

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF AMENDMENT
ARM 17.8.744 and adoption of New)	AND ADOPTION
Rules I through IX implementing a)	
registration system for certain facilities)	(AIR QUALITY)
that currently require a Montana air)	
quality permit)	

TO: All Concerned Persons

1. On December 21, 2018, the Board of Environmental Review published MAR Notice No. 17-402 regarding the public hearing on the proposed amendment and adoption of the above-stated rules at page 2430, 2018 Montana Administrative Register, Issue Number 24.

2. The board has amended the rule exactly as proposed. The board has adopted New Rule I (17.8.1801), New Rule II (17.8.1802), New Rule III (17.8.1805), New Rule IV (17.8.1806), New Rule V (17.8.1807), New Rule VI (17.8.1810), New Rule VII (17.8.1811), New Rule VIII (17.8.1812), and New Rule IX (17.8.1815) exactly as proposed.

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

COMMENT NO. 1: The board received a comment in support of the proposed amendment and adoption of new rules. The commenter recognized the efforts of the department to work with industry stakeholders in developing a proposed new registration system that is both fair and protective of the environment.

RESPONSE: The board thanks the commenter for the comments.

COMMENT NO. 2: The board received a comment regarding the particulate matter (PM) limits for asphalt plants in proposed New Rule IX. The commenter noted that the proposed PM limit of 0.04 grains per dry standard cubic foot (Gr/DSCF) for all new and/or previously unpermitted asphalt plants comes from a federal New Source Performance Standard (NSPS) that is applicable only to asphalt plants that commenced construction or modification after June 11, 1973. The commenter suggested that the PM emission limits in rule be set in accordance with not just the level but the applicability of the NSPS, allowing a plant that does not meet the applicability requirements of the NSPS to operate without meeting the PM limits of the NSPS.

RESPONSE: The board appreciates the comment. The commenter is correct that the PM emission limit of 0.04 Gr/DSCF is consistent with that set forth in the NSPS. However, the board clarifies that the proposed limit is not simply a surrogate for the NSPS, which, the board notes, remains an applicable federal regulation for certain asphalt plants due to its incorporation by reference into the board's generally

applicable emission standards in ARM 17.8.302. Rather, the proposed limit represents the present-day standard achievable with best available control technology or "BACT." Under existing permitting rules, a company seeking a new Montana air quality permit for an asphalt plant, regardless of its age, would be required to install the maximum air pollution control capability that is technically practicable and economically feasible following a case-by-case BACT analysis. The department has written Montana air quality permits for many asphalt plants over the last decade that have included a BACT analysis and resultant PM emission limit of 0.04 Gr/DSCF.

The board decided not to apply the 0.04 Gr/DSCF limit to existing asphalt plants that hold valid Montana air quality permits containing different limits because those limits were determined to be appropriate based on thorough analyses at the times of issuance. In the absence of any modification of a plant that would require a new evaluation, it would not be reasonable to change the limits for those plants simply because the board has adopted new rules. However, the board believes that any new case-by-case analysis of those or similar asphalt plants would result in a limit of 0.04 Gr/DSCF, in line with the requirements in proposed New Rule IX and consistent with the NSPS. Therefore, the board did not make changes to the PM emission limits based on this comment.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ Edward Hayes
EDWARD HAYES
Rule Reviewer

By: /s/ Christine Deveny
CHRISTINE DEVENY
Chair

Certified to the Secretary of State April 16, 2019.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING
17.8.744 and adoption of New Rules I)	ON PROPOSED AMENDMENT
through IX implementing a registration)	AND ADOPTION
system for certain facilities that currently)	
require a Montana air quality permit)	(AIR QUALITY)

TO: All Concerned Persons

1. On January 23, 2019, at 2:00 p.m., the Board of Environmental Review will hold a public hearing in Room 45 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Board of Environmental Review (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 Sandy Scherer, Legal Secretary, no later than 5:00 p.m., January 16, 2019, 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 rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

17.8.744 MONTANA AIR QUALITY PERMITS--GENERAL EXCLUSIONS

(1) A Montana air quality permit is not required under ARM 17.8.743 for the following:

(a) through (l) remain the same.

(m) any facility that has been registered with the department in accordance with ARM Title 17, chapter 8, subchapter 17 or 18.

AUTH: 75-2-111, 75-2-204, 75-2-234, MCA

IMP: 75-2-211, 75-2-234, MCA

REASON: The board is proposing to amend an existing rule and adopt new rules to implement a registration system for certain facilities that currently require a Montana air quality permit. The facilities proposed to be included in the new registration system include nonmetallic mineral processing plants (commonly known as crushing and screening operations), asphalt plants, and concrete batch plants. These sources are often considered portable based on their ability to move locations and will be referred to as "portable sources." Currently, with specified exemptions, the administrative rules adopted under the Clean Air Act of Montana require the owner or operator of a source of air pollution that meets certain criteria to obtain a

permit prior to construction or operation. Section 75-2-234, MCA, authorizes the board to adopt a registration system in lieu of permitting.

The proposed new rules would provide a system for the owner or operator of a portable source facility to register with the department in lieu of submitting a permit application and obtaining a permit. The owner or operator of a registered facility still would be required to supply information that is consistent with the type and amount of information currently required in a permit application. Registered facilities would still be required to follow rules of operation that are similar to current permit conditions. These rules of operation would include emission limitations, air pollution control equipment installation and operation requirements, and requirements for testing, monitoring, and reporting. The proposed rules of operation are consistent with what is required at facilities across the state and, as such, are considered reasonable. Should more stringent, cost-effective technologies become widely available, the board could consider initiating a process to update the rules. The owner or operator of a registered facility still would be required to comply with any other applicable requirements.

Registration in lieu of permitting is appropriate for source categories in which there are a large number of homogeneous sources subject to identical requirements and for which there is no substantial benefit from individual permitting. For these homogeneous facilities, the permit conditions and environmental impacts vary little from facility to facility. The facilities proposed to be included in this registration system fit into this category of sources. Implementing a registration system would allow the department to use air program staff more efficiently and focus on major source permitting issues and compliance assistance in the field.

4. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) "Asphalt plant" means a facility used to manufacture asphalt by heating and drying aggregate and mixing it with asphalt cement.

(2) "Concrete batch plant" means a facility that combines various ingredients, such as sand, water, aggregate, fly ash, potash, cement, and cement additives, to form concrete.

(3) "Deregister" means to revoke a registration.

(4) "Drop point" means a location at which air emissions are generated from the transfer of materials, such as loading raw materials into a hopper or transferring materials between conveyers.

(5) "Dust suppression control" means the use of water, water spray bars, chemical dust suppression, wind fences, enclosures, or other dust control techniques.

(6) "Facility" means any real or personal property that is either portable or stationary and is located on one or more contiguous or adjacent properties under the control of the same owner or operator and that emits or has the potential to emit any air pollutant subject to regulation under the Clean Air Act of Montana or the Federal Clean Air Act and that has the same two-digit standard industrial classification code. A facility may consist of one or more emitting units.

(7) "Nonmetallic mineral" has the meaning given in 40 CFR Part 60, subpart 000.

(8) "Nonmetallic mineral processing plant" means a facility consisting of equipment that is used to crush, grind, or screen nonmetallic minerals and associated material-handling equipment and transfer points. The term does not include facilities in underground mines or at other stationary sources subject to Montana air quality permitting.

(9) "Permanent location" means a physical location at which a registered facility may remain or does remain for more than 12 months.

(10) "Registered facility" means a facility that has been registered in accordance with this subchapter.

(11) "Registration" means the submission to the department of the completed registration notification under [NEW RULE III].

(12) "Temporary location" means a physical location at which a registered facility remains for no more than 12 months.

AUTH: 75-2-111, 75-2-234, MCA

IMP: 75-2-234, MCA

REASON: Proposed New Rule I is necessary to define terms that are used by the new rules and not defined elsewhere in ARM Title 17, chapter 8.

Section (3) defines "deregister" to provide that the process to remove authorization to operate as a registered facility is the same process used elsewhere to remove authorization to operate under an air quality permit. "Revoke" is used in statute to describe this process for permitted facilities and, for the purposes of this subchapter, "deregister" is defined as having the same meaning.

In (5), the term "dust suppression control" is defined to include a range of possible dust control methods, including the use of water applied by a spray bar or other application method, or chemical dust suppression if application of water is not feasible.

Section (6) carries forward the definition of "facility" that currently exists in ARM Title 17, chapter 8, subchapter 7. Because these new rules would replace the permitting requirements in subchapter 7 for specific sources of air pollution, it is reasonable to use the same word to describe the regulated unit, a "facility," as that is used in the rules for the existing permitting program.

Section (8) defines "nonmetallic mineral processing plant" to exclude from regulation under this subchapter facilities located at underground mines or other stationary sources subject to Montana air quality permitting. Those types of facilities are included in the permits for the stationary sources with which they are associated and should not be eligible for registration as separate sources.

Sections (9) and (12) define the terms "permanent location" and "temporary location" to distinguish between two types of locations at which a facility may operate. This is important for the specific types of facilities subject to these new rules because of their tendency to be portable and move around the state, as well as out of the state, from job site to job site. The key difference between a permanent and temporary location, as defined, is whether the facility remains, meaning equipment is present but not necessarily operating, at the location for more than 12

months. The reason the definition of "permanent location" is permissive is to allow an owner or operator to identify a location as being permanent, and comply with the requirements applicable at permanent locations, before the facility has actually remained at the location for more than 12 months. No facility may remain at a temporary location for longer than 12 months.

In (11), the term "registration" is defined to include the submission of required information to the department.

NEW RULE II APPLICABILITY (1) This subchapter applies to the following facilities:

(a) Nonmetallic mineral processing plants with annual production of less than 8,000,000 tons as a rolling 12-month total.

(b) Concrete batch plants with annual production of less than 1,000,000 cubic yards as a rolling 12-month total.

(c) Asphalt plants that:

(i) combust natural gas, propane, distillate fuel, waste oil, diesel, or biodiesel; and

(ii) have annual production of less than:

(A) 996,000 tons as a rolling 12-month total for drum mix plants; or

(B) 324,000 tons as a rolling 12-month total for batch mix plants.

(d) Engines, such as power generators and other internal combustion engines, associated with any facility described in (a) through (c).

(2) An owner or operator of a facility that is not listed in (1) shall comply with the applicable application and permitting requirements of this chapter.

AUTH: 75-2-111, 75-2-234, MCA

IMP: 75-2-234, MCA

REASON: Proposed New Rule II is necessary to describe the facilities that are eligible for registration. The eligibility of the facilities described in (1)(a) through (c) is based on annual production levels. The annual production levels were calculated as surrogates for emission limits using federal emission factors for the specific types of processes included in each source category. The emission factors come from the U.S. Environmental Protection Agency's Compilation of Air Pollutant Emission Factors (AP-42). Using the appropriate emission factors, the production limits were set at levels that ensure that no major stationary source, as defined in ARM Title 17, chapter 8, subchapters 8, 9, or 10, would be eligible to register under this subchapter. For each type of facility, the production levels equate to maximum mass emissions below major source thresholds. The reason for limiting registration-eligible facilities to below major source thresholds is that the simplified analysis associated with registration is not appropriate for major sources, which may have emissions and environmental impacts that differ from facility to facility and which therefore require case-specific impact analysis.

For nonmetallic mineral processing plants, particulate matter with an aerodynamic diameter of 10 microns or less (PM-10) is the primary pollutant of concern. The annual production limit of 8,000,000 tons as a rolling 12-month total results in maximum mass emissions of PM-10 of less than 63 tons per year from any

single facility. A facility emitting 100 tons per year of PM-10 would trigger additional permitting requirements as a major stationary source.

For concrete batch plants, PM-10 is also the primary pollutant of concern. The annual production limit of 1,000,000 cubic yards as a rolling 12-month total results in maximum mass emissions of less than 12 tons of PM-10 per year from any single facility.

For asphalt plants, carbon monoxide (CO) is the primary pollutant of concern because the majority of emissions from this source category results from fuel combustion. CO emissions differ depending on the type of fuel that is burned. The annual production limits account for a variety of the most common fuel types, which are listed in (1)(c)(i). The asphalt plants using fuel types not listed in this rule would require case-by-case permitting and would not be eligible for registration. In Montana, most of the permitted asphalt plants are drum mix plants. However, because the CO emission factors differ greatly between drum mix plants and batch mix plants, it is necessary to include two production limits. Each annual production limit results in maximum mass emissions of about 66 tons of CO per year from any single facility. A facility emitting 100 tons per year of CO would trigger additional permitting requirements as a major stationary source. This limit is low enough to allow for additional combustion emissions from associated generator engines, which often locate with portable equipment, and still result in a facility not exceeding major source limits.

A generator engine or other nonroad internal combustion engine used in association with one of the other three eligible source categories would also be eligible for registration. The facilities subject to this subchapter often operate at locations without line power and must therefore sometimes be powered using generator engines or other similar engines that are designed to be moved from one location to another. The engines to which the new rules apply are those associated with a listed type of registration-eligible facility, and not engines used as part of any facility not covered by this subchapter. Engine operating limits are discussed in New Rule V.

Section (2) is necessary to emphasize that a facility exceeding the annual production described in (1) is not eligible for registration and would be required to follow the existing permitting process in ARM Title 17, chapter 8 for a Montana air quality permit. The additional scrutiny provided by existing case-by-case permitting is more appropriate than registration for major sources of emissions.

Preparation of an environmental assessment for registration of a facility is not necessary as long as the facility meets the applicability criteria. Facilities meeting the applicability criteria will not have a significant environmental impact. The department has made this determination through preparation of a programmatic environmental assessment. See paragraph 5 immediately following the statement of reasonable necessity for proposed New Rule IX.

NEW RULE III REGISTRATION PROCESS AND INFORMATION

(1) Except as provided in (3), the owner or operator of a facility that meets the applicability criteria of [NEW RULE II] and that commences operation after [the effective date of this rule] shall:

(a) register the facility with the department prior to beginning initial operations; or

(b) register the facility with the department and request revocation of the associated Montana air quality permit (MAQP), if the owner or operator holds a valid MAQP for the facility.

(2) Except as provided in (3), the owner or operator of a facility that meets the applicability criteria of [NEW RULE II] and that commenced operation prior to [the effective date of this rule] shall:

(a) register the facility with the department no later than December 31, 2019; and

(b) request revocation of the associated MAQP, if the owner or operator holds a valid MAQP for the facility.

(3) An engine that meets the applicability criteria of [NEW RULE II] is exempt from the registration requirement if the engine will be located at temporary locations only.

(4) To register, the owner or operator shall submit a complete registration notification to the department on the form provided by the department. The notification information must include the following:

(a) Company name and mailing address;

(b) Owner or operator's name, mailing address, telephone number, and email address;

(c) Contact person's name, mailing address, telephone number, and email address;

(d) Physical location(s) of known permanent location(s), initial temporary location(s) if no permanent location is proposed, or business location if no in-state location of operation has been identified (legal description to the nearest 1/4 section);

(e) Physical location(s) of each permanent or temporary location not included in (d) of an existing facility for which the owner or operator holds a valid MAQP;

(f) Equipment-specific information, as applicable, including:

(i) Unit type;

(ii) Manufacturer's name;

(iii) Date of manufacture; and

(iv) Horsepower.

(g) Acknowledgement of the owner or operator's duty to comply with this subchapter;

(h) Other information required by the department.

(5) A facility is considered registered upon the department's receipt of the notification required in (4).

(6) Within 15 calendar days after registration, the department shall publish acknowledgment of the registration on the department's website at <http://deq.mt.gov/Air/PublicEngagement>.

(7) An owner or operator of a registered facility may not operate for the first 15 calendar days following the date of registration, unless the owner or operator holds a valid MAQP for the facility at the time of registration. Registration does not supersede any other local, state, or federal requirements associated with the operation of registered facilities.

(8) An owner or operator of a registered facility shall provide notification to the department, in a manner prescribed by the department, of any change(s) to the equipment-specific information required in (4)(f) by March 15th of each calendar year.

(9) If the owner or operator of a registered facility changes, the new owner or operator shall, prior to operating the facility, register with the department by submitting the notification required in (4).

(10) An owner or operator of a registered facility shall update the registration information by submitting notification to the department, in a manner prescribed by the department, to identify a location as a permanent location in advance of remaining at the location for longer than 12 months.

(11) Registration under this subchapter is valid provided the registered facility continues to meet the applicability criteria in [NEW RULE II].

AUTH: 75-2-111, 75-2-234, MCA
IMP: 75-2-234, MCA

REASON: Proposed New Rule III is necessary to describe when and how an owner or operator must register with the department. Section (1) applies to any registration-eligible facility that begins operation after these rules become effective. Any registration-eligible facility that is not already permitted by the department must be registered prior to beginning initial operations. If the owner or operator has already obtained a Montana air quality permit for the facility and the facility is eligible to register under New Rule II, the owner or operator must register the facility and request revocation of the permit at the time of registration. The purpose of this provision is to ensure that all facilities meeting the applicability criteria in New Rule II register in lieu of permitting. Registration of eligible facilities is mandatory. Only facilities that are not registration-eligible would be allowed to obtain a Montana air quality permit. This is reasonably necessary to allow the department to appropriately streamline the registration of homogeneous types of facilities.

Section (2) establishes a deadline of December 31, 2019, for registration of facilities in operation prior to the effective date of these rules. It may not be feasible for the owners and operators of existing facilities to immediately register upon adoption of these rules. Existing facilities with valid Montana air quality permits that are registration-eligible must also request revocation of the permit by the same deadline. The reason is the same as for (1).

Section (3) provides an exception to the registration requirement for engines that are otherwise eligible for registration but that will not be located at a permanent location. Power generators and the other nonroad engines at facilities regulated under this subchapter are sources of emissions that are generally considered to be mobile because they can be transported from one location to another. Mobile emitting units, including the nonroad engines listed in New Rule II, are generally excluded from the permitting requirements of this chapter. See ARM 17.8.744(1)(b). Therefore, it is reasonable to exclude such engines from the requirement to register. However, under Title 40, C.F.R. 89.2, internal combustion engines that would otherwise be considered nonroad engines are no longer considered mobile when they remain at a location for longer than 12 consecutive months. Therefore, these

engines would no longer qualify for the mobile emitting unit exclusion from permitting requirements if they remain at a location for longer than 12 months. Similarly, it is reasonable to require that they be registered under the proposed new rules if they remain at a location for longer than 12 months. Owners and operators of engines eligible for registration are required to request revocation of any existing MAQPs. The reason is the same as for (1).

Section (4) is necessary to list the information an owner or operator is required to provide to register a facility. A registration notification that is missing any of the listed information would be considered incomplete.

Sections (5), (6), and (7) prohibit operation of a registered facility for 15 days following the date of registration. The purpose of this delay is to allow time for the department to publish notification of the registration on the department's website and to determine if the registration notification submitted by the owner or operator contains complete information.

Section (8) requires the owner or operator of a registered facility to submit any changes to the required equipment-specific registration information no later than March 15 of each calendar year. Possible changes to the equipment-specific information include the addition or removal of emitting units from the list of registered equipment. Although changes must be submitted at least once per year, there is no limit on the number of times an owner or operator may submit changes to the registration. The purpose of requiring submission of the changes is to keep equipment-specific registration information current.

Section (9) is necessary to keep information identifying the entity that owns or operates registered facilities current.

Section (10) is reasonably necessary to provide a process by which an owner or operator may add or remove permanent locations included in the registration information.

Section (11) is reasonably necessary because registered facilities might change production levels or equipment in such a manner that the facility would no longer be eligible to operate as a registered facility under this subchapter.

NEW RULE IV GENERAL OPERATING REQUIREMENTS (1) Registration of a facility under this subchapter does not relieve an owner or operator of the responsibility to comply with:

- (a) applicable federal, state, or local statutes, rules, or orders; and
 - (b) control strategies contained in the Montana State Implementation Plan.
- (2) The department may require an owner or operator to conduct a test, emission or ambient, under ARM 17.8.105. Emission source testing must comply with ARM 17.8.106.

(3) An owner or operator of a facility required to be registered under this subchapter:

- (a) shall install, operate, and maintain all equipment to provide the maximum air pollution control for which it was designed;
- (b) shall employ dust suppression control that is installed, maintained, and operated to ensure that the facility complies with this chapter. Dust suppression control for crushing, screening, and/or conveyor transfer points consisting of water spray bars and/or chemical dust suppression must be operating if any visible

emissions equal to or greater than 10 percent opacity averaged over six consecutive minutes are present;

(c) shall allow the department's representatives access to the operations at any facility at all reasonable times to inspect or conduct surveys, collect samples, obtain data, audit any monitoring equipment or observe any monitoring or testing, and otherwise conduct all necessary functions related to the administration of this chapter; and

(d) may not operate an engine that is subject to the requirements of this subchapter at any permanent location when the combined horsepower hours of those sources exceed the following limits:

- (i) 6,000,000 horsepower-hours per rolling 12-month period; or
- (ii) 3,500,000 horsepower-hours per rolling 12-month period, if an asphalt plant is also located at the permanent location.

AUTH: 75-2-111, 75-2-234, MCA
IMP: 75-2-234, MCA

REASON: Proposed New Rule IV is necessary to provide general requirements for facilities that are eligible to be registered under this subchapter. Other federal, state, or local regulations and provisions of the Montana State Implementation Plan may be applicable to the registration-eligible facility. For example, subchapter 3 of this chapter contains opacity limitations and incorporates federal New Source Performance Standards, both of which will continue to apply to registration-eligible facilities. Section (1) is necessary to inform an owner or operator that registration of a facility under this subchapter does not affect the duty of that entity to comply with these other applicable requirements.

Section (2) is necessary to inform an owner or operator that facilities eligible to be registered under this subchapter are still subject to the testing requirements in ARM 17.8.105. The required testing may include source tests specifically required under a Federal New Source Performance Standard. Because some of the facilities that would be subject to this subchapter are required to conduct specific testing, the board believes it appropriate to include this reference even though ARM 17.8.105 and 17.8.106 apply to such sources regardless of whether those rules are incorporated here.

Subsection (3)(a) is necessary to ensure that the owner or operator installs, operates, and maintains all equipment to achieve the maximum pollution control for which the equipment was designed. The purpose of this rule is to require good operating and maintenance practices, which will result in decreased emissions.

Subsection (3)(b) is necessary to establish the required level of dust suppression for facilities required to register under this subchapter. Because different types of facilities are subject to different opacity limits, this rule requires that the owner or operator use a dust suppression technique that is sufficient to comply with the limits applicable to that facility.

For crushing, screening, and conveyor transfer points, (3)(b) requires the use of water spray bars and/or chemical dust suppression if visible emissions have an opacity of greater than 10 percent. It is necessary that owners and operators of these types of facilities not only have available but operate such dust suppression to

ensure that the facility complies with applicable opacity limits. Depending on the applicable limit, the facility may be allowed to have emissions with opacity greater than 10 percent, but the controls must be operating whenever opacity exceeds 10 percent.

Subsection (3)(c) requires that the owner or operator provide department representatives access to the plant site at reasonable times so the department can conduct necessary site inspections, monitoring, observations, and/or data collection. This will allow the department to perform its functions and subject an owner or operator that did not allow access to compliance or enforcement actions.

Subsection (3)(d) establishes limits on the operation of registration-eligible engines at permanent locations. These operating limits are necessary to limit the emissions from such engines at locations where they would be considered stationary sources. No limits would apply at temporary locations, where these sources would be considered mobile, because mobile sources are not subject to the permitting requirements of this chapter. The horsepower-hour limits ensure that the additional emissions produced by engines do not create a major source, as defined in ARM Title 17, chapter 8, subchapters 8, 9, or 10, when added to the emissions from other associated emitting units at the facility. The reason for this requirement is the same as for New Rules II and III(1).

NEW RULE V NOTICE OF LOCATION (1) Unless the owner or operator of a facility required to be registered under this subchapter has previously submitted the location of a facility under [NEW RULE III](4), the owner or operator shall submit to the department a notice of location for each facility, on a form provided by the department. The owner or operator shall submit the form at least 15 calendar days before commencing operation of the facility.

(2) If there is more than one type of facility listed in [NEW RULE II] at the same location, the owner or operator shall submit a notice of location for each facility type.

(3) Upon receipt of a complete notice of location, the department shall publish notification on the department's website at <http://deq.mt.gov/Air/PublicEngagement>.

(4) The owner or operator shall confirm the location, in a manner prescribed by the department, within 10 calendar days after commencing operation at the location.

(5) The owner or operator shall notify the department, in a manner prescribed by the department, within 10 calendar days after removing all equipment of a single type from the location. Following such notification, the owner or operator shall comply with (1) through (4) prior to operating equipment of that type at the location again.

(6) An owner or operator may transfer equipment between any locations that have been identified under (1) and (2), unless the owner or operator has notified the department under (5) that all equipment of the same type has been removed from the location.

(7) A registered facility may not remain at a temporary location for more than twelve months. Before twelve months have elapsed, the owner or operator of the registered facility shall either:

- (a) remove all equipment from the temporary location, according to the applicable requirements in this rule; or
- (b) register the location as a permanent location.

AUTH: 75-2-111, 75-2-234, MCA
IMP: 75-2-234, MCA

REASON: Proposed New Rule V is necessary to describe the process an owner or operator or a registered facility must follow to provide notice of all locations of operation. This process is necessary because the facilities that are eligible to register under this subchapter are portable and may be relocated. It is the board's intent that the public and the department be informed, in advance, of all locations at which registered facilities may operate.

Section (1) requires that the owner or operator submit a notice of location to the department for each registered facility at least 15 days prior to operating that facility. This is necessary to ensure that the department has advance notice of each potential location of operation. The advance notice allows the department to notify interested parties and the public and raise any concerns that may exist regarding a specific location. Advance notice would be considered to have been given for locations the owner or operator provided to the department with the registration notification under New Rule III(4). Therefore, additional notice for such locations would not be required under this section.

Section (2) requires that the owner or operator of a registered facility notify the department of the locations where each type of registered facility may operate. This is necessary because the different types of registered facilities have different emission profiles and different operating requirements. The department must be able to keep accurate records of the locations of different types of emissions to ensure areas continue to meet the emission standards in the federal Clean Air Act and the Clean Air Act of Montana and implementing rules.

Section (3) requires the department to publish notification on its website of all complete notices of location. This is necessary to notify interested parties and the public of the possibility that sources of emissions may locate at a particular site. The website publication would also confirm to the owner or operator that the department had received the appropriate location notice.

Section (4) requires that the owner or operator of a registered facility provide confirmation of a location within ten days after beginning to operate at that location. This is necessary because the owners and operators of the facilities eligible to register under this subchapter may submit multiple potential locations to the department in advance of deciding where the equipment will actually be located. Section (5) requires the owner or operator to notify the department within ten days after removing all equipment of a single type from the location. The notices in (4) and (5) are necessary to ensure the department maintains an accurate record of the locations at which each type of registered facility is operating. Such a record is reasonably necessary for the department to efficiently perform required site visits and compliance checks, appropriately respond to complaints, and ensure compliance with emission standards.

Section (6) provides that an owner or operator may move equipment between locations if the owner or operator has identified the locations under (1) and (2). This clarification is necessary because the process in this subchapter differs from the process required under ARM Title 17, chapter 8, subchapter 7. For facilities registered under this subchapter, the owner or operator is not required to submit additional notification to move equipment between previously identified locations.

Section (7) prohibits a registered facility from remaining at a temporary location for longer than twelve months and establishes the options for an owner or operator if equipment has been at a temporary location for twelve months. It is necessary for the owner or operator to either remove equipment from a temporary location or identify the location as a permanent location before twelve months have elapsed because the requirements for registration-eligible engines differ depending on whether the engine is located at a permanent or temporary location.

NEW RULE VI DEREGISTRATION (1) The department may deregister a facility:

- (a) on written request of the owner or operator, or
- (b) for a violation of this chapter.

(2) To deregister a facility under (1)(b), the department shall notify the owner or operator in writing of its intent to deregister by certified mail, return receipt requested, to the owner or operator's last known address. The department shall advise the owner or operator of the right to request a hearing before the board under 75-2-211, MCA.

(3) If the department does not receive a return receipt for the notice of intent to deregister in (2), the department may give notice to the owner or operator by publishing the notice of intent to deregister. The publication must occur once each week for three consecutive weeks in a newspaper published in the county where the owner or operator's mailing address set forth in the registration is located. If no newspaper is published in that county, then the notice may be published in a newspaper having a general circulation in that county.

(4) When the department has published notice under (3), the owner or operator is deemed to have received the notice on the date the last notice was published.

(5) A hearing request must be in writing and must be filed with the board within 15 days after receipt of the department's notice of intent to deregister. Filing a hearing request postpones the effective date of the department's decision until issuance of a final decision by the board.

(6) If no hearing request is filed, the department's decision to deregister a facility is final when 15 days have elapsed from the date the owner or operator received notice.

(7) A hearing under this subchapter is governed by the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA.

AUTH: 75-2-111, 75-2-234, MCA
IMP: 75-2-234, MCA

REASON: Proposed New Rule VI is necessary to provide the department the authority to deregister a facility, either at the request of the registered entity or by the department based on an owner or operator's violation of the air quality rules in the operation of a registered facility. The new rule also necessarily provides for an appeal of the deregistration of a facility by the owner or operator to satisfy due process requirements. These provisions are nearly identical to those in ARM 17.8.763 for the revocation of a Montana air quality permit.

NEW RULE VII RECORDKEEPING AND REPORTING (1) An owner or operator of a facility required to be registered under this subchapter shall make records that include:

- (a) the location at which the facility was operated;
 - (b) daily production rates and rolling 12-month total production in the units used in [NEW RULE II](1);
 - (c) daily pressure drop readings, including daily water input rate or pressure, if applicable;
 - (d) daily horsepower hours of engines and rolling 12-month total horsepower hours, if applicable; and
 - (e) a log of required facility inspections, repairs, and maintenance.
- (2) The owner or operator shall maintain the records in (1) for at least five years following the date the record was created.
- (3) The owner or operator shall maintain the records in (1) at the facility location or at another convenient location. The owner or operator shall make the records available to the department for inspection and submit the records to the department upon request.

AUTH: 75-2-111, 75-2-234, MCA
IMP: 75-2-234, MCA

REASON: Proposed New Rule VII is necessary to provide the general recordkeeping and reporting requirements for facilities registered under this subchapter. Facilities would be required to maintain records of information necessary for the department to verify compliance with the requirements of this chapter. An owner or operator would be required to maintain these records for at least five years and must make them available for inspection upon request of the department. The recordkeeping and reporting requirements would be substantially the same under the registration process as under traditional permitting.

NEW RULE VIII REQUIREMENTS FOR CONCRETE BATCH PLANTS

- (1) Except as provided in (2), an owner or operator of a concrete batch plant required to be registered under this subchapter shall control particulate emissions from the facility at all times during operation using:
- (a) a fabric filter dust collector or equivalent on each cement silo, cement storage silo, or similarly enclosed storage bin or weigh hopper; and
 - (b) a particulate containment boot or equivalent on every product loadout opening.

(2) If a concrete batch plant required to register under this subchapter that commenced operation prior to [the effective date of this rule] does not have the control equipment in (1) installed at the time of registration, the owner or operator of the facility shall install the equipment no later than twelve months after registration.

(3) In addition to the general requirements in [NEW RULE VII], the owner or operator shall conduct a monthly inspection of each operating facility for fugitive dust. If visible emissions from the fabric filter are present, the inspection must include an inspection of the fabric filter for evidence of leaking, damaged, or missing filters. The owner or operator shall take appropriate corrective actions to restore the filter system to proper operation before resuming normal operations.

AUTH: 75-2-111, 75-2-234, MCA

IMP: 75-2-234, MCA

REASON: Proposed New Rule VIII is necessary to provide performance standards for registration-eligible concrete batch plants. These source-specific air pollution control requirements are consistent with existing permit conditions and constitute Best Available Control Technology for this source category. Section (2) would provide a period of twelve months after registration for the owner or operator of an existing facility to install any required control equipment not present at the time of registration. This is necessary because it may not be feasible for an owner or operator to install the equipment immediately upon registration. The reason for the monthly inspection required in (3) is to determine whether the required control equipment is operating correctly and is achieving the expected level of emission control. If it is not, (3) requires the owner or operator to correct the issue, which is necessary to ensure appropriate emission control.

NEW RULE IX REQUIREMENTS FOR ASPHALT PLANTS (1) An owner or operator of an asphalt plant required to register under this subchapter:

(a) shall limit particulate matter emissions to no more than:

(i) 0.04 grains per dry standard cubic foot; or

(ii) 0.10 grains per dry standard cubic foot, for a facility that holds a valid MAQP containing this limit at the time of registration;

(b) shall control emissions from each dryer or mixer at all times during operation using control equipment capable of achieving the applicable emission limit;

(c) shall shut down an emitting unit using a baghouse control device needing a bag replacement until the replacement bag is installed;

(d) shall install and maintain a device to measure the pressure drop on the control device, such as a magnehelic gauge or manometer. The pressure drop must be measured in inches of water and recorded daily; and

(e) shall install and maintain temperature indicators at the control device inlet and outlet; and

(f) may not allow the asphalt production rate to exceed the average production rate during the last source test demonstrating compliance. The owner or operator may retest at a higher production rate at any time.

(2) Records made and maintained under [NEW RULE VII] must include daily pressure drop readings from the control device and the daily water input rate or the water input pressure, if applicable.

AUTH: 75-2-111, 75-2-234, MCA
IMP: 75-2-234, MCA

REASON: Proposed New Rule IX is necessary to provide performance standards for registration-eligible asphalt plants. These source-specific air pollution control requirements are consistent with existing permit conditions and constitute Best Available Control Technology for this source category.

Under (1)(a), an existing facility that holds a valid MAQP would be allowed to continue to operate with the same particulate matter emission limit that is in the permit. This is because the limit included in the permit was determined to be appropriate based on a case-specific review that included consideration of the age of the facility. As of the effective date of this rule, any registration-eligible facility that does not hold a valid MAQP containing a different particulate matter limit would be required to meet the limit in (1)(a)(i). This is because the lower limit is representative of the standard achievable using available pollution control technology for new facilities.

5. Concerned persons may submit their data, views, or arguments in writing 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., January 25, 2019. To be guaranteed consideration, mailed comments must be postmarked on or before that date. In addition, the department has prepared an environmental assessment demonstrating that the facilities eligible to register under proposed New Rule II do not have significant environmental impacts. That environmental assessment may be viewed on the department's web site at <http://deq.mt.gov/public/publiccomment>. An electronic or hard copy of that document may also be obtained from Sandy Scherer at the addresses listed above. Oral or written comments on the environmental assessment may also be submitted in the same manner as for the proposed rule amendments.

6. Sarah Clerget, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

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

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

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ Edward Hayes
EDWARD HAYES
Rule Reviewer

BY: /s/ Christine Deveny
CHRISTINE DEVENY
Chairman

Certified to the Secretary of State, December 11, 2018.