17.56.101 DEFINITIONS For the purposes of this chapter and unless otherwise provided, the following terms have the meanings given to them in this rule and must be used in conjunction with those definitions in 75-11-203, 75-11-302, and 75-11-503, MCA.

(1) "Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion of an UST system or tank system and aboveground releases associated with overfills and transfer operations as the regulated substances moves to or from an UST system.

(2) "Aboveground storage tank" or "AST" means any one or a combination of tanks that is used to contain an accumulation of petroleum or petroleum products, and the volume of which is 90% or more above the surface of the ground.

(3) "Active tank" means, for the purpose of determining operating permit and compliance inspection requirements in subchapter 3 and closure requirements in subchapter 7, an underground storage tank that is being used, or is capable of being used, for dispensing, depositing or storing a regulated substance and is not inactive as defined in (31).

(4) "Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.

(5) "Belowground release" means any release to the subsurface of the land and to ground water. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

(6) "Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

(7) "Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

(8) "Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

(9) "CERCLA" means the Comprehensive, Environmental Response, Compensation, and Liability Act of 1980, as amended.

(10) "Closure" or "to close" means the process of properly removing or filling in place an underground storage tank that is no longer in service.

(11) "Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.

(12) "Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is

connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

(13) "Consumptive use" with respect to heating oil means consumed on the premises.

(14) "Containment sump" means a liquid-tight container that protects the environment by containing leaks and spills of regulated substances from piping, dispensers, pumps and related components in the containment area. Containment sumps may be single walled or secondarily contained and may be located at the top of the tank (tank top or submersible turbine pump sump), underneath the dispenser (under-dispenser containment sump), or at other points in the piping run (transition or intermediate sump).

(15) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal, and other actions necessary to respond to a release.

(16) "Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

(17) "Department" means the Department of Environmental Quality created by 2-15-3501, MCA.

(18) "Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

(19) "Dispenser" means equipment located aboveground that dispenses regulated substances from the UST system.

(20) "Dispenser system" means the dispenser and the equipment necessary to connect the dispenser to the underground storage tank system.

(21) "Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

(22) "Excavation zone" means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

(23) "Existing tank system" means a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before November 3, 1989. Installation is considered to have commenced if:

(a) the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and

(b) either a continuous on-site physical construction or installation program has begun, or the owner or operator has entered into contractual obligations, which cannot

be canceled or modified without substantial loss, for physical construction at the site or installation of the tank system to be completed within a reasonable time.

(24) "Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

(25) "Flow-through process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or byproducts from the production process.

(26) "Free product" refers to a regulated substance that is present as a nonaqueous phase liquid (e.g., liquid not dissolved in water).

(27) "Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

(28) "Ground water" means water below the land surface in a zone of saturation.

(29) "Hazardous substance UST system" means an underground storage tank system that contains a hazardous substance defined in section 101(14) of CERCLA (but not including any substance regulated as a hazardous waste under subtitle C) or any mixture of such substances and petroleum, and which is not a petroleum UST system.

(30) "Hazardous waste" means a hazardous waste as defined by 75-10-403, MCA.

(31) "Heating oil" means petroleum that is No. 1, No. 2, No. 4--light, No. 4--heavy, No. 5--light, No. 5--heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including navy special fuel oil and bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(32) "Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

~~(33) "Implementing agency" means an office or program of a local governmental unit, designated by the department pursuant to ARM 17.56.1003, in which the PST or UST system is located. Only one local governmental unit may act as an implementing agency for any given PST or UST system.~~

~~(34)~~(33) "Inactive tank" means, for the purpose of determining operating permit and compliance inspection requirements in subchapter 3 and closure requirements in subchapter 7, an underground storage tank for which the department has received written notice, in accordance with ARM 17.56.701, that the tank is currently not being used for dispensing, depositing, or storing a regulated substance.

~~(35)~~(34) "Installation" or "to install" means the placement of an underground storage tank system, including excavation, tank placement, backfilling, and piping of underground portions of the underground storage tank system that store or convey regulated substances. Installation includes repair or modification of an underground storage tank system through such means as tank relining or the repair or replacement of valves, fillpipes, piping, vents, or in-tank liquid-level monitoring systems. Installation

also means installation, repair, or modification of a leak detection device that is external to and not attached to the underground storage tank system and the installation, repair, or modification of a cathodic protection system. The terms "installation" and "to install" do not include the process of conducting a precision (tightness) test to establish the integrity of the underground storage tank system.

~~(36)~~(35) "Installer" means an individual who installs or closes underground storage tank systems.

~~(37)~~(36) "Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

~~(38)~~(37) "Local governmental unit" means a city, town, county, or fire district.

~~(39)~~(38) "Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing product.

~~(40)~~(39) "Motor fuel" means a complex blend of hydrocarbons typically used in the operation of a motor engine, such as motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any blend containing one or more of these substances (for example: motor gasoline blended with alcohol).

~~(41)~~(40) "New tank performance standards" includes design, construction, installation, release detection, and compatibility standards.

~~(42)~~(41) "New tank system" means a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after November 3, 1989.

~~(43)~~(42) "Noncommercial purposes" with respect to motor fuel means not for resale.

~~(44)~~(43) "Oil/water separator" means a flow-through tank designed to separate petroleum from water. The term does not include piping or tanks that contain petroleum effluent.

~~(45)~~(44) "On the premises where stored" with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

~~(46)~~(45) "Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under subchapter 7.

~~(47)~~(46) "Operator" means:

(a) for purposes of administration of Title 75, chapter 11, parts 2 and 5, MCA, the term as defined in 75-11-203, MCA; and

(b) for purposes of administration of Title 75, chapter 11, part 3, MCA, the term as defined in 75-11-302, MCA.

~~(48)~~(47) "Out of service" means that the normal operation of the UST system is discontinued as characterized by the fact that no regulated substances are being deposited into or drawn from the system, and:

(a) leak detection or leak prevention procedures are not conducted in a manner normally associated with an in-service system of a similar type and purpose; or

(b) for emergency generator tanks, used oil tanks, heating oil tanks, or hazardous substance tanks, the infrequent use of the UST system cannot be justified as part of its purpose.

~~(49)~~(48) "Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

~~(50)~~(49) "Owner" means:

(a) for purposes of administration of Title 75, chapter 11, part 2, MCA, the term as defined in 75-11-203, MCA;

(b) for purposes of administration of Title 75, chapter 11, part 3, MCA, the term as defined in 75-11-302, MCA; and

(c) unless otherwise provided in statute or rule, for purposes of administration of Title 75, chapter 11, part 5, MCA, any person who:

(i) holds title to, controls, or possesses an interest in an UST system; or

(ii) owns the property on which an UST system is located. The term does not include a person who holds an interest in a storage tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

~~(51)~~(50) "Person" means:

(a) for purposes of administration of Title 75, chapter 11, part 2, MCA, the term as defined in 75-11-203, MCA;

(b) for purposes of administration of Title 75, chapter 11, part 3, MCA, the term as defined in 75-11-302, MCA; and

(c) for purposes of administration of Title 75, chapter 11, part 5, MCA, the term as defined in 75-11-503, MCA.

~~(52)~~(51) "Petroleum mixing zone" has the meaning given in 75-11-503, MCA.

~~(53)~~(52) "Petroleum storage tank" or "PST" means a tank that contains or contained petroleum or petroleum products and that is:

(a) an underground storage tank as defined in 75-11-503, MCA;

(b) a storage tank that is situated in an underground area such as a basement, cellar, mine, draft, shaft, or tunnel;

(c) an aboveground storage tank with a capacity less than 30,000 gallons; or

(d) aboveground pipes associated with tanks under (50)(b) and (c), except that pipelines regulated under the following laws are excluded:

(i) the Natural Gas Pipeline Safety Act of 1968 (49 USC 1671 et seq.);

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 USC 2001 et seq.); and

(iii) state law comparable to the provisions of law referred to in (50)(d)(i) and (ii), if the facility is intrastate.

~~(54)~~(53) "Petroleum UST system" means an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

~~(55)~~(54) "Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of nonearthen materials.

~~(56)~~(55) "Pipeline facilities (including gathering lines)" are new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

~~(57)~~(56) "Primary leak detection method" means the leak detection method, approved under this chapter, that is:

(a) specified by the owner or operator and recorded by the compliance inspector as the primary leak detection method in the most recent UST program compliance inspection; or

(b) specified by the owner or operator in writing or e-mail to the department as the primary leak detection method.

~~(58)~~(57) "Public water supply system" means a public water supply system as defined in 75-6-102, MCA.

~~(59)~~(58) "RCRA" means the federal Resource Conservation and Recovery Act of 1986.

~~(60)~~(59) "Regulated substance" means a hazardous substance as defined in 75-10-602, MCA; or petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (60oF and 14.7 pounds per square inch absolute); does not include a substance regulated as a hazardous waste under Title 75, chapter 10, part 4, MCA.

~~(61)~~(60) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a tank system into ground water, surface water, surface soils, or subsurface soils.

~~(62)~~(61) "Release detection" means determining whether a release of a regulated substance has occurred from the tank system into the environment or a leak has occurred into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

~~(63)~~(62) "Repair" means to restore to proper operating condition a tank, pipe, spill prevention equipment, overfill prevention equipment, corrosion protection equipment, release detection equipment or other UST system component that has caused a release of product from the UST system or has failed to function properly.

~~(64)~~(63) "Replaced" means:

(a) for a tank - to remove a tank and install another tank.

(b) for piping - to remove 50 percent or more of piping and install other piping, excluding connectors, connected to a single tank. For tanks with multiple piping runs, this definition applies independently to each piping run.

~~(65)~~(64) "Residential tank" is a tank located on property used primarily for dwelling purposes.

~~(66)~~(65) "Safe Drinking Water Act" means the federal Safe Drinking Water Act, as amended, 42 USC 300f, et seq., and implementing regulations in 40 CFR Parts 141 and 142.

~~(67)~~(66) "SARA" means the Superfund Amendments and Reauthorization Act of 1986.

~~(68)~~(67) "Secondary containment" means:

(a) a liquid-tight (secondary) shell or jacket that extends around the inner (primary) shell of a tank or piping that is designed, constructed, and installed to contain any leak from any part of the tank or piping that routinely contains a regulated substance. Secondary containment must be designed, constructed, and installed to:

(i) prevent releases to the environment;

(ii) allow for monitoring of releases between the primary and secondary shells; and

(iii) allow for detection of any leak; and

(b) liquid-tight tank sumps, transition sumps, or under-dispenser containment sumps that will contain a leak from any part of the tank or piping that routinely contains a regulated substance until detection.

~~(69)~~(68) "Septic tank" is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

~~(70)~~(69) "Significant noncompliance" means the existence of one or more violations that:

(a) cause, or may cause, a substantial, continuing risk to public health and the environment;

(b) substantially deviate from a requirement of this chapter; or

(c) include failure to install, maintain, or operate equipment essential to preventing or detecting leaks.

~~(71)~~(70) "State fire marshal" means the state fire marshal as provided for in 2-15-2005, MCA.

~~(72)~~(71) "Storm water or wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

~~(73)~~(72) "Surface impoundment" is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

~~(74)~~(73) "Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of nonearthen materials (e.g., concrete, steel, plastic) that provide structural support.

~~(75)~~(74) "Terminal piping" means piping that:

(a) is located within a facility with a North American Industry Classification System (NAICS) code of 424710 (Petroleum Bulk Stations and Terminals) (2017), 486110 (Pipeline Transportation of Crude Oil) (2017), 486910 (Pipeline Transportation of Refined Petroleum Products) (2017), or 482111 (Line-Haul Railroads (2017);

(b) is underground, or is above ground, if the above ground piping:

(i) cannot be segregated, disconnected, or isolated from subject underground piping; and

(ii) is connected to ancillary equipment including, but not limited to, pumps, valves, or meters;

(c) is connected to a storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely underground;

(d) is used to contain or transport a regulated substance; and

(e) has a normal operating pressure greater than 50 psi or a piping capacity greater than 362 gallons for diesel and 316 gallons for gasoline.

(f) Copies of the NACIS codes listed in (a) are available at https://www.naics.com/contact-us/ or by calling 1-888-756.2427. Copies are also available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901.

~~(76)~~(75) "Underground area" means an underground room, such as a basement, cellar, shaft, or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

~~(77)~~(76) "Underground release" means any belowground release.

~~(78)~~(77) "Under-dispenser containment" means containment underneath a dispenser that will prevent leaks from the dispenser from reaching soil or ground water (see ARM 17.56.204).

~~(79)~~(78) "Underground storage tank" or "UST" has the meaning given in 75-11-503, MCA.

~~(80)~~(79) "Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of product.

~~(81)~~(80) "UST system" or "tank system" means an underground storage tank or petroleum storage tank, as appropriate, ancillary equipment designed to prevent, detect, or contain a release from an UST system, the equipment necessary to connect dispensers to product piping, and containment system, if any.

~~(82)~~(81) "Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

History: 75-11-204, 75-11-319, 75-11-505, MCA; IMP, 75-11-203, 75-11-302, 75-11-319, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 1999 MAR p. 2046, Eff. 9/24/99; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2003 MAR p. 2759, Eff. 12/12/03; AMD, 2005 MAR p. 443, Eff. 4/1/05; AMD, 2006 MAR p. 913, Eff. 4/7/06; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2008 MAR p. 2475, Eff. 11/27/08; AMD, 2009 MAR p. 2247, Eff. 11/26/09; AMD, 2010 MAR p. 1888, Eff. 8/27/10; AMD, 2011 MAR p. 2279, Eff. 10/28/11; AMD, 2016 MAR p. 1694, Eff. 9/24/16; AMD, 2018 MAR p. 1954, Eff. 10/6/18.

Reason: The department proposes the repeal of (33) “Implementing agency” as the referenced source ARM17.56.1003 was repealed in 2016 rendering its continued use inappropriate.

17.56.102 APPLICABILITY (1) Except as otherwise provided in (2) through (6), this chapter applies to all owners and operators of UST systems and to all owners and operators of petroleum storage tanks who seek or intend to seek reimbursement from the Montana Petroleum Tank Release Cleanup Fund. An UST system listed in (4) or (5) must comply with ARM 17.56.104.

(2) This chapter does not apply to the following UST systems:

(a) any UST system holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances; and

(b) any wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 402 or 307(b) of the Clean Water Act.

(3) Subchapters 2, 3, 4, 7, 8, 9, 10, 13, 14, and 15 do not apply to any of the following types of PSTs and UST systems:

(a) equipment or machinery that contains regulated substances for operation purposes such as hydraulic lift tanks and electrical equipment tanks;

(b) any UST system that contains a de minimis concentration of regulated substances;

(c) any emergency spill or overflow containment UST system that is expeditiously emptied after use;

(d) a storage tank that is situated in an underground area such as a basement, cellar, mine draft, shaft, or tunnel;

(e) an aboveground storage tank with a capacity less than 30,000 gallons;

(f) aboveground pipes associated with tanks under (3)(d) or (e); or

(g) oil/water separators.

(4) Subchapters 2, 3, 4, 5, 7, 8, 9, 10, 13, 14, and 15 do not apply to any of the following types of UST systems:

(a) wastewater treatment tank systems;

(b) any UST system containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 USC 2011 and following); and

(c) any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR Part 50, Appendix A.

(5) Subchapters 2, 3, 4, 8, and 15 do not apply to any UST system whose capacity is 110 gallons or less.

(6) Subchapter 8 does not apply to any of the following types of UST systems:

(a) farm or residential tank of 1100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(b) tank used for storing heating oil for consumptive use on the premises where stored; and

(c) underground pipes connected to an aboveground storage tank.

History: 75-11-319, 75-11-505, MCA; IMP, 75-11-319, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2006 MAR p. 913, Eff. 4/7/06; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2010 MAR p. 1888, Eff. 8/27/10; AMD, 2011 MAR p. 145, Eff. 2/11/11; AMD, 2018 MAR p. 1954, Eff. 10/6/18.

17.56.103 INTERIM PROHIBITION FOR INSTALLATION This rule has been repealed.

History: 75-10-405, MCA; IMP, 75-10-405, MCA; NEW, 1986 MAR p. 669, Eff. 4/25/86; TRANS, from DHES, 1995 MAR p. 2259; REP, 2003 MAR p. 1079, Eff. 5/23/03.

17.56.104 TANK STANDARDS FOR EXCLUDED UST SYSTEMS (1) Owners or operators must install an UST system listed in ARM 17.56.102(4) or (5) that meets the following requirements for storing regulated substances (whether of single- or double-wall construction):

(a) will prevent releases due to corrosion or structural failure for the operational life of the UST system;

(b) is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(c) is constructed or lined with material that is compatible with the stored substance.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2018 MAR p. 1954, Eff. 10/6/18.

17.56.105 VARIANCES (1) Any person subject to this chapter may request in writing that a variance from requirements or procedures of this chapter be granted by the department to the requestor if the request includes approval of an alternate requirement or procedure.

(2) The written request must include the following:

(a) the specific site for which a variance is sought;

(b) the specific provision of this chapter from which the variance is sought;

(c) the time period for which the variance is sought;

(d) the reason the variance is requested; and

(e) the alternate procedure or requirement for which approval is sought and a demonstration that the alternate procedure or requirement provides an equivalent or greater degree of protection for the public health, welfare, safety, and environment as the established requirement.

(3) The department shall grant or deny a variance requested in accordance with (1) within 30 days of receipt of the information required by (2). The department may only grant the variance if the applicant proves compliance with the requirements of (2)(e) by substantial evidence.

(4) The department, on its own initiative, may issue a variance from any requirement or procedure of this chapter when noncompliance is discovered as a result of a compliance inspection, immediate compliance is impracticable, and the cost of immediate compliance is disproportionate to the benefit provided. The following criteria apply to a variance issued under this rule:

(a) a variance may be issued only when the department makes a written determination that delaying compliance does not create a significant increased threat to the public health, welfare, safety, and the environment;

(b) a variance may postpone compliance only until the earliest practicable time for replacement or upgrading the facility UST systems as identified in department findings; and

(c) the department may define a time period for each variance issued under this section. In no case may a variance be issued under this section for a term longer than 15 years.

(5) A variance issued under (4) must include the following:

(a) the specific provision of this chapter to which the variance applies;

(b) the time period for the variance; and

(c) any conditions or other procedures, methods, or equipment that the department determines are required in order to minimize the risk of release during the term of the variance.

(6) In order to reduce the risk of a release, any variance granted or issued by the department under this rule may be subject to conditions which may include implementation of procedures, methods, and the use of equipment not specifically required by law or rules.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2002 MAR p. 1477, Eff. 5/17/02; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2010 MAR p. 1888, Eff. 8/27/10; AMD, 2018 MAR p. 1954, Eff. 10/6/18.

17.56.120 NOTICE OF ASSESSMENT OF ADMINISTRATIVE PENALTY (REPEALED)

History: 75-11-505, MCA; IMP, 75-11-505, 75-11-525, MCA; NEW, 1998 MAR p. 1739, Eff. 6/26/98; REP, 2007 MAR p. 1189, Eff. 8/24/07.

17.56.121 DETERMINATION OF ADMINISTRATIVE PENALTIES (REPEALED)

History: 75-11-505, MCA; IMP, 75-11-505, 75-11-525, MCA; NEW, 1998 MAR p. 1739, Eff. 6/26/98; AMD, 2001 MAR p. 2459, Eff. 12/21/01; AMD, 2003 MAR p. 2759, Eff. 12/12/03; AMD, 2006 MAR p. 1874, Eff. 5/5/06; REP, 2007 MAR p. 1189, Eff. 8/24/07.

17.56.201 PERFORMANCE STANDARDS FOR NEW TANK SYSTEMS

(1) In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems shall meet the following requirements:

(a) each tank must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion, in accordance with any one of the codes of practice developed by a nationally recognized association or independent testing laboratory identified in (1)(a)(i) through (iii):

(i) the tank is constructed of fiberglass-reinforced plastic in accordance with any one of the standards in (6)(a) and (b); or

(ii) the tank is constructed of steel and cathodically protected in the following manner and in accordance with any one of the standards in (6)(c) through (j):

(A) the tank is coated with a suitable dielectric material;

(B) field-installed cathodic protection systems are designed by a corrosion expert;

(C) impressed current systems are designed to allow determination of current operating status as required in ARM 17.56.302; and

(D) cathodic protection systems are operated and maintained in accordance with ARM 17.56.302; or

(iii) the tank is constructed of steel and clad or jacketed with a non-corrodible material in accordance with all of the standards in (6)(k) through (n);

(b) the piping that routinely contains regulated substances, and is in contact with the ground, must be properly designed, constructed, and protected from corrosion in accordance with any one of the codes of practice developed by a nationally recognized association or independent testing laboratory identified in (1)(b)(i) and (ii):

(i) the piping is constructed of non-corrodible material in accordance with all of the standards in (6)(o) and (p); or

(ii) the piping is constructed of steel and cathodically protected in the following manner and in accordance with all of the standards in (6)(s) through (w):

(A) the piping is coated with a suitable dielectric material;

(B) field-installed cathodic protection systems are designed by a corrosion expert;

(C) impressed current systems are designed to allow determination of current operating status as required in ARM 17.56.302; and

(D) cathodic protection systems are operated and maintained in accordance with ARM 17.56.302;

(c) to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators shall use the following spill and overfill prevention equipment:

(i) spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and

(ii) overfill prevention equipment that will:

(A) automatically shut off flow into the tank when the tank is no more than 95 percent full; or

(B) alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm.

(iii) flow restrictors used in vent lines may not be used to comply with (1)(c)(ii) when overfill prevention is installed or replaced after October 13, 2018; and

(iv) spill and overfill prevention equipment must be periodically tested or inspected in accordance with ARM 17.56.306.

(d) all tanks and piping must be properly installed in accordance with this chapter, the manufacturer's instructions or specifications, all permit conditions, and all applicable standards identified in (6);

(e) upon completion of all work and testing performed pursuant to a permit issued under subchapter 13 for the installation or modification of an underground storage tank system, the licensed installer or department inspector shall certify, on a form approved by the department, compliance with the following requirements:

(i) installation or modification in accordance with (1)(d);

(ii) corrosion protection of steel tanks and piping under (1)(a) and (b);

(iii) release detection under ARM 17.56.402 and 17.56.403; and

(iv) spill and overfill protection under ARM 17.56.301.

(2) Except for suction piping that meets the requirements in ARM 17.56.402, tanks and piping installed or replaced must be secondarily contained and use interstitial monitoring in accordance with ARM Title 17, chapter 56, subchapters 2 and 4.

(3) Secondary containment must contain regulated substances leaked from the primary containment until detected and removed and prevent the release of regulated substances to the environment.

(4) For cases where the piping is replaced, the entire piping run must be secondarily contained.

(5) Each UST system must be equipped with under-dispenser containment pursuant to ARM 17.56.204.

(6) The department adopts and incorporates by reference the version in effect on January 1, 2018, of the following standards, specifications, and publications:

(a) Underwriters Laboratories Standard 1316, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Alcohols, and Alcohol-Gasoline Mixtures," which sets forth requirements for the manufacture and installation of glass-fiber-reinforced plastic underground storage tanks for petroleum products, a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

(b) Underwriters Laboratories of Canada Standard ULC-S615, "Standard for Reinforced Plastic Underground Tanks for Flammable and Combustible Liquids," which sets forth requirements for the manufacture and installation of horizontal reinforced plastic underground tanks for petroleum products, a copy of which may be obtained from Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9;

(c) Steel Tank Institute, "Specification for STI-P3® Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks," which sets forth design and installation standards of cathodically protected steel underground storage tanks, a copy of which may be obtained from the Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 50047, (800) 438-8265;

(d) Underwriters Laboratories Standard 1746, "External Corrosion Protection Systems for Steel Underground Storage Tanks," which sets forth design requirements for factory installed exterior corrosion protection systems for steel underground storage tanks intended for flammable and combustible liquids, a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

(e) Underwriters Laboratories of Canada Standard ULC-S603, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," which sets forth the requirements that cover single-wall and double-wall cylindrical steel tanks of the horizontal, nonpressure type that are used for the underground storage of flammable liquids and combustible liquids, a copy of which may be obtained from Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9;

(f) Underwriters Laboratories of Canada Standard ULC-S603.1, "Standard for External Corrosion Protection Systems for Steel Underground Tanks for Flammable and

Combustible Liquids," which sets forth the requirements for external corrosion protection systems on carbon steel underground storage tanks, a copy of which may be obtained from Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9;

(g) Underwriters Laboratories of Canada Standard ULC-S631, "Standard for Isolating Bushing for Steel Underground Tanks Protected with External Corrosion Protection Systems," which sets forth requirements for low profile nylon isolating bushings with internal and external threads and component thread sealant, which are intended for use in the external corrosion protection of underground steel tanks, a copy of which may be obtained from Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9;

(h) Steel Tank Institute Standard F841, "Standard for Dual Wall Underground Steel Storage Tanks," which sets forth design requirements for standard dual wall underground steel storage tanks, a copy of which may be obtained from the Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 50047, (800) 438-8265;

(i) National Association of Corrosion Engineers Standard SP0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection," which sets forth cathodic protection standards for buried or submerged metallic liquid storage systems, a copy of which may be obtained from NACE International, P.O. Box 201009, Houston, TX 77216-1009, (281) 228-6200;

(j) Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," which sets forth requirements for horizontal atmospheric-type steel tanks intended for the underground storage of flammable and combustible liquids, and single wall tanks, secondary containment tanks, multiple compartment single wall, and multiple compartment secondary containment tanks, a copy of which may be obtained from Underwriters Laboratory, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

(k) Steel Tank Institute ACT-100, "Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks," which sets forth manufacturing specifications to build the ACT-100 FRP composite steel underground storage tank, a copy of which may be obtained from the Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 50047, (800) 438-8265;

(l) Underwriters Laboratories Subject 971, "Standard for Nonmetallic Underground Piping For Flammable Liquids," which sets forth design standards for fiberglass reinforced plastic pipe, a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

(m) Steel Tank Institute ACT-100-U® Specification F961, "Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks," which sets forth manufacturing requirements to build the ACT-100-U composite steel underground storage tank, a copy of which may be obtained from the Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 50047, (800) 438-8265;

(n) Steel Tank Institute Specification F922, "Steel Tank Institute Specification for Permatank®," which sets forth manufacturing requirements to build a Permatank®, a copy of which may be obtained from the Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 50047, (800) 438-8265;

(o) Underwriters Laboratories of Canada Standard ULC-S660, "Standard for Nonmetallic Underground Piping for Flammable and Combustible Liquids," which sets forth requirements for underground piping for flammable and combustible liquids, a copy of which may be obtained from Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9;

(p) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code," which sets forth transferring and dispensing practices for flammable and combustible liquids, a copy of which may be obtained from National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269, (800) 344-3555;

(q) American Petroleum Institute Recommended Practice 1615, "Installation of Underground Petroleum Storage Systems," which sets forth proper installation procedures for UST systems, a copy of which may be obtained from Global Engineering Documents, 15 Inverness Way East, M/S C303B, Englewood, CO 80112-5776, (303) 397-7956;

(r) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems," which sets forth the cathodic protection standards for UST systems, a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375;

(s) Underwriters Laboratories Subject 971A, "Outline of Investigation for Metallic Underground Fuel Pipe," which sets forth manufacturing requirements for metallic and composite primary carrier, secondary containment, and integral primary/secondary pipe systems, a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

(t) Steel Tank Institute Recommended Practice R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems," which sets forth design, installation, and monitoring of corrosion control systems for underground metallic piping, a copy of which may be obtained from the Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 50047, (800) 438-8265;

(u) National Association of Corrosion Engineers Practice SP0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems," which sets forth practices for the control of external corrosion or buried or submerged metallic piping systems, a copy of which may be obtained from NACE International, P.O. Box 201009, Houston, TX 77216-1009, (281) 228-6200;

(v) Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems," which sets forth proper installation procedures for UST systems, a copy of which may be obtained from Petroleum Equipment Institute, P.O. Box 2380, Tulsa, OK 74101, (918) 494-9696;

(w) American National Standards Institute Standard B31.3, "Process Piping," which sets forth requirements for piping typically found in petroleum refineries; chemical, pharmaceutical, textile, paper, semiconductor, and cryogenic plants; and related processing plants and terminals, a copy of which may be obtained from ANSI, 25 W. 43rd Street, 4th Floor, New York, NY, 10036, (212) 642-4900;

(x) National Fire Protection Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages," which sets forth safeguards for dispensing liquid and

gaseous motor fuels into the fuel tanks of automotive vehicles and marine craft, a copy of which may be obtained from The American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017;

(y) NACE International Standard Practice SP 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection," which sets forth minimum requirements for using CP to control external corrosion of metallic UST systems, a copy of which may be obtained from NACE International, P.O. Box 201009, Houston, TX 77216-1009, (281) 228-6200; and

(z) American Petroleum Institute 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Filling Stations," which describes recommended practices for the storing, handling, and fire protection of ethanol and gasoline-ethanol blends from E1 to E15 and from E65 to E100 (used for E85) at distribution terminals and filling stations, a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2010 MAR p. 1888, Eff. 8/27/10; AMD, 2013 MAR p. 1826, Eff. 10/18/13; AMD, 2016 MAR p. 1694, Eff. 9/24/16; AMD, 2018 MAR p. 1954, Eff. 10/6/18.

17.56.202 UPGRADING OF EXISTING UST SYSTEMS (1) Owners and operators must permanently close, in accordance with ARM Title 17, chapter 56, subchapter 7, any UST system that does not meet the new UST system performance standards in ARM 17.56.201 or has not been upgraded in accordance with (2) through (4). This requirement does not apply to previously deferred UST systems described in ARM 17.56.1601 and where an upgrade is required by the department.

(2) All existing UST systems must comply with one of the following requirements:

(a) new UST system performance standards under ARM 17.56.201;

(b) the upgrading requirements in (2) through (4); or

(c) closure requirements under subchapter 7, including applicable requirements for corrective action under subchapter 6.

(3) Steel tanks must be upgraded to meet any one of the following requirements in accordance with all of the standards in (6):

(a) a tank may be upgraded by internal lining if:

(i) the lining is installed in accordance with the requirements of ARM 17.56.304;

(ii) within ten years after lining, and every five years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications; and

(iii) if the internal lining is no longer performing in accordance with original design specifications and cannot be repaired in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory, then the lined tank must be permanently closed in accordance with ARM Title 17, chapter 56, subchapter 7.

(b) a tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of ARM 17.56.201(1)(a)(ii)(B), (C), and (D) and the integrity of the tank is ensured using one of the following methods:

(i) the tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing the cathodic protection system; or

(ii) the tank has been installed for less than ten years and is monitored monthly for releases in accordance with ARM 17.56.407(1)(d) through (g); or

(iii) the tank has been installed for less than ten years and is assessed for corrosion holes by conducting two tightness tests that meet the requirements of ARM 17.56.407(1)(c). The first tightness test must be conducted prior to installing the cathodic protection system. The second tightness test must be conducted between three and six months following the first operation of the cathodic protection system; and

(c) a tank may be upgraded by both internal lining and cathodic protection if:

(i) the lining is installed in accordance with the requirements of ARM 17.56.304; and

(ii) the cathodic protection system meets the requirements of ARM 17.56.201(1)(a)(ii)(B), (C) and (D).

(4) Metal piping that routinely contains regulated substances, and is in contact with the ground, must be cathodically protected in accordance with all of the standards adopted by reference in ARM 17.56.201(6)(s) through (w) and must meet the requirements of ARM 17.56.201(1)(b)(ii)(B), (C), and (D).

(5) To prevent spilling and overfilling associated with product transfer to the UST system, all existing UST systems must comply with new UST system spill and overfill prevention equipment requirements specified in ARM 17.56.201(1)(c).

(6) The department adopts and incorporates by reference the version in effect on January 1, 2018, of the following publications and standards:

(a) American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks," which sets forth repair and lining standards for UST systems, a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375;

(b) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection," which sets forth repair and lining standards for UST systems, a copy of which may be obtained from National Leak Prevention Association, 7685 Fields Ertel Road, Cincinnati, OH 45241, (800) 543-1838;

(c) National Association of Corrosion Engineers Standard RP0285, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection," which sets forth cathodic protection standards for buried or submerged metallic liquid storage systems, a copy of which may be obtained from NACE, International, P.O. Box 201009, Houston, TX 77216-1009, (281) 228-6200; and

(d) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems," which sets forth cathodic protection standards for UST systems, a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375.

(e) Ken Wilcox Associates Recommended Practice, "Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera," a copy of which may be obtained from Ken Wilcox Associates, Inc., 1125 Valley Ridge Drive, Grain Valley, MO 64029, (816) 443-2494.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2010 MAR p. 1888, Eff. 8/27/10; AMD, 2013 MAR p. 1826, Eff. 10/18/13; AMD, 2016 MAR p. 1694, Eff. 9/24/16; AMD, 2018 MAR p. 1954, Eff. 10/6/18.

17.56.203 ADDITIONAL PERFORMANCE STANDARDS FOR NEW UNDERGROUND PIPING CONNECTED TO ABOVEGROUND TANKS OR TO UNDERGROUND TANKS WITH A CAPACITY OF 660 GALLONS OR LESS USED TO STORE HEATING OIL (1) Primary underground piping connected to above ground tanks or to underground tanks with a capacity of 660 gallons or less used exclusively to store heating oil for consumptive use on the premises where stored may be constructed of copper provided that the piping is enclosed in secondary containment consistent with these rules.

(2) In addition to cathodically protected steel or non-metallic pipe listed for use with petroleum products and/or motor fuels, schedule 40 or greater PVC pipe and fittings may be used to provide secondary containment for heating oil tank systems subject to this rule provided that only adhesives resistant to petroleum products are used to bond PVC joints.

(3) If liquid or vapor sensors are not used to monitor the interstitial space for a release, the piping system must be installed so that any liquid released into the interstitial space will not move more than 20 feet before being visually detected in a sump or standpipe.

History: 75-11-302, 75-11-505, MCA; IMP, 75-11-302, 75-11-505, MCA; NEW, 1995 MAR p. 2488, Eff. 11/23/95; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07.

17.56.204 SECONDARY CONTAINMENT, UNDER-DISPENSER CONTAINMENT, AND INTERSTITIAL MONITORING (1) Any UST that is replaced or installed after November 26, 2009 must employ:

(a) secondary containment and approved continuous interstitial monitoring, as described in ARM 17.56.407(1)(g) and (2), as a monthly leak detection method; and

(b) a liquid-tight tank top sump where the product piping exits the tank.

(2) Any pressurized product piping regulated under this chapter that is installed or replaced must:

(a) employ secondary containment;

(b) terminate in a liquid tight sump at each end. The sumps must:

(i) be liquid-tight on their sides, bottom, and at any penetrations;

(ii) be compatible with the substance conveyed by the piping; and

(iii) allow for visual inspection and access to the components in the containment system and/or otherwise allow the system to be monitored; and

(c) employ approved continuous interstitial monitoring, as described in ARM 17.56.407(1)(g) and (2), as a monthly leak detection method.

(3) If 50 percent or more of the length (measured from the piping terminus at the tank to the nearest point where the product is dispensed or otherwise used) or a pressurized product pipe regulated under this chapter is replaced, then the entire length of product piping must be replaced with secondarily-contained piping. The replacement of a line of product piping from a particular UST does not require the replacement of product pipes connected to other USTs.

(4) Under-dispenser containment must be installed under dispensers when:

(a) a new UST system is installed;

(b) dispensers and any associated hardware used to attach the dispenser to the underground storage tank system are replaced. Equipment necessary to connect the dispenser to the underground storage tank system includes check valves, shear valves, unburied risers or flexible connectors, or other transitional components that are underneath the dispenser and used to connect the dispenser to the underground piping;

(c) product piping is repaired or replaced at an associated dispenser island;

(d) significant modifications are made to the concrete at a dispenser island; or

(e) the department determines under-dispenser containment is necessary to meet the requirements of this rule.

(5) If under-dispenser containment is required pursuant to (1) or (4), the containment must:

(a) employ approved interstitial monitoring, as described in ARM 17.56.407(1)(g) and (2), as a monthly leak detection method;

(b) be liquid-tight on its sides, bottom, and at any penetrations;

(c) be compatible with the substance conveyed by the piping; and

(d) allow for visual inspection and access to the components in the containment system or be periodically monitored for leaks from the dispenser system.

History: 75-11-505, MCA; IMP, 75-11-509, MCA; NEW, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2018 MAR p. 1954, Eff. 10/6/18.

17.56.205 ANTI-SIPHON REQUIREMENTS (1) The owner or operator of an UST system that is located at an elevation that produces a gravity head on an underground piping system shall ensure that the product pipe is equipped with one of the following devices:

(a) a department-approved anti-siphon valve;

(b) a department-approved normally closed solenoid valve; or

(c) any other department-approved device designed to prevent siphoning.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 2011 MAR p. 145, Eff. 2/11/11.

17.56.221 ISSUANCE OF COMPLIANCE TAGS AND CERTIFICATES

This rule has been repealed.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1998 MAR p. 3108, Eff. 11/20/98; AMD, 2002 MAR p. 1477, Eff. 5/17/02; AMD, 2003 MAR p. 1079, Eff. 5/23/03; REP, 2003 MAR p. 2759, Eff. 12/12/03.

17.56.301 SPILL AND OVERFILL CONTROL (1) Owners and operators shall ensure that releases due to spilling or overfilling do not occur. The owner and operator shall ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling. The transfer procedures described in National Fire Protection Association Standard 385, "Standard for Tank Vehicles for Flammable and Combustible Liquids," must be used to comply with this section. Further guidance on spill and overfill prevention appears in American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," and National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code."

(2) The owner and operator shall report, investigate, and clean up any spills and overfills in accordance with ARM 17.56.505.

(3) The department adopts and incorporates by reference the version in effect on January 1, 2016, of the following standards and publications:

(a) National Fire Protection Association Standard 385, "Standard for Tank Vehicles for Flammable and Combustible Liquids," which applies to tank vehicles to be used for the transportation of normally stable flammable and combustible liquids with a flash point below 200ºF (93.4ºC). Standard 385 provides minimum requirements for the design and construction of cargo tanks and their appurtenances. A copy may be obtained from National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, (800) 344-3555;

(b) American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," which sets forth transferring and dispensing practices for flammable and combustible liquids, a copy of which may be obtained from Global Engineering Documents, 15 Inverness Way East, M/S C303B, Englewood, CO 80112-5776, (303) 397-7956; and

(c) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code," which sets forth transferring and dispensing practices for flammable and combustible liquids, a copy of which may be obtained from National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, (800) 344-3555.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2016 MAR p. 1694, Eff. 9/24/16.

17.56.302 OPERATION AND MAINTENANCE OF CORROSION PROTECTION (1) All owners and operators of metal UST systems with corrosion protection shall comply with the following requirements to ensure that releases due to corrosion are prevented until the UST system is permanently closed or undergoes a change-in-service pursuant to ARM Title 17, chapter 56, subchapter 7:

(a) all corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that are in contact with the ground;

(b) all UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

(i) all cathodic protection systems must be tested within six months of installation and at least every three years thereafter; and

(ii) the criteria that are used to determine that cathodic protection is adequate as required by this rule must be in accordance with one of the codes of practice listed in (2);

(c) UST systems with impressed current cathodic protection systems must also be inspected every 60 days to ensure the equipment is running properly; and

(d) for UST systems using cathodic protection, records of the operation of the cathodic protection must be maintained in accordance with ARM 17.56.305 to demonstrate compliance with the performance standards in this rule. These records must provide the following:

(i) the results of the last three inspections required in (1)(c); and

(ii) the results of testing from the last two inspections required in (1)(b).

(2) The department adopts and incorporates by reference the version in effect on January 1, 2018, of the following standards and test methods:

(a) NACE International Test Method TM 0101, "Measurement Techniques Related to Criteria for Cathodic Protection of Underground Storage Tank Systems," a copy of which may be obtained from NACE International, P.O. Box 201009, Houston, TX 77216-1009, (281) 228-6200;

(b) NACE International Test Method TM0497, "Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems," a copy of which may be obtained from NACE International, P.O. Box 201009, Houston, TX 77216-1009, (281) 228-6200;

(c) Steel Tank Institute Recommended Practice R051, "Cathodic Protection Testing Procedures for STI-P3® USTs," a copy of which may be obtained from the Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 50047, (800) 438-8265;

(d) NACE International Standard Practice SP 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection," a copy of which may be obtained from NACE International, P.O. Box 201009, Houston, TX 77216-1009, (281) 228-6200; or

(e) NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems," a copy of which may be obtained from NACE International, P.O. Box 201009, Houston, TX 77216-1009, (281) 228-6200.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259, Eff. 7/1/95; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2010 MAR p. 1888, Eff. 8/27/10; AMD, 2016 MAR p. 1694, Eff. 9/24/16; AMD, 2018 MAR p. 1954, Eff. 10/6/18.

17.56.303 COMPATIBILITY (1) Owners and operators shall use an UST system made of or lined with materials that are compatible with the substance stored in the UST system. Owners and operators storing alcohol blends shall use American Petroleum Institute Publication 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Filling Stations to comply with the requirements of this rule.

(2) The department adopts and incorporates by reference the version in effect on July 1, 2018, of American Petroleum Institute Publication 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Filling Stations," which sets forth requirements for storing and handling regulated substances at UST facilities, a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375.

(3) Owners and operators must notify the department at least 30 days prior to switching to a regulated substance containing greater than 10 percent ethanol, greater than 20 percent biodiesel, or any other regulated substance identified by the department.

(4) Owners and operators with UST systems storing these regulated substances must demonstrate compatibility of the UST system (including the tank, piping, containment sumps, pumping equipment, release detection equipment, spill equipment, and overfill equipment) with the regulated substance stored using one of the following options:

(a) certification or listing of UST system equipment or components by a nationally recognized, independent testing laboratory for use with the regulated substance stored; or

(b) equipment or component manufacturer written approval indicating an affirmative statement of compatibility and specifying the range of biofuel blends the equipment or component is compatible with; or

(c) use another option determined by the department to be no less protective of human health and the environment.

(5) Owners and operators must maintain records in accordance with ARM 17.56.305 documenting compliance with ARM 17.56.303(4) for as long as the UST system is used to store the regulated substance.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2010 MAR p. 1888, Eff. 8/27/10; AMD, 2018 MAR p. 1954, Eff. 10/6/18.

17.56.304 REPAIRS (1) Owners and operators of UST systems shall ensure that repairs will prevent releases due to structural failure or corrosion for as long as the UST system is used to store regulated substances. Owners and operators shall receive a permit from the department prior to making any repair of an UST system.

(2) Tanks not meeting the design or construction standards of the applicable code of practice in (4) may not be repaired and must be closed in accordance with ARM 17.56.702.

(3) Repairs must meet the following requirements:

(a) repairs to UST systems must be conducted in accordance with all applicable state, federal, and local laws and regulations and the applicable code of practice in (4).

If there is a conflict in the referenced codes, the more stringent and protective code applies;

(b) tanks must be repaired according to the manufacturer's recommendation and under the supervision on site of a manufacturer's authorized representative or the tank manufacturer shall certify that the repaired tank meets the manufacturer's design standards;

(c) the tank manufacturer shall re-warranty the repaired tank for ten years or the remainder of the original warranty period, whichever is longer;

(d) the department may require excavation of the tank to be repaired so that the outer wall of the tank may be inspected and tested for defects;

(e) metal pipe sections and fittings that are damaged or have released product as a result of corrosion or other damage must be replaced;

(f) upon completion of the repair and before the UST system is placed in service, the following tests must be performed:

(i) repaired tanks and piping must be tightness tested in accordance with ARM 17.56.407(1)(c) and 17.56.408(1)(b);

(ii) corrosion protection systems circuitry must be tested to ensure it is still functioning; and

(iii) repairs to secondary containment areas of tanks and piping used for interstitial monitoring and to containment sumps used for interstitial monitoring of piping must have the secondary containment tested for tightness within 30 days following the date of completion of the repair according to one of the following:

(A) the manufacturer's instructions;

(B) a code of practice developed by a nationally recognized association or independent testing laboratory; or

(C) according to requirements established by the department.

(g) within six months following the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with ARM 17.56.302(1)(b) and (c) to ensure that it is operating properly;

(h) within 30 days following any repair to spill or overfill prevention equipment, the repaired spill or overfill prevention equipment must be tested or inspected, as appropriate, in accordance with ARM 17.56.306; and

(i) UST system owners and operators must maintain records (in accordance with ARM 17.56.305) of each repair until the UST system is permanently closed or undergoes a change-in-service pursuant to ARM Title 17, chapter 56, subchapter 7.

(4) The department adopts and incorporates by reference the version in effect on January 1, 2018, of the following standards or specifications:

(a) Underwriters Laboratories Standard 1316, "Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products," which sets forth requirements for the manufacture and installation of glass-fiber-reinforced plastic underground storage tanks for petroleum products, a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

(b) Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks," which sets forth requirements for corrosion protection systems for underground storage tanks, a copy of which may be obtained from

Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

(c) American Petroleum Institute Recommended Practice RP 2200, "Repairing Crude Oil, Liquified Petroleum Gas, and Product Pipelines," which sets forth guidelines and safe practices for in-service pipeline repairs for hazardous liquids, a copy of which may be obtained from Global Engineering Documents, 15 Inverness Way East, M/S C303B, Englewood, CO 80112-5776, (303) 397-7956;

(d) Steel Tank Institute, "Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks," which sets forth design and installation standards of cathodically protected steel underground storage tanks, a copy of which may be obtained from the Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 60047, (800) 438-8265;

(e) Steel Tank Institute Recommended Practice R972, "Recommended Practice for the Addition of Supplemental Anodes to STI-P3® Tanks," which sets forth standards for the addition of supplemental anodes to STI-P3® Tanks, a copy of which may be obtained from the Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 60047, (800) 438-8265;

(f) American Petroleum Institute Recommended Practice RP 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks," which sets forth recommendations for the interior lining of existing steel and fiberglass reinforced plastic underground tanks used to store petroleum-based motor fuels and middle distillates, a copy of which may be obtained from Global Engineering Documents, 15 Inverness Way East, M/S C303B, Englewood, CO 80112-5776, (303) 397-7956;

(g) National Leak Prevention Association Standard 631, "Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks," which sets forth standards for cleaning, interior inspection, repair and lining of underground storage tanks, a copy of which may be obtained from the National Leak Prevention Association, 7685 Fields Ertel Road, Cincinnati, OH 45241, (800) 543-1838;

(h) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code," which sets forth transferring and dispensing practices for flammable and combustible liquids, a copy of which may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269, (800) 344-3555;

(i) NACE International Standard Practice SP 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection," which sets forth methods and practices for achieving effective control of external corrosion on underground or submerged metallic piping systems, a copy of which may be obtained from NACE International, P.O. Box 201009, Houston, TX 77216-1009, (281) 228-6200;

(j) Fiberglass Tank and Pipe Institute Recommended Practice T-95-02, "Remanufacturing of Fiberglass Reinforced Plastic (FRP) Underground Storage Tanks," which sets forth requirements and procedures for the remanufacture of existing fiberglass reinforced plastic (FRP) underground storage tanks or FRP tanks damaged prior to installation, a copy of which may be obtained from the Fiberglass Tank and Pipe Institute, 8252 S. Harvard Avenue, Suite 102, Tulsa, OK 74137 (918) 809-6292;

(k) Steel Tank Institute Recommended Practice R012, "Recommended Practice for Interstitial Tightness Testing of Existing Underground Double Wall Steel Tanks," which sets forth standards for interstitial tightness of existing underground double wall

steel tanks, a copy of which may be obtained from the Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 60047, (800) 438-8265;

(l) Fiberglass Tank and Pipe Institute Protocol, "Field Test Protocol for Testing the Annular Space of Installed Underground Fiberglass Double and Triple-Wall Tanks with Dry Annular Space - RP 2007-2," which sets forth field integrity testing of the dry annular space of double or triple wall underground fiberglass storage tanks, a copy of which may be obtained from the Fiberglass Tank and Pipe Institute, 8252 S. Harvard Avenue, Suite 102, Tulsa, OK 74137 (918) 809-6292; and

(m) Petroleum Equipment Institute Recommended Practice RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities," which sets forth general guidelines for the inspection and testing of leak detection, release prevention and overfill prevention equipment at UST facilities, a copy of which may be obtained from the Petroleum Equipment Institute, P.O. Box 2380, Tulsa, OK 74101, (918) 494-9696.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 1999 MAR p. 2046, Eff. 9/24/99; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2010 MAR p. 1888, Eff. 8/27/10; AMD, 2016 MAR p. 1694, Eff. 9/24/16; AMD, 2018 MAR p. 1954, Eff. 10/6/18.

17.56.305 REPORTING AND RECORDKEEPING (1) Owners and operators of UST systems shall cooperate fully with inspections, monitoring, and testing conducted by the department, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to section 9005 of Subtitle I of the Resource Conservation and Recovery Act (RCRA), amending the Solid Waste Disposal Act, as amended or pursuant to other state laws or rules, including the following:

(a) owners and operators shall submit the following information to the department:

(i) notification for all UST systems on a department-approved form that includes certification of installation of new UST systems and notification when any person assumes ownership of an UST system;

(ii) reports of all releases including suspected releases, spills and overfills, and confirmed releases;

(iii) corrective actions planned or taken including initial abatement measures, initial site history, free product removal, the result of remedial investigations, and cleanup plan;

(iv) a notification before permanent closure or change-in-service; and

(v) notification at least 30 days prior to UST systems switching to certain regulated substances under ARM 17.56.303.

(b) owners and operators shall maintain the following information:

(i) documentation of operation of corrosion protection equipment;

(ii) documentation of UST system repairs;

(iii) documentation of compliance with release detection requirements;

(iv) results of the site investigation conducted at permanent closure;

(v) documentation of compatibility for UST systems containing greater than 10 percent ethanol, greater than 20 percent biodiesel, or any other regulated substance identified by the department;

(vi) documentation of compliance for spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping;

(vii) documentation of periodic walkthrough inspections;

(viii) records of site assessments conducted under ARM 17.56.407(1)(e) and (f) and investigations of leak detection alarms under ARM 17.56.407 and ARM 17.56.408; and

(ix) documentation of operator training.

(c) owners and operators shall keep the records required either:

(i) at the UST site and immediately available for inspection by the department;

(ii) at a readily available alternative site and be provided for inspection by the department upon request; or

(iii) in the case of permanent closure records required under ARM 17.56.705, owners and operators are also provided with the additional alternative of mailing closure records to the department if they cannot be kept at the site or an alternative site as indicated above.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2010 MAR p. 1888, Eff. 8/27/10; AMD, 2016 MAR p. 1694, Eff. 9/24/16; AMD, 2018 MAR p. 1954, Eff. 10/6/18.

17.56.306 PERIODIC TESTING OF SPILL PREVENTION EQUIPMENT AND CONTAINMENT SUMPS USED FOR INTERSTITIAL MONITORING OF PIPING AND PERIODIC INSPECTION OF OVERFILL PREVENTION EQUIPMENT (1) Owners and operators of UST systems with spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping must meet the following requirements to ensure the equipment is operating properly and will prevent releases to the environment:

(a) containment sumps used for interstitial monitoring of piping and spill prevention equipment, such as a catchment basin, spill bucket, or other spill containment device, must prevent releases to the environment by meeting one of the following:

(i) the equipment is double walled and the integrity of both walls is periodically monitored at a frequency not less than the frequency of the walkthrough inspections described in ARM 17.56.307. Owners and operators must begin meeting (1)(a) and conduct a test within 30 days of discontinuing periodic monitoring of this equipment; or

(ii) the spill prevention equipment and containment sumps used for interstitial monitoring of piping are tested at least once every three years to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with one of the following criteria:

(A) requirements developed by the manufacturer only if the manufacturer has developed requirements;

(B) code of practice developed by a nationally recognized association or independent testing laboratory; or

(C) requirements determined by the department to be no less protective of human health and the environment than the requirements listed in (1)(a)(ii)(A) and (B) or follow one of the department-approved methods listed below:

(I) hydrostatically test all containment sumps once every three years with liquid for one hour to a height six inches above the highest sump penetration. A passing test must show no liquid loss measured during the testing interval; or

(II) vacuum or pressure test containment sumps in accordance with the testing equipment manufacturer's instructions and pass/fail requirements.

(2) Testing conducted pursuant to (1) must be accomplished by a licensed installer or compliance inspector.

(3) Failed tests pursuant to (1) shall be reported to the department in accordance with ARM Title 17, chapter 56, subchapter 5.

(4) Overfill prevention equipment and containment sumps used for interstitial monitoring of piping must be inspected at least once every three years and meet the following:

(a) at a minimum, the inspection must ensure that overfill prevention equipment is set to activate at the correct level specified in ARM 17.56.201(1)(c) and will activate when regulated substance reaches that level; and

(b) inspections must be conducted in accordance with one of the criteria in (1).

(5) The code of practice from Petroleum Equipment Institute Publication RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities." may be used to comply with (1).

(6) Owners and operators must begin meeting these requirements for UST systems in use on or before October 13, 2018. The initial spill prevention equipment test, containment sump test, and overfill prevention equipment inspection must be conducted no later than October 13, 2021.

(7) For UST systems brought into use after October 13, 2018, these requirements apply at installation:

(a) owners and operators must maintain records in accordance with ARM 17.56.305 for spill prevention equipment, containment sumps used for interstitial monitoring of piping, and overfill prevention equipment;

(b) all records of testing or inspection must be maintained for three years; and

(c) for spill prevention equipment and containment sumps used for interstitial monitoring of piping not tested every three years, documentation showing that the prevention equipment is double walled and the integrity of both walls is periodically monitored must be maintained for as long as the equipment is periodically monitored.

History: 75-11-505, 75-11-509, MCA; IMP, 75-11-505, 75-11-509, MCA; NEW, 2018 MAR p. 1954, Eff. 10/6/18.

17.56.307 PERIODIC OPERATION AND MAINTENANCE WALKTHROUGH INSPECTIONS (1) To properly operate and maintain UST systems, no later than October 13, 2021, owners and operators must meet one of the following:

(a) conduct a walkthrough inspection that, at a minimum, checks the following equipment as specified below:

(i) every 30 days, except spill prevention equipment at UST systems receiving deliveries at intervals greater than every 30 days may be checked prior to each delivery:

(A) visually check spill prevention equipment for damage;

(B) remove liquid or debris;

(C) check for and remove obstructions in the fill pipe;

(D) check the fill cap to make sure it is securely on the fill pipe;

(E) for double walled spill prevention equipment with interstitial monitoring, check for a leak in the interstitial area;

(F) check release detection equipment to make sure the release detection equipment is operating with no alarms or other unusual operating conditions present; and

(G) ensure records of release detection testing are reviewed and current; and

(ii) on an annual basis, the following must be checked:

(A) visually check containment sumps for damage, leaks to the containment area, or releases to the environment; remove liquid (in contained sumps) or debris; and, for double walled sumps with interstitial monitoring, check for a leak in the interstitial area;

(B) check hand held release detection equipment such as tank gauge sticks or groundwater bailers for operability and serviceability; and

(C) conduct operation and maintenance walkthrough inspections according to a standard code of practice developed by a nationally recognized association or independent testing laboratory that checks equipment comparable to (1)(a); or

(b) use the following code of practice to comply with (1): Petroleum Equipment Institute Recommended Practice RP 900, "Recommended Practices for the Inspection and Maintenance of UST Systems."

(2) Conduct operation and maintenance walkthrough inspections developed by the department that checks equipment comparable to (1).

(3) Owners and operators must maintain records in accordance with ARM 17.56.305 of operation and maintenance walkthrough inspections for one year.

(a) Records must include:

(i) a list of each area checked;

(ii) whether each area checked was acceptable or needed action taken;

(iii) a description of actions taken to correct an issue; and

(iv) delivery records if spill prevention equipment is checked less frequently than every 30 days due to infrequent deliveries.

History: 75-11-505, 75-11-509, MCA; IMP, 75-11-505, MCA; NEW, 2018 MAR p. 1954, Eff. 10/6/18.

17.56.308 OPERATING PERMIT REQUIRED (1) After March 31, 2003, except as provided in (9), a person may not place a regulated substance in, dispense a regulated substance from, or otherwise operate an underground storage tank system unless the owner or operator has a valid operating permit for the system.

(2) When the ownership of an UST changes, the operating permit in the name of the previous owner will remain valid for the new owner for 45 days after the transfer is completed.

(3) The department shall issue an operating permit when:

(a) the owner or operator has filed with the department an inspection report signed by a licensed compliance inspector and the department determines, on the basis of the inspection report and other relevant information, that the operation and maintenance of the underground storage tank systems at that facility are not in significant noncompliance with Title 75, chapter 11, part 5, MCA, or rules adopted thereunder, on the date of the inspection. The department may issue and renew permits for tanks that are in significant noncompliance with applicable requirements. The department may take enforcement actions, including actions for penalties, and may pursue any other remedy available to the department to address noncompliance with statutes, rules, permits, or orders issued pursuant to this chapter; and

(b) the department has received all required UST-related permit, inspection, and registration fees.

(4) If a filed inspection report contains substantive errors or inconsistencies, the department may, before determining whether to issue an operating permit, correct the report based on available information, require the inspector to provide additional information or require the owner or operator to obtain a follow-up inspection.

(5) An operating permit must be issued for three years.

(6) The department may suspend, revoke, or determine not to renew an operating permit issued under this rule upon its finding that there is substantial evidence that:

(a) the underground storage tank system for which the permit was issued is in significant noncompliance with Title 75, chapter 11, part 5, MCA, or with rules, permits or orders issued pursuant to Title 75, chapter 11, part 5, MCA;

(b) the permittee committed fraud or deceit in applying for the operating permit; or

(c) the operating permit was issued in error.

(7) Except as provided in (8), the department shall suspend or revoke an operating permit issued under this rule according to the provisions of 75-11-512, MCA.

(8) If the department determines that noncompliance with Title 75, chapter 11, part 5, MCA, or this chapter, poses an immediate or substantial threat to the public health, safety, or environment, it may immediately revoke the operating permit. A permittee whose operating permit has been revoked in accordance with this rule may request a hearing before the department. The department shall schedule a hearing within ten days of the request for hearing.

(9) For the first 45 days after an operating permit expires, an UST is considered not operating if no regulated substance is deposited into or dispensed from the system.

History: 75-11-505, MCA; IMP, 75-11-509, MCA; NEW, 2000 MAR p. 969, Eff. 4/14/00; AMD, 2001 MAR p. 2459, Eff. 12/21/01; AMD, 2002 MAR p. 1091, Eff. 4/12/02; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2003 MAR p. 2759, Eff. 12/12/03; AMD, 2006 MAR p. 913, Eff. 4/7/06; AMD, 2007 MAR p. 1667, Eff. 8/24/07; AMD, 2011 MAR p. 2139, Eff. 10/14/11.

17.56.309 REQUIREMENTS FOR COMPLIANCE INSPECTIONS (1) The owner or operator of an underground storage tank system shall have all active underground storage tank systems inspected by a licensed compliance inspector, licensed pursuant to ARM 17.56.1402(3), at least every three years for compliance with the operation and maintenance requirements of this chapter. The inspections must:

(a) be completed at least 90 days before the expiration date of the operating permit issued pursuant to ARM 17.56.308; and

(b) include examination, assessment, and documentation of compliance with all tank operation and maintenance requirements, set forth in rules adopted under 75-11-505, MCA, or in rules adopted or permits issued under 75-11-509, MCA.

(2) The owner or operator of an underground storage tank system must have all inactive underground storage tank systems inspected by a compliance inspector or an oversight inspector, licensed pursuant to ARM 17.56.1402(3) or (4), at least every three years for compliance with the requirements of ARM 17.56.701. The inspections must be completed:

(a) at least 90 days before the expiration date of the operating permit issued pursuant to ARM 17.56.308; or

(b) if no operating permit has been issued for the inactive underground storage tank, at least 90 days before the three-year compliance inspection is due.

(3) Underground storage tank systems that:

(a) under ARM 17.56.102(3) and (4), are exempt from ARM Title 17, chapter 56, subchapters 2, 3, and 4, are also exempt from compliance inspection requirements. Owners or operators of these underground storage tank systems may obtain an operating permit by making a written request to the department and providing evidence, satisfactory to the department, that the UST systems qualify for this exemption; and

(b) are referenced in ARM 17.56.102(2), (4), and (5), are not required to have compliance inspections.

(4) For an underground storage tank system that is installed or returned to active status pursuant to ARM 17.56.701 after November 1, 2001, an initial inspection must be completed at least 90 days, but no more than 120 days, after the date the conditional operating permit is issued or reissued pursuant to ARM 17.56.310. If the facility has other underground storage tank systems installed prior to November 1, 2001, all subsequent inspections of an underground storage tank system installed on or after November 1, 2001, must be conducted on the same schedule as the underground storage tank systems in existence prior to that date.

(5) Upon completion of the inspection, the inspector shall provide the owner or operator with a copy of the inspection report.

(6) No later than 15 days after any inspection conducted pursuant to this rule, the owner or operator, or the compliance inspector shall provide to the department the results of the compliance inspection in a manner approved by the department. The inspection report must be signed by the licensed compliance inspector and the underground storage tank system owner or operator.

(7) All underground storage tank systems at an individual facility must be inspected at one time.

(8) The owner or operator shall correct all violations noted in a compliance inspection report:

(a) within 90 days of receipt of the inspection report by the owner or operator;

(b) at least 14 days prior to the expiration of the facility's operating permit; or

(c) within another timeframe established by the department.

(9) The owner or operator or compliance inspector shall submit to the department a follow-up inspection report:

(a) within seven days after completion of the corrective actions required under (8);

(b) at least 14 days before the expiration of the facility's operating permit; or

(c) within another timeframe established by the department.

History: 75-11-505, 75-11-509, MCA; IMP, 75-11-509, MCA; NEW, 2000 MAR p. 969, Eff. 4/14/00; AMD, 2001 MAR p. 2459, Eff. 12/21/01; AMD, 2002 MAR p. 1091, Eff. 4/12/02; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2003 MAR p. 2759, Eff. 12/12/03; AMD, 2006 MAR p. 913, Eff. 4/7/06; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2009 MAR p. 2247, Eff. 11/26/09; AMD, 2010 MAR p. 1888, Eff. 8/27/10; AMD, 2011 MAR p. 145, Eff. 2/11/11; AMD, 2011 MAR p. 2139, Eff. 10/14/11; AMD, 2016 MAR p. 1694, Eff. 9/24/16.

17.56.310 CONDITIONAL, ONE-TIME FILL AND EMERGENCY OPERATING PERMITS (1) For an underground storage tank system installed after December 31, 2001, the department shall issue a conditional operating permit upon the submission of all documentation required by ARM 17.56.1305, related to the installation of that underground storage tank system.

(2) The department may issue or reissue a conditional operating permit when an underground storage tank system is returned to active status, pursuant to ARM 17.56.701, or when the department has determined that violations resulting from a compliance or oversight inspection have not been resolved.

(3) A conditional operating permit issued under (1) or (2) expires 180 days after issuance.

(4) Notwithstanding issuance of a conditional operating permit, the department may pursue any enforcement measures available under Title 75, chapter 11, part 5, MCA, to address UST violations.

(5) The department may issue a one-time fill permit for the following purposes:

(a) testing related to installation of a new UST system. The department may issue the fill permit concurrently with an installation permit issued pursuant to subchapter 13; or

(b) testing related to returning an inactive UST system to active status. The department may issue the fill permit upon receipt of written notice, in accordance with ARM 17.56.701, that the UST will return to active operational status.

(6) The department may issue an emergency operating permit to allow operation of an UST without a valid operating permit when operation of the UST is necessary to protect the safety and welfare of persons, property, or national security from imminent harm or threat of harm, as follows:

(a) before issuing an emergency operating permit, the department shall determine that under all the circumstances, any potential impacts to human health and the environment arising from operation of the UST are outweighed by the interest in preserving health, safety, or welfare of persons, property, or national security;

(b) emergency permits expire when the emergency is abated or 90 days after issuance of the permit, whichever time period is shorter;

(c) notwithstanding issuance of an emergency permit, the department may pursue any enforcement measures available under Title 75, chapter 11, part 5, MCA, to address UST violations; and

(d) in order to reduce the risk of a release, any emergency operating permit issued by the department under this rule may be subject to conditions or procedures that the department determines are necessary to minimize risks to human health or to the environment.

History: 75-11-505, 75-11-509, MCA; IMP, 75-11-509, MCA; NEW, 2003 MAR p. 2759, Eff. 12/12/03; AMD, 2006 MAR p. 913, Eff. 4/7/06; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2010 MAR p. 1888, Eff. 8/27/10; AMD, 2011 MAR p. 2139, Eff. 10/14/11.

17.56.311 PERMANENT NONEXPIRING TAG (1) For purposes of this rule, "permanent nonexpiring tag" means a tank tag issued by the department for an underground storage tank system for identification and recordkeeping purposes.

(2) After September 1, 2011, the department shall issue a permanent nonexpiring tag for each underground storage tank for which the department has newly issued an operating permit as described in ARM 17.56.308(3) and (5). The tag must be visibly affixed by the owner or operator to each tank's fill pipe or to another visible part of the tank if affixing the tag to the fill pipe is impracticable.

History: 75-11-505, 75-11-509, MCA; IMP, 75-11-509, MCA; NEW, 2011 MAR p. 2139, Eff. 10/14/11.

17.56.312 DELIVERY PROHIBITION (1) For purposes of meeting the delivery prohibition requirements of The Energy Policy Act of 2005, whenever the department finds that there has been significant noncompliance with Title 75, chapter 11, part 5, MCA, or with rules, permits, or orders issued pursuant to part 5, and the department has suspended, revoked, or determined not to renew an operating permit pursuant to ARM 17.56.308(7), or determined not to issue, or determined not to renew an operating permit pursuant to 75-11-509(9), MCA, the department will classify such underground storage tank(s) as ineligible for delivery, deposit, or acceptance of product.

(2) The department shall:

(a) make every reasonable effort to notify tank owners, operators, or both prior to prohibiting the delivery, deposit, or acceptance of product;

(b) notify product deliverers when an underground storage tank is ineligible for delivery, deposit, or acceptance of product;

(c) issue a certificate that clearly identifies the ineligible underground storage tank classified in (1); and

(d) issue an operating permit to the owner or operator within ten business days to reclassify an ineligible underground storage tank as eligible following correction of violations identified as significant noncompliance based on a follow-up inspection report submitted to the department in accordance with ARM 17.56.309(8).

(3) The certificate issued in (2)(c) must be conspicuously displayed at the facility until the underground storage tank is reclassified as eligible for delivery, deposit, or acceptance of product.

(4) Tanks issued a certificate in (2)(c) will be posted on the department's "Do Not Fill" web site at: http://deq.mt.gov/Portals/112/Land/UST/Documents/MonthlyReportsPDF/NonPermittedTanks.pdf.

History: 75-11-505, 75-11-509, MCA; IMP, 75-11-505, 75-11-509, MCA; NEW, 2011 MAR p. 2139, Eff. 10/14/11; AMD, 2016 MAR p. 1694, Eff. 9/24/16; AMD, 2018 MAR p. 1954, Eff. 10/6/18.

17.56.401 GENERAL REQUIREMENTS FOR ALL UST SYSTEMS (1) Owners and operators of new and existing UST systems shall provide a method, or combination of methods, of release detection that:

(a) can detect a release from any portion of the tank and the connected underground piping that routinely contains product;

(b) is installed and calibrated, in accordance with the manufacturer's instructions;

(c) meets the performance requirements in ARM 17.56.407 or 17.56.408, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods listed in ARM 17.56.407(1)(b) through (d), (h) and (i); in ARM 17.56.408(1)(a) and (b); or in ARM 17.56.1601 must be capable of detecting a leak rate or quantity specified for that method in ARM 17.56.407(1)(b) through (d), (h) and (i); in ARM 17.56.408(1)(a) and (b); or in ARM 17.56.1601 with a probability of detection of 0.95 and a probability of false alarm of 0.05; and

(d) beginning on October 13, 2021, the release detection method or a combination of methods must be operated and maintained, and electronic and mechanical components must be tested for proper operation, in accordance with one of the following:

(i) manufacturer's instructions;

(ii) a code of practice developed by a nationally recognized association or an independent testing laboratory;

(iii) the Petroleum Equipment Institute Publication RP1200 "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities;" or

(iv) requirements determined by the department to be no less protective of human health and the environment than the two options listed in (d)(i) and (d)(ii).

(2) A test of the proper operation of leak detection equipment must be performed at least annually and, at a minimum, as applicable to the facility, cover the following components and criteria:

(a) automatic tank gauge and other controllers:

(i) test alarm;
(ii) verify system configuration; and
(iii) test battery backup.
(b) probes and sensors:
(i) inspect for residual buildup;
(ii) ensure floats move freely;
(iii) ensure shaft is not damaged;
(iv) ensure cables are free of kinks and breaks; and
(v) test alarm operability and communication with controller.
(c) automatic line leak detector:
(i) test operation to meet applicable criteria in ARM 17.56.408(1)(a) by simulating a leak.
(d) vacuum pumps and pressure gauges:
(i) ensure proper communication with sensors and controller.
(e) hand-held electronic sampling equipment associated with groundwater and vapor monitoring:
(i) ensure proper operation.
(3) When a release detection method operated in accordance with the performance standards in ARM 17.56.407 and 17.56.408 indicates a release may have occurred, owners and operators shall notify the department in accordance with subchapter 5.
(4) Any UST system that cannot apply a method of release detection that complies with the requirements of this subchapter must complete the closure procedures in ARM Title 17, chapter 56, subchapter 7.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2010 MAR p. 1888, Eff. 8/27/10; AMD, 2016 MAR p. 1694, Eff. 9/24/16; AMD, 2018 MAR p. 1954, Eff. 10/6/18.

17.56.402 REQUIREMENTS FOR PETROLEUM UST SYSTEMS (1) Except as provided in (3), owners and operators of petroleum UST systems shall provide release detection for tanks and piping as follows:
(a) tanks must be monitored at least every 30 days for releases using one of the methods listed in ARM 17.56.407(1)(d) through (h) except that:
(i) UST systems that meet the performance standards in ARM 17.56.201 or 17.56.202, and the 30-day inventory control requirements in ARM 17.56.407(1)(a) or (b), may use tank tightness testing (conducted in accordance with ARM 17.56.407(1)(c)) at least every five years until ten years after the tank was installed;
(ii) tanks with capacity of 550 gallons or less and tanks with a capacity of 551 to 1,000 gallons that meet the tank diameter criteria in ARM 17.56.407(1)(b) in Table 1 may use manual tank gauging (conducted in accordance with ARM 17.56.407(1)(b)); and
(iii) farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes installed prior to November 26, 2009, and a tank of 1,100 gallons or less capacity used for storing heating oil for consumptive use on the

premises where stored installed prior to November 26, 2009, may use manual tank gauging (conducted in accordance with ARM 17.56.407(1)(b)); and

(b) underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets one of the following requirements:

(i) underground piping that conveys regulated substances under pressure must:

(A) be equipped with an automatic line leak detector conducted in accordance with ARM 17.56.408(1)(a); and

(B) have an annual line tightness test conducted in accordance with ARM 17.56.408(1)(b) or monitor at least every 30 days using a method in accordance with ARM 17.56.408(1)(c); and

(ii) underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every three years and in accordance with ARM 17.56.408(1)(b), or monitor at least every 30 days using a method conducted in accordance with ARM 17.56.408(1)(c). No release detection is required for suction piping that is designed and constructed to meet the following standards:

(A) the below-grade piping operates at less than atmospheric pressure;

(B) the below-grade piping is closed so that the contents of the pipe will drain back into the storage tank if the suction is released;

(C) only one check valve is included in each suction line;

(D) the check valve is located directly below and as close as practical to the suction pump; and

(E) a method is provided that allows compliance with (1)(b)(ii)(B) through (D) to be readily determined;

(iii) underground piping connected to heating oil tanks with a capacity of 660 gallons or less is exempt from the requirements of (1)(b)(i) and (ii) provided that:

(A) the new primary underground piping has secondary containment;

(B) liquid released into the interstitial space will move not more than 20 feet before being detected in a standpipe or sump;

(C) the interstice is visually monitored for released liquid once every 30 days; and

(D) the test results are maintained for at least one year; and

(iv) new underground piping connected to underground heating oil tanks with a capacity of 660 gallons or less shall slope back towards tanks that do not have foot valves.

(2) All leak testing results required by this rule must be observed by the owner, operator, or facility employee and the owner or operator shall document and retain the results.

(3) Terminal piping that is connected to aboveground storage tanks and not associated with an airport hydrant system, is exempt from the requirements of ARM 17.56.204(2) and (3), 17.56.304(3)(g)(i), 17.56.408(1)(a) through (d), 17.56.504(1)(a), and 17.56.701(4)(b)(ii) and (d)(ii). The department may exempt other associated piping that is connected to aboveground storage tanks and is not associated with airport hydrant systems, on a case-by-case basis, if the department determines the exemption would not cause harm to human health or the environment.

(4) The exempt piping referenced in (3) must be annually leak tested using:

(a) the procedures described in American Petroleum Institute Recommended Practice 1110, "Recommended Practice for Pressure Testing of Steel Pipelines for the

Transportation of Gas, Petroleum Gas, Hazardous Liquids, Highly Volatile Liquids or Carbon Dioxide," with the following exceptions:

(i) the minimum leak test pressure ratios may not be less than 1.0;

(ii) the leak test duration may not be less than one hour; and

(iii) leak acceptance criteria must be based on 5 percent decrease in pressure of the pipeline segment during the test period; or

(b) another leak test procedure approved by the department.

(5) The department adopts and incorporates by reference the version in effect on July 1, 2013, of American Petroleum Institute Recommended Practice 1110, "Recommended Practice for Pressure Testing of Steel Pipelines for the Transportation of Gas, Petroleum Gas, Hazardous Liquids, Highly Volatile Liquids or Carbon Dioxide," which sets forth guidelines for pressure testing steel pipelines for the transportation of gas, petroleum gas, hazardous liquids, highly volatile liquids, or carbon dioxide, a copy of which may be obtained from Global Engineering Documents, 15 Inverness Way East, M/S C303B, Englewood, CO 80112-5776, (303) 397-7956.

History: 75-11-302, 75-11-505, MCA; IMP, 75-11-302, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2559, Eff. 7/1/95; AMD, 1995 MAR p. 2488, Eff. 11/23/95; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2008 MAR p. 2475, Eff. 11/27/08; AMD, 2009 MAR p. 2247, Eff. 11/26/09; AMD, 2010 MAR p. 1888, Eff. 8/27/10; AMD, 2011 MAR p. 145, Eff. 2/11/11; AMD, 2016 MAR p. 1694, Eff. 9/24/16; AMD, 2018 MAR p. 1954, Eff. 10/6/18.

17.56.403 REQUIREMENTS FOR HAZARDOUS SUBSTANCE UST SYSTEMS

(1) For hazardous substance UST systems installed after October 13, 2018, owners and operators shall provide containment that meets the following requirements and monitor these systems pursuant to ARM 17.56.407(1)(g) at least every 30 days:

(a) secondary containment systems must be designed, constructed, and installed to:

(i) contain regulated substances leaked from the primary containment until they are detected and removed;

(ii) prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

(iii) be checked for evidence of a release at least every 30 days.

(b) double-walled tanks must be designed, constructed, and installed to:

(i) contain a leak from any portion of the inner tank within the outer wall; and

(ii) detect the failure of the inner wall;

(c) external liners (including vaults) must be designed, constructed, and installed to:

(i) contain 100 percent of the capacity of the largest tank within its boundary;

(ii) prevent the interference of precipitation or ground water intrusion with the ability to contain or detect a release of regulated substances; and

(iii) surround the tank completely (i.e., it is capable of preventing lateral as well as vertical migration of regulated substances).

(d) underground piping must be equipped with secondary containment that satisfies the requirements of (1)(a) (e.g., trench liners, double-walled pipe). In addition,

underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector in accordance with ARM 17.56.408(1).

(2) For hazardous substance UST systems installed on or before October 13, 2018, owners and operators may use:

(a) other methods of release detection if owners and operators:

(i) demonstrate to the department that an alternate method can detect a release of the stored substance as effectively as any of the methods allowed in ARM 17.56.407(1)(b) through (i) can detect a release of petroleum;

(ii) provide information to the department on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance, and the characteristics of the UST site; and

(iii) obtain approval from the department to use the alternate release detection method before the installation and operation of the new UST system; or

(b) the methods of release detection set forth in 40 CFR 265.193 (2011), Containment and Detection of Releases.

(3) The department adopts and incorporates by reference 40 CFR 265.193 (2011), which sets forth standards for containment and detection of releases. A copy may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783-3238. Copies are also available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2010 MAR p. 1888, Eff. 8/27/10; AMD, 2018 MAR p. 1954, Eff. 10/6/18.

17.56.407 METHODS OF RELEASE DETECTION FOR TANKS (1) Each method of release detection for tanks used to meet the requirements of ARM 17.56.402 must be conducted in accordance with the following:

(a) product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis in the following manner:

(i) inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;

(ii) the equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;

(iii) the regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;

(iv) deliveries are made through a drop tube that extends to within one foot of the tank bottom;

(v) product dispensing is metered and recorded within for an accuracy of six cubic inches for every five gallons of product withdrawn; and

(vi) the measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month;

(b) manual tank gauging must meet the following requirements:

(i) tank liquid level measurements are taken at the beginning and ending of a period of at least 36 hours during which no liquid is added to or removed from the tank;

(ii) level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period;

(iii) the equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;

(iv) a release is suspected and subject to the requirements of ARM Title 17, chapter 56, subchapter 5 if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

Table 1:

Nominal Tank Capacity

Minimum Duration Of Test

Weekly Standard (One Test)

Monthly Standard (Four Test Average)

550 gallons or less

36 hours

10 gallons

5 gallons

551-1,000 gallons

(when tank diameter is 64 inches)

44 hours

9 gallons

4 gallons

551-1,000 gallons

(when tank diameter is 48 inches)

58 hours

12 gallons

6 gallons

551 – 1,000 gallons

(also requires periodic tank tightness testing)

36 hours

13 gallons

7 gallons

1,001 – 2,000 gallons

(also requires periodic tank tightness testing)

36 hours

26 gallons

13 gallons

(v) tanks of 550 gallons or less nominal capacity and tanks with a nominal capacity of 551 to 1,000 gallons that meet the tank diameter criteria in Table 1 may use this method as the sole method of release detection. All other tanks with a nominal capacity of 551 to 2,000 gallons may use the method in place of inventory control in (1)(a). Tanks of greater than 2,000 gallons nominal capacity may not use this method to meet the requirements of this subchapter; and

(vi) tanks listed in ARM 17.56.402(1)(a)(iv) may use this method of release detection as the sole method of annual tank tightness testing;

(c) tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table;

(d) equipment for automatic tank gauging that tests for the loss of product or conducts inventory control must meet the following requirements:

(i) the automatic product level monitor test can detect a 0.2 gallon per hour (gph) leak rate from any portion of the tank that routinely contains product;

(ii) after December 31, 2010, if the automatic tank gauging equipment has the capability, the leak detection console must be set to temporarily disable the pumping system after a failed 0.2 gph leak test. The owner or operator may not restart the pumping system until:

(A) an investigation of the UST system alarm condition is conducted in accordance with the leak detection equipment manufacturer's requirements and ARM Title 17, chapter 56, subchapter 5; and

(B) the owner or operator determines that a release to the environment has not occurred;

(iii) inventory control (or another test of equivalent performance) is conducted in accordance with the requirements of (1)(a); and

(iv) the test must be performed with the system operating in one of the following modes:

(A) in-tank static testing is conducted at least once every 30 days; or

(B) continuous in-tank leak detection operating on an uninterrupted basis or operating within a process that allows the system to gather incremental measurements to determine the leak status of the tank at least once every 30 days.

(e) testing or monitoring for vapors within the soil gas of the excavation zone may only be used as a leak detection method until October 13, 2023, to meet the requirements of ARM 17.56.402 and must meet the following requirements:

(i) the materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;

(ii) the stored regulated substance, or a tracer compound placed in the tank system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank;

(iii) the measurement of vapors by the monitoring device is not rendered inoperative by the ground water, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than 30 days;

(iv) the level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank;

(v) the vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system;

(vi) in the UST excavation zone, the site is assessed to ensure compliance with the requirements in (1)(e)(i) through (iv) and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product;

(vii) monitoring wells are clearly marked and secured to avoid unauthorized access and tampering; and

(viii) after December 31, 2010, if the vapor monitoring equipment has the capability, the leak detection console must be set to temporarily disable the pumping system after a failed leak test. The owner or operator may not restart the pumping system until:

(A) an investigation of the UST system alarm condition is conducted in accordance with the leak detection equipment manufacturer's requirements and ARM Title 17, chapter 56, subchapter 5; and

(B) the owner or operator determines that a release to the environment has not occurred;

(f) testing or monitoring for liquids on the ground water may only be used as a leak detection method until October 13, 2023, to meet the requirements of ARM 17.56.402 and must meet the following requirements:

(i) the regulated substance stored is immiscible in water and has a specific gravity of less than one;

(ii) ground water is never more than 20 feet from the ground surface and the hydraulic conductivity of the soil(s) between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec (e.g., the soil should consist of gravels, coarse to medium sands, course silts, or other permeable materials);

(iii) the slotted portion of the monitoring well casing must be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low ground water conditions, as well as all conditions between the high and low ground water conditions;

(iv) monitoring wells shall be sealed from the ground surface to the top of the filter pack;

(v) monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;

(vi) the continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of free product on top of the ground water in the monitoring wells;

(vii) within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in (1)(f)(i) through (v) and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product;

(viii) monitoring wells are clearly marked and secured to avoid unauthorized access and tampering;

(ix) monitoring wells must be accessible for the sampling purposes of ARM 17.56.503; and

(x) after December 31, 2010, if the ground water monitoring equipment has the capability, the leak detection console must be set to temporarily disable the pumping system after a failed leak test. The owner or operator may not restart the pumping system until:

(A) an investigation of the UST system alarm condition is conducted in accordance with the leak detection equipment manufacturer's requirements and ARM Title 17, chapter 56, subchapter 5; and

(B) the owner or operator determines that a release to the environment has not occurred;

(g) interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed, and installed to detect a leak from any portion of the tank that routinely contains product and also meets one of the following requirements:

(i) for double-walled UST systems:

(A) the sampling or testing method can detect a release through the inner wall in any portion of the tank that routinely contains product; and

(B) after December 31, 2010, if the interstitial monitoring equipment has the capability, the leak detection console must be set to temporarily disable the pumping system after a failed leak test. The owner or operator may not restart the pumping system until:

(I) an investigation of the UST system alarm condition is conducted in accordance with the leak detection equipment manufacturer's requirements and ARM Title 17, chapter 56, subchapter 5; and

(II) the owner or operator determines that a release to the environment has not occurred;

(ii) for UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a leak between the UST system and the secondary barrier;

(A) the secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least 10-6 cm/sec for the regulated substance stored) to direct a leak to the monitoring point and permit its detection;

(B) the barrier is compatible with the regulated substance stored so that a leak from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;

(C) for cathodically protected tanks, the secondary barrier must be installed so that it does not interfere with the proper operation of the cathodic protection system;

(D) the ground water, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days;

(E) the site is assessed to ensure that the secondary barrier is always above the ground water and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions; and

(F) monitoring wells are clearly marked and secured to avoid unauthorized access and tampering; and

(iii) for tanks with an internally fitted liner, an automated device can detect a leak between the inner wall of the tank and the liner, and the liner is compatible with the substance stored; and

(h) release detection methods based on the application of statistical principles to inventory data must meet the following requirements:

(i) report a quantitative result with a calculated leak rate;

(ii) be capable of detecting a leak rate of 0.2 gallon per hour or a release of 150 gallons within 30 days; and

(iii) use a threshold that does not exceed one-half the minimum detectible leak rate.

(i) any other type of release detection method, or combination of methods, can be used if it can detect a 0.2 gallon per hour leak rate or a release of 150 gallons within 30 days with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(2) UST systems installed, modified, or replaced after November 26, 2009, must employ interstitial monitoring and meet the requirements in ARM 17.56.306(3), ARM 17.56.204, and applicable recordkeeping requirements in ARM 17.56.409.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2009 MAR p. 2247, Eff. 11/26/09; AMD, 2018 MAR p. 1954, Eff. 10/6/18.

17.56.408 METHODS OF RELEASE DETECTION FOR PIPING (1) Each method of release detection for piping used to meet the requirements of ARM 17.56.402 must be conducted in accordance with the following:

(a) automatic line leak detectors, which include methods that alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm, may be used only if they detect leaks of three gallons per hour at ten pounds per square inch line pressure within one hour and an annual test of the operation of the leak detector is conducted in accordance with ARM 17.56.401. If an automatic line leak detector fails the annual test at 3.0 gallons per hour at 10 pounds per square inch line pressure within 1 hour, it must be replaced;

(b) line tightness testing, including periodic test of piping, may be conducted only if it can detect a 0.1 gallon-per-hour leak rate at 1 1/2 times the operating pressure; and

(c) tank methods designed to detect a release from any portion of the underground piping that routinely contains regulated substances. These methods include those set forth in ARM 17.56.407(1)(e) through (i) and (2).

(2) After December 31, 2010, if the leak detection monitoring equipment has the capability, an owner or operator of an UST system that conducts pipe leak detection pursuant to ARM 17.56.408(1)(a) or (d) shall set the leak detection console to temporarily disable the pumping system after a failed leak test. An operator may not restart the pumping system until:

(a) an investigation of the UST system alarm condition is conducted in accordance with the leak detection equipment manufacturer's requirements and ARM Title 17, chapter 56, subchapter 5; and

(b) the owner or operator determines that a release to the environment has not occurred.

(3) An owner or operator of an UST system, existing prior to November 26, 2009, employing piping interstitial monitoring as the primary leak detection method pursuant to this chapter shall meet the requirements of ARM 17.56.306(3) and ARM 17.56.204.

(4) UST systems installed, modified, or replaced after November 26, 2009, must employ piping interstitial monitoring and meet the requirements in ARM 17.56.306(3) and ARM 17.56.204.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2009 MAR p. 2247, Eff. 11/26/09; AMD, 2010 MAR p. 1888, Eff. 8/27/10; AMD, 2018 MAR p. 1954, Eff. 10/6/18.

17.56.409 RELEASE DETECTION RECORDKEEPING (1) All UST system owners and operators shall maintain records in accordance with ARM 17.56.305 demonstrating compliance with all applicable requirements of this subchapter. These records must include the following:

(a) all written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the

equipment manufacturer or installer, must be maintained for the operating life of the release detection system;

(b) the results of any sampling, testing, or monitoring must be maintained for at least one year, or another reasonable period of time determined by the department, except as follows:

(i) the results of annual tests of proper operation of leak detection equipment conducted in accordance with ARM 17.56.401(2) must be maintained for three years minimum. The results must list each component tested, indicate whether each component tested meets the criteria in ARM 17.56.401(2) or needs to have action taken, and describe any action taken to correct an issue;

(ii) the results of tank tightness testing conducted in accordance with ARM 17.56.407(1)(c) must be retained until the next test is conducted; and

(iii) the results of line tightness testing and vapor monitoring using a tracer compound placed in the tank system conducted in accordance with ARM 17.56.1601(1)(a)(iii) must be retained until the next test is conducted;

(iv) written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for at least one year after the servicing work is completed, or for another reasonable time period determined by the department; and

(v) any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for five years from the date of installation.

(c) an owner or operator of an UST system existing prior to November 26, 2009, who conducts interstitial monitoring as the primary leak detection method pursuant to this subchapter shall document the communication of all sensors with the console at least monthly, and maintain the record onsite of each monthly sensor test for the previous 12 months.

(d) UST systems installed, modified, or replaced after November 26, 2009, shall document the communication of all sensors with the console at least monthly, and maintain the record onsite of each monthly sensor test for the previous 12 months.

(e) UST systems installed, modified or replaced after October 13, 2018, shall maintain records of site assessments conducted under ARM 17.56.407(1)(e) or (f) as long as the leak detection methods are used.

(f) records of site assessments conducted under ARM 17.56.407(1)(e) or (f) after October 13, 2018, must be signed by a professional engineer or professional geologist, or equivalent licensed professional with experience in environmental engineering, hydrogeology, or other relevant technical discipline acceptable to the department.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2010 MAR p. 1888, Eff. 8/27/10; AMD, 2018 MAR p. 1954, Eff. 10/6/18.

17.56.501 GENERAL (1) Except as otherwise provided in this subchapter, owners and operators of UST systems must comply with the requirements of this subchapter. Owners and operators of PSTs seeking reimbursement from the Montana

Petroleum Tank Release Cleanup Fund must comply with the requirements of this subchapter.

History: 75-10-405, 75-11-319, MCA; IMP, 75-10-405, 75-11-309, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259.

17.56.502 REPORTING OF SUSPECTED RELEASES (1) Owners and operators, any person who installs or removes an UST, or who performs subsurface investigations for the presence of regulated substances, and any person who performs a tank tightness or line tightness test pursuant to ARM 17.56.407 or 17.56.408, must report suspected releases to a person within the department or to the 24-hour Disaster and Emergency Services duty officer available at telephone number (406) 324-4777 within 24 hours of discovery of the existence of any of the following conditions:

(a) visual or olfactory observations, field monitoring results or other indicators of the presence of regulated substances in soil or nearby surface or ground water, or the presence of free product or vapors in basements, sewer or utility lines;

(b) the sudden or unexplained loss of product from the tank system;

(c) a failed tightness test, performed in accordance with subchapter 4, unless the tank system is found to be defective but not leaking and is immediately repaired or replaced;

(d) sampling, testing, or monitoring results from a release detection method, performed in accordance with subchapter 4, that indicate a release may have occurred, unless the release detection or monitoring device is found to be defective and is immediately repaired, recalibrated, or replaced, and subsequent monitoring, sampling, or testing indicates that the system is not leaking;

(e) the presence of product in the tank secondary containment system;

(f) erratic behavior of product dispensing equipment or automatic release detection equipment unless the equipment is found to be defective but not leaking, and is immediately repaired or replaced;

(g) an unexplained presence of water in the tank or liquid in the interstitial space between the tank and the tank secondary containment;

(h) inconclusive results from a tank tightness test, performed in accordance with subchapter 4, unless the tank system is found to be defective but not leaking;

(i) sampling, testing, or monitoring results from a release detection method, required under subchapter 4, that are inconclusive and cannot rule out the occurrence of a release, unless the monitoring device is found to be defective and is immediately repaired, recalibrated, or replaced, and subsequent monitoring, sampling, or testing indicates that the system is not leaking;

(j) analytical results from soil samples that exceed 200 milligrams per kilogram for extractable petroleum hydrocarbons (EPH); and

(k) activation of a leak detection equipment monitoring alarm, or activation of flow restriction mode for a mechanical line leak detector, unless:

(i) within 24 hours of the occurrence of the condition, the condition is investigated, the cause of the condition is discovered, corrected, and a release to the environment or to secondary containment has not occurred;

(ii) the leak detection system is returned to a fully operational condition within 24 hours; and

(iii) records documenting the cause of the condition and the investigative and corrective actions undertaken in response to the condition are maintained for a one-year period at the facility, or at a readily available alternative site, where the records may be provided for inspection by the department upon request.

(2) Messages left on answering machines, received by facsimile, e-mail, voice mail, or other messaging device are not adequate 24-hour notice. For further assistance, the department's release reporting hotline may be reached at 1 (800) 457-0568.

History: 75-11-319, 75-11-505, MCA; IMP, 75-11-309, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2004 MAR p. 1391, Eff. 6/18/04; AMD, 2005 MAR p. 87, Eff. 1/14/05; AMD, 2007 MAR p. 2124, Eff. 12/21/07; AMD, 2009 MAR p. 4, Eff. 1/16/09; AMD, 2011 MAR p. 234, Eff. 2/25/11; AMD, 2016 MAR p. 1694, Eff. 9/24/16; AMD, 2018 MAR p. 1954. Eff. 10/6/18.

17.56.503 INVESTIGATION DUE TO OFF-SITE IMPACTS (1) When required by the department based upon a suspected release, an owner and operator must follow the procedures in ARM 17.56.504 to determine if the system is the source of off-site impacts. These impacts include the discovery of regulated substances (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters) that have been observed by the department or brought to its attention by another person.

History: 75-10-405, 75-11-319, MCA; IMP, 75-10-405, 75-11-309, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2016 MAR p. 1694, Eff. 9/24/16.

17.56.504 RELEASE INVESTIGATION AND CONFIRMATION STEPS (1) Unless corrective action is initiated in accordance with ARM Title 17, chapter 56, subchapter 6, owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under ARM 17.56.502, within seven days of the discovery of the condition identified in ARM 17.56.502, using either of the following steps, unless both are required by the language of this rule:

(a) Owners and operators must conduct tests (according to the requirements for tightness testing in ARM 17.56.407 and 17.56.408 or, as appropriate, secondary containment testing in ARM 17.56.304(3)(f)(iii)) that determine whether a leak exists in any portion of the tank that routinely contains product, or the attached delivery piping, or both.

(i) Owners and operators must immediately repair, replace, upgrade, or close the PST or UST system, and begin corrective action in accordance with ARM Title 17, chapter 56, subchapter 6 if the test results for the system, tank, or delivery piping indicate that a release exists.

(ii) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a release exists and if environmental contamination is not the basis for suspecting a release.

(iii) Owners and operators must conduct a site check as described in (1)(b) if the test results for the system, tank, and delivery piping do not indicate that a leak exists but environmental contamination is the basis for suspecting a release.

(b) Owners and operators must measure for the presence of a release where contamination is most likely to be present at the PST or UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth of ground water, and other factors appropriate for identifying the presence and source of the release. The department should be consulted to assist in determining sample types, sample locations, and measurement methods. Owners and operators of PST sites and owners and operators of UST sites should refer to the Montana Quality Assurance Plan for Investigation of Underground Storage Tank Releases as a guide in the collection, preservation and analysis of field samples;

(i) if the test results for the excavation zone or the PST or UST site indicate that a release has occurred, owners and operators must begin corrective action in accordance with subchapter 6;

(ii) if the test results for the excavation zone or the PST or UST site are taken according to (1)(b) and do not indicate that a release has occurred, further investigation is not required if approved by the department; and

(iii) the department may reject all or part of the test results, if it has reasonable doubt as to the quality of data or if the sample or test methods are scientifically unsound. In such cases, the department may require resampling, reanalysis, or both. The department will provide the owner or operator with an explanation of its decision to reject any test results.

History: 75-11-319, 75-11-505, MCA; IMP, 75-11-309, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2004 MAR p. 1391, Eff. 6/18/04; AMD, 2018 MAR p. 1954, Eff. 10/6/18.

17.56.505 REPORTING AND CLEANUP OF SPILLS AND OVERFILLS (1) Owners and operators must contain and immediately clean up a spill or overfill, immediately report the spill or overfill to the department pursuant to (3) or by another method that ensures that a person within the department receives notice within 24 hours of the release, and must begin corrective action in accordance with subchapter 6 in the following cases:

(a) spill or overfill of petroleum that results in a release to the environment that exceeds 25 gallons, or that causes a sheen on nearby surface water; and

(b) spill or overfill of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under 40 CFR Part 302.

(2) Owners and operators must contain and immediately clean up a spill or overfill of petroleum that is less than 25 gallons and a spill or overfill of a hazardous

substance that is less than the reportable quantity. If cleanup cannot be accomplished within 24 hours, owners and operators must immediately notify the department.

(3) Telephone notification required in (1) or (2) must be made to a person in the department or to the 24-hour Disaster and Emergency Services duty officer at (406) 324-4777. Messages left on answering machines, received by facsimile, e-mail, voice mail or other messaging device are not adequate 24-hour notice. For further assistance, the department's release reporting hotline may be reached at 1 (800) 457-0568.

History: 75-11-319, 75-11-505, MCA; IMP, 75-11-309, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2004 MAR p. 1391, Eff. 6/18/04; AMD, 2011 MAR p. 234, Eff. 2/25/11; AMD, 2016 MAR p. 1694, Eff. 9/24/16.

17.56.506 REPORTING OF CONFIRMED RELEASES (1) Upon confirmation of a release in accordance with ARM 17.56.504, or after a release from the PST or UST system is identified in any other manner, owners and operators, any person who installs or removes an UST, or who performs subsurface investigations for the presence of regulated substances, and any person who performs a tank tightness or line tightness test pursuant to ARM 17.56.407 or 17.56.408, must report releases to the department within the specified timeframes and in the following manner:

(a) Except as provided in (1)(b), all confirmed releases must be reported to a person within the department or to the 24-hour Disaster and Emergency Services duty officer available at (406) 324-4777 within 24 hours of confirming the release. Messages left on answering machines, received by facsimile, e-mail, voice mail, or other messaging device are not adequate 24-hour notice. For further assistance, the department's release reporting hotline may be reached at 1 (800) 457-0568.

(b) When a release is confirmed from laboratory analysis of samples collected from a site, the release must be reported to the department by a method that ensures the department receives the information within seven days of release confirmation. The date of release confirmation, for purposes of this rule, is the date the owner, operator, installer, remover, or person who performs subsurface investigations for the presence of regulated substances received notification of the sample results from the laboratory. Laboratory analytical results that exceed the following values confirm that a release has occurred:

(i) risk-based screening levels (RBSLs) established for petroleum contaminants in surface soil at UST sites, published in the first numeric column of the Tier 1 Surface Soil RBSL Table (Table 1) of Montana Risk-based Corrective Action Guidance for Petroleum Releases (RBCA) for petroleum compounds and mixtures in surface and subsurface soil;

(ii) regional screening levels published in the United States Environmental Protection Agency, Regional Screening Level (RSL) Table for contaminants in soil that are not listed in RBCA; or

(iii) contaminant levels in water that exceed background levels in the receiving water.

History: 75-11-319, 75-11-505, MCA; IMP, 75-11-309, 75-11-505, MCA; NEW, 2004 MAR p. 1391, Eff. 6/18/04; AMD, 2010 MAR p. 1502, Eff. 6/25/10; AMD, 2011 MAR p. 234, Eff. 2/25/11; AMD, 2017 MAR p. 186, Eff. 2/4/17.

17.56.507 ADOPTION BY REFERENCE (1) For purposes of this subchapter, the department adopts and incorporates by reference:

(a) Department Circular DEQ-7, "Montana Numeric Water Quality Standards" (June 2019 edition);

(b) Montana Risk-Based Corrective Action Guidance for Petroleum Releases (RBCA) (May 2018);

(c) U.S. Environmental Protection Agency, Regional Screening Level (RSL) Tables (November 2018); and

(d) Reportable Quantities for Hazardous Substances under section 102(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) published at 40 CFR Part 302 (2009).

(2) All references in this subchapter to the documents incorporated by reference in this rule are to the edition specified in this rule.

(3) Copies of the documents incorporated by reference in this rule may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

History: 75-11-319, 75-11-505, MCA; IMP, 75-11-309, 75-11-505, MCA; NEW, 2004 MAR p. 1391, Eff. 6/18/04; AMD, 2005 MAR p. 87, Eff. 1/14/05; AMD, 2006 MAR p. 528, Eff. 2/24/06; AMD, 2007 MAR p. 2124, Eff. 12/21/07; AMD, 2008 MAR p. 946, Eff. 5/9/08; AMD, 2010 MAR p. 1502, Eff. 6/25/10; AMD, 2010 MAR p. 1796, Eff. 8/13/10; AMD, 2012 MAR p. 2060, Eff. 10/12/12; AMD, 2017 MAR p. 186, Eff. 2/4/17; AMD, 2017 MAR p. 602, Eff. 5/13/17; AMD, 2019 MAR p. 174, Eff. 2/9/19; AMD, 2019 MAR p. 826, Eff. 6/22/19.

17.56.508 NUMBERING PETROLEUM RELEASES (1) The department shall assign each confirmed petroleum release from a petroleum storage tank a unique identification number. Except as provided in (2), from the date of discovery of a confirmed release of petroleum from a petroleum storage tank at a facility, all contamination from petroleum storage tanks subsequently discovered through any investigative or corrective action in response to the previously confirmed and numbered release pursuant to subchapter 5 or 6, is considered "one release" and part of the previously confirmed and numbered release.

(2) Under the following circumstances the department shall confirm a separate release and assign another release identification number to petroleum contamination from a petroleum storage tank at a facility that has a previously confirmed and numbered release:

(a) when a separate release from a petroleum storage tank is discovered at a facility and, based on substantial evidence, the department finds the release began after the department categorized all earlier confirmed releases at the facility as resolved in accordance with ARM 17.56.607(4);

(b) when, based on substantial evidence, the department finds that there is a separate release of petroleum from a petroleum storage tank at a facility that began after any previously confirmed and numbered release was discovered; or

(c) when additional contamination from a petroleum storage tank is discovered and, based on substantial evidence, the department finds that the contamination originated from a petroleum storage tank or tanks at a different facility than the facility where the previously confirmed and numbered release occurred.

(3) For the purposes of this rule only, "facility" means any one or a combination of petroleum storage tanks that are located on contiguous property and owned and operated as a single business by the same person(s), at the time a confirmed release is discovered. A facility does not include petroleum storage tanks used in different businesses, or owned by different persons, and connected through permanent or temporary piping used to transfer petroleum products from one business to another at the time a confirmed release was discovered.

(4) "Petroleum storage tank" has the meaning provided in 75-11-302, MCA.

(5) The department may rescind a release number if the department determines that the release should not have been confirmed. This determination must be based on substantial evidence upon which the department may conclude that the release did not occur, that the contamination did not exceed standards cited in ARM 17.56.506, or that the contamination does not meet the criteria set forth in (2) and should have been attributed to an earlier confirmed release that has been assigned a release number.

History: 75-11-319, 75-11-505, MCA; IMP, 75-11-308, 75-11-309, 75-11-505, MCA; NEW, 2007 MAR p. 2124, Eff. 12/21/07.

17.56.601 GENERAL (1) Except as otherwise provided in this rule, owners and operators of UST systems must, in response to a confirmed release from a tank or system, comply with the requirements of this subchapter. Owners or operators of PSTs seeking reimbursement from the Montana petroleum tank release cleanup fund, must, in response to a confirmed release from a tank or system, comply with the requirements of this subchapter. This subchapter does not apply to USTs excluded under ARM 17.56.102(2) and (4) and UST systems subject to RCRA Subtitle C corrective action requirements under section 3004(u) of the Resource Conservation and Recovery Act, as amended.

(2) If corrective action, initial response and abatement, initial site history, remedial investigation, preparation of remedial investigation and cleanup plans, or cleanup, or any of them are conducted by:

(a) the department through a response action contractor employed by the department, this subchapter governs only to the extent it is not inconsistent with the master contract and task order agreed to between the contractor and the department.

(b) the owner or operator of the PST or UST system, whether with or without a response action contractor, this subchapter governs only to the extent it is not inconsistent with any order issued by a court, the department, or any corrective action plan approved by the department.

History: 75-10-405, 75-11-319, MCA; IMP, 75-10-405, 75-11-309, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2016 MAR p. 1694, Eff. 9/24/16.

17.56.602 INITIAL RESPONSE AND ABATEMENT MEASURES (1) Upon confirmation of a release in accordance with ARM 17.56.504 or after a release from the PST or UST system is identified in any other manner, owners and operators must:

(a) perform the following initial response actions:

(i) report the release to the department in accordance with ARM 17.56.506;

(ii) take immediate action to prevent any further release of the regulated substance into the environment; and

(iii) identify and mitigate fire, explosion, and vapor hazards.

(b) perform the following initial abatement measures:

(i) remove as much of the regulated substance from the PST or UST system as is necessary to prevent further release into the environment;

(ii) visually inspect any aboveground releases or exposed belowground releases and prevent further migration of the released substance into surrounding soils and ground water;

(iii) continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone or the PST and entered into subsurface structures (such as sewers or basements) . Vapor concentrations measured as gasoline in surface or subsurface structures (basements, buildings, utility conduits) must be reduced to a level below the action levels established by the department. A combustible gas indicator should be used to determine explosive levels measured from the lowest point in a structure. To determine health-based vapor levels, air samples should be collected from the breathing space approximately four feet above the floor. The Montana Quality Assurance Plan for Investigation of Underground Storage Tank Releases should be consulted for appropriate sampling and analytical methods for collection of air samples. The following action levels for gasoline vapors are established by the department:

(A) action level to guard against explosion or fire is 10% of the lower explosive limit of gasoline, (1300 parts per million (ppm)) ;

(B) action level to protect the health of individuals exposed in affected structures eight hours per day, five days per week is 30 ppm; and

(C) action level to protect the health of individuals in affected structures with full-time occupancy is seven ppm. If any action level is exceeded, immediate action must be taken by the owners and operators to reduce concentrations to below the above-specified action level. Monitoring and mitigation must continue for as long as they are necessary as indicated by the remedial investigation and these action levels.

(iv) remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or cleanup activities. If these remedies include treatment or disposal of soils, owners and operators must comply with applicable state and local requirements. Soils heavily contaminated with leaded gasoline, waste oil, solvents, or hazardous substances must be tested for the presence of hazardous wastes. Treatment or disposal of all soils containing hazardous wastes must be approved by the department.

(v) determine the extent and magnitude of contamination in soils, ground water, surface water or both, which contamination has resulted from the release at the PST or UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the type of backfill, depth to ground water and other factors as appropriate for identifying the presence and source of the release. Samples must be collected and analyzed in accordance with ARM 17.56.504(1) (b) ; and

(vi) investigate surface water and ground water to determine if existing drinking water sources have been adversely impacted by the release. If so, immediately provide an alternate supply of safe drinking water to the impacted persons, residences or businesses.

(c) Investigate to determine the possible presence of free product, begin free product removal as soon as practicable, and:

(i) conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery byproducts in compliance with applicable local, state and federal regulations;

(ii) use abatement of free product migration as a minimum objective for the design of the free product removal system; and

(iii) handle any flammable products in a safe and competent manner to prevent fires or explosions in accordance with local and state fire codes.

(d) Within 30 days after release confirmation, submit a report to the department on a form designated by the department summarizing the initial response and abatement measures taken under (1) (a) through (c) and any resulting information or data. The report must include data on the nature, estimated quantity and source of the release. If initial response and abatement measures extend beyond the 30-day time period, owners and operators must also submit an additional follow-up completion report according to a schedule established by the department. If free product is removed, the following information must also be provided in or with the report:

(i) the name of the person(s) responsible for implementing the free product removal measures;

(ii) the estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations;

(iii) the type of free product recovery system used;

(iv) whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;

(v) the type of treatment applied to, and the effluent quality expected from, any discharge to sanitary sewers, surface water, ground water or atmosphere and a copy of any current state or federal discharge permit;

(vi) the steps that have been or are being taken to obtain necessary permits for any discharge; and

(vii) the disposition of the recovered free product.

History: 75-11-319, 75-11-505, MCA; IMP, 75-11-309, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2004 MAR p. 1391, Eff. 6/18/04.

17.56.603 INITIAL SITE HISTORY (1) Unless directed to do otherwise by the department, owners and operators must assemble and provide to the department information about a site where a release has been confirmed which must include, but is not necessarily limited to the following:

(a) A legal description of the real property at which the release occurred;

(b) A history of the ownership and operation of the PST or UST from which the release occurred, since at least the time at which the release from the tank did or could have occurred at the site, including the following:

(i) the name, current address and telephone number of all current owners and operators;

(ii) the name, current address and telephone number (if known) of all past owners and operators;

(iii) the years of current and past ownership and/or operation;

(iv) a description of the activities conducted at the site by each current and past owner/operator; and

(v) a general construction history of site.

(c) A map or maps and descriptions or symbols appropriate in scale and scope showing the following within a 500 foot (unless otherwise noted) radius of the site:

(i) adjacent and nearby buildings;

(ii) owner/operator each building;

(iii) paved (concrete or asphalt) areas;

(iv) property line defining the site;

(v) location of above and underground tanks and associated lines, pumps, and dispensers;

(vi) location of former tanks on property;

(vii) soil boring locations (if done) ;

(viii) monitoring well locations (if done) ;

(ix) underground utilities on and adjacent to the property (sewer, water, telephone, electric) ;

(x) basements and tile drain and sump systems on and adjacent to the property;

(xi) street maps or named/numbered streets;

(xii) all wells and springs within a 2 mile radius of the site;

(xiii) water bodies (rivers, ponds, lakes, and irrigation diversion) within a 2 mile radius of the site;

(xiv) surface elevation of the site of the release as taken from surveys, topographic maps of city; and

(xv) north arrow and map legend (scale, such as 1 inch = 100 feet) .

(d) The following information concerning the PST or UST systems on the property:

(i) date of installation of all the tank or tanks on the site;

(ii) dates of installation and removal of all tanks previously located on the site;

(iii) size of all tanks on site (diameter, length, gallons);

(iv) tank construction material of all tanks on site;
(v) present contents of all tanks on site;
(vi) previous contents of all tanks on site;
(vii) type and locations of product pumps, piping, and dispensers;
(viii) method and results of product inventory reconciliation (describe and attach copies of product inventory charts);
(ix) corrosion protection on tanks and lines (yes/no and description);
(x) type and location of leak detectors;
(xi) type of fill under and around tanks and lines (clay, sand, or other material); and
(xii) type of tank anchors (if any).
(e) a description of all leaks, spills, overfills, or other releases from the PST or UST systems located on the site:
(i) date of release;
(ii) date release was reported to the department;
(iii) product released;
(iv) quantity lost;
(v) quantity recovered;
(vi) location on site;
(vii) cleanup action taken; and
(viii) offsite effects.
(f) any tank or line test dates, methods used for conducting the tests, tester's name, address, and phone number, and results of the test (include data and worksheets or calculations).
(g) if the PST or UST system (tanks and lines) or any part of it has been removed from the ground, provide a description of the condition of it by answering the following questions and providing the other information called for below:
(i) Was corrosion present?
(ii) Was there a visible leak?
(iii) Were there any loose fittings?
(iv) Was the tank/line carefully examined for signs of leakage?
(v) Was an independent observer (fire marshal, city official, testing laboratory employee, etc. but not your employee) present when tank(s) were removed?
(A) name of the independent observer;
(B) organization;
(C) address; and
(D) telephone.
(vi) Provide pictures of removed tanks and lines if pictures are available;
(vii) State the disposition of tank(s) (who took it, where was it disposed);
(viii) Provide a description of soil conditions in the area of the tank and line excavation, with an estimate of the volumes:
(A) odors present and method of measurement;
(B) visible product in soil;
(C) sheen on water mixed with soil;
(D) sheen on groundwater in excavation;
(E) product on groundwater in excavation;

(F) soil sampling descriptions; and

(G) instrument reading (if available).

(ix) State the disposition of the soil removed during the excavation or at any other time after the release.

(h) copies of all reports previously completed, such as reports on soil, groundwater, or other reports pertinent to the site.

(2) Within 30 days of release confirmation, owners and operators must submit the information collected in compliance with (1) of this rule to the department in a manner that demonstrates its applicability and technical adequacy. Owners and operators must provide an explanation to the department regarding any information requested in (1) of this rule that cannot be obtained.

History: 75-10-405, 75-11-319, MCA; IMP, 75-10-405, 75-11-309, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2016 MAR p. 1694, Eff. 9/24/16.

17.56.604 REMEDIAL INVESTIGATION (1) In order to determine the full extent and location of soils contaminated by the release and the presence and concentrations of free and dissolved product contamination in the surface water and in ground water, owners and operators must conduct a remedial investigation of the release, the release site, and the surrounding area possibly affected by the release if any of the following conditions exist:

(a) there is evidence that ground water wells have been affected by the release (e.g., as found during release confirmation or previous corrective action measures);

(b) free product is found to need recovery in compliance with ARM 17.56.602(1)(c);

(c) there is evidence that contaminated soils may be in contact with ground water (e.g., as found during conduct of the initial response measures required under ARM 17.56.602); or

(d) the department requests a remedial investigation, based on the known or potential effects of contaminated soil or ground water on nearby surface water, ground water, and human health.

(2) After reviewing information required under ARM 17.56.602 and 17.56.603, the department may determine that no additional investigation or corrective action is necessary; however, the department may require the owners and operators to initiate and continue compliance monitoring as determined by the department.

(3) A remedial investigation generally is an expanded site assessment more detailed in scope than the initial response and abatement measures under ARM 17.56.602, which must define the nature, extent, and magnitude of contamination and identify threats to public health, welfare and to the environment. A remedial investigation work plan must be submitted to the department prior to implementation by the owners and operators. The department shall submit a copy of a work plan from any owner or operator who is or may be seeking reimbursement to the appropriate local government office with jurisdiction over corrective action of the release. The office shall respond with any comments within 15 days of receipt of the plan and the department shall approve or

disapprove the plan within 15 days of receipt from the local government. The following information is required to complete the remedial investigation:

(a) site map(s) showing all sampling locations, including the site(s) of:

(i) borings;

(ii) monitoring wells;

(iii) recovery wells;

(iv) vapor survey points; and

(v) sites where any other samples were taken.

(b) soil and bedrock technical information and map(s), including:

(i) soil type, thickness, and classification below the site of the release;

(ii) unconsolidated material and bedrock type, thickness, and formation name below the site of the release;

(iii) boring logs and monitoring well logs (description of well, well construction methods, sediment odors, and blow count);

(iv) soil characteristics (grain size, sorting, origin, texture, permeability, classification);

(v) observed contamination (visual, odors, and vapor survey results); and

(vi) laboratory analytical results.

(c) ground water technical information and map(s), including:

(i) general description and characteristics of aquifers and unsaturated zone below the site of the release, including:

(A) hydraulic characteristics;

(B) depth to water table;

(C) surveyed water elevations and contours (potentiometric surface);

(D) direction of ground water flow;

(E) rate of ground water flow;

(F) perched conditions; and

(G) connections to other aquifers.

(ii) location, ownership, use and construction of all municipal, domestic, irrigation, industrial and monitoring wells within ½ mile of the site;

(iii) sampling description;

(iv) results of laboratory analysis.

(d) surface water technical information and map(s), including:

(i) location and use of all surface water within one mile of site;

(ii) ground water/surface water discharge points;

(iii) sampling description; and

(iv) results of laboratory analysis.

(e) description of and map(s) showing the extent of free product and vapors discovered, whether as a result of current or past vapors/seepage, in basements and other subsurface structures and utilities. The description must include a copy of the vapor survey.

(f) technical conclusions, which must be stated with reasonable professional certainty and under the standard of care applicable, must include at least:

(i) source of the release;

(ii) current extent of and potential for the release (determined with field or laboratory analytical detection equipment) in or through the following media:

(A) soil; lateral and vertical extent of fuel-soaked soil;

(B) free product; areal extent;

(C) water; dissolved phase (water soluble constituents);

(D) vapor;

(g) sampling summary charts, which clearly identify by the date on which the samples were taken, all of the following: sample ID#, sampling location, sample type, date analyzed, laboratory conducting the analysis, analytical method, and results of the analysis.

(h) laboratory report sheets.

(4) If a remedial investigation has been conducted, owners and operators must submit a report containing the information collected under (3) within 120 days of release confirmation. If investigation extends beyond the time for submission of the report, owners and operators must also submit an additional follow-up completion report according to a schedule established by the department.

History: 75-11-319, 75-11-505, MCA; IMP, 75-11-309, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2007 MAR p. 2124, Eff. 12/21/07; AMD, 2016 MAR p. 1694, Eff. 9/24/16.

17.56.605 CLEANUP PLAN (1) At any time after reviewing the information submitted pursuant to ARM 17.56.602, 17.56.603, and/or 17.56.604, the department may require owners and operators to submit additional information or to develop and submit a cleanup plan for responding to contaminated soils and groundwater. If a plan is required, owners and operators must submit the plan according to a schedule and format established by the department. Alternatively, owners and operators may, after fulfilling the requirements of ARM 17.56.602 through 17.56.604, choose to submit a cleanup plan for responding to contaminated soil and groundwater. In either case, owners and operators are responsible for submitting a plan that provides for adequate protection of human health, safety, and the environment as determined by the department, and must modify their plan as necessary to meet this standard.

(2) In order to prepare the cleanup plan, owners and operators must properly evaluate and interpret the field and analytical results of the site or remedial investigation to define the extent and magnitude of free product, adsorbed phase product, dissolved phase plume and vapor phase product.

(3) The owners and operators must screen and select cleanup alternatives to develop a matrix evaluation of cleanup alternatives which considers cost, performance, reliability, implementation, safety, and effects on public health and the environment. Information on all cleanup alternatives, with an explanation of why any alternative was selected, must be included in the cleanup plan. Cleanup alternatives may include, but are not limited to, the following types of action:

(a) take no further action;

(b) excavate the contaminated soil and/or treat and/or dispose of the same;

(c) in-place soil treatment;

(d) product recovery;

(e) groundwater removal and treatment;

(f) groundwater gradient control (hydrodynamic);

(g) vapor control measures;

(h) enhanced biodegradation;

(i) drinking water supply replacement;

(j) relocation of affected residences and/or businesses; and

(k) establishment of a petroleum mixing zone in accordance with ARM 17.56.607.

(4) Upon receipt of a cleanup plan from any owner or operator who is or may be seeking reimbursement, the department shall submit a copy of the plan to the appropriate local government office with jurisdiction over corrective action of the release. The office shall respond with any comments within 15 days of receipt of the plan and the department shall approve or disapprove the plan within 15 days of receipt from the local government.

(5) The department will approve the cleanup plan only after ensuring that implementation of the plan will adequately protect human health, safety, and the environment. In making this determination, the department must consider the following factors as appropriate:

(a) the physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;

(b) the hydrogeologic characteristics of the facility and the surrounding area;

(c) the proximity, quality, and current and future uses of nearby surface water and groundwater;

(d) the potential effects of residual contamination on nearby surface water and groundwater;

(e) an exposure assessment that identifies routes by which receptors may be exposed to contaminants and estimates contaminant concentrations to which receptors may be exposed; and

(f) any information assembled in compliance with this subchapter.

(6) Within 30 days of department approval of the cleanup plan or as directed by the department, owners and operators must implement the plan, including any modifications made by the department to the plan. Owners and operators must monitor, evaluate, and report the results of implementing the plan in accordance with a schedule and in a format established by the department. During implementation of the cleanup plan, a status letter shall be submitted quarterly to the department. The cleanup plan must contain a plan and schedule for compliance monitoring to evaluate the effectiveness of cleanup activities. Compliance monitoring must continue for a period of at least two years after completion of cleanup activities specified in the cleanup plan, or another reasonable time period approved by the department. Results of compliance monitoring will be evaluated by the department on a site-specific basis and compared to cleanup goals that should be outlined in the cleanup plan. Final completion of cleanup activities and compliance monitoring must be approved by the department.

(7) Owners and operators may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil and groundwater before the cleanup plan is approved provided that they:

(a) notify the department of their intention to begin cleanup;

(b) comply with any conditions imposed by the department, including halting cleanup or mitigating adverse consequences from cleanup activities; and

(c) incorporate these self-initiated cleanup measures in the cleanup plan that is submitted to the department for approval.

(8) As part of corrective action, owners and operators must conduct restoration activities as soon as the completion of any part of the cleanup plan will allow. Restoration activities must include:

(a) restoring utility services disrupted as a result of investigative or corrective action activities;

(b) properly abandon or reclaim recovery and monitoring systems, including any wells, in accordance with state law or rules, after recovery and monitoring operations are terminated. Proper abandonment and reclamation includes reclamation of recovery culverts, infiltration galleries, electrical systems and plumbing systems, and landscaping necessary to restore any disturbed property to its precorrective action state.

History: 75-11-319, 75-11-505, MCA; IMP, 75-11-319, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2011 MAR p. 2279, Eff. 10/28/11; AMD, 2016 MAR p. 1694, Eff. 9/24/16.

17.56.606 PUBLIC PARTICIPATION (1) For each confirmed release that requires a cleanup plan under ARM 17.56.605, the department must provide notice to the public by means designed to reach those members of the public directly affected by the release and the planned cleanup activities. This notice may include, but is not limited to, public notice in local newspapers, block advertisements, public service announcements, letters to individual households, or personal contacts by field staff.

(2) The department must ensure that site release information and decisions concerning the cleanup plan are made available to the public for inspection upon request.

(3) Before approving a cleanup plan, the department may hold a public meeting to consider comments on the proposed cleanup plan if there is sufficient public interest, or for any other reason.

(4) The department must give public notice that complies with (1) if implementation of an approved cleanup plan does not achieve the established cleanup levels in the plan and termination of that plan is under consideration by the department.

History: 75-10-405, 75-11-319, MCA; IMP, 75-10-405, 75-11-309, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259.

17.56.607 RELEASE CATEGORIZATION (1) The department shall categorize all releases from USTs and PSTs regulated under this chapter as active, transferred, resolved, ground water management, or resolved with a petroleum mixing zone releases.

(2) Releases that do not meet the criteria set forth in (3), (4), (7), or (10) must be categorized as active.

(3) The department may categorize a release as transferred if another state or federal program assumes jurisdiction over the facility and all releases and threatened releases of hazardous or deleterious substances from USTs or PSTs regulated under this chapter are to be addressed by that program at the facility. The department shall

notify the owner or operator before categorizing the release as transferred. The notice must state which state or federal program has jurisdiction over the release.

(4) The department may categorize a release as resolved if the department has determined that all cleanup requirements have been met and that conditions at the site ensure present and long-term protection of human health, safety, and the environment. The following requirements must also be met before a release may be categorized as resolved:

(a) documented investigations, conducted in accordance with ARM 17.56.604, identify the extent or absence of contamination in the soil, ground water, surface water, and other environmental media relevant to the release;

(b) risks to human health, safety and the environment from residual contamination at the site have been evaluated using methods listed in (4)(b)(i) or (ii) and the evaluation indicates that unacceptable risks do not exist and are not expected to exist in the future. The department considers a total hazard index that does not exceed 1.0 for noncarcinogenic risks, and a total cancer risk that does not exceed 1 x 10-5, to be an acceptable risk level. Owners or operators, or other persons may, with department approval, use either of the following methods to evaluate risks from a release:

(i) Tier 1 evaluation using Montana Risk-based Correction Action Guidance for Petroleum Releases (RBCA) for evaluation of risks to human health, safety and the environment associated with surface and subsurface soil and ground water contamination; or

(ii) a site-specific risk assessment method approved by the department for evaluation of risks to human health, safety, and the environment associated with contamination, or likely contamination, that demonstrates to the department's satisfaction that current and potential future exposure pathways are incomplete;

(c) all appropriate corrective actions associated with the release and required by the department, including compliance monitoring and confirmatory sampling, have been completed;

(d) all free product has been removed to the maximum extent practicable; and

(e) all applicable environmental laws associated with the release have been met. These applicable requirements may include, but are not limited to, air quality, drinking water and monitoring well requirements, solid waste management requirements, hazardous waste management requirements, national pollutant discharge elimination system (NPDES) and Montana pollutant discharge elimination system (MPDES) requirements, underground injection controls and standards, UST requirements, noxious weed control, ground water and surface water quality standards, nondegradation requirements, storm water requirements, and requirements for the protection of endangered species, historic sites, wetlands and floodplains.

(5) The department may recategorize a resolved or a resolved with a petroleum mixing zone release as active if the department receives information with which it determines that further corrective action is necessary. Such information may include, but is not limited to, changes in land use or site conditions, including removal, alteration, or failure to maintain department-approved institutional controls, engineering controls, or physical conditions, that may increase the potential for adverse impacts to human health, safety, or to the environment from residual contamination. The department shall

notify the owner or operator of the department's determination to recategorize a resolved release as active.

(6) If a release is categorized as resolved, the department shall send a letter to the owner or operator that:

(a) states that, based on information available, no further corrective action will be required at that time;

(b) requires that all monitoring wells, piezometers, and other ground water sampling points either be abandoned or maintained by the owner or operator in accordance with applicable rules and requirements;

(c) describes the nature, extent, concentration, and location of any residual contamination;

(d) describes any institutional controls, engineering controls, or physical conditions that must be maintained to protect human health, safety, or the environment from residual contamination;

(e) states the reasons why the department believes the release does not pose a present or future risk to human health, safety, or to the environment; and

(f) states that the department reserves the right to conduct or to require further corrective action if a new release occurs or if the department receives new or different information related to the release.

(7) The department may categorize a release as ground water management if:

(a) site conditions satisfy all criteria listed under (4)(a) and (d);

(b) risk evaluations conducted in accordance with (4)(b) demonstrate that there are no unacceptable risks to human health, safety, ecological receptors, surface water, or aquatic sediments from exposure or likely exposure to contamination;

(c) all cleanup actions required by the department have been completed except for continued monitoring required under (8);

(d) ground water quality parameters exceed:

(i) a water quality standard or nondegradation requirement;

(ii) a standard established as a drinking water maximum contaminant level published in 40 CFR Part 141; or

(iii) a risk-based screening level published in RBCA;

(e) ground water performance monitoring and natural attenuation data collected in accordance with U.S. Environmental Protection Agency Office of Solid Waste and Emergency Response Directive 9200.4-17P indicate that the extent, magnitude, and concentration of the dissolved contaminant plume have been stable or decreasing under fluctuating hydrogeologic conditions for a period of monitoring that is determined by the department to be sufficient to detect unacceptable risks to human health, safety, or to the environment;

(f) the source area contamination has been eliminated, controlled, or reduced to the maximum extent practicable, in accordance with U.S. Environmental Protection Agency Office of Solid Waste and Emergency Response Directive 9200.4-17P, and any remaining source area contamination presents a low long-term threat to human health, safety or to the environment;

(g) documented investigations demonstrate that taking additional or different cleanup action is not feasible and will not meet site corrective action objectives within a reasonable timeframe as compared to monitored natural attenuation; and

(h) institutional controls are in place to ensure that identified risks to human health and safety are reduced to acceptable levels. For the purposes of this rule, institutional controls must consist of:

(i) deed restrictions or restrictive covenants that run with the land and that have been approved by the department and duly recorded;

(ii) a designated controlled ground water area as provided for in 85-2-506, MCA;

(iii) environmental control easements created and approved in accordance with 76-7-101 through 76-7-213, MCA; or

(iv) another method approved by the department that has been shown to ensure that risk to human health has been reduced to acceptable levels.

(8) If the department categorizes a release as ground water management, the owner or operator shall monitor ground water in accordance with a monitoring program developed for the site and approved by the department.

(a) The monitoring program must specify the location, frequency, and type of sampling required to evaluate site conditions and confirm that residual contamination at the site is either decreasing in extent and concentration or remaining stable.

(b) The frequency of monitoring must not be less often than one monitoring event every three years.

(c) Monitoring must continue until the corrective action objectives for the site are achieved and the release may be categorized as resolved in accordance with (4).

(d) In developing a ground water monitoring program, the department shall consider:

(i) the nature, extent, and concentration of the contaminant plume;

(ii) the locations of human health and environmental receptors relative to the predicted migration path of the plume;

(iii) historical or reasonably anticipated land use in the area; and

(iv) any other factors that the department determines may affect the risk from residual contamination to human health, safety, or the environment.

(9) If the department categorizes a release as ground water management, the department shall send a letter to the owner or operator that:

(a) states that contamination from the release will be addressed by monitored natural attenuation;

(b) contains the information in (6)(b), (c), and (e);

(c) states the reasons why the department believes that the release does not pose an unacceptable present or future risk to human health, safety, or ecological receptors;

(d) includes a monitoring program that complies with (8);

(e) includes a schedule for review of any institutional controls;

(f) states that the release is not categorized as resolved and documents all conditions that preclude the site from being categorized as resolved; and

(g) states that the department may require further remedial investigation or corrective action to determine whether the requirements in (4) are met if the owner, operator or department proposes to recategorize the release as resolved.

(10) The department may categorize a release as resolved with a petroleum mixing zone and send a letter to the owner or operator in accordance with (11), if the department has determined that conditions at the site ensure present and long-term

protection of human health, safety, and the environment and that residual petroleum in soil and ground water will continue to be remediated through natural attenuation processes without additional intervention, active cleanup, or monitoring. The following requirements must also be met before a release may be categorized as resolved with a petroleum mixing zone:

(a) the petroleum mixing zone is included in a corrective action plan and all the conditions set forth in 75-11-508, MCA, are met;

(b) documented investigations, conducted in accordance with ARM 17.56.604, identify the extent or absence of contamination in the soil, ground water, surface water, or other environmental media;

(c) all free product has been removed to the maximum extent practicable;

(d) risk evaluations conducted in accordance with (4)(b) demonstrate that there are no unacceptable risks to human health, safety, ecological receptors, surface water, or aquatic sediments from exposure or likely exposure to contamination;

(e) all appropriate corrective actions associated with the release have been completed and no further corrective actions are reasonably required by the department;

(f) all applicable environmental laws listed in (4)(e) associated with the release have been met, except that ground water quality exceeds a water quality standard for petroleum or petroleum constituents. In addition, ground water quality may exceed a nondegradation requirement or a standard established as a drinking water maximum contaminant level published in 40 CFR Part 141 for petroleum or petroleum constituents;

(g) ground water performance monitoring indicates that the extent, magnitude, and concentration of the dissolved contaminant plume have been stable or decreasing under fluctuating hydrogeologic conditions for a period of monitoring that is determined by the department to be sufficient to detect unacceptable risks to human health and safety;

(h) the source area contamination has been removed to the maximum extent practicable, and any remaining source area contamination does not pose an unacceptable present or future risk to human health, safety, or the environment;

(i) at the downgradient boundary of a petroleum mixing zone, the concentration of any petroleum constituent does not exceed a water quality standard adopted by the Board of Environmental Review pursuant to 75-5-301, MCA. The downgradient boundary of a petroleum mixing zone must be determined by documented investigations conducted in accordance with ARM 17.56.604;

(j) a petroleum mixing zone must remain within the facility property boundary unless a recorded easement, a restrictive covenant, or another institutional control approved by the department on an adjoining property allows the petroleum mixing zone to extend off the facility property. For purposes of this rule, the term "facility property" means a single parcel or contiguous parcels on which one or more petroleum storage tanks are or were located, provided that contiguous parcels must be under single ownership at the time the petroleum mixing zone is established;

(k) a petroleum mixing zone may not extend either beyond 500 feet from the origin of the release or within 500 feet of an existing drinking water well or surface water unless the department determines, in writing and based on site-specific circumstances, that distances not meeting the 500-foot criteria, as specified in the determination, will

ensure present and long-term protection of human health and safety and of the environment in the specific circumstances. In making this determination, the department shall consider the following factors:

(i) the specific contaminants and concentrations involved;

(ii) the nature, hydrogeologic characteristics, and quality of the aquifer(s) involved;

(iii) the nature and quality of any well or surface water potentially affected;

(iv) the degree of certainty that site-specific scientific data supports the determinations made pursuant to (c), (d), (g), and (h); and

(v) any other consideration determined by the department to be relevant in the particular circumstances.

(l) department-approved institutional controls, engineering controls, or physical conditions are in place to ensure that identified risks to human health and safety are reduced to acceptable levels. For the purposes of this rule, institutional controls, engineering controls, or physical conditions may consist of:

(i) easements, deed restrictions, or restrictive covenants that run with the land and that have been approved by the department and duly recorded;

(ii) a designated controlled ground water area as provided for in 85-2-506, MCA;

(iii) environmental control easements created and approved in accordance with 76-7-101 through 76-7-213, MCA; and

(iv) an engineering control, physical condition, or other method or condition approved by the department and designed to ensure that risk to human health has been reduced to acceptable levels; and

(m) a notice is placed on the deed of all parcels of real property on which the facility is located that the source of the release is resolved with a petroleum mixing zone. This deed notice must describe the nature and location of the residual contamination remaining in the soil and ground water at the facility and must describe all institutional controls, engineering controls, physical conditions, or other controls or conditions required to maintain the petroleum mixing zone.

(11) If the department categorizes a release as resolved with a petroleum mixing zone, the department shall send a no-further-action letter to the owner or operator. The letter must describe the following conditions required to maintain the petroleum mixing zone:

(a) no further corrective action will be required to address the release provided that all institutional controls, engineering controls, physical conditions, or other department-approved controls or conditions are maintained;

(b) residual contamination from the release will be addressed by natural attenuation processes designed to reduce residual concentrations of contaminants to levels that meet all applicable environmental laws, listed in (4)(e), at a point in the future;

(c) all monitoring wells, piezometers, and other ground water sampling points either be abandoned or maintained by the owner or operator in accordance with applicable rules and requirements and as directed by the department. Monitoring well maintenance requirements include reasonable well maintenance necessary to avoid waste or contamination of ground water in accordance with Title 37, chapter 43, MCA.

Maintenance does not include monitoring of ground water level, flow, or quality, unless there is a unique, overriding, site-specific, impact-related reason to require monitoring;

(d) the nature, extent, concentration, and location of any residual contamination is defined and will not expand or increase;

(e) the release does not pose an unacceptable present or future risk to human health, safety, or ecological receptors;

(f) there be a schedule for review of any institutional controls;

(g) a statement that the department may require further documentation of site conditions to determine whether the requirements in (4) are met if the owner, operator, or department proposes to recategorize the release as resolved; and

(h) a statement that the department reserves the right to conduct or to require further investigation or corrective action if a new release occurs or if the department receives new or different information related to the release.

(12) Institutional controls, engineering controls, physical conditions, and notices placed on deeds, required to categorize a release as resolved with a petroleum mixing zone under (10), may be removed when the department determines that residual petroleum contamination in ground water exceeding a parameter listed in (10)(f) is no longer present or when the release is categorized as resolved in accordance with (4).

History: 75-11-319, 75-11-505, MCA; IMP, 75-11-309, 75-11-505, MCA; NEW, 2005 MAR p. 87, Eff. 1/14/05; AMD, 2007 MAR p. 2124, Eff. 12/21/07; AMD, 2010 MAR p. 1502, Eff. 6/25/10; AMD, 2011 MAR p. 2279, Eff. 10/28/11; AMD, 2014 MAR p. 2774, Eff. 11/7/14; AMD, 2016 MAR p. 1694, Eff. 9/24/16; AMD, 2017 MAR p. 186, Eff. 2/4/17.

17.56.608 ADOPTION BY REFERENCE (1) For purposes of this subchapter, the department adopts and incorporates by reference:

(a) Department Circular DEQ-7, "Montana Numeric Water Quality Standards" (June 2019 edition);

(b) Drinking Water Maximum Contaminant Levels published at 40 CFR Part 141 (2009);

(c) Montana Risk-Based Corrective Action Guidance for Petroleum Releases (RBCA) (May 2018); and

(d) U.S. Environmental Protection Agency Office of Solid Waste and Emergency Response Directive 9200.4-17P, "Use of Monitored Natural Attenuation at Superfund, RCRA Corrective Action, and Underground Storage Tank Sites" (April 1999).

(2) All references in this subchapter to the documents incorporated by reference in this rule are to the edition specified in this rule.

(3) Copies of the documents incorporated by reference in this rule may be obtained from the Department of Environmental Quality, Remediation Division, P.O. Box 200901, Helena, MT 59620-0901.

History: 75-11-319, 75-11-505, MCA; IMP, 75-11-309, 75-11-505, MCA; NEW, 2005 MAR p. 87, Eff. 1/14/05; AMD, 2007 MAR p. 2124, Eff. 12/21/07; AMD, 2008 MAR p. 946, Eff. 5/9/08; AMD, 2010 MAR p. 1502, Eff. 6/25/10; AMD, 2010 MAR p. 1796, Eff. 8/13/10; AMD, 2012 MAR p. 2060, Eff. 10/12/12; AMD, 2017 MAR p. 186, Eff. 2/4/17;

AMD, 2017 MAR p. 602, Eff. 5/13/17; AMD, 2019 MAR p. 174, Eff. 2/9/19; AMD, 2019 MAR p. 826, Eff. 6/22/19.

17.56.701 INACTIVE AND OUT-OF-SERVICE UST SYSTEMS (1) An UST system is inactive when the owner or operator notifies the department that the UST is no longer in use for dispensing, depositing, or storing regulated substances or the department determines inactive status based on available information. The owner or operator shall continue operation and maintenance of corrosion protection on an out-of-service UST in accordance with ARM 17.56.302, and shall continue operation and maintenance of any release detection in accordance with ARM Title 17, chapter 56, subchapter 4. ARM Title 17, chapter 56, subchapters 5 and 6 must be complied with if a release is suspected or confirmed. However, release detection, release detection operation, and maintenance testing and inspections in ARM Title 17, chapter 56, subchapter 3 and 4 are not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remains in the system. In addition, spill and overfill operation and maintenance testing and inspections in subchapter 3 are not required.

(2) When an UST system is inactive or out of service for three months or more, owners and operators shall also:

(a) empty the UST system;

(b) leave vent lines open and functioning; and

(c) cap and secure all other lines, pumps, manways, and ancillary equipment.

(3) Out-of-service UST system components that do not meet the corrosion protection requirements of ARM 17.56.201 or 17.56.202 must, within 12 months of being taken out of service or, in the case of a found tank, within 12 months of its discovery, be:

(a) permanently closed in accordance with ARM 17.56.702 through 17.56.706; or

(b) brought into compliance with ARM Title 17, chapter 56, subchapter 2.

(4) In order to return an inactive UST to active status, owners and operators, in addition to complying with all applicable UST requirements under this subchapter, shall:

(a) when an UST has a valid operating permit and is inactive for 12 months or less, provide the department with 30 days advance written notice of the owner or operator's intent to return the UST to active status;

(b) when an UST has a valid operating permit and is inactive for more than 12 months:

(i) provide the department with 30 days advance written notice of the owner or operator's intent to return the UST to active status; and

(ii) perform a precision tank tightness test, line tightness tests and functionality tests of all mechanical and electronic release detection equipment, and submit all test results to the department. The owner and operator may return the UST to active status only upon receipt of notice from the department indicating that the test results are satisfactory. All tests must be conducted in accordance with accepted industry standards and must meet the performance requirements in ARM 17.56.407 and 17.56.408

(c) when an UST does not have a valid operating permit, but no more than 12 months have passed since the expiration date of the last operating permit issued for the UST:

(i) provide the department with advance written notice as required in (4)(b)(i); and

(ii) obtain a conditional operating permit in accordance with ARM 17.56.310 and a compliance inspection in accordance with ARM 17.56.309;

(d) when an UST does not have a valid operating permit, and more than 12 months have passed since the expiration date of the last operating permit issued for the UST:

(i) provide the department with advance written notice as required in (4)(b)(i);

(ii) perform a precision tank tightness test, line tightness tests, and functionality tests of all mechanical and electronic release detection equipment, and submit test results to the department. The owner and operator may return the UST to active status only upon receipt of notice from the department indicating that the test results are satisfactory. All tests must be conducted in accordance with accepted industry standards and must meet the performance requirements in ARM 17.56.407 and 17.56.408; and

(iii) obtain a conditional operating permit in accordance with ARM 17.56.310 and a compliance inspection in accordance with ARM 17.56.309;

(e) when an UST does not have a valid operating permit, continuous operation and maintenance of corrosion protection in accordance with ARM 17.56.302 cannot be demonstrated, and more than three years have passed since the expiration date of the last operating permit issued for the UST:

(i) meet all the requirements in (4)(d)(i) through (4)(d)(iii); and

(ii) show that the UST is structurally sound based upon an internal inspection.

History: 75-11-505, 75-11-509, MCA; IMP, 75-11-505, 75-11-509, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2003 MAR p. 2759, Eff. 12/12/03; AMD, 2006 MAR p. 913, Eff. 4/7/06; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2010 MAR p. 1888, Eff. 8/27/10; AMD, 2016 MAR p. 1694, Eff. 9/24/16; AMD, 2018 MAR p. 1954, Eff. 10/6/18.

17.56.702 PERMANENT CLOSURE AND CHANGES IN SERVICE (1) At least 30 days before beginning either permanent closure or a change in service under (2) and (3), the owner or operator shall notify the department of their intent to permanently close or make the change in service, unless such action is in response to corrective action already noticed to the department under subchapter 6. The required assessment of the excavation zone under ARM 17.56.703 must be performed after notifying the department, but before completion of the permanent closure or a change in service.

(2) To permanently close a tank or connected piping, the owner or operator shall empty and clean it by removing all liquids and accumulated sludges. All tanks or connected piping taken out of service permanently must also be either removed from the ground or, when approved by the department, filled with an inert solid material.

(3) Continued use of an UST system to store a nonregulated substance is considered a change in service. Before a change in service, the owner or operator shall empty and clean the UST system by removing all liquid, accumulated sludge, and all

combustible and flammable vapors and conduct a site assessment in accordance with ARM 17.56.703.

(4) The cleaning and closure procedures in (5) must be used to comply with this rule.

(5) The department adopts and incorporates by reference the version in effect on January 1, 2018, of the following standards, specifications, and publications:

(a) American Petroleum Institute Recommended Practice 1604, "Closure of Underground Petroleum Storage Tanks," (2015), which sets forth closure practices for UST systems, a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375;

(b) American Petroleum Institute Recommended Practice 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks," (2001), which sets forth lining and periodic inspection standards for UST tanks, a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375;

(c) American Petroleum Institute Standard 2015, "Safe Entry and Cleaning of Petroleum Storage Tanks, Planning and Managing Tank Entry From Decommissioning Through Recommissioning," (2015), which sets forth cleaning and entrance standards for UST tanks, a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375;

(d) The National Institute for Occupational Safety and Health publication No. 80-106, "Criteria for a Recommended Standard: Working in Confined Space," (1979), which sets forth standards for working inside an UST tank, a copy of which may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783-3238;

(e) American Petroleum Institute Recommended Practice 2016, "Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks," (2016), which sets forth entrance and cleaning standards for UST tanks, a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375; and

(f) National Fire Protection Association (NFPA) Standard 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair," (2015), which sets forth procedures to safeguard tanks or containers that contain or have contained flammable and combustible liquids or other hazardous substances before entry, cleaning, repair, or other activities can be performed, a copy of which may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269, (800) 344-3555.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2010 MAR p. 1888, Eff. 8/27/10; AMD, 2016 MAR p. 1694, Eff. 9/24/16; AMD, 2018 MAR p. 1954, Eff. 10/6/18.

17.56.703 ASSESSING THE SITE AT CLOSURE OR CHANGE IN SERVICE

(1) Before permanent closure or a change in service is completed, the owner or operator shall measure for the presence of a release where contamination is most likely

to be present at the UST site. When measuring for the presence of a release, the owner or operator:

(a) shall collect soil samples, as soon as possible after the tank or piping has been removed, at the base of the tank excavation and piping trench at suspected worst-case locations, which locations may include:

(i) areas around the tank and piping that record the highest concentrations of hydrocarbon vapor recorded with vapor monitoring instruments;

(ii) areas around the tank and piping that look stained or discolored;

(iii) the lowest point of the tank;

(iv) where the tank meets the piping; and

(v) beneath the fill lines. For each tank with a capacity of over 600 gallons that is being removed for closure, at least two soil samples, one at each end of the tank, or at suspected worst-case locations, must be taken. For a tank with a capacity of 600 gallons or less, one soil sample must be collected beneath the tank. Each sample must be taken at least one-to-two feet below the base of the maximum excavation depth. If contaminated soil is removed from the excavation site, at least one composite sample of the contaminated soil must be collected for analysis. For piping removal, soil samples must be collected every 20 feet at the base of the piping trench, and at suspected worst-case locations. Up to five piping trench samples may be composited;

(b) if ground water is encountered in the tank excavation, shall measure the presence of free product and collect a sample of the water for analysis;

(c) in selecting sample types, sample locations, and measurement methods, shall consider the method of closure, the nature of the stored substance, type of backfill, depth to ground water, and other factors appropriate for identifying the presence of a release. The department should be consulted to assist in determining sample types, sample locations, and measurement methods. The Montana Quality Assurance Plan for Investigation of Underground Storage Tank Releases should be used as a guide for the collection, preservation, and analysis of field samples;

(d) may use field hydrocarbon vapor analyzers as screening tools to determine the presence of a release and to assist in determining the extent of contaminated soil to be removed. These analyzers, however, should not be used to confirm the absence of soil or water contamination. Only laboratory analysis of samples will be accepted by the department to confirm the absence of soil or water contamination.

(2) If sampling indicates contaminated soils, contaminated ground water, or if free product as a liquid or vapor is discovered under (1), or by any other manner, the owner or operator shall begin corrective action in accordance with subchapter 6. A release must be reported to the department by the owner or operator within 24 hours.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2010 MAR p. 1888, Eff. 8/27/10; AMD, 2016 MAR p. 1694, Eff. 9/24/16.

17.56.704 APPLICABILITY TO PREVIOUSLY CLOSED UST SYSTEMS (1) When directed by the department, the owner or operator of a permanently closed UST system shall access the excavation zone and close the UST system in accordance with

this subchapter if releases from the UST may, in the judgment of the department, pose a current or potential threat to human health and the environment.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2010 MAR p. 1888, Eff. 8/27/10.

17.56.705 CLOSURE RECORDS (1) The owner or operator shall maintain records in accordance with ARM 17.56.305 that are capable of demonstrating compliance with closure requirements under this subchapter. Results of the excavation zone assessment required in ARM 17.56.703 must be maintained for at least three years after completion of permanent closure or change in service in one of the following ways:

(a) by the owners and operators who took the UST system out of service;

(b) by the current owners and operators of the UST system site; or

(c) by mailing these records to the department if the records cannot be maintained at the closed facility.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2010 MAR p. 1888, Eff. 8/27/10; AMD, 2016 MAR p. 1694, Eff. 9/24/16.

17.56.706 REQUIREMENT TO EMPTY NONCOMPLIANT USTS (1) The department may require an owner or operator to immediately empty an UST system upon a finding that the UST system is not in compliance with any of the requirements in ARM Title 17, chapter 56, subchapters 2, 3, 4 or 7 and that allowing the contents to remain in the UST system poses a risk to public health or the environment.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 2003 MAR p. 2759, Eff. 12/12/03.

17.56.801 APPLICABILITY (1) This subchapter applies to owners and operators of all petroleum underground storage tank (UST) systems except as otherwise provided in ARM 17.56.102 and in this rule.

(2) Owners and operators of petroleum UST systems are subject to these requirements established in accordance with ARM 17.56.802.

(3) State and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this subchapter.

(4) The requirements of this subchapter do not apply to owners and operators of any UST system exempted from this subchapter by ARM 17.56.102(2), (3), (4), (5), or (6).

(5) If the owner and operator of a petroleum underground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2018 MAR p. 1954, Eff. 10/6/18.

17.56.802 COMPLIANCE DATES (1) Owners of petroleum underground storage tanks must comply with the requirements of this subchapter. Previously deferred UST systems must comply with the schedule according to ARM 17.56.1601(1)(a).

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1667, Eff. 8/24/07; AMD, 2018 MAR p. 1954, Eff. 10/6/18.

17.56.803 DEFINITION OF TERMS For the purposes of this subchapter, the following terms have the meanings given in this rule:

(1) "Accidental release" means any sudden or nonsudden release of petroleum arising from an operating underground storage tank that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator.

(2) "Bodily injury" has the meaning given to this term by applicable state law; however, this term does not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

(3) "Chief financial officer" means the individual with overall authority and responsibility for collection, disbursement, and use of funds by an entity. In the case of local government owners and operators, chief financial officer means the individual with overall authority and responsibility for collection, disbursement, and use of funds by the local government.

(4) "Controlling interest" means direct ownership of at least 50 percent of the voting stock of another entity.

(5) "Director" means the director of the department.

(6) "Financial reporting year" means the latest consecutive 12-month period for which any of the following reports used to support a financial test is prepared and may comprise a fiscal or a calendar year period:

(a) a 10-K report submitted to the SEC;

(b) an annual report of tangible net worth submitted to Dun and Bradstreet; or

(c) annual reports submitted to the Energy Information Administration or the Rural Utilities Service.

(7) "Legal defense cost" means any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought,

(a) by EPA or the state to require corrective action or to recover the costs or corrective action;

(b) by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or

(c) by any person to enforce the terms of a financial assurance mechanism.

(8) "Local government" shall have the meaning given this term by applicable state law and, for purposes of this subchapter only, includes Indian tribes. The term is generally intended to include:

(a) counties, intergovernmental bodies, municipalities, townships, separately chartered and operated special districts (including local government public transit systems and redevelopment authorities), and independent school districts authorized as governmental bodies by state charter or constitution; and

(b) special districts and independent school districts established by counties, municipalities, townships, and other general-purpose governments to provide essential services.

(9) "Occurrence" includes an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank.

(10) "Owner or operator", when the owner or operator are separate parties, means the party that is obtaining or has obtained financial assurances.

(11) "Petroleum marketing facilities" includes all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

(12) "Property damage" shall have the meaning given this term by the applicable law of this state. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy

(13) "Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in ARM 17.56.807 through 17.56.811, 17.56.815 through 17.56.817, and 17.56.820, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state-required mechanism, or a state.

(14) "Substantial business relationship" means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

(15) "Substantial governmental relationship" means the extent of a governmental relationship necessary under applicable state law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from a clear commonality of interest in the event of an UST release such as coterminous boundaries, overlapping constituencies, common groundwater aquifer, or other relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.

(16) "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

(17) "Termination" means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

(18) "Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground. This term does not include any:

(a) farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(b) tank used for storing heating oil for consumptive use on the premises where stored;

(c) septic tank;

(d) pipeline facility (including gathering lines) regulated under:

(i) the Natural Gas Pipeline Safety Act of 1968 (49 USC App. 1671, et seq.); or

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 USC App. 2001, et seq.); or

(iii) which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in (i) or (ii) above.

(e) surface impoundment, pit, pond, or lagoon;

(f) storm water or wastewater collection system;

(g) flow-through process tank;

(h) liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

(i) storage tank situated in an underground area (such as a basement, cellar, mineworking, draft, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor. The term "underground storage tank" or "UST" does not include any pipes connected to any tank which is described in (a) through (i).

(19) "UST system" or "tank system" means an underground storage tank as defined in this subchapter, connected underground piping, underground ancillary equipment, and containment system, if any.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2018 MAR p. 1954, Eff. 10/6/18.

17.56.804 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the department adopts and incorporates by reference the following provisions contained within the final rules published in the Federal Register at 40 CFR Parts 280 and 281 on July 15, 2015:

(a) Code of Federal Regulations (CFR) 280.104 Local government bond rating test;

(b) CFR 280.105 Local government financial test;

(c) CFR 280.106 Local government guarantee;

(d) CFR 280.107 Local government fund;

(e) CFR 280.200 Definitions;

(f) CFR 280.210 Participation in management;

(g) CFR 280.220 Ownership of an underground storage tank or underground storage tank system or facility or property on which an underground storage tank or underground storage tank system is located; and

(h) CFR 280.230 Operating an underground storage tank or underground storage tank system.

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

(3) Where exceptions to incorporated federal regulations are necessary, these exceptions are noted in the rules.

(4) Cross-references within federal regulations adopted and incorporated by reference in these rules refer to the cross-referenced provision as adopted and incorporated by reference in this subchapter with any indicated additions and exceptions.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 2018 MAR p. 1954, Eff. 10/6/18.

17.56.805 AMOUNT AND SCOPE OF REQUIRED FINANCIAL RESPONSIBILITY (1) Owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following per-occurrence amounts:

(a) for owners or operators of petroleum underground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year; $1 million.

(b) for all other owners or operators of petroleum underground storage tanks; $500,000.

(2) Owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:

(a) for owners or operators of 1 to 100 petroleum underground storage tanks, $1 million; and

(b) for owners or operators of 101 or more petroleum underground storage tanks, $2 million.

(3) For the purposes of (2) and (6) of this rule, only, "a petroleum underground storage tank" means a single containment unit and does not mean combinations of single containment units.

(4) Except as provided in (5) of this rule, if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

(a) taking corrective action;

(b) compensating third parties for bodily injury and property damage caused by sudden accidental releases; or

(c) compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in (1) and (2) of this rule.

(5) If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.

(6) Owners or operators shall review the amount of aggregate assurance provided whenever additional petroleum underground storage tanks are acquired or installed. If the number of petroleum underground storage tanks for which assurance must be provided exceeds 100, the owner or operator shall demonstrate financial responsibility in the amount of at least $2 million of annual aggregate assurance by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective. If assurance is being demonstrated by a combination of mechanisms, the owner or operator shall demonstrate financial responsibility in the amount of at least $2 million or annual aggregate assurance by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

(7) The amounts of assurance required under this rule exclude legal defense costs.

(8) The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07.

17.56.806 ALLOWABLE MECHANISMS AND COMBINATIONS OF MECHANISMS (1) Subject to the limitations of (2), an owner or operator may use any one or combination of the mechanisms listed in ARM 17.56.807 through 17.56.811, 17.56.815 through 17.56.817, and 17.56.820 to demonstrate financial responsibility under this subchapter for one or more underground storage tanks.

(2) An owner or operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this rule, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07.

17.56.807 FINANCIAL TEST OF SELF-INSURANCE (1) An owner or operator, and/or guarantor, may satisfy the requirements of ARM 17.56.805 by passing a financial test as specified in this rule. To pass the financial test of self-insurance, the owner or operator, and/or guarantor must meet the criteria of (2) through (7) of this rule based on year-end financial statements for the latest completed fiscal year.

(2) The owner or operator, and/or guarantor, must have a tangible net worth of at least ten times:

(a) the total of the applicable aggregate amount required by ARM 17.56.805, based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility to the department under this rule;

(b) the sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR 264.101, 264.143, 264.145, 264.147, 265.143, 265.145, and 265.147 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 271; and

(c) the sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR 144.63 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 145.

(3) The owner or operator, and/or guarantor, must have a tangible net worth of at least $10 million.

(4) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer worded as specified in (8) of this rule.

(5) The owner or operator, and/or guarantor, must either:

(a) file financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Utilities Service; or

(b) report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A.

(6) The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(7) The owner or operator, and/or guarantor must meet the financial test requirements of 40 CFR 264.147(f)(1), substituting the appropriate amounts specified in ARM 17.56.805(2)(a) and (b) for the "amount of liability coverage" each time specified in that section.

(a) The fiscal year-end financial statements of the owner or operator, and/or guarantor, must be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

(b) The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(c) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer, worded as specified in (4) of this rule.

(d) If the financial statements of the owner or operator, and/or guarantor, are not submitted annually to the U.S. Securities Exchange Commission, the Energy Information Administration or the Rural Utilities Service, the owner or operator, and/or guarantor, must obtain a special report by an independent certified public accountant stating that:

(i) he has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator, and/or guarantor, with the amounts in such financial statements; and

(ii) in connection with that comparison, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(8) To demonstrate that it meets the financial test under (2) through (7) of this rule, the chief financial officer of the owner or operator, or guarantor, must sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instruction in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance," and/or "guarantee"] to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test or a financial test under 40 CFR 280.95 by this [insert: "owner or operator," and/or "guarantor"]: [List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test or a financial test under 40 CFR 280.95. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test or a financial test under 40 CFR 280.95 by the tank identification number provided in the notification number provided in the notification submitted pursuant to 40 CFR 280.22 or ARM 17.56.902.]

A [insert: "financial test" and/or "guarantee"] is also used by this [insert: "owner or operator," or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 CFR Parts 271 and 145:

EPA Regulations
Amount

Closure (264.143 and 265.143) .....$

Post-Closure Care (264.145 and 265.145) .....$

Liability Coverage (264.147 and 265.147) .....$

Corrective Action (264.101(b) .....$

Plugging and Abandonment (144.63) .....$

Closure .....$

Post-Closure Care .....$

Liability Coverage .....$

Corrective Action .....$

Plugging and Abandonment .....$

Total .....$

This [insert: "owner or operator," or "guarantor"] has not received an adverse opinion, a disclaimer or opinion, or a "going concern" qualification from an independent auditor on his financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of ARM 17.56.807(2) are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of ARM 17.56.807(3) are being used to demonstrate compliance with the financial test requirements.]

Alternative I

1. Amount of annual UST aggregate coverage being

assured by a financial test, and/or guarantee .....$

2. Amount of corrective action, closure and

post-closure care costs, liability coverage,

and plugging and abandonment costs covered

by a financial test, and/or guarantee .....$

3. Sum of lines 1 and 2 .....$

4. Total tangible assets .....$

5. Total liabilities [if any of the amount

reported on line 3 is included in total

liabilities, you may deduct that amount from

this line and add that amount to line 6] .....$

6. Tangible net worth [subtract line 5 from line 4]
.....$

Yes No

7. Is line 6 at least $10 million?
____ ____

8. Is line 6 at least 10 times line 3?

9. Have financial statements for the latest

fiscal year been filed with the Securities

and Exchange Commission?

10. Have financial statements for the latest

year been filed with the Energy Information

Administration?

11. Have financial statements for the latest

fiscal year been filed with the Rural Utilities Service?

12. Has financial information been provided

to Dun and Bradstreet, and has Dun and

Bradstreet provided a financial strength

rating of 4A or 5A? [Answer "Yes" only

if both criteria have been met.]

Alternative II

1. Amount of annual UST aggregate coverage

being assured by a test, and/or guarantee $

2. Amount of corrective action, closure and

post-closure care costs, liability coverage

and plugging and abandonment costs covered

by a financial test, and/or guarantee $

3. Sum of lines 1 and 2 $

4. Total tangible assets $

5. Total liabilities [if any of the amount

reported on line 3 is included in total

liabilities, you may deduct that amount from

this line and add that amount to line 6] $

6. Tangible net worth [subtract line 5 from

line 4] $

7. Total assets in the US [required only if less

than 90% of assets are located in the US $

Yes No

8. Is line 6 at least $10 million?

9. Is line 6 at least 6 times line 3?

10. Are at least 90% of assets located

in the US [If "No," complete line 11.]

11. Is line 7 at least 6 times line 3?

[Fill in either lines 12-15 or lines 16-18:]

12. Current assets $

13. Current liabilities $

14. Net working capital [subtract line 13

from line 12] $

Yes No

15. Is line 14 at least 6 times line 3?

16. Current bond rating of most recent

bond issue

17. Name of rating service

18. Date of maturity of bond

19. Have financial statements for the latest

fiscal year been filed with the SEC, the

Energy Information Administration, or

the Rural Utilities Service?

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]

[For both Alternative I and Alternative II complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in ARM 17.56.807(4) as such rule was constituted on the date shown immediately below.

[Signature]

[Name]

(9) If an owner or operator using the test to provide financial assurance finds that he or she no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

(10) The director may require reports of financial condition at any time from the owner or operator, and/or guarantor. If the director finds, on the basis of such reports or other information, that the owner or operator, and/or guarantor, no longer meets the financial test requirements of (5) through (7) and (8), the owner or operator must obtain alternate coverage within 30 days after notification of such a finding.

(11) If the owner or operator fails to obtain alternate assurance within 150 days of finding that he or she no longer meets the requirements of the financial test based on the yearend financial statements, or within 30 days of notification by the director that he or she no longer meets the requirements of the financial test, the owner or operator must notify the director of such failure within ten days.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2018 MAR p. 1954, Eff. 10/6/18.

17.56.808 GUARANTEE (1) An owner or operator may satisfy the requirements of ARM 17.56.805 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be:

(a) a firm that:

(i) possesses a controlling interest in the owner or operator;

(ii) possesses a controlling interest in a firm described under (i) above; or

(iii) is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or,

(b) a firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.

(2) Within 120 days of the close of each financial reporting year the guarantor must demonstrate that it meets the financial test criteria of ARM 17.56.807 based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in ARM 17.56.807(8) and must deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. If the director notifies the guarantor that he no longer meets the requirements of the financial test of ARM 17.56.807(5) through (7) and (8), the guarantor must notify the owner or operator within ten days of receiving such notification from the director. In both cases, the guarantee will terminate no less than 120 days after the date the owner or

operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternative coverage as specified in ARM 17.56.827(3).

(3) The guarantee must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Guarantee

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [name of state], herein referred to as guarantor, to the Montana Department of Environmental Quality and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

Recitals.

(1) Guarantor meets or exceeds the financial test criteria of ARM 17.56.807(5) through (7) and (8) and agrees to comply with the requirements for guarantors as specified in ARM 17.56.808(2).

(2) [Owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies ARM Title 17, chapter 56, subchapter 8 requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating and above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if grantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related form of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to the Montana Department of Environmental Quality and to any and all third parties that:

In the event that [owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Director of the Montana Department of Environmental Quality has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the Director, shall fund a standby trust fund in accordance with

the provisions of ARM 17.56.824, in an amount not to exceed the coverage limits specified above.

In the event that the Director determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with ARM Title 17, chapter 56, subchapter 6, the guarantor upon written instructions from the Director shall fund a standby trust in accordance with the provisions of ARM 17.56.824, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the Director, shall fund a standby trust in accordance with the provisions of ARM 17.56.824 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of ARM 17.56.807(2) through (7) and (8), the guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), US Code naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to ARM Title 17, chapter 56.

(7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of ARM Title 17, chapter 56, subchapter 8 for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) any obligation of [insert owner or operator] under a workers' compensation disability benefits, or unemployment compensation law or other similar law;

(b) bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of ARM 17.56.805.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Montana Department of Environmental Quality, by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in ARM 17.56.808(3) as such rule was constituted on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[name of person signing]

[Title of person signing]

Signature of witness or notary:

(4) An owner or operator who uses a guarantee to satisfy the requirements of ARM 17.56.805 must establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the director under ARM 17.56.824. This standby trust fund must meet the requirements specified in ARM 17.56.817.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2018 MAR p. 1954, Eff. 10/6/18.

17.56.809 INSURANCE AND RISK RETENTION GROUP COVERAGE (1) An owner or operator may satisfy the requirements of ARM 17.56.805 by obtaining liability insurance that conforms to the requirements of this rule from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

(2) Each insurance policy must be amended by an endorsement worded as specified in (a) below, or evidenced by a certificate of insurance worded as specified in (b) below, except that instruction in brackets must be replaced with the relevant information and the brackets deleted:

(a) Endorsement

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number:

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]:

Address of [Insurer or Risk Retention Group]:

Name of Insured:

Address of Insured:

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility.] for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided however, that any provisions inconsistent with (a)-(e) of this paragraph 2 are hereby amended to conform with (a)-(e).

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in ARM 17.56.807 through 17.56.811, 17.56.815 through 17.56.817, and 17.56.804(1)(a) through (1)(d).

c. Whenever requested by the Director, the ["Insurer" or "Group"] agrees to furnish to the Director a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"] will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ["Insurer" "Group"] within 6 months of the effective date of the cancellation or termination of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in ARM 17.56.809(2)(a) and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states"].

[Signature of authorized representative of Insurer or Risk Retention Group]

[Name of person signing]

[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

(b) Certificate of Insurance

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number:

Endorsement (if applicable) :

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]:

Address of [Insurer or Risk Retention Group]:

Name of Insured:

Address of Insured:

Certification

1. [Name of Insurer or Risk Retention Group], [the "Insurer" or "Group"], as identified above, hereby certified that it has issued liability insurance covering the following underground storage tank(s) :

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility.] for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is

different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Group"] further certifies the following with respect to the insurance described in paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this certificate applies.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider or corrective action or a damaged third-party, with a right or reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in ARM 17.56.807 through 17.56.811, 17.56.815 and 17.56.816.

c. Whenever requested by the Director of the Montana Department of Environmental Quality, the ["Insurer" or "Group"] agrees to furnish to the Director a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"] will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ["Insurer" or "Group"] within six months of the effective date of the cancellation or other termination of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in ARM 17.56.809(2)(b) and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states"].

[Signature of authorized representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

(3) Each insurance policy must be issued by an insurer or a risk retention group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2018 MAR p. 1954, Eff. 10/6/18.

17.56.810 SURETY BOND (1) An owner or operator may satisfy the requirements of ARM 17.56.805 by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

(2) The surety bond must be worded as follows, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

Performance Bond

Date bond executed:

Period of coverage:

Principal: [legal name and business address of owner or operator]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation (if applicable) :

Surety(ies) : [name(s) and business address(es)]

Scope of Coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility. List the coverage guaranteed by the bond: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" "arising from operating the underground storage tank"].

Penal sums of bond:

Per occurrence $

Annual aggregate $

Surety's bond number:

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the Department of Environmental Quality, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under Subtitle I to the Resource Conservation and Recovery Act (RCRA) amending the Solid Waste Disposal Act, as amended, to provide financial assurance for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully ["take corrective action, in accordance with ARM Title 17, chapter 56, subchapter 6, and the Director of the Montana Department of Environmental Quality's instructions for," and/or "compensate injured third parties for bodily injury and property damage caused by" either "sudden" or "nonsudden" or "sudden and nonsudden"] accidental releases arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in ARM Title 17, chapter 56, subchapter 4, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of ARM 17.56.805.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Director of the Montana Department of Environmental Quality that the Principal has failed to ["take corrective action, in accordance with ARM Title 17, chapter 56, subchapter 6 and the Director's instructions," and/or "compensate injured third parties"] as guaranteed by this bond, the Surety(ies) shall either perform ["corrective action in accordance with ARM Title 17, chapter 56 and the Director's instructions," and/or "third-party liability compensation"] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the Director under ARM 17.56.824.

Upon notification by the Director that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the Director has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the Director under ARM 17.56.824.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Thereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in ARM 17.56.810(2) as such rule was constituted on the date this bond was executed.

Principal

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

Corporate Surety(ies)

[Name and address]

[State of Incorporation:

[Liability limit: $

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $

(3) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

(4) The owner or operator who uses a surety bond to satisfy the requirements of ARM 17.56.805 must establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instruction from the director under ARM 17.56.824. This standby trust fund must meet the requirements specified in ARM 17.56.817.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2018 MAR p. 1954, Eff. 10/6/18.

17.56.811 LETTER OF CREDIT (1) An owner or operator may satisfy the requirements of ARM 17.56.805 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this rule. The issuing institution must be an entity that has the authority to issue letters of credit in each state where used and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(2) The letter of credit must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit
[Name and address of issuing institution]
Director
Montana Department of Environmental Quality
PO Box 200901, Metcalf Building
Helena, Montana 59620-0901

Attn: UST Program

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] US dollars ($[insert dollar amount]), available upon presentation by you of

(1) your sight draft, bearing reference to this letter of credit, No. , and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of Subtitle I to the Resource Conservation and Recovery Act (RCRA) amending the Solid Waste Disposal Act, as amended and the applicable state laws and rules."

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the

amount of [in words] $[insert dollar amount] per occurrence and [in words] $[insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of ARM 17.56.805.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless at least 120 days before the current expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by [owner or operator], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instruction.

We certify that the wording of this letter of credit is identical to the wording specified in ARM 17.56.811(2) as such rule was constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(3) An owner or operator who uses a letter of credit to satisfy the requirements of ARM 17.56.805 must also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the director will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the director under ARM 17.56.824. This standby trust fund must meet the requirements specified in ARM 17.56.817.

(4) The letter of credit must be irrevocable with a term specified by the issuing institution. The letter of credit must provide that credit be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit, the 120 days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2018 MAR p. 1954, Eff. 10/6/18.

17.56.815 MONTANA PETROLEUM TANK RELEASE CLEANUP FUND (1) An owner or operator may satisfy any part of the applicable requirements of ARM 17.56.805 for underground storage tanks located in Montana by use of the petroleum tank release cleanup fund created by 75-11-313 , MCA. The burden of proof is upon the owner or operator to prove compliance with all necessary prerequisites for coverage by the petroleum tank release cleanup fund.

(2) If an owner or operator uses the petroleum tank release cleanup fund as partial satisfaction of the coverage requirements of ARM 17.56.805, the owner or operator may demonstrate that remaining coverage requirements are met by certifying a tangible net worth equal to that amount.

(3) Certification of tangible net worth must be based on year-end financial statements for the latest completed calendar year and documented on a form approved by the department.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2006 MAR p. 913, Eff. 4/7/06.

17.56.816 TRUST FUND (1) An owner or operator may satisfy the requirements of ARM 17.56.805 by establishing a trust fund that conforms to the requirements of this rule. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

(2) The wording of the trust agreement must be identical to the wording specified in ARM 17.56.817(2)(a), and must be accompanied by a formal certification in ARM 17.56.817(2)(b).

(3) The trust fund, when established, must be funded for a full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.

(4) If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the director for release of the excess.

(5) If other financial assurance as specified in this subchapter is substituted for all or part of the trust fund, the owner or operator may submit a written request to the director for release of the excess.

(6) Within 60 days after receiving a request from the owner or operator for release of funds as specified in (4) or (5), the director will instruct the trustee to release to the owner or operator such funds as the director specifies in writing.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07.

17.56.817 STANDBY TRUST FUND (1) An owner or operator using any one of the mechanisms authorized by ARM 17.56.808, 17.56.810, or 17.56.811 must establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

(2)(a) The standby trust agreement must be worded as follows, except that instruction in brackets are to be replaced with the relevant information and the brackets deleted:

Trust Agreement

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the state of _____ " or "a national bank"], the "Trustee."

[Whereas, the Montana Department of Environmental Quality," an agency of the Montana state government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank (This paragraph is only applicable to the standby trust agreement)];

[Whereas, the Grantor has elected to establish [insert either "a guarantee," "surety bond," or "letter of credit"] to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby

trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement)];

[Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions.

As used in this Agreement:

(a) "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) "Trustee" means the trustee who enters into this Agreement and any successor Trustee.

(c) "Department" means the Montana Department of Environmental Quality.

(d) "Director" means the Director of the Department.

Section 2. Identification of the Financial Assurance Mechanism.

This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the State of Montana acting through the Department. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to the Director of the Department's instructions are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the Department.

Section 4. Payment for ["Corrective Action" and/or Third-Party Liability Claims"].

The Trustee shall make payments from the Fund as the Director shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by"

either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the court of employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of ARM 17.56.805. The Trustee shall reimburse the Grantor, or other persons as specified by the Director in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 USC 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 USC 80a1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee.

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advise of Counsel.

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Director of the Montana Department of Environmental Quality to the Trustee shall be in writing,

signed by the Director, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Director hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Director, except as provided for herein.

Section 14. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the Director of the Montana Department of Environmental Quality if the Grantor ceases to exist.

Section 15. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the Director of the Montana Department of Environmental Quality, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Director of the Montana Department of Environmental Quality issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law.

This Agreement shall be administered, construed, and enforced according to the laws of the state of State of Montana, or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in ARM 17.56.817(2) (a) as such rule was constituted on the date written above.

[Signature of Grantor]
[Name of the Grantor]
[Title]
Attest:

[Signature of Trustee]
[Name of the Trustee]
[Title]
[Seal]

[Signature of Witness]
[Name of the Witness]
[Title]
[Seal]

(3) The standby trust agreement must be accompanied by a formal certification of acknowledgment similar to the following. State requirements may differ on the proper content of this acknowledgment.
State of
County of

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] or [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

[Name of Notary Public]

(4) The director will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the director determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

(5) An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07.

17.56.820 SUBSTITUTION OF FINANCIAL ASSURANCE MECHANISMS BY OWNER OR OPERATOR (1) An owner or operator may substitute any alternate financial assurance mechanisms as specified in this subchapter, provided that at all times he maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of ARM 17.56.805.

(2) After obtaining alternate financial assurance as specified in this subchapter, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07.

17.56.821 CANCELLATION OR NONRENEWAL BY A PROVIDER OF FINANCIAL ASSURANCE (1) Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator.

(a) Termination of a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(b) Termination of insurance, risk retention group coverage, or state-funded assurance may not occur until 60 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(2) If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in ARM 17.56.822, the owner or operator must obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator must notify the director of such failure and submit:

(a) the name and address of the provider of financial assurance;

(b) the effective date of termination; and

(c) the evidence of the financial assistance mechanism subject to the termination maintained in accordance with ARM 17.56.823(2).

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2018 MAR p. 1954, Eff. 10/6/18.

17.56.822 REPORTING BY OWNER OR OPERATOR (1) An owner or operator must submit the appropriate forms listed in ARM 17.56.823(2) documenting current evidence of financial responsibility to the director:

(a) Within 30 days after the owner or operator identifies a release from an underground storage tank required to be reported under ARM 17.56.505 or 17.56.602.

(b) If the owner or operator fails to obtain alternate coverage as required by this subchapter, within 30 days after the owner or operator receives notice of:

(i) commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor,

(ii) suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism,

(iii) failure of a guarantor to meet the requirements of the financial test,

(iv) other incapacity of a provider of financial assurance; or

(c) As required by ARM 17.56.807(7) and 17.56.821(2).

(2) An owner or operator must certify compliance with the financial responsibility requirements of this part as specified in the new tank notification form when notifying the appropriate state or local agency of the installation of a new underground storage tank under ARM 17.56.902.

(3) The director may require an owner or operator to submit evidence of financial assurance as described in ARM 17.56.823(2) or other information relevant to compliance with this subchapter at any time.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07.

17.56.823 RECORDKEEPING (1) Owners or operators must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this subchapter for an underground storage tank until released from the requirements of this subchapter under ARM 17.56.825. An owner or operator must maintain such evidence at the underground storage tank site or the owner's or operator's place of business. Records maintained off-site must be made available upon request of the department.

(2) An owner or operator must maintain the following types of evidence of financial responsibility:

(a) An owner or operator using an assurance mechanism specified in ARM 17.56.807 through 17.56.811, and 17.56.815 or 17.56.816 must maintain a copy of the instrument worded as specified.

(b) An owner or operator using a financial test or guarantee must maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence must be on file no later than 120 days after the close of the financial reporting year.

(c) An owner or operator using a guarantee, surety bond, or letter of credit must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(d) An owner or operator using an insurance policy or risk retention group coverage must maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

(e) An owner or operator covered by the Montana petroleum tank release cleanup fund must maintain on file a copy of any evidence of coverage supplied by or required by the state under ARM 17.56.815.

(f) An owner or operator using an assurance mechanism specified in ARM 17.56.807 through 17.56.811, 17.56.815, and 17.56.816 must maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Financial Responsibility

[Owner or operator] hereby certifies that it is in compliance with the requirements of ARM Title 17, chapter 56, subchapter 8.

The financial assurance mechanism[s] used to demonstrate financial responsibility under ARM Title 17, chapter 56, subchapter 8, is [are] as follows:

[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases."]

[Signature of owner or operator]
[Name of owner or operator]
[Title]
[Date]
[Signature of witness or notary]
[Name of witness or notary]

[Date]

The owner or operator must update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07.

17.56.824 DRAWING ON FINANCIAL ASSURANCE MECHANISMS (1) The director shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the director, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

(a) (i) the owner or operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and

(ii) the director determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the director pursuant to subchapters 5 or 6 of a release from an underground storage tank covered by the mechanism; or

(b) the conditions of (2) (a) or (2) (b) (i) or (ii) of this rule are satisfied.

(2) The director may draw on a standby trust fund when:

(a) the director makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under ARM Title 17, chapter 56, subchapter 6; or

(b) the director has received either:

(i) certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and a third-party liability claim should be paid. The certification must be worded as follows, except that instruction in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as principals and as legal representatives of [insert owner or operator] and [insert name and address of third-party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner's or operator's] underground storage tank should be paid in the amount of $[ ].

[Signatures]
Owner or Operator
Attorney for Owner or Operator
(Notary)

[Signature(s)]
Claimant(s)
Attorney(s) for Claimant(s)

(Notary) Date

(ii) A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an underground storage tank covered by financial assurance under this subchapter and the director determines that the owner or operator has not satisfied the judgment.

(3) If the director determines that the amount of corrective action costs and third-party liability claims eligible for payment under (2) may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health

and the environment. The director shall pay third-party liability claims in the order in which the director receives certifications under (2)(b)(i), and valid court orders under (2)(b)(ii).

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07.

17.56.825 RELEASE FROM THE REQUIREMENTS (1) An owner or operator is no longer required to maintain financial responsibility under this subchapter for an underground storage tank after the tank has been properly closed or, if corrective action is required, after corrective action has been completed and the tank has been properly closed as required by ARM Title 17, chapter 56, subchapter 7.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07.

17.56.827 BANKRUPTCY OR OTHER INCAPACITY OF OWNER OR OPERATOR OR PROVIDER OF FINANCIAL ASSURANCE (1) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator must notify the director by certified mail of such commencement and submit the appropriate forms listed in ARM 17.56.824(2) documenting current financial responsibility.

(2) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor must notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in ARM 17.56.808.

(3) An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, letter of credit, or state-required mechanism. The owner or operator must obtain alternate financial assurance as specified in this subchapter within 30 days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within 30 days after such notification, he must notify the director.

(4) Within 30 days after receipt of notification that the Montana petroleum release cleanup fund is incapable of paying for assured corrective action or third-party compensation costs, the owner or operator must obtain alternate financial assurance.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07.

17.56.828 REPLENISHMENT OF GUARANTEES, LETTERS OF CREDIT, OR SURETY BONDS

(1) If at any time after a standby trust is funded upon the instruction of the director with funds drawn from a guarantee, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall by the anniversary date of the financial mechanism from which the funds were drawn:

(a) replenish the value of financial assurance to equal the full amount of coverage required; or

(b) acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

(2) For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by ARM 17.56.805 of this subchapter. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07.

17.56.901 INTERIM NOTIFICATION REQUIREMENTS (1) The department adopts and incorporates by reference the UST notification and registration forms "Owner Change or Amended Owner Notification" and "Complete" available on the department's web site, which ask for information including, but not limited to, ownership, location, age, material of construction, capacity, use, and internal and external construction. Copies of these forms may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1986 MAR p. 669, Eff. 4/25/86; TRANS, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2010 MAR p. 1888, Eff. 8/27/10; AMD, 2016 MAR p. 1694, Eff. 9/24/16.

17.56.902 NOTIFICATION REQUIREMENTS (1) An owner who brings an underground storage tank system into use after May 8, 1986, shall within 30 days of bringing such tank into use, submit a notice of existence of such tank system to the department in the form prescribed by the department.

Note: Owners and operators of UST systems that were in the ground on or after May 8, 1986, unless taken out of operation on or before January 1, 1974, were required to notify the state in accordance with the Hazardous and Solid Waste Amendments of 1984, Pub.L. 98-616, on a form published by EPA on November 8, 1985 (50 FR 46602) unless notice was given pursuant to section 103(c) of CERCLA. Owners and operators who have not complied with the notification requirements may use portions I through VI of the notification form prescribed by the department.

(2) Owners required to submit a notice under (1) shall provide a notice to the department for each tank they own. Owners may provide notice for several tanks using one notification form, but owners who own tanks located at more than one place of operation shall file a separate notification form for each separate place of operation.

(3) Notice required to be submitted under (1) must provide all of the information in sections I through VI of the prescribed form for each tank for which notice must be given. Notices for tanks installed after December 22, 1988, must also provide all of the information in section VII of the prescribed form for each tank for which notice must be given.

(4) Owners and operators of new or modified UST systems shall provide the following with the notification form set forth in ARM 17.56.901:

(a) a certification that the owner or operator has complied with the financial responsibility requirements under subchapter 8; and

(b) the following information related to the tank system:

(i) the location of each tank system;

(ii) ownership of each tank system;

(iii) status of each tank system;

(iv) the date of each tank system installation;

(v) the estimated total capacity of each tank system;

(vi) tank and piping material;

(vii) the substance currently or last stored in each tank system; and

(viii) any other information required on the notification form that is necessary to ensure tanks can be adequately identified for regulatory purposes.

(5) Owners and operators of new or modified UST systems shall ensure that, upon completion of all work and testing performed pursuant to the installation permit, the licensed installer or department inspector completes a certification of compliance in accordance with the requirements in ARM 17.56.201(1)(e).

(6) Beginning October 24, 1988, any person who sells a tank intended to be used as an underground storage tank shall notify the purchaser of the tank of the owner's notification obligations under (1). The form prescribed by the department shall be used to comply with this requirement.

(7) Owners and operators of existing or new UST systems shall notify the department on a form approved by the department when any of the information submitted on the notification form has changed, such as upgrading or repairing new or existing tanks or pipes, or change of owner, or contact person, or meeting the requirements specified in ARM 17.56.202 or subchapter 8.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2010 MAR p. 1888, Eff. 8/27/10; AMD, 2016 MAR p. 1694, Eff. 9/24/16.

17.56.903 CHANGE IN OWNERSHIP (1) The purchaser of an UST system shall provide written notification to the department within 30 days after any sale.

(2) The purchaser shall also provide the information required by ARM 17.56.902(7) .

(3) Until notification of a new owner, or other responsible party, has been received by the department in accordance with this rule, annual tank registration fees will continue to be assessed to the owner, or other responsible party, of record with the department.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 2003 MAR p. 2759, Eff. 12/12/03; AMD, 2006 MAR p. 913, Eff. 4/7/06.

17.56.1001 TANK FEE SCHEDULE (1) Owners or operators of underground storage tanks which have not been closed in accordance with ARM 17.56.702 shall pay an annual registration fee for each underground storage tank owned or operated. In order to schedule annual renewal dates, the department may prorate the registration fee to cover registration periods not equal to 12 months.

(2) Owners or operators of the following underground storage tanks shall pay the following annual registration fees in accordance with (1) before the department will issue an operating permit under ARM 17.56.308:

(a) underground storage tanks with a capacity of more than 1,100 gallons, $108 per tank;

(b) underground storage tanks with a capacity of 1,100 gallons or less, $36 per tank.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 1998 MAR p. 3108, Eff. 11/20/98; AMD, 1999 MAR p. 2858, Eff. 12/17/99; AMD, 2003 MAR p. 2759, Eff. 12/12/03; AMD, 2006 MAR p. 913, Eff. 4/7/06; AMD, 2011 MAR p. 145, Eff. 2/11/11.

17.56.1002 GRANTS TO LOCAL GOVERNMENTAL UNITS

This rule has been repealed.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07; REP, 2016 MAR p. 1694, Eff. 9/24/16.

17.56.1003 DESIGNATION OF LOCAL UST PROGRAMS

This rule has been repealed.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259, Eff. 7/1/95; AMD, 2000 MAR p. 969, Eff. 4/14/00; AMD, 2007 MAR p. 1189, Eff. 8/24/07; REP, 2016 MAR p. 1694, Eff. 9/24/16.

17.56.1004 IMPLEMENTING AGENCY PROGRAM SERVICES AND REIMBURSEMENT

This rule has been repealed.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2000 MAR p. 969, Eff. 4/14/00; AMD, 2007 MAR p. 1189, Eff. 8/24/07; REP, 2016 MAR p. 1694, Eff. 9/24/16.

17.56.1005 REVOCATION AND SURRENDER OF DESIGNATION

This rule has been repealed.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2000 MAR p. 969, Eff. 4/14/00; AMD, 2007 MAR p. 1189, Eff. 8/24/07; REP, 2016 MAR p. 1694, Eff. 9/24/16.

17.56.1101 DEFINITIONS

This rule has been repealed.

History: 75-11-319, MCA; IMP, 75-11-309, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 1995 MAR p. 2489, Eff. 11/23/95; REP, 2003 MAR p. 1079, Eff. 5/23/03.

17.56.1102 REVIEW OF REIMBURSEMENT CLAIMS

This rule has been repealed.

History: 75-11-319, MCA; IMP, 75-11-309, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; REP, 2003 MAR p. 1079, Eff. 5/23/03.

17.56.1103 PROVISION OF CORRECTIVE ACTION PLANS TO LOCAL GOVERNMENT

This rule has been repealed.

History: 75-11-319, MCA; IMP, 75-11-309, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; REP, 2003 MAR p. 1079, Eff. 5/23/03.

17.56.1104 DESIGN, CONSTRUCTION, AND INSTALLATION STANDARDS FOR ALL DOUBLE-WALLED PETROLEUM STORAGE TANK SYSTEMS

This rule has been repealed.

History: 75-11-319, MCA; IMP, 75-11-302, 75-11-309, 75-11-319, MCA; NEW, 1995 MAR p. 2489, Eff. 11/23/95; REP, 2003 MAR p. 1079, Eff. 5/23/03.

17.56.1201 PURPOSE

This rule has been repealed.

History: 75-11-204, MCA; IMP, 75-11-204, MCA; EMERG, NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; REP, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1202 DEFINITIONS

This rule has been transferred.

History: 75-11-204, MCA; IMP, 75-11-203, 75-11-204, MCA; EMERG, NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS to 17.56.1301, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1205 INSTALLER LICENSE REQUIREMENTS GENERALLY

This rule has been transferred.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-209, 75-11-210, MCA; EMERG, NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS to 17.56.1401, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1206 ELIGIBILITY FOR INSTALLER LICENSE

This rule has been transferred.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-210, MCA; EMERG, NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS to 17.56.1402, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1207 INSTALLER LICENSE APPLICATION

This rule has been transferred.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-210, MCA; EMERG, NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS to 17.56.1403, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1208 INSTALLER LICENSE EXAMINATION AND RE-EXAMINATION

This rule has been transferred.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-210, MCA; EMERG, NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS to 17.56.1405, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1209 INSTALLER LICENSE ISSUANCE, TERM, RESTRICTION

This rule has been transferred.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-210, 75-11-211, MCA; EMERG, NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS to 17.56.1406, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1210 INSTALLER LICENSE RENEWAL

This rule has been transferred.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-210, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS to 17.56.1407, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1215 APPROVAL OF CONTINUING EDUCATION COURSES
This rule has been transferred.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-210, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS to 17.56.1408, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1216 INSTALLER DUPLICATE LICENSES
This rule has been transferred.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-210, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS to 17.56.1409, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1217 INSTALLER LICENSING FEES
This rule has been transferred.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-210, MCA; EMERG, NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS to 17.56.1404, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1218 LICENSED INSTALLER RECORD KEEPING
This rule has been transferred.

History: 75-11-204, MCA; IMP, 75-11-204, MCA; EMERG, NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS to 17.56.1410, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1221 PROHIBITION OF UNPROFESSIONAL INSTALLER CONDUCT
This rule has been transferred.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-211, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS to 17.56.1422, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1222 INSTALLATION AND CLOSURE PERMIT REQUIREMENT--APPLICATION
This rule has been transferred.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-209, 75-11-212, MCA; EMERG, NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS to 17.56.1303, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1223 INSPECTION IN LIEU OF LICENSED INSTALLER

This rule has been transferred.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-213, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS to 17.56.1308, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1226 PERMIT ISSUANCE, TERMS, CONDITIONS

This rule has been transferred.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-212, MCA; EMERG, NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS to 17.56.1305, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1227 EMERGENCY PERMIT APPLICATION AND ISSUANCE

This rule has been transferred.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-212, MCA; EMERG, NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD, 1998 MAR p. 1739, Eff. 6/26/98; AMD & TRANS to 17.56.1306, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1228 PERMIT CONDITIONING, MODIFICATION, SUSPENSION, REVOCATION

This rule has been transferred.

History: 75-11-204, MCA; IMP, 75-11-204, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS to 17.56.1307, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1229 PERMIT APPLICATION REVIEW FEES

This rule has been transferred.

History: 75-11-204; IMP, 75-11-204, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1991 MAR p. 1280, Eff. 7/26/91; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS to 17.56.1304, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1232 INSPECTION FEES

This rule has been transferred.

History: 75-11-204; IMP, 75-11-204, 75-11-213, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1991 MAR p. 1280, Eff. 7/26/91; AMD, 1994 MAR p. 2744, Eff. 10/14/94; AMD, 1995 MAR p. 27, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS to 17.56.1309, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1233 REQUIREMENTS FOR INSPECTION GENERALLY

This rule has been repealed.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-213, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; REP, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1235 ELIGIBILITY FOR INSPECTOR LICENSING

This rule has been repealed.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-217, MCA; EMERG, NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; REP, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1236 INSPECTOR LICENSE APPLICATION

This rule has been repealed.

History: 75-11-204, MCA; IMP, 75-11-204, MCA; EMERG, NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; REP, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1237 INSPECTOR LICENSE EXAMINATION

This rule has been repealed.

History: 75-11-204, MCA; IMP, 75-11-204, MCA; EMERG, NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; REP, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1238 INSPECTOR LICENSE ISSUANCE, TERM, RESTRICTIONS, CONDITIONS

This rule has been repealed.

History: 75-11-204, MCA; IMP, 75-11-210, 75-11-204, 75-11-213, MCA; EMERG, NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; REP, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1239 INSPECTOR LICENSE RENEWAL

This rule has been repealed.

History: 75-11-204, MCA; IMP, 75-11-204, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; REP, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1240 INSPECTOR DUPLICATE LICENSES

This rule has been repealed.

History: 75-11-204, MCA; IMP, 75-11-204, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; REP, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1241 INSPECTOR LICENSING FEES

This rule has been repealed.

History: 75-11-204, MCA; IMP, 75-11-204, MCA; EMERG, NEW, 1990 MAR p. 1827, Eff. 10/1/90; REP, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259.

17.56.1242 PROHIBITION OF UNPROFESSIONAL INSPECTOR CONDUCT

This rule has been repealed.

History: 75-11-204, MCA; IMP, 75-11-204, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; REP, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1245 DESIGNATION OF IMPLEMENTING AGENCIES

This rule has been repealed.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-213, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1991 MAR p. 1280, Eff. 7/26/91; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; REP, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1246 INSTALLATION AND CLOSURE INSPECTION REQUIREMENTS--REPORTS

This rule has been repealed.

History: 75-11-204, MCA; IMP, 75-11-204, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; REP, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1247 INSPECTION REIMBURSEMENT

This rule has been repealed.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-213, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1991 MAR p. 1280, Eff. 7/26/91; AMD, 1994 MAR p. 2744, Eff.

10/14/94; TRANS, from DHES, 1995 MAR p. 2259; REP, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1250 NOTICE OF VIOLATION--WRITTEN ORDER TO TAKE CORRECTIVE ACTION

This rule has been repealed.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-218, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; REP, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1251 THIRD PARTY COMPLAINTS--INVESTIGATIONS

This rule has been repealed.

History: 75-11-204, MCA; IMP, 75-11-204, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; REP, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1252 DISCIPLINARY AND OTHER LICENSING ACTION GENERALLY

This rule has been transferred.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-211, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS to 17.56.1421, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1253 RESTRICTING OR CONDITIONING OF LICENSE

This rule has been transferred.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-211, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS to 17.56.1423, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1254 MODIFICATION OF LICENSE

This rule has been transferred.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-211, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2559; AMD & TRANS to 17.56.1424, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1255 SUSPENSION OF LICENSE

This rule has been transferred.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-211, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS to 17.56.1425, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1256 LICENSE REVOCATION

This rule has been transferred.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-211, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS to 17.56.1426, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1260 REQUEST FOR HEARING

This rule has been repealed.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-211, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; REP, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1301 DEFINITIONS For the purposes of ARM Title 17, chapter 56, subchapters 13 and 14 and unless otherwise provided, the following terms have the meanings given to them in this rule and must be used in conjunction with the definitions in subchapter 1 of this chapter and those in 75-11-203 and 75-11-503, MCA:

(1) "Annual period" means a calendar year beginning on March 1 and ending on the last day of February of the following year, for the purpose of calculating when fees are due to the department.

(2) "Day" means a calendar day.

(3) "External leak detection device" means a monitoring system that is located external to and not attached to an underground storage tank system and that is designed and installed to detect a release of the regulated substance stored in the underground storage tank system. Examples of external leak detection devices include, but are not limited to, soil vapor monitoring wells, observation wells, continuous monitoring equipment, if any, that is installed within the wells to detect a release, and a groundwater monitoring well when constructed by a person holding a monitoring well constructor license issued by the board of water well contractors and in accordance with the provisions of ARM Title 36, chapter 21, and ARM 17.56.407(1)(f).

(4) "Groundwater monitoring well" means a monitoring well constructed by a licensed monitoring well contractor and in accordance with the requirements of ARM Title 36, chapter 21, and any associated sensing equipment which is located outside of the tank excavation and is designed and installed to be used to detect releases of regulated substances from underground storage tank systems.

(5) "Installer license" means a license issued to an individual by the department under 75-11-210, MCA, to conduct the installation, closure, or both, of underground storage tank systems.

(6) "Lining" means the addition of a plastic, fiberglass, or other shell of impervious material to the inside of an underground storage tank for the purpose of ensuring that the tank retains its contents. The term includes all steps to be taken in preparation for the addition of the lining and includes relining.

(7) "Major installation" means the installation of underground storage tanks, piping, vapor or groundwater leak detection monitoring wells, corrosion protection, interstitial tank probes and sensors and corrosion protection system anodes. Repair or

modification of the above-listed items, and activities not defined as a "minor installation" are also considered major installations.

(8) "Minor installation" means the installation of replacement spill buckets, offset sleeves on tank risers, boots on piping flex connectors, drop-tubes, drop-tube shut-off valves and auto dialers, and the extension or replacement of vent standpipes. Minor installation also includes the decommissioning of groundwater and vapor leak detection monitoring wells.

(9) "Modification" means a significant change in the structure or components of an underground storage tank system, and includes, but is not limited to, lining a tank, cutting the walls of a tank, and the addition of internal leak detection devices.

(10) "Observation well" means, for purposes of this subchapter, a device and sensing equipment, if any, which consists of a cased penetration of an underground storage tank's backfill from which groundwater and/or soil vapors are monitored to detect whether a release of the regulated substance stored in an underground storage tank system has occurred, and which is located entirely within an underground storage tank system's backfill and does not penetrate beyond the bottom of the tank system's backfill.

(11) "Triennial period" means a period of three calendar years beginning on March 1 and ending on the last day of February three years later for the purpose of calculating continuing education units earned by a licensee of the department.

History: 75-11-204, 75-11-505, MCA; IMP, 75-11-204, 75-11-209, 75-11-210, 75-11-212, 75-11-509, MCA; EMERG, NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS, 2000 MAR p. 969, Eff. 4/14/00; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2005 MAR p. 443, Eff. 4/1/05; AMD, 2016 MAR p. 1694, Eff. 9/24/16; AMD, 2018 MAR p. 1954, Eff. 10/6/18.

17.56.1303 INSTALLATION AND CLOSURE PERMIT REQUIREMENT--APPLICATION (1) No person may install or close an underground storage tank system without a permit issued by the department pursuant to ARM 17.56.1305 or 17.56.1306.

(2) Except as provided in (6):

(a) a completed application for a major installation permit must be filed by the permit applicant on a form provided by the department at least ~~30~~ XX days prior to the proposed date of installation; and

(b) a completed application for a minor installation or closure permit must be filed by the permit applicant on a form provided by the department at least 20 days prior to the proposed date of installation or closure.

(3) If the installation or closure is to be conducted by:

(a) a licensed installer or remover, the licensed installer or remover shall sign the permit application;

(b) an owner or operator with an on-site installation inspector, the owner or operator must sign the permit application.

(4) The department shall notify an applicant if it determines that an application is deficient. The department shall notify the applicant what information is required for the application to be considered complete. The department shall hold deficient applications

pending the receipt of the required information. The department shall issue the permit within ~~30~~ XX days of the department's receipt of the complete permit application. If the applicant fails to submit the required information within six months of receiving the department's deficiency notice, the deficient permit application expires.

(5) The permit application review fee required by ARM 17.56.1304 and any applicable inspection fee required by ARM 17.56.1309 must be received by the department within five business days of applicant's submittal of the permit application to the department. If the permit applicant accumulates more than two unpaid permit application review and/or inspection fees, the department shall suspend further permit reviews until all past due fees are paid in full.

(6) For good cause, the department may waive the 30-day requirement in (2).

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-209, 75-11-212, MCA; EMERG, NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS, 2000 MAR p. 969, Eff. 4/14/00; AMD, 2005 MAR p. 443, Eff. 4/1/05; AMD, 2016 MAR p. 1694, Eff. 9/24/16.

Reason: The department proposes to extend the application submittal time requirement in (2)(a) and the issuance of a permit in (4) from 30 days to XX days in each case. The department has attempted to keep the time necessary for application submittals to a minimum but finds that the comprehensive review necessary to comply with the Montana Environmental Policy Act, especially in the case of a major installation permit at a newly proposed location (i.e., new UST facility), may prove difficult to achieve without additional time for staff to produce. The department has not yet proposed a replacement time period as Stakeholder and internal discussions continue.

17.56.1304 PERMIT APPLICATION REVIEW FEES (1) A person applying for an underground storage tank installation or closure permit shall pay to the department the applicable permit application review fee provided in (2) through (5), and, if a licensed installer will not conduct the installation or closure, the applicable inspection fee provided in ARM 17.56.1309.

(2) A permit application is deficient until the permit application review fee is paid to the department.

(3) Subject to the limitation in (4), for the installation or closure of an underground storage tank system, the permit applicant shall pay the following permit application review fees:

(a) any application, or group of applications, proposing work at a facility that includes the installation or closure of an underground storage tank ~~$100~~ $161/permit plus $0.02/gallon of tank capacity;

(b) any application solely for a minor installation ~~$50~~$80;

(c) any application solely for piping installation and/or closure:

(i) greater than 50 feet ~~$100~~$161;

(ii) 50 feet or less ~~$ 50~~$80; and

(d) any combination of applications in (3)(b) and (c), or any other permit application ~~$100~~ $161.

(4) To determine whether a proposed piping installation or closure exceeds the 50-foot threshold in (3)(c), piping length shall be calculated as the sum of the linear feet of all pipe proposed to be installed and closed.

(5) Permit application review fees for installations, closures, or both, at one facility or location must not exceed ~~$750~~ $1208 per permit issued by the department.

(6) For the issuance of a duplicate of any permit, the permittee shall pay a fee of $10.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-209, 75-11-212, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1991 MAR p. 1280, Eff. 7/26/91; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS, 2000 MAR p. 2018, Eff. 4/14/00; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2005 MAR p. 443, Eff. 4/1/05; AMD, 2016 MAR p. 1694, Eff. 9/24/16.

Reason: The current fee structure was adopted in 2005. The department has determined that reasonable necessity exists to generally amend the fee rules in (3) to establish sufficient fees to enable the department to effectively operate and implement the federal and state regulatory obligations. This fee proposal is intended to simplify the existing fee structure, apply the fees equitably across the regulated community, provide predictability, be commensurate with costs, and generate sufficient revenue to meet department mandates. The department proposes the change to fees according to the Bureau of Labor and Statistics data showing an inflationary rise since 2005 on a $100 annual fee now places that cost at $161. For FY 2023 – The UST program issued 312 UST construction Permits (141 minors at 50.00, 127 majors at 100.00, and 44 majors which fees greater than 100.00). UST construction Permit fees invoiced for FY 2023 were $38,913. The proposed changes would increase this number by $25,500 going forward assuming similar permit applications are received.

17.56.1305 MAJOR INSTALLATION, MINOR INSTALLATIONS, AND CLOSURE PERMIT ISSUANCE, TERMS, CONDITIONS (1) Upon receipt of a completed permit application and the fees required by ARM 17.56.1304 or 17.56.1309 for the installation or closure of an underground storage tank system, the department shall review the application and determine whether the proposed installation or closure meets the criteria for approval in (2).

(2) A permit must be issued by the department upon its determination that the proposed installation or closure will:

(a) comply with applicable statutes and rules of the department;

(b) comply with state law and rules governing disposal of the tank system components and tank contents; and

(c) be conducted in such a place and manner as to protect the environment, and the public's health, welfare, and safety.

(3) A permit issued to an applicant under this rule must state:

(a) the name of the owner or operator to whom the permit is issued;

(b) the address or location of the site of the planned installation or closure;

(c) the date(s) when the installation or closure is to be conducted;

(d) whether the installation or closure will be conducted by a licensed installer and, if so, the name and license number of the installer;

(e) whether the installation or closure will be inspected by the department; and

(f) any special permit conditions imposed by the department that are necessary to ensure the permit applicant's requested installation or removal activities are in compliance with (2).

(4) The department may not issue a permit under this rule until all annual registration fees required by ARM 17.56.1001 are received.

(5) The licensee or the department installer or remover inspector must sign and deliver the permit and all other required documentation specified by permit conditions to the department within 30 days of the installation or closure.

(6) The permit must be kept at the installation or closure site during all phases of the installation or closure.

(7) If the department deems it necessary to protect public health or the environment, the department may require any installation to be inspected by a department inspector. Whenever this occurs, the fee must be paid by the owner, operator, installer, or any other person who made the inspection necessary.

(8) A permit issued by the department under this rule or under ARM 17.56.1306 is issued subject to the accuracy of the information provided by the applicant in the permit application, the information stated or referenced on the permit pursuant to (3), compliance with all applicable statutes and rules and any conditions applied by the department. Any installation or closure not conducted in accordance with any information, condition(s), statute or rule will be considered to be conducted without a permit, and in violation of the law.

(9) Unless extended in writing by the department, permit is valid for six months from the date of issuance.

(10) The owner or operator shall keep a copy of the signed permit at the place where the installation or closure was conducted or at the owner or operator's place of business if that place is different from the installation or closure location and copies cannot safely be kept at the location of the installation or closure. The copy of the permit must be kept for as long as the tank system is used to store a regulated substance in the same location, or for at least three years after a closure is completed at that site.

(11) A permit issued under this subchapter is nontransferable.

History: 75-11-204, 75-11-505, MCA; IMP, 75-11-204, 75-11-209, 75-11-212, 75-11-505, MCA; EMERG, NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS, 2000 MAR p. 969, Eff. 4/14/00; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2011 MAR p. 145, Eff. 2/11/11; AMD, 2016 MAR p. 1694, Eff. 9/24/16.

17.56.1306 EMERGENCY PERMIT APPLICATION AND ISSUANCE (1) In the event of an emergency requiring immediate installation or closure of an underground

storage tank system, the applicant may contact the department, provide the information required by ARM 17.56.1303 and explain the nature of the emergency and the consequences of nonissuance. An emergency permit may be issued orally by the department and it will be valid for a maximum of ten days. Whenever an emergency permit is issued, the applicant shall pay the appropriate fees as provided in ARM 17.56.1304, and submit a completed permit application to the department within ten days of issuance of the emergency permit.

(2) If the department determines that an emergency exists under (1) and (3) and that the requirements of ARM 17.56.1303(2) have been satisfied, it must issue the permit in the manner provided by this rule and subject to any permit conditions imposed pursuant to this subchapter.

(3) For the purposes of this rule, an emergency is an imminent and substantial threat to the public health or safety or to the environment, including a threat to public health or safety or to the environment identified in a judicial order or an order of the department.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-209, 75-11-212, MCA; EMERG, NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD, 1998 MAR p. 1739, Eff. 6/26/98; AMD & TRANS, 2000 MAR p. 969, Eff. 4/14/00; AMD, 2016 MAR p. 1694, Eff. 9/24/16.

17.56.1307 PERMIT CONDITIONING, MODIFICATION, SUSPENSION, REVOCATION (1) The department may condition, modify, suspend or revoke any permit previously issued under ARM 17.56.1305 or 17.56.1306 upon its determination that:

(a) the owner, operator or licensee failed to meet the standards for issuance of a permit under ARM 17.56.1303, 17.56.1305 or 17.56.1306, as appropriate;

(b) the owner, operator or licensee committed fraud or deceit in applying for a permit;

(c) the owner, operator or licensee violated any statute or rule governing the installation or closure of an underground storage tank system of the department;

(d) the owner, operator or licensee violated the terms of any permit or order issued by the department relating to the installation or closure of an underground storage tank system;

(e) the owner, operator or licensee lacks the education, training or experience necessary to conduct any installation or closure for which a permit was previously issued;

(f) a change in the facts or circumstances of installation or closure necessitates a change in the permit; or that

(g) the condition, modification, suspension or revocation is necessary to protect the installer's or the public's health, welfare or safety, or the environment.

(2) Action by the department pursuant to (1) must be accompanied by a written statement of the reason for the department action.

(3) Upon revocation of a permit and written demand by the department, the owner, operator or licensee shall surrender his or her permit to the department. The

department shall retain the revoked permit or issue a modified or conditional permit in accordance with this rule.

(4) The owner, operator or licensee shall comply with the conditions or modifications imposed by the department.

(5) The conditioning, modification, suspension or revocation of a permit is effective upon delivery to the owner, operator or licensee at the address shown on the permit application whether or not the permittee actually takes possession of the notice. When a permit is revoked in accordance with this rule, the owner or operator may not install or close the tank system for which the permit was originally issued without again applying for and receiving a new permit.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-209, 75-11-212, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS, 2000 MAR p. 969, Eff. 4/14/00.

~~17.56.1308 INSPECTION IN LIEU OF LICENSED INSTALLER (1) An owner or operator intending to install or close an underground storage tank system without the services of a licensed installer in accordance with 75-11-213, MCA, must have the installation or closure inspected by a licensed department inspector.~~

~~(2) An owner or operator intending to have the department provide an inspector for the installation or closure of an underground storage tank system in lieu of obtaining the services of a licensed installer shall so state on the permit application submitted to the department. The permit application must be accompanied by the applicable permit review fee required by ARM 17.56.1304 and the inspection fee required by ARM 17.56.1309. As soon as practicable after a permit is issued by the department, the owner or operator must schedule an inspection for a date mutually agreeable to both the department and the applicant.~~

~~(3) A licensed department inspector need not be present when concrete or pavement is being removed from over an underground storage tank system in preparation for a closure or repair so long as the tank and its associated piping are not disturbed by the activity.~~

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-209, 75-11-212, 75-11-213, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS, 2000 MAR p. 969, Eff. 4/14/00; AMD, 2016 MAR p. 1694, Eff. 9/24/16.

Reason: The department proposes repealing ARM 17.56.1308 as this service is more appropriately provided by a private sector licensed installer. The department also performs and prioritizes activities based on the limitations of staffing and can contribute a broader range of services to a greater number of stakeholders by eliminating this function.

~~17.56.1309 INSTALLATION AND CLOSURE INSPECTION FEES (1) An inspection fee deposit of $90 for the use of a licensed department inspector shall be~~

~~submitted to the department for each installation or closure not conducted by a licensed installer. The owner or operator shall submit the inspection fee deposit with the permit application in accordance with ARM 17.56.1308 and the fee must be paid in the form of a check or money order made payable to the Montana Department of Environmental Quality.~~

~~(2) If a permit applicant changes the method of installation or closure from inspection to use of a licensed installer or cancels the installation or closure, the department shall refund the inspection fee deposit to the applicant, without payment of interest, upon the applicant's request if:~~

~~(a) the department receives from the applicant a written request for a refund not later than two weeks after the expiration of the permit; and~~

~~(b) the applicant surrenders the unused permit to the department.~~

~~(3) Within five days after completion of the inspection, the inspector shall report the total time required for the inspection, including the inspector's travel time to and from the inspection site, reported to the nearest one-half hour. Upon receipt of the report, the department shall calculate the total inspection fee owing to the department based upon the following formula for closures and installation inspections:~~

~~Type of Fee~~
~~Minimum fee (fee deposit) $90~~
~~Per hour fee for each hour~~
~~over 2 hours $45~~

~~(4) The total inspection fee must be calculated by multiplying the actual inspection and travel time that is greater than two hours, calculated to the nearest one-half hour, times the hourly fee provided in (3) and adding the result to the fee deposit. Any amount calculated greater than the deposit paid to the department must be billed by state invoice to the permittee and must be paid by the permittee within 30 days of receipt of the state's invoice.~~

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-209, 75-11-212, 75-11-213, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1991 MAR p. 1280, Eff. 7/26/91; AMD, 1994 MAR p. 2744, Eff. 10/14/94; AMD, 1995 MAR p. 27, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS, 2000 MAR p. 2018, Eff. 4/14/00; AMD, 2016 MAR p. 1694, Eff. 9/24/16.

Reason: The department proposes to repeal ARM 17.56.1309 as the proposed removal of ARM17.56.1308 eliminates its necessity and renders it obsolete. For the last three calendar years there has been no billable time under the provisions of ARM 17.56.1309 and subsequently zero fees collected under ARM 17.56.1309.

17.56.1401 GENERAL LICENSE REQUIREMENTS (1) Except as provided in 75-11-213(7) and 75-11-510(2), MCA, a person may not install, close, or inspect an underground storage tank system unless that individual has a valid license issued by the department under 75-11-210 or 75-11-214, MCA, and this subchapter.

(2) All installation, closure, compliance, or oversight inspections must be personally performed by a licensed inspector in accordance with this chapter.

(3) Installers and removers shall ensure that the installation or closure of underground storage tank systems is performed according to Title 75, chapter 11, part 2, MCA, the rules adopted thereunder, and any permit conditions.

(4) Compliance and oversight inspectors shall examine, assess, and document the presence, condition, and performance of all the facility's underground storage tank systems including, but not limited to, release detection equipment, spill and overfill prevention devices, and cathodic protection equipment. Compliance and oversight inspectors shall also verify that testing, monitoring, and recordkeeping are being performed as required.

(5) The requirements of this subchapter do not prohibit the employment by a licensed installer of any assistants, helpers, or apprentices who have not been issued their own installer license to work at any installation or closure site so long as the licensed installer is physically present at the installation or closure throughout the entirety of the project and personally exercises supervisory control over those unlicensed persons.

(6) Licenses issued under this subchapter are nontransferable.

(7) The definitions contained in ARM 17.56.1301 are applicable to this subchapter.

History: 75-11-204, 75-11-505, MCA; IMP, 75-11-204, 75-11-209, 75-11-210, 75-11-212, 75-11-214, 75-11-509, MCA; EMERG, NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS, 2000 MAR p. 969, Eff. 4/14/00; AMD, 2005 MAR p. 443, Eff. 4/1/05; AMD, 2016 MAR p. 1694, Eff. 9/24/16.

17.56.1402 ELIGIBILITY FOR LICENSE (1) A person may not be granted an ~~installer, or remover~~ license specified in ARM 17.56.1403 by the department unless that person:

(a) is a natural person at least 18 years old;

(b) has submitted a completed license application to the department in accordance with ARM 17.56.1403;

(c) has paid the appropriate license and examination fees as provided in ARM 17.56.1404 to the department;

(d) has successfully completed the licensing examination required by ARM 17.56.1405; and

(e) has not been cited for violations of state and federal underground storage tank laws and has not had a similar license suspended or revoked in this state, another state, or U.S. territory.

(2) A person may not be granted an installation or closure inspector's license unless that person:

(a) meets the criteria of (1); and

(b) is a department employee.

(3) A person may not be granted a compliance inspector's license unless that person:

(a) meets the criteria of (1); and

(b) successfully completes the licensing training and practical examination required by ARM 17.56.1405.

(4) A person may not be granted an oversight inspector's license unless that person:

(a) meets the eligibility requirements in (3); and

(b) is a department employee.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-210, 75-11-211, 75-11-214, 75-11-505, 75-11-509, MCA; EMERG, NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS, 2000 MAR p. 969, Eff. 4/14/00; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2016 MAR p. 1694, Eff. 9/24/16.

Reason: The department proposes to strike specific license names and instead reference ARM 17.56.1403 “License Categories” where they are individually listed already. Listing individual license disciplines in ARM17.56.1402 is redundant.

17.56.1403 LICENSE CATEGORIES (1) There are ~~five~~ eight license categories:

(a) installers, which includes those licensees who install or close underground storage tank systems;

(b) removers, which includes those licensees who only close underground storage tank systems;

(c) installation inspectors, which includes those licensees who inspect underground storage tank installations or underground storage tank closures;

(d) compliance inspectors, which includes those licensees who inspect operating underground storage tank facilities for compliance with underground storage tank regulations; and

(e) oversight inspectors, which includes those licensees who conduct oversight inspections to verify accuracy of inspection reports submitted by compliance inspectors.

(f) compliance tester, which includes those licensees who conduct triennial testing in accordance with ARM 17.56.306(1) and annual testing requirements in accordance with ARM 17.56.401(2).

(g) junior installer, which includes those licensees who may install, replace, repair, or modify spill prevention equipment; containment sumps used for interstitial monitoring of piping; and overfill prevention equipment. These licensees must have the necessary training, testing equipment, manufacturer’s certifications, and experience to perform that work. Licensees must obtain construction permits for any permitted work before performing installations, repairs or modifications of the spill prevention equipment, containment sumps, and overfill prevention equipment.

(h) corrosion protection installer, which includes those licensees who can only install corrosion protection on UST systems.

(2) An application for a license required by this subchapter must be made on the appropriate form provided by the department and include all the information required by the department.

(3) The application must include an affirmation that the information provided is correct.

(4) An application for an installer license must be accompanied by at least three references from other persons attesting to the applicant's experience in the installation and closure of underground tank systems. The references must be written on forms provided by the department.

(5) References for an applicant seeking an installer license must show that the applicant actively participated in at least three underground storage tank system installations and two closures that were completed in accordance with applicable statutes and rules in the last three years.

(6) References for an applicant seeking a remover license to conduct tank system closures must establish that the applicant has actively participated in at least three closures in the last three years.

(7) An application for a compliance inspector license must, in addition to the other requirements of this rule, be accompanied by at least three references attesting to the applicant's experience in underground storage tank regulations, operation, maintenance, and inspections. The references must be written on a form provided by the department.

(8) The department shall evaluate applications and attachments for conformity with this subchapter and Title 75, chapter 11, part 2, MCA. The department shall notify an applicant if it determines that an application is incomplete and shall provide an explanation of what information is needed for the application to be considered complete. The department shall hold incomplete applications pending the receipt of additional information.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-210, 75-11-509, MCA; EMERG, NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS, 2000 MAR p. 969, Eff. 4/14/00; AMD, 2016 MAR p. 1694, Eff. 9/24/16.

Reason: The “compliance tester” (f) and “junior installer” (g) are proposed additions to license categories to increase the number of licensed personnel who can do minor repairs or tests on underground storage tank systems in accordance with ARM 17.56.401(2) and ARM 17.56.306. ARM 17.56.306 requires testing of spill prevention equipment, containment sumps used for piping interstitial monitoring, and overfill prevention devices to be completed by a licensed installer or compliance inspector. . The addition of these two categories allows for companies to train employees and utilize their skills for limited testing and repairs before they are ready to become a full installer or inspector. The new license categories allow individuals that wish to complete testing and installations specific to the requirements of ARM 17.56.401(2) to obtain a license without the necessary experience required for a full tank installer license or a full third-party compliance inspection license. Some individuals prefer to focus their work on testing and repairs specific to this type of equipment, rather than license as third-party

UST compliance inspectors or full UST installers. The amount of work required throughout the state of Montana has increased significantly in testing of spill containment devices, containment sumps, and overfill devices since 2018 when the additional testing mandates were added to the UST regulations.
The addition of "corrosion protection installer" license is proposed for unique situations of UST repair work where a corrosion protection specialist is essential to complete a project. Current regulations require a full installer license to perform specialty corrosion protection work, however this work is often outside the capabilities of a normal UST installer as it requires the specialized skills of a corrosion protection professional. Department estimates expect utilization of these new licenses by 23 individuals, generating an additional department income of $2300 under the current ARM 17.56.1404 fee schedule.

17.56.1404 LICENSE FEES (1) An individual applying for an underground storage tank installer's license shall pay to the department the applicable fee(s) provided in (2). All fees are nonrefundable.

(2) Licensing fees are as follows:

(a) license application and examination fee $ ~~100~~483

(b) annual license renewal fee $ ~~100~~483

~~(c) duplicate license fee $ 10~~

(3) Department installation and oversight inspectors are exempt from the licensing fees described in this rule.

(4) Failure to pay license fees may result in the denial, nonrenewal, or revocation of a license issued under this subchapter.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-210, 75-11-211, 75-11-509, MCA; EMERG, NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS, 2000 MAR p. 2018, Eff. 4/14/00; AMD, 2005 MAR p. 443, Eff. 4/1/05; AMD, 2016 MAR p. 1694, Eff. 9/24/16.

Reason: The current fee structure was adopted in 2005. The department has determined that reasonable necessity exists to generally amend the fee rules in (2)(a) and (2)(b) to establish sufficient fees to enable the department to effectively operate and implement the federal and state regulatory obligations. This fee proposal is intended to simplify the existing fee structure, apply the fees equitably across the regulated community, provide predictability, be commensurate with costs, and generate sufficient revenue to meet department mandates. The department proposes the change to fees according to the Bureau of Labor and Statistics data showing an inflationary rise since 2005 on a $100 annual fee now places that cost at $161. The department also proposes under ARM 17.56.1406(2) to extend the licensing period from one year to three years. This proposal will assist in maintaining lower fees, reduce resource expenditure by the department by minimizing the frequency of applicant processing, decrease the paperwork burden on applicants, and provide more consistent results on currently licensed individuals when searched by the public. Based on the current licensing

number of 86 individuals, the department estimates the generation of an additional $5246 annually by adopting this proposal.
The department receives few requests for duplicate licenses and proposes to repeal the fee in (2)(c) as duplication of information from the department database and can be efficiently extracted, with the cost absorbed from initial licensing fees. The department has not received a duplicate license request or charged this fee in several years so the financial impact to the department is estimated at $0.

17.56.1405 LICENSE EXAMINATION AND RE-EXAMINATION (1) To become licensed, an applicant for a license must successfully complete a written examination. The department shall offer the examination by appointment to the applicant and the examination must be conducted at a time and place fixed by the department.

(2) To take the examination, the applicant must register with the department for the examination at least 5 days before an examination is scheduled by submitting a completed license application to the department and paying the license application and examination fee provided in ARM 17.56.1404.

(3) The examination must test the applicant's knowledge of the statutes, rules, current technology, and industry recommended practices applicable to the type of license sought.

(4) To qualify for licensing, an applicant for a compliance and oversight inspector license must have completed an inspector training course approved by the department that includes training in the operation and maintenance of release detection, corrosion protection, spill and overfill equipment, and regulatory compliance. Applicants possessing an installer license issued in accordance with the rules of this subchapter do not need to complete an inspector training course. All applicants, including those possessing an installer license, must successfully complete a field practical examination.

(5) To prepare and administer an examination, the department may utilize a national certification examination or the services of organizations which have expertise and experience in the development and administration of licensing and code examinations. Such organizations must use nationally recognized educational standards and methods to develop and validate the examination used by the department.

(6) A score of 80 percent or higher on the written examination and on the compliance and oversight inspector field practical examination constitutes a passing grade. The department shall notify applicants of their examination score within 30 days of the date the department calculates or receives the test score results.

(7) An applicant who fails the examination may retake the examination only twice by registering in the same manner as for the original examination.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-210, 75-11-211, 75-11-509, MCA; EMERG, NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS, 2000 MAR p. 2018, Eff. 4/14/00; AMD, 2016 MAR p. 1694, Eff. 9/24/16.

17.56.1406 LICENSE ISSUANCE, TERM, RESTRICTIONS (1) The department shall issue a license upon the applicant's satisfaction of the applicable provisions of this subchapter and Title 75, chapter 11, part 2, MCA. The license must set forth the name of the licensee, a license identification number, the type of license issued, and the dates of expiration of the license, and any restrictions.

(2) A license issued under this subchapter is valid for ~~one~~ three calendar years beginning on March 1 of the year the license is issued and ending on the last day of February ~~of the following year~~ of the third year. A license under this subchapter expires at the end of the ~~annual~~ triennial period, ~~unless annual registration fees are paid within the annual triennial period~~. In addition, the licensee must earn the required department-approved continuing education units within the triennial period.

(3) Licenses may be revoked, suspended, modified or restricted prior to expiration in accordance with 75-11-211, MCA, (4), and ARM 17.56.1423 through 17.56.1426, as applicable.

(4) If the department determines that restrictions are necessary to protect the public's or licensee's health, safety, or welfare, or to protect the environment, upon issuance or renewal of a license or at other times in accordance with ARM 17.56.1423, the department may restrict or condition a license limiting the licensee in the time, type, or manner of work to be performed pursuant to the license or impose any other conditions it deems appropriate.

(5) No license may be granted unless the department determines, on the basis of the application and attachments and the examination given under ARM 17.56.1405, that the applicant possesses the necessary competence and experience. The applicant must be able to understand and comply with the rules governing the subject area in which the applicant intends to be licensed, and must understand the techniques required to ensure that the applicant's actions will protect public health, safety, and the environment.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-210, 75-11-211, 75-11-509, MCA; EMERG, NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS, 2000 MAR p. 2018, Eff. 4/14/00; AMD, 2016 MAR p. 1694, Eff. 9/24/16.

Reason: The department proposes under ARM 17.56.1406(2) to extend the licensing period from one year to three years. This proposal will assist in maintaining lower fees, reduce resource expenditure by the department by minimizing the frequency of applicant processing, decrease the paperwork burden on applicants, and provide more consistent results on currently licensed individuals when searched by the public.

17.56.1407 LICENSE RENEWAL (1) A licensee who does not request a change from the category of license currently held may renew the license within the ~~annual~~ triennial period if the licensee completes a renewal application form provided by the department, pays the license renewal application fee required by ARM 17.56.1404 and, before the conclusion of each triennial period, provide sufficient proof that the

continuing education requirements have been satisfactorily completed as required by (3) or (4).

(2) The department shall renew the license of any person who complies with the provisions of (1) within 30 days of receipt of the renewal application.

(3) Licensed removers must complete at least one refresher training course ~~administered~~ approved by the department for a total of four credit hours of continuing education within the triennial period.

(4) All licensees not subject to (3) must complete at least two department-approved continuing education courses for a total of 16 credit hours of continuing education within the triennial period. ~~One course must be a department-administered refresher training course.~~

(5) The department shall notify a licensee of the impending expiration of the license at least 60 days prior to the expiration date of the license. The licensee shall keep the department informed of the licensee's current address for notification purposes. Failure of the department to notify the licensee does not affect the expiration of the license.

(6) A licensee, whose license has expired or who wants to change license categories, is subject to the same licensing requirements as a new applicant, including payment of the license application and examination fees and the satisfactory completion of the ~~written~~ licensing examination.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-210, 75-11-211, 75-11-509, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS, 2000 MAR p. 969, Eff. 4/14/00; AMD, 2009 MAR p. 2247, Eff. 11/26/09; AMD, 2016 MAR p. 1694, Eff. 9/24/16.

Reason: The department proposes under (1) to amend language in consideration of the proposed change to ARM 17.56.1406(2) in extending the licensing period from one year to three years. This proposal will assist in maintaining lower fees, reduce resource expenditure by the department by minimizing the frequency of applicant processing, decrease the paperwork burden on applicants, and provide more consistent results on currently licensed individuals when searched by the public.

The department proposes to remove the word “administered” in (3) and replace it with “approved” as there are many training courses available online that are not administered by the department but are “approved” pursuant to ARM 17.56.1408 that meet training requirements for licensing. Similarly, the requirement that one course must be a “department-administered” refresher training for licensee’s continuing education has been removed in (4), reducing department resource expenditure and offering more options and flexibility to licensees.

The department proposes to remove the word “written” in (6) as the term is not clearly defined and the administration of the licensing examination may take alternate forms such as an electronic format.

17.56.1408 APPROVAL OF CONTINUING EDUCATION COURSES (1) The department shall approve a continuing education course if it finds that it:

(a) is relevant to the subject area of installation, management, inspection, regulation, or closure of underground storage tank systems; and

(b) offers instruction on current technology or methods for the subject(s) in (a) and that technology or those methods will satisfy applicable department rules.

(2) The amount of continuing education credits earned by the licensee for a course is determined by the department and must be based on the department's evaluation of the course syllabus submitted by the licensee to the department.

(3) Within five days of the department receiving documentation that a licensee has successfully completed a continuing education credit course, the department shall notify the licensee whether the course is approved and the number of credits earned.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-210, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS, 2000 MAR p. 2018, Eff. 4/14/00; AMD, 2016 MAR p. 1694, Eff. 9/24/16.

~~17.56.1409 DUPLICATE LICENSES (1) The department shall issue a duplicate license to replace a lost, damaged, or destroyed license upon receipt of sufficient evidence indicating the loss, damage, or destruction and upon payment of the duplicate licensing fee provided in ARM 17.56.1404. The duplicate license must be designated as a duplicate and contain the same information as the original license. A duplicate license is subject to the same rules and requirements as an original license.~~

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-210, 75-11-509, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS, 2000 MAR p. 2018, Eff. 4/14/00; AMD, 2016 MAR p. 1694, Eff. 9/24/16.

Reason: The department proposes the repeal of ARM 17.56.1409 as the department receives few requests for duplicate licenses and has subsequently proposed to repeal the fee in ARM 17.56.1404. Duplication of information from the department database and can be efficiently extracted as needed with the cost absorbed from initial licensing fees. The department has not received a duplicate license request or charged this fee in several years so the financial impact to the department is estimated at $0.

17.56.1410 LICENSEE RECORD KEEPING (1) Within 30 days of completion of an underground storage tank system installation or closure, a licensed installer shall submit to the department and to the owner or operator:

(a) one copy of the installation or closure permit signed by the installer or remover certifying that the work was completed according to the applicable state statutes, rules, and any permit conditions;

(b) for installations, the certificate of compliance signed by the installer; and

(c) for closures, a completed tank closure report submitted in accordance with ARM 17.56.705.

(2) If the installation or closure is conducted by the owner or operator with an on-site installation inspector, the documents specified in (1) must be signed by the installation inspector and underground storage tank system owner or operator.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-210, 75-11-211, MCA; EMERG, NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS, 2000 MAR p. 969, Eff. 4/14/00; AMD, 2005 MAR p. 443, Eff. 4/1/05; AMD, 2016 MAR p. 1694, Eff. 9/24/16.

17.56.1421 DISCIPLINARY AND OTHER LICENSING ACTION GENERALLY

(1) The department may restrict, condition, modify, suspend, revoke, or refuse to renew any license, previously issued under this subchapter upon finding substantial evidence that the licensee has committed any of the following:

(a) failure to meet the standards for issuance of an original license, as provided in 75-11-210 and 75-11-211, MCA, and this subchapter;

(b) fraud or deceit in applying for a license or permit;

(c) a violation of any statute or rule governing the installation, closure, or inspection of an underground storage tank system of the department, the United States, any other state or U.S. territory;

(d) a violation of any statute or rule of the department governing the licensing of underground tank system installers, removers, or compliance inspectors, including any of the rules of professional conduct provided in this subchapter;

(e) a violation of the terms of any department-issued license, permit, order, or stipulation issued or agreed to by the department relating to the installation, modification, repair, closure, or inspection of an underground storage tank system;

(f) a violation that resulted in the suspension or revocation of a similar license in this state, another state, or U.S. territory; or

(g) failure to pay the license fees required by ARM 17.56.1404.

(2) The department may also restrict, condition, or modify any license upon its finding that there is substantial evidence that:

(a) the licensee lacks the education, training, or experience necessary to conduct any installation, closure, or inspection; and

(b) the condition or modification is necessary to protect the environment or the health, welfare, or safety of the licensee, the licensee's employee(s), or the public.

(3) In determining whether to restrict, condition, modify, suspend, revoke, or refuse to renew a license under this rule, the department shall consider:

(a) the type and seriousness of any violation, including the degree of culpability of the licensee;

(b) the threat of or actual injury to health, welfare, or safety of the licensee, the licensee's employee(s), the public, or to the environment; and

(c) any past or pending disciplinary actions against the licensee.

(4) The department shall restrict, condition, modify, suspend, revoke, or refuse to renew any license under this rule in the manner provided by this rule and ARM 17.56.1423 through 17.56.1426.

(5) An order issued by the department under this rule must be sent to the licensee and must be accompanied by a written statement of the reasons for and

term(s) and condition(s) of the department's action and a written statement of the rights of the licensee, including the right to appeal to the board in accordance with 75-11-218, MCA.

(6) Action taken by the department under this subchapter is effective pending appeal to the board.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-211, 75-11-509, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS, 2000 MAR p. 2018, Eff. 4/14/00; AMD, 2016 MAR p. 1694, Eff. 9/24/16.

17.56.1422 PROHIBITION OF UNPROFESSIONAL LICENSEE CONDUCT (1) Any of the following acts of a person licensed under this subchapter constitute unprofessional conduct, are prohibited, and may result in the department conditioning, restricting, suspending, or revoking a license issued under this subchapter:

(a) false, fraudulent, or misleading advertising;

(b) misrepresentation or fraud in any aspect of the installation, closure, or inspection of an underground storage tank system;

(c) participation in any unlawful unpermitted underground storage tank system installation or removal;

(d) failure to cooperate with the department by:

(i) not furnishing to the department upon its request a full and complete written explanation covering the matter contained in any complaint filed with the department;

(ii) not responding to a subpoena issued by the department or any court, whether or not the recipient of the subpoena is the respondent named in any proceeding;

(iii) failure to submit the signed permit, the certification of compliance, or to meet any other permit special condition imposed under ARM 17.56.1305(3)(f) for installations; or

(iv) failure to submit the tank closure report, the signed permit, or the laboratory results for the site assessment for closures.

(e) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts to the department or its authorized representative, or by the use of threats or harassment against any person to prevent the person from providing evidence in any agency proceeding or legal action relating to underground storage tank systems;

(f) failure to make available, upon request of a client using the licensee's services, or upon request of the client's designee, copies of documents in the possession and under the control of the licensee, when those documents have been prepared by the licensee relating to the licensee's services performed for the client;

(g) failure to comply with an order issued by any court or by the department, with a permit condition, or with a consent order or stipulation entered into with the department;

(h) failure to adequately supervise the licensee's employee(s)' compliance with statutes and rules relating to underground storage tank systems;

(i) aiding or abetting an unlicensed person to install, close, or inspect an underground storage tank system;

(j) violation of any state or federal statute or administrative rule, or any ordinance of a political subdivision relating to the installation or closure of an underground storage tank system;

(k) failure to display his or her license upon request of any client, prospective client, representative of the department, or licensed inspector;

(l) failure to adequately inspect an underground storage tank system for compliance with its operation, maintenance, and recordkeeping requirements in accordance with ARM 17.56.309;

(m) undertaking work from which the licensee has been prohibited by the terms of a license, permit, or order issued by the department; or

(n) offering, giving, soliciting, or receiving, directly or indirectly, any commission, gift, or other valuable consideration in exchange for the grant of a license from the department or to obtain a license for another.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-211, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS, 2000 MAR p. 2018, Eff. 4/14/00; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2016 MAR p. 1694, Eff. 9/24/16.

17.56.1423 RESTRICTING OR CONDITIONING OF LICENSE (1) Upon making the finding required by ARM 17.56.1421, the department may restrict or condition a new or previously issued license.

(2) Upon a written demand by the department, a licensee shall surrender his or her license to the department, whereupon the department shall issue a new license with the restrictions or conditions imposed by the department stated or referenced on the license. Whether or not a license is surrendered, the department may issue a restricted or conditional license in accordance with this subchapter and the licensee shall comply with the restrictions or conditions stated or referenced thereon. The department shall inform the licensee in writing of the reasons for and term(s) of any restrictions or condition(s).

(3) As a condition of any license, the department may add any term, requirement, restriction or condition not prohibited by law which, in the judgment of the department, will protect the environment or the health of the licensee, the licensee's employee(s), or the public safety or welfare.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-211, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1424 MODIFICATION OF LICENSE (1) Upon making the finding required by ARM 17.56.1421, the department may modify the terms, restrictions, or conditions of any previously issued license.

(2) Upon written demand by the department, a licensee shall surrender his or her license to the department, whereupon the department shall issue a new license with any modification imposed by the department. Whether or not a license is surrendered, the department may issue a modified license in accordance with this subchapter and the

licensee shall comply with the terms of the modified license. The department shall inform the licensee in writing of the reasons for and term(s) of the modification(s).

(3) The modification of a license by the department may be appealed as provided in 75-11-218 , MCA.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-211, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2559; AMD & TRANS, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1425 SUSPENSION OF LICENSE (1) Upon making the finding required by ARM 17.56.1421, the department may suspend any previously issued license.

(2) Upon suspending a license, the department shall inform the licensee in writing of the reason for and term(s) of the suspension. The department shall demand and upon demand the licensee shall surrender his or her license to the department. Whether or not a license is surrendered, the suspension is effective upon notice to the licensee for the term determined by the department.

(3) A licensee may not practice or undertake the acts for which he or she was licensed during the term of the license suspension. The department may determine to issue a modified, restricted or conditional license, during the term of the suspension, upon consideration of the factors provided in and in accordance with ARM 17.56.1421.

(4) Upon expiration of the term of suspension, the department shall return the license to the licensee and inform him or her in writing of the reinstatement of the license. The reinstated license may contain such restrictions, conditions, or modifications as the department may impose in accordance with ARM 17.56.1423 and 17.56.1424.

(5) The suspension of a license issued under this subchapter may be appealed as provided in 75-11-218 , MCA.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-211, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1426 LICENSE REVOCATION (1) Upon making the finding required by ARM 17.56.1421, the department may revoke a previously issued license.

(2) Upon revoking a license, the department shall inform the licensee in writing of the reason(s) for and fact of the revocation. The department shall demand and upon demand the licensee shall surrender his or her license to the department. Whether or not a license is surrendered, the revocation is effective upon notice to the licensee.

(3) A person whose license has been revoked shall not practice or undertake the acts for which he or she was licensed without again applying for and being licensed by the department in the manner of an original license.

(4) A person whose license has been revoked may not reapply for a license for any term in which application is prohibited by the department and for which the person is informed in writing.

(5) The revocation of a license issued under this subchapter may be appealed as provided in 75-11-218 , MCA.

History: 75-11-204, MCA; IMP, 75-11-204, 75-11-211, MCA; NEW, 1990 MAR p. 1827, Eff. 10/1/90; AMD, 1994 MAR p. 2744, Eff. 10/14/94; TRANS, from DHES, 1995 MAR p. 2259; AMD & TRANS, 2000 MAR p. 969, Eff. 4/14/00.

17.56.1501 OPERATOR TRAINING DEFINITIONS For purposes of ARM 17.56.1502 through 17.56.1505, the following definitions apply:

(1) "Class A operator" means an owner or operator of an UST facility whose primary responsibility is to operate and maintain the UST system. A Class A operator's responsibilities also include managing resources and personnel to achieve and maintain compliance with regulatory requirements.

(2) "Class B operator" means an owner or operator of an UST facility whose primary responsibility is to implement the applicable underground storage tank regulatory requirements and standards in the field. A Class B operator implements day-to-day aspects of operating, maintaining, and recordkeeping for underground storage tanks at one or more facilities.

(3) "Class C operator" means an employee of the owner or operator of the facility who is responsible for responding to alarms or other indications of emergencies caused by spills or releases from UST systems. A Class C operator notifies the Class B or Class A operator and appropriate emergency responders when necessary.

(4) "Operator" has the meaning provided in 75-11-203, MCA.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 2009 MAR p. 2250, Eff. 11/26/09.

17.56.1502 OPERATOR TRAINING (1) The owner or operator of an UST system that has a valid operating permit or that is required to have an operating permit under ARM 17.56.308 shall have trained Class A, B, and C operators for the system. The operators must be trained in accordance with ARM 17.56.1503. Each Class A, B, or C operator shall be responsible for his or her applicable operation, maintenance, and emergency response activities, even when the operator is not present at the facility.

(2) A trained Class A or B operator of an UST system may be replaced by an untrained operator if, within 30 days after assuming operation responsibilities, the new operator receives training in accordance with ARM 17.56.1503. Class C operators must be trained before assuming their responsibilities.

(3) One person may hold all or any combination of the Class A, B, or C operator positions simultaneously, if he or she has the appropriate training.

(4) If the department determines that an UST system does not meet EPA's significant operational compliance (SOC) requirements for release prevention and release detection measures, the appropriate operators, as determined by the department, must be retrained. Retraining must include the subjects in which the UST system was found to be not in significant compliance. Retraining must occur within a reasonable timeframe set forth in a department-approved corrective action plan after the department's determination that an UST system does not meet EPA's SOC requirements for release prevention and release detection measures. For purposes of this chapter, the department adopts and incorporates by reference the EPA SOC

requirements dated March 2005. Copies of the documents incorporated by reference may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 2009 MAR p. 2250, Eff. 11/26/09; AMD, 2016 MAR p. 1694, Eff. 9/24/16.

17.56.1503 OPERATOR TRAINING: AUTHORIZED PROVIDERS; AND REQUIRED SUBJECTS (1) Training of UST system operators must be performed by the department or by a third-party trainer approved by the department pursuant to ARM 17.56.1505, except that a trained Class A or B operator also may train a Class C operator.

(2) Class A operators must be trained in the following:

(a) general knowledge of underground storage tank system requirements so that the operator can make informed decisions regarding compliance and can ensure that appropriate persons are meeting the operation, maintenance, and recordkeeping requirements provided in ARM Title 17, chapter 56. The general knowledge must include, but is not limited to, the following:

(i) spill prevention;

(ii) overfill prevention;

(iii) release detection;

(iv) corrosion protection;

(v) emergency response;

(vi) product compatibility; and

(vii) reporting and recordkeeping requirements;

(b) financial responsibility documentation requirements;

(c) notification requirements;

(d) release and suspected release reporting;

(e) temporary and permanent closure requirements;

(f) operator training requirements; and

(g) all the requirements applicable to Class B and C operators.

(3) Class B operators must be trained in the following aspects of the UST system that is under their responsibility:

(a) components of UST systems;

(b) materials used in UST system components;

(c) methods of release detection and release prevention applied to UST components;

(d) operation, maintenance, and recordkeeping requirements provided in ARM Title 17, chapter 56 including, but not limited to:

(i) spill prevention;

(ii) overfill prevention;

(iii) release detection;

(iv) corrosion protection;

(v) emergency response;

(vi) product compatibility; and

(vii) reporting and recordkeeping requirements; and

(e) all the requirements applicable to Class C operators.

(4) Class C operators must be trained in the following aspects of the UST system that is under their responsibility:

(a) emergency shut-down procedures;

(b) how to respond to a surface spill; and

(c) who to contact in the event of a surface spill, suspected release, equipment alarm or equipment malfunction, and how to contact them.

(5) Class A and B operators who choose department-sponsored training shall pass a department-administered test with at least an 80 percent score.

(6) Class C operators who:

(a) choose department-approved training, shall pass a department-~~administered~~ approved class C training examination ~~test with at least an 80 percent score~~; or

(b) choose training by a trained Class A or B operator, shall successfully complete a practical demonstration or other evaluation procedure determined to be acceptable by the department.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 2009 MAR p. 2250, Eff. 11/26/09; AMD, 2016 MAR p. 1694, Eff. 9/24/16.

17.56.1504 OPERATOR TRAINING: RECORDKEEPING (1) Owners or operators shall maintain records documenting the training received for all of their UST system operators. Records must be maintained either:

(a) at the UST system site and must be immediately available for inspection by the department; or

(b) at a readily available alternative site and must be available for inspection by the department upon request.

(2) the owner or operator shall keep the operator training record for a person at least three years after the person served as a Class A, B, or C operator at the facility.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 2009 MAR p. 2250, Eff. 11/26/09.

17.56.1505 OPERATOR TRAINING: THIRD-PARTY TRAINING COURSE APPROVAL (1) Operator training by a third-party provider does not satisfy the training requirements of ARM 17.56.1502 unless the department has approved the provider's instructors and courses pursuant to this rule.

(2) To apply for department approval of a training program under this rule, a third-party training provider shall submit to the department, at least 60 days before the requested approval date:

(a) a detailed description of course content and the amount of time allotted to each major topic;

(b) a description of the evaluation method; and

(c) when requested by the department, copies of all materials proposed for use.

(3) The department may attend a third-party training program as an observer to verify whether the provider conducts the training in accordance with the requirements of ARM 17.56.1503 and in accordance with the program as approved by the department.

(4) The department may approve a third-party training program if the program meets the requirements of ARM 17.56.1503.

(5) If a Class A or B operator has completed operator training in another state, the department may approve the training if the training requirements of the other state are at least as stringent as the training requirements under this subchapter.

(6) The department may suspend its approval if it finds that the program fails to meet the requirements of ARM 17.56.1503 or is not in accordance with the program as approved by the department.

History: 75-11-505, MCA; IMP, 75-11-505, MCA; NEW, 2009 MAR p. 2250, Eff. 11/26/09.

17.56.1601 UST SYSTEMS WITH FIELD CONSTRUCTED TANKS AND AIRPORT HYDRANT FUEL DISTRIBUTION SYSTEMS

(1) For the purposes of this subchapter, the department adopts and incorporates by reference the following provisions contained within the final rules published in the Federal Register at 40 CFR Parts 280 and 281 published on July 15, 2015:

(a) Subpart K-UST Systems with Field Constructed Tanks and Airport Hydrant Fuel Distribution Systems;

(i) CFR 280.250 Definitions;

(ii) CFR 280.251 General Requirements; and

(iii) CFR 280.252 Additions, Exceptions and Alternatives for UST systems with field constructed tanks and airport hydrant systems.

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

(3) Where exceptions to incorporated federal regulations are necessary, these exceptions are noted in the rules.

(4) Cross-references within federal regulations adopted and incorporated by reference in these rules refer to the cross-referenced provision as adopted and incorporated by reference in this subchapter with any indicated additions and exceptions.

History: 75-11-505, MCA; IMP, 75-11-505, 75-11-508, 75-11-509, MCA; NEW, 2018 MAR p. 1954, Eff. 10/6/18.