging facility in Libby, Lincoln County, Montana, BER 2015-08 JV.** The First Prehearing Order was issued on January 11, 2016.
3. Contested Cases not assigned to a Hearing Examiner
- a. **In the matter of the notice of appeal and request for hearing by Western Energy Company (WECO) regarding its MPDES Permit No. MT0023965 issued for WECO's Rosebud Mine in Colstrip, BER 2012-12 WQ.** On April 9, 2014, the hearings examiner issued an Order Granting the Joint Unopposed Motion for Partial Remand of Permit to Department of Environmental Quality and for Suspension of Proceedings. On May 14, 2014, DEQ filed a Status Report regarding the matter stating that a modified permit would be made available for public comment on or before June 9, 2014.

B. OTHER BRIEFING ITEMS

- 1. On December 8, 2015, the EPA approved the Board's Water Quality Standards for EC and SAR that were adopted in Montana in 2003 and 2006. The Department will brief the Board on how this approval letter affects water programs within the Department.
- 2. The Department will brief the Board on site specific water quality standards for electrical conductivity (EC) and sodium adsorption ratio (SAR) for Otter Creek, tributary to the Tongue River.
- 3. The Department will brief the Board on the status of Senate Bill 325 rulemaking. Senate Bill 325, now Montana Code Annotated 75-5-222, sets forth requirements for water quality standards to be no more stringent than the nonanthropogenic condition of a water body, and requires rule development for variances from standards in certain situations.

III. ACTION ITEMS

A. NEW CONTESTED CASES

- 1. **In the matter of Appeal of the Denial for the Silverado Heights Subdivision Lots 1 and 10 Rewrite, EQ # 16-1383, Ravalli County, Montana, case number BER 2016-01 PWS. The Board received the appeal on January 5, 2016.** On January 11, 2016, the Interim Hearing Examiner Ben Reed issued a First Prehearing Order requesting the parties file a Proposed Scheduling Order by January 29, 2016. The Board may assign a permanent Hearing Examiner or decide to hear the matter.
- 2. **In the matter of Appeal of the Denial for the Wiediger Family Transfer EQ # 16-1116, Ravalli County, Montana, case number BER 2016-02 PWS.** The Board received the appeal on January 5, 2016. On January 11, 2016, the Interim Hearing Examiner Ben Reed issued a

First Prehearing Order requesting the parties file a Proposed Scheduling Order by January 29, 2016. The Board may assign a permanent hearing examiner or decide to hear the matter.

3. **In the matter of Appeal Amendment AM4, Western Energy Company Rosebud Strip Mine Area B, Permit No. C1984003B, case number BER 2016-03 SM. The Board received the appeal on January 4, 2016.** On January 11, 2016, the Interim Hearing Examiner Ben Reed issued a First Prehearing Order requesting the parties file a Proposed Scheduling Order by January 29, 2016. The Board may assign a permanent Hearing Examiner or decide to hear the matter.

B. INITIATION OF RULEMAKING

DEQ will propose that the Board initiate rulemaking to:

1. Amend ARM 17.8.610, 17.8.612, 17.8.613, 17.8.614, 17.8.615, 17.8.749, and 17.8.1210 pertaining to open burning permits, issuance or denial of a permit, and general requirements for an air quality operating permit, in response to changes to the Clean Air Act of Montana (the Act). The proposed amendments address changes to the Act affecting the process to appeal a department decision on a permit application.

C. REPEAL, AMENDMENT, OR ADOPTION OF FINAL RULES

1. The Department requests authorization to request comment on Montana's water quality standards as part of the 2016 triennial water quality standards review. A review of water quality standards at least every three years is required per Montana Code Annotated 75-5-301(3).
2. In the matter of the repeal of ARM 17.8.334, 17.8.335, and 17.8.772 pertaining to Emission Standards for Existing Aluminum Plants and Mercury Allowance Allocations under Cap and Trade Budget, respectively. The Department is requesting that the Board repeal the rules as noticed in MAR 17-375.
3. Generally revise the rules implementing the Opencut Mining Act ("the Act"), ARM Title 17, Chapter 25, Subchapter 2, in response to changes to the Act enacted in the 2007, 2009, and 2013 legislative sessions; to generally clarify and simplify the rules by reorganizing the provisions to avoid treatment of single concepts in multiple rules, eliminate redundant provisions, and improve syntax; and to make substantive changes to remove unnecessary requirements and add requirements that improve reclamation and regulatory process.
4. The Department requests that the Board repeal rules in ARM Title 17, chapters 4, 30, and 38, pertaining to water pollution rules, radiological criteria, state and EPA coordination, pretreatment, definitions, enforcement actions for administrative penalties, purpose, definitions, enforcement procedures and suspended penalties. The Department recommends the Board repeal the rules as proposed in the Notice of Hearing.

D. OTHER ACTION

1. Approval of amendments to the Butte-Silver Bow air quality control rules to address changes made to federal regulations on new residential wood heaters under the strengthened new source performance standards published by the Environmental Protection Agency on February 3, 2015

E. FINAL ACTION ON CONTESTED CASES

IV. GENERAL PUBLIC COMMENT

Under this item, members of the public may comment on any public matter within the jurisdiction of the Board that is not otherwise on the agenda of the meeting. Individual contested case proceedings are not public matters on which the public may comment.

V. ADJOURNMENT

DRAFT

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.8.610, 17.8.612, 17.8.613, 17.8.614,)
17.8.615, 17.8.749, and 17.8.1210)
pertaining to major open burning source)
restrictions, conditional air quality open)
burning permits, Christmas tree waste)
open burning permits, commercial film)
production open burning permits,)
firefighter training, conditions for)
issuance or denial of permit, and general)
requirements for air quality operating)
permit content)

NOTICE OF PROPOSED
AMENDMENT

(AIR QUALITY)

NO PUBLIC HEARING
CONTEMPLATED

TO: All Concerned Persons

1. On June 3, 2016, the Board of Environmental Review proposes to amend the above-stated rules.

2. The board 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 Denise Hartman, no later than 5:00 p.m., April 18, 2016, to advise us of the nature of the accommodation that you need. Denise may be contacted 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 dhartman2@mt.gov.

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

17.8.610 MAJOR OPEN BURNING SOURCE RESTRICTIONS (1) through (2) remain the same.

(3) When the department approves or denies the application for a permit under this rule, a person who is ~~jointly or severally~~ directly and adversely affected by the department's decision may request a hearing before the board in the manner provided in 75-2-211, MCA. ~~The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.~~

(4) through (5) remain the same.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-203, 75-2-211, MCA

17.8.612 CONDITIONAL AIR QUALITY OPEN BURNING PERMITS

(1) through (9) remain the same.

(10) When the department approves or denies the application for a permit under this rule, a person who is ~~jointly or severally~~ directly and adversely affected by the department's decision may request a hearing before the board in the manner provided in 75-2-211, MCA. ~~The request for hearing must be filed within 15 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final until 15 days have elapsed from the date of the decision. The filing of a request for a hearing does not stay the effective date of the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:~~

~~(a) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or~~

~~(b) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.~~

~~(11) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4), MCA, for undertakings on injunctions.~~

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-203, 75-2-211, MCA

17.8.613 CHRISTMAS TREE WASTE OPEN BURNING PERMITS

(1) through (7)(b)(iii) remain the same.

(8) When the department approves or denies the application for a permit under this rule, a person who is ~~jointly or severally~~ directly and adversely affected by the department's decision may request a hearing before the board in the manner provided in 75-2-211, MCA. ~~The request for hearing must be filed within 15 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final until 15 days have elapsed from the date of the decision. The filing of a request for a hearing does not stay the effective date of the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:~~

~~(a) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or~~

~~(b) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.~~

~~(9) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4), MCA, for undertakings on injunctions.~~

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, 75-2-211, MCA

17.8.614 COMMERCIAL FILM PRODUCTION OPEN BURNING PERMITS

~~(1) through (7) remain the same.~~

~~(8) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally directly and adversely affected by the department's decision may request a hearing before the board in the manner provided in 75-2-211, MCA. The request for hearing must be filed within 15 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final until 15 days have elapsed from the date of the decision. The filing of a request for a hearing does not stay the effective date of the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:~~

~~(a) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or~~

~~(b) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.~~

~~(9) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4), MCA, for undertakings on injunctions.~~

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, 75-2-211, MCA

17.8.615 FIREFIGHTER TRAINING (1) through (5) remain the same.

~~(6) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally directly and adversely affected by the department's decision may request a hearing before the board in the manner provided in 75-2-211, MCA. The request for hearing must be filed within 15 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision.~~

~~The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final until 15 days have elapsed from the date of the decision. The filing of a request for a hearing does not stay the effective date of the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:~~

~~(a) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or~~

~~(b) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.~~

~~(7) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4), MCA, for undertakings on injunctions.~~

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, 75-2-211, MCA

17.8.749 CONDITIONS FOR ISSUANCE OR DENIAL OF PERMIT

(1) through (6) remain the same.

(7) If the department denies an application for a Montana air quality permit it shall notify the applicant in writing of the reasons for the permit denial and advise the applicant of the right to appeal the department's decision to the board as provided in 75-2-211 or 75-2-213, MCA, as applicable.

(8) remains the same.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-211, 75-2-213, MCA

17.8.1210 GENERAL REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT (1) through (1)(e) remain the same.

(2) The following standard terms and conditions are applicable to each air quality operating permit issued pursuant to this subchapter:

(a) through (i) remain the same.

(j) The department's final decision regarding issuance, renewal, revision, denial, revocation, reissuance, or termination of a permit is not effective until 30 days have elapsed from the date of the decision. The decision may be appealed to the board by filing a request for hearing within 30 days after the date of the decision. A copy of the request shall be served on the department. The filing of a timely request for a hearing postpones does not stay the effective date of the department's decision until the board issues a final decision. However, the board may order a stay as provided in 75-2-218, MCA. If effective, the permit shield, or application shield, as appropriate, shall remain in effect until such time as the board has rendered a final decision.

(k) through (5)(c) remain the same.

AUTH: 75-2-217, 75-2-218, MCA
IMP: 75-2-217, 75-2-218, MCA

REASON: Sections 75-2-211, 75-2-213, and 75-2-218, MCA, contain the procedures for appeals of permits for construction, installation, alteration, use, and operation of facilities under the Clean Air Act of Montana. As currently written, those statutes provide:

- (1) that a person who is directly and adversely affected by the issuance or denial of a permit may request a hearing;
- (2) that a request for hearing does not stay the department's decision on an application unless the board orders a stay;
- (3) that depending on the applicable statute, an appellant must file an affidavit supporting the request for hearing either with the request or within 30 days after the issuance or denial of the permit; and
- (4) that a separate process is available for challenges to energy development projects in 75-2-213, MCA.

The proposed amendments would modify the rules to incorporate these provisions and remove provisions implementing previous statutory procedures.

In addition, the proposed amendments would strike paragraphs of rule text that were lifted verbatim from 75-2-211, MCA. The Montana Administrative Procedure Act at 2-4-305(2), MCA, states that rules should not unnecessarily repeat statutory language. Doing so creates situations where rules must be amended whenever even the smallest changes are made to statute. The proposed amendments instead refer to the appeal process provided in 75-2-211, MCA.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Denise Hartman at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail dhartman2@mt.gov, no later than May 6, 2016. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Denise Hartman at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail dhartman2@mt.gov, no later than May 6, 2016.

6. If the board receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been

determined to be 25, based on the more than 250 persons who potentially could wish to appeal air quality permits and therefore could be affected by this rulemaking.

7. The board 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, email, 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; 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 Denise Hartman, Administrative Rules Coordinator, 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 dhartman2@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled by sending a letter by U.S. Mail to the bill sponsor on January 8, 2016.

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the proposed amendment of the above-stated rules will not significantly and directly impact small businesses.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North

JOHN F. NORTH
Rule Reviewer

BY: /s/ Joan Miles

JOAN MILES, CHAIRMAN

Certified to the Secretary of State, March 28, 2016.

From: [Debi Sutliff](#)
To: [Harbage, Rebecca](#)
Subject: DEQ Request for Public Comment on the Amendment of ARM
Date: Friday, April 08, 2016 11:57:05 AM

DATE: April 6, 2016

TO: Air Quality Interested Parties

FROM: MT-DEQ Air Quality Bureau

RE: Request for public comment on the amendment of ARM 17.8.610, 17.8.612, 17.8.613, 17.8.614, 17.8.615, 17.8.749, and 17.8.1210

With this notice, the Department of Environmental Quality (Department) is inviting public comment on the amendment of Administrative Rules of Montana (ARM) 17.8.610, 17.8.612, 17.8.613, 17.8.614, 17.8.615, 17.8.749, and 17.8.1210 pertaining to major open burning source restrictions, conditional air quality open burning permits, Christmas tree waste open burning permits, commercial film production open burning permits, firefighter training, conditions for issuance or denial of permit, and general requirements for air quality operating permit content. The Department is requesting the amendment of these rules to make them consistent with changes that have been made to the Clean Air Act of Montana. The Board of Environmental Review initiated rulemaking on February 5, 2016, as noticed in Montana Administrative Register Notice No. 17-382.

Interested parties may view the notice at the Department's website <http://deq.mt.gov/Public/publiccomment> or may call the Department at 406-444-1472 to have copies made available for their inspection.

To be guaranteed consideration, written comments on the proposed rules must be postmarked by 5:00 p.m. on Friday, May 6, 2016.



Public Comment Periods

By Subject or Program:

- [Air Quality Permits](#)
- [Draft TMDL Reports](#)
- [Water Quality Discharge Permits](#)
- [Nutrient Management Plans](#)
- [Coal and Uranium Program](#)

The documents listed in the links above may not be included in the list below.

The [DEQ Public Comment Site](#) shows programs open for comment with instructions on how to enter comments and attachments.

Site Subject	Comment Period Ends	Document Location	Send Comments To
Request for public comment on the amendment of ARM 17.8.610, 17.8.612, 17.8.613, 17.8.614, 17.8.615, 17.8.749, and 17.8.1210 pertaining to major open burning source restrictions, conditional air quality open burning permits, Christmas tree waste open burning permits, commercial film production open burning permits, firefighter training, conditions for issuance or denial of permit, and general requirements for air quality operating permit content. MAR Notice No. 17-382	To be guaranteed consideration, written comments must be postmarked on or before: 5 p.m. on Friday, May 6, 2016	Montana Department of Environmental Quality 1520 E 6th Avenue P.O. Box 200901 Helena, MT 59620	mail to: Montana Department of Environmental Quality Air Quality Bureau PO Box 200901 Helena, MT 59620-0901 or electronically to: dhartman2@mt.gov
In accordance with § 75-10-735(1) and (2), Montana Code Annotated (MCA), the Montana Department of Environmental Quality (DEQ) hereby gives notice of a 30-	Begins on March 30, 2016 Ends on April 28,	Montana Dept. of Environmental Quality Waste Management and Remediation Division 1225 Cedar Street Helena, Montana	Mail to: Jessica Smith Montana Department of

TO: Board of Environmental Review

FROM: Norman J. Mullen, DEQ Staff Attorney



DATE: May 27, 2016

SUBJECT: House Bill 521 (stringency) and House Bill 311 (takings) review of rulemaking concerning the amendment of ARM 17.8.610, 17.8.612, 17.8.613, 17.8.614, 17.8.615, 17.8.749, and 17.8.1210 pertaining to major open burning source restrictions, conditional air quality open burning permits, Christmas tree waste open burning permits, commercial film production open burning permits, firefighter training, conditions for issuance or denial of permit, and general requirements for air quality operating permit content in ARM Notice No. 17-382 (publ. 4/8/16)

HB 521 REVIEW

(Comparing Stringency of State and Local Rules
to Any Comparable Federal Regulations or Guidelines)

Sections 75-2-111 and 207, MCA, codify the air quality provisions of House Bill 521, from the 1995 legislative session, by requiring that the Board of Environmental Review, prior to adopting a rule to implement the Clean Air Act of Montana that is more stringent than a comparable federal regulation or guideline that addresses the same circumstances, make certain written findings after a public hearing and receiving public comment.

In this proceeding, the Board is proposing to amend seven rules in ARM Title 17, chapter 8, by correcting language concerning air quality appeals to make them consistent with appeals language in Sections 75-2-211, 75-2-213, and 75-2-218, MCA.

None of the proposed amendments would make the state rules more stringent than comparable federal regulations or guidelines. Rather, the proposed amendments would amend seven of the Board's air quality rules to make them consistent with the relevant Montana statutes concerning air quality permit appeals. Therefore, no further House Bill 521 analysis is required.

(over, please)

House Bill 521 and House Bill 311 Memo for Amendments
to Air Quality Permit Appeals Rules
ARM Notice No. 17-382
May 27, 2016
Page 2

HB 311 REVIEW
(Assessing Impact on Private Property)

Sections 2-10-101 through 105, MCA, codify House Bill 311, the Private Property Assessment Act, from the 1995 legislative session, by requiring that, prior to taking an action that has taking or damaging implications for private real property, a state agency must prepare a taking or damaging impact assessment. Under Section 2-10-103(1), MCA, "action with taking or damaging implications" means:

a proposed state agency administrative rule, policy, or permit condition or denial pertaining to land or water management or to some other environmental matter that if adopted and enforced would constitute a deprivation of private property in violation of the United States or Montana constitution.

Section 2-10-104, MCA, requires the Montana Attorney General to develop guidelines, including a checklist, to assist agencies in determining whether an agency action has taking or damaging implications.

I reviewed the guidelines and reviewed whether the adoptions of the rule amendments being proposed would constitute a deprivation of real property in violation of the federal or state constitution. I determined that they would not, and have completed an Attorney General's Private Property Assessment Act Checklist, which is attached to this memo. No further House Bill 311 assessment is required.

PRIVATE PROPERTY ASSESSMENT ACT CHECKLIST
(using form prepared by Montana Department of Justice, Jan. 2011)

In the matter of the amendment of ARM 17.8.610, 17.8.612, 17.8.613, 17.8.614, 17.8.615, 17.8.749, and 17.8.1210 pertaining to major open burning source restrictions, conditional air quality open burning permits, Christmas tree waste open burning permits, commercial film production open burning permits, firefighter training, conditions for issuance or denial of permit, and general requirements for air quality operating permit content in ARM Notice No. 17-382 (publ. 4/8/16)

DOES THE PROPOSED AGENCY ACTION HAVE TAKINGS IMPLICATIONS UNDER THE PRIVATE PROPERTY ASSESSMENT ACT?

YES NO

- | | | |
|--------------------------|-------------------------------------|---|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 1. Does the action pertain to land or water management or environmental regulation affecting private real property or water rights? |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 2. Does the action result in either a permanent or indefinite physical occupation of private property? |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 3. Does the action deprive the owner of all economically beneficial use of the property? |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 4. Does the action require a property owner to dedicate a portion of property or to grant an easement? [If the answer is NO, skip questions 4a and 4b and continue with question 5.] |
| <input type="checkbox"/> | <input type="checkbox"/> | 4a. Is there a reasonable, specific connection between the government requirement and legitimate state interests? |
| <input type="checkbox"/> | <input type="checkbox"/> | 4b. Is the government requirement roughly proportional to the impact of the proposed use of the property? |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 5. Does the action deny a fundamental attribute of ownership? |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 6. Does the action have a severe impact on the value of the property? |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 7. Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public generally? [If the answer is NO, do not answer questions 7a-7c.] |
| <input type="checkbox"/> | <input type="checkbox"/> | 7a. Is the impact of government action direct, peculiar, and significant? |
| <input type="checkbox"/> | <input type="checkbox"/> | 7b. Has government action resulted in the property becoming practically inaccessible, waterlogged, or flooded? |
| <input type="checkbox"/> | <input type="checkbox"/> | 7c. Has government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question? |

Taking or damaging implications exist if **YES** is checked in response to question 1 and also to any one or more of the following questions: 2, 3, 5, 6, 7a, 7b, 7c; or if **NO** is checked in response to questions 4a or 4b.

If taking or damaging implications exist, the agency must comply with Mont. Code Ann. § 2-10-105, to include the preparation of a taking or damaging impact assessment. Normally, the preparation of an impact assessment will require consultation with agency legal staff.

DRAFT

No Public Comments Were Received.

DRAFT

FRIDAY JUNE 3, 2016
METCALF BUILDING, ROOM 111
1520 EAST 6th AVENUE, HELENA, MONTANA

NOTE: It is expected that most available Board members will be participating telephonically. The along with any Board members who so choose, will be present at the location stated above. Interested persons, members of the public, and the media are welcome to attend at the location stated above. Members of the public and press also may join Board members with prior arrangement. Contact information for Board members is available on the Board's Website (<http://deq.mt.gov/DEQAdmin/ber>) or from the Board Secretary (406-444-2544). The Board will make reasonable accommodations for persons with disabilities who wish to participate in this meeting. Please contact the Board Secretary by telephone or by e-mail at hhoule@mt.gov no later than 24 hours prior to the meeting to advise her of the nature of the accommodation needed.

NOTE: The Board will make reasonable accommodations for persons with disabilities who wish to participate in this meeting. Please contact the Board Secretary by telephone (406-444-2544) or by e-mail (hhoule@mt.gov) no later than 24 hours prior to the meeting to advise her of the nature of the accommodation needed.

9:00 AM

I. ADMINISTRATIVE ITEMS

A. REVIEW AND APPROVE MINUTES

1. The Board will vote on adopting the April 21, 2016 meeting minutes.

II. BRIEFING ITEMS

A. CONTESTED CASE UPDATE

1. Enforcement cases assigned to the Hearing Examiner
 - a. **In the matter of violations of the Public Water Supply Laws by Rene Requa at Highlander Bar and Grill, PWISD MT0004764, Lewis and Clark County (FID 2299, Docket No. PWS-14-08), BER 2014-09 PWS.** An Order Vacating Scheduling Orders was issued on May 17, 2016.
 - b. **In the matter of violations of the Water Quality Act by Reflections at Copper Ridge, LLC at Reflections at Copper Ridge Subdivision, Billings, Yellowstone County (MTR105376), BER 2015-01 WQ.** An Order Granting Request to Stay Scheduling Order was issued on April 12, 2016.
 - c. **In the matter of violations of the Water Quality Act by Copper Ridge Development Corporation at Copper Ridge Subdivision, Billings, Yellowstone County (MTR105377), BER 2015-02 WQ.** An Order Granting Request to Stay Scheduling Order was issued on March 22, 2016.
 - d. **In the matter of violations of the Water Quality Act by Buscher Construction and Development, Inc., at Poly Vista Estates, Trailhead, and Falcon Ridge II Subdivisions, Billings, Yellowstone County, BER 2015-03 WQ.** A First Order Modifying the Scheduling Order was issued on April 26, 2016.

2. Non-enforcement cases assigned to the Hearings Examiner
 - a. **In the matter of Phillips 66 Company's appeal of Outfall 006 Arsenic Limits in Montana Pollution Discharge Elimination System Permit No. MT0000256, Billings, Yellowstone County, MT, BER 2014-05 WQ.** On March 25, 2015, the hearing examiner issued an Order Approving the Stipulation to Stay Appeal and ordered the parties to comply with the terms or the stipulation.
 - b. **In the matter of Columbia Falls Aluminum Company's (CFAC) appeal of DEQ's modification of Montana Pollutant Discharge Elimination System Permit No. MT0030066, Columbia Falls, Flathead County, MT, BER 2014-06 WQ.** Two Orders on Motion to Compel DEQ to Produce Documents DEQ Argues are Privileged and a Motion and Brief in Support of Summary Judgement were filed on April 21, 2016.
 - c. **In the matter of Heart K Land & Cattle Co.'s appeal of its final 401 Certification with conditions, BER 2015-05 WQ, application No. MT4010948; MWO-2013-00590-MTB-Addendum, issued by DEQ for the Yellowstone River, Park County, MT.** The Board received the appeal on July 17, 2015. A Proposed Second Amended Scheduling Order was issued on May 10, 2016.
 - d. **In the matter of Westmoreland Resources, Inc.'s, BER 2015-06 WQ, appeal of final MPDES permit No. MT0021229 issued by DEQ for the Absaloka Mine in Hardin, Big Horn County, MT.** A Second Prehearing Order was issued on May 17, 2016.
 - e. **In the matter of the notice of appeal of final MPDES Permit No. MT0000264 Issued by DEQ for the Laurel Refinery in Laurel, Yellowstone County, Montana, BER 2015-07 WQ.** CHS, Inc. filed an Unopposed Motion to Extend Schedule on May 16, 2016.
 - f. **In the matter of termination by DEQ of the application by Payne Logging, Inc. Requesting to move boundaries of the Payne Logging facility in Libby, Lincoln County, Montana, BER 2015-08 JV.** DEQ filed a Combined Reply Brief in Support of Motion to Dismiss, Response Brief in Opposition to Payne Logging's Motion for Judgement on the Pleadings and Response in Opposition to Payne Logging's Request for Oral Argument on May 27, 2016.
 - g. **In the matter of Appeal Amendment AM4, Western Energy Company Rosebud Strip Mine Area B, Permit No. C1984003B, case number BER 2016-03 SM.** McGarvey, Heberling, Sullivan & Lacey filed a Notice of Appearance for Roger Sullivan on May 10, 2016.
3. Contested Cases not assigned to a Hearing Examiner
 - a. **In the matter of the notice of appeal and request for hearing by Western Energy Company (WECO) regarding its MPDES Permit No. MT0023965 issued for WECO's Rosebud Mine in Colstrip, BER 2012-12 WQ.** On April 9, 2014, the hearings examiner issued an Order Granting the Joint Unopposed Motion for Partial Remand of Permit to Department of Environmental Quality and for Suspension of Proceedings. This matter has been stayed while an informal judicial review action proceeded. On March 14, 2016,

Judge Seeley issued an Order on Summary Judgment invalidating the permit modification and remanding the matter for consideration consistent with the opinion.

B. OTHER BRIEFING ITEMS

III. ACTION ITEMS

A. NEW CONTESTED CASES

1. In the matter of LT Trucking, LLC, appeal Riverside Contracting Inc., Reclamation Bond Release Permit #2083, CVID#17280, BER2016-04 OC. The Board may assign a permanent Hearing Examiner or decide to hear the matter.
2. In the matter of appeal the denial of non-degradation review, EQ#16-1698, Sanders County, MT, BER2016-05 PWS. The Board may assign a permanent Hearing Examiner or decide to hear the matter.

B. INITIATION OF RULEMAKING

DEQ will propose that the Board initiate rulemaking to:

1. -Amend ARM 17.8.102 to incorporate by reference updated federal and state statutes and regulations, and ARM 17.8.103 to update references stating where the documents may be obtained electronically.

C. REPEAL, AMENDMENT, OR ADOPTION OF FINAL RULES

1. Amend ARM 17.8.610, 17.8.612, 17.8.613, 17.8.614, 17.8.615, 17.8.749, and 17.8.1210 pertaining to open burning permits, issuance or denial of a permit, and general requirements for an air quality operating permit, in response to changes to the Clean Air Act of Montana (the Act). The Department requests that the Board amend the rules as noticed in MAR Notice No. 17-382.

D. OTHER ACTION

E. FINAL ACTION ON CONTESTED CASES

F. Hearing

1. Triennial Review of Water Quality Standards: The board will hold a public hearing to solicit comments from all interested persons on any aspect of Montana's water quality standards that a person believes should be considered for potential revision. A review of water quality standards at least every three years is required per Montana Code Annotated 75-5- 301(3). Montana's water quality standards include the Administrative Rules of Montana Title 17, Chapter 30, subchapters 5 (mixing zones), 6 (water quality standards), 7 (nondegradation), 10 (groundwater protection), 1350 (compliance schedules), and Department of Environmental Quality (DEQ) Circulars DEQ-7 and DEQ-12. Comments should identify the water quality standard at issue, any suggested

revision to the standard, and the basis for the suggested revision, including technical information.

IV. GENERAL PUBLIC COMMENT

Under this item, members of the public may comment on any public matter within the jurisdiction of the Board that is not otherwise on the agenda of the meeting. Individual contested case proceedings are not public matters on which the public may comment.

V. ADJOURNMENT

DRAFT

1 (No response)

2 CHAIRMAN SHROPSHIRE: I will accept a
3 motion to initiate rulemaking in accordance with
4 the notice of proposed amendment that is attached
5 to this executive summary.

6 MS. CANTY: So moved.

7 CHAIRMAN SHROPSHIRE: It's been moved by
8 Marietta.

9 MS. REINHART-LEVINE: Second.

10 CHAIRMAN SHROPSHIRE: Seconded by
11 Michele. Any further discussion?

12 (No response)

13 CHAIRMAN SHROPSHIRE: All those in
14 favor, signify by saying aye.

15 (Response)

16 CHAIRMAN SHROPSHIRE: Opposed.

17 (No response)

18 CHAIRMAN SHROPSHIRE: Motion carries
19 unanimously.

20 The next thing we have on the agenda --

21 this is a final adoption, correct -- to amend ARM

22 17.8.610, 612, 613, 614, 615, 749, and 1210

23 pertaining to open burning permits, issuance or
24 denial of permit, and general requirements for an
25 air quality operating permit in response to

1 changes to the Clean Air Act of Montana.

2 MR. MATHIEUS: Madam Chair, Rebecca is
3 going to do this one as well.

4 MS. HARBAGE: Once again, for the
5 record, my name is Rebecca Harbage, and I'm
6 representing the Air Quality Bureau here at DEQ.
7 This morning we're asking that the Board take
8 final action to amend several of the air quality
9 rules that make them consistent with changes that
10 have been made to the Clean Air Act of Montana.
11 And just as a quick refresher, Section 75-2-211,
12 75-2-213, and 75-2-218, Montana Code Annotated,
13 contain procedures for appeals of permits for
14 construction, installation, alteration, use, and
15 operation of facilities under the Clean Air Act of
16 Montana.

17 Specifically those statutes provide,
18 one, that a person who is directly and adversely
19 affected by the issuance or denial of a permit may
20 request a hearing; that a request for hearing does
21 not stay the Department's decision on an
22 application unless the Board orders a stay; three,
23 that depending on the applicable statute, an
24 appellant must file an affidavit supporting their
25 request for hearing, either with the request or

1 within thirty days after the issuance or denial of
2 the permit; and finally that a separate process is
3 available for challenges to energy development
4 projects in 75-2-213, MCA.

5 The proposed rulemaking would amend the
6 Administrative Rules of Montana as listed by Madam
7 Chair to incorporate these provisions, and remove
8 provisions that implement the previous version of
9 those statutes. The Board initiated rulemaking on
10 this package on February 5th, and the public
11 comment period for the proposed amendment closed
12 on May 6th. No comments were received during that
13 time, and a hearing was not requested.

14 The Department now requests that the
15 Board adopt the amendments as proposed and issue
16 the notice of amendment included as a draft in
17 your packet for this agenda item. Also included
18 for the record in your packet are the 521 and 311
19 stringency and takings analysis for this
20 rulemaking. If you have any questions for me.

21 (No response)

22 CHAIRMAN SHROPSHIRE: Questions from the
23 Board?

24 (No response)

25 CHAIRMAN SHROPSHIRE: Remind me, John.

1 Any public comment here? Is there any public
2 comment?

3 (No response)

4 CHAIRMAN SHROPSHIRE: I will accept a
5 motion to accept the House Bill 311 and 521
6 analyses, and to adopt the rule amendments as
7 proposed and as indicated in the notice of
8 amendment that is attached to the executive
9 summary. Do I have a motion?

10 DR. BYRON: So moved.

11 CHAIRMAN SHROPSHIRE: Moved by Dr.
12 Byron.

13 MS. CANTY: I'll second.

14 CHAIRMAN SHROPSHIRE: Seconded by
15 Marietta. Any further discussion?

16 (No response)

17 CHAIRMAN SHROPSHIRE: All those in
18 favor, signify by saying aye.

19 (Response)

20 CHAIRMAN SHROPSHIRE: Opposed.

21 (No response)

22 CHAIRMAN SHROPSHIRE: Motion carries
23 unanimously.

24 I think that brings us to the end of
25 agenda items for the meeting. After I ask if

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.8.610, 17.8.612, 17.8.613, 17.8.614,)
17.8.615, 17.8.749, and 17.8.1210)
pertaining to major open burning source)
restrictions, conditional air quality open)
burning permits, Christmas tree waste)
open burning permits, commercial film)
production open burning permits,)
firefighter training, conditions for)
issuance or denial of permit, and general)
requirements for air quality operating)
permit content)

NOTICE OF AMENDMENT

(AIR QUALITY)

TO: All Concerned Persons

1. On April 8, 2016, the Board of Environmental Review published MAR Notice No. 17-382 regarding a notice of proposed amendment of the above-stated rules at page 563, 2016 Montana Administrative Register, Issue Number 7.
2. The board has amended the rules exactly as proposed.
3. No public comments or testimony were received.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North
JOHN F. NORTH
Rule Reviewer

By: /s/ Joan Miles
JOAN MILES
Chairman

Certified to the Secretary of State, May 23, 2016.