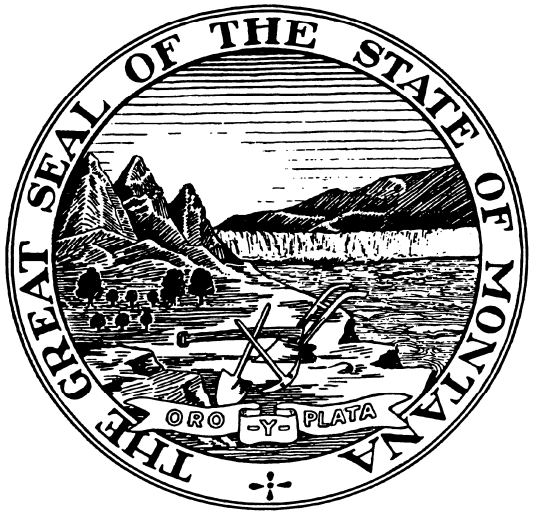
CLEAN AIR ACT OF MONTANA

TITLE 75. ENVIRONMENTAL PROTECTION
CHAPTER 2. AIR QUALITY



With revisions from the 61th Legislative session - 2009

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CHAPTER 2
AIR QUALITY

Part 1 — General Provisions and Administration

Part 2 — Standards, Permits, and Variances

Part 3 — Local Air Pollution Control

Part 4 — Enforcement, Appeal, and Penalties

Chapter Cross-References
Local government smoke abatement programs, Title 7, ch. 31, part 1.
Nuisances, Title 27, ch. 30.
Montana Clean Indoor Air Act of 1979, Title 50, ch. 40.
Penalties, fees, and interest, Title 75, ch. 1, part 10.
Energy emergency provisions — exclusion, 90-4-310.

Part 1
General Provisions and Administration

75-2-101. Short title. Parts 1 through 4 of this chapter are known and may be cited as the "Clean Air Act of Montana".

History: En. Sec. 1, Ch. 313, L. 1967; R.C.M. 1947, 69-3904; amd. Sec. 264, Ch. 42, L. 1997.

75-2-102. Intent — policy and purpose. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Clean Air Act of Montana. It is the legislature's intent that the requirements of parts 1 through 4 of this chapter provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) It is the public policy of this state and the purpose of this chapter to achieve and maintain levels of air quality that will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state, and facilitate the enjoyment of the natural attractions of this state. This policy must be balanced by the legislature with the policy of protecting the ability of the people to pursue life's basic necessities and to acquire property and to use that property in all lawful ways.

(3) Local and regional air pollution control programs must be supported to the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality.

(4) To these ends it is the purpose of this chapter to:

(a) provide for a coordinated statewide program of air pollution prevention, abatement, and control;

(b) provide for an appropriate distribution of responsibilities among the state and local units of government;

(c) facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; and

(d) provide a framework within which all values may be balanced in the public interest.

History: En. Sec. 2, Ch. 313, L. 1967; R.C.M. 1947, 69-3905; amd. Sec. 7, Ch. 361, L. 2003.

Cross-References

Beauty of state, Preamble, Mont. Const.

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Duty to maintain clean and healthful environment, Art. IX, sec. 1, Mont. Const.

75-2-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advisory council" means the air pollution control advisory council provided for in 2-15-2106.

(2) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(3) "Air pollutants" means one or more air contaminants that are present in the outdoor atmosphere, including those pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(4) "Air pollution" means the presence of air pollutants in a quantity and for a duration that are or tend to be injurious to human health or welfare, animal or plant life, or property or that would unreasonably interfere with the enjoyment of life, property, or the conduct of business.

(5) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.

(6) "Board" means the board of environmental review provided for in 2-15-3502.

(7) (a) "Commercial hazardous waste incinerator" means:

(i) an incinerator that burns hazardous waste; or

(ii) a boiler or industrial furnace subject to the provisions of 75-10-406.

(b) Commercial hazardous waste incinerator does not include a research and development facility that receives federal or state research funds and that burns hazardous waste primarily to test and evaluate waste treatment remediation technologies.

(8) "Department" means the department of environmental quality provided for in 2-15-3501.

(9) "Emission" means a release into the outdoor atmosphere of air contaminants.

(10) (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

(i) generating electricity;

(ii) producing gas derived from coal;

(iii) producing liquid hydrocarbon products;

(iv) refining crude oil or natural gas;

(v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;

(vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or

(vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.

(11) "Environmental protection law" means a law contained in or an administrative rule adopted pursuant to Title 75, chapter 2, 5, 10, or 11.

(12) "Hazardous waste" means:

(a) a substance defined as hazardous under 75-10-403 or defined as hazardous in department administrative rules adopted pursuant to Title 75, chapter 10, part 4; or

(b) a waste containing 2 parts or more per million of polychlorinated biphenyl (PCB).

(13) (a) "Incinerator" means any single- or multiple-chambered combustion device that burns combustible material, alone or with a supplemental fuel or with catalytic combustion assistance, primarily for the purpose of removal, destruction, disposal, or volume reduction of any portion of the input material.

(b) Incinerator does not include:

(i) safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;

(ii) space heaters that burn used oil;

(iii) wood-fired boilers; or

(iv) wood waste burners, such as tepee, wigwam, truncated cone, or silo burners.

(14) "Medical waste" means any waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in medical research on humans or animals, or in the production or testing of biologicals. The term includes:

(a) cultures and stocks of infectious agents;

(b) human pathological wastes;

(c) waste human blood or products of human blood;

(d) sharps;

(e) contaminated animal carcasses, body parts, and bedding that were known to have been exposed to infectious agents during research;

(f) laboratory wastes and wastes from autopsy or surgery that were in contact with infectious agents; and

(g) biological waste and discarded material contaminated with blood, excretion, exudates, or secretions from humans or animals.

(15) (a) "Oil or gas well facility" means a well that produces oil or natural gas. The term includes:

(i) equipment associated with the well and used for the purpose of producing, treating, separating, or storing oil, natural gas, or other liquids produced by the well; and

(ii) a group of wells under common ownership or control that produce oil or natural gas and that share common equipment used for the purpose of producing, treating, separating, or storing oil, natural gas, or other liquids produced by the wells.

(b) The equipment referred to in subsection (15)(a) includes but is not limited to wellhead assemblies, amine units, prime mover engines, phase separators, heater treater units, dehydrator units, tanks, and connecting tubing.

(c) The term does not include equipment such as compressor engines used for transmission of oil or natural gas.

(16) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or private corporation, the state or a subdivision or agency of the state, a trust, an estate, an interstate body, the federal government or an agency of the federal government, or any other legal entity and includes persons resident in Canada.

(17) "Principal" means a principal of a corporation, including but not limited to a partner, associate, officer, parent corporation, or subsidiary corporation.

(18) "Small business stationary source" means a stationary source that:

(a) is owned or operated by a person who employs 100 or fewer individuals;

(b) is a small business concern as defined in the Small Business Act, 15 U.S.C. 631, et seq.;

(c) is not a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.;

(d) emits less than 50 tons per year of an air pollutant;

(e) emits less than a total of 75 tons per year of all air pollutants combined; and

(f) is not excluded from this definition under 75-2-108(3).

(19) (a) "Solid waste" means all putrescible and nonputrescible solid, semisolid, liquid, or gaseous wastes, including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or industrial wastes; medical waste; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction, demolition, or salvage wastes; dead animals, dead animal parts, offal, animal droppings, or litter; discarded home and industrial appliances; automobile bodies, tires, interiors, or parts thereof; wood products or wood byproducts and inert materials; styrofoam and other plastics; rubber materials; asphalt shingles; tarpaper; electrical equipment, transformers, or insulated wire; oil or petroleum products or oil or petroleum products and inert materials; treated lumber and timbers; and pathogenic or infectious waste.

(b) Solid waste does not include municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of environmental quality, or slash and forest debris regulated under laws administered by the department of natural resources and conservation.

History: En. Sec. 3, Ch. 313, L. 1967; amd. Sec. 13, Ch. 349, L. 1974; amd. Sec. 1, Ch. 308, L. 1977; R.C.M. 1947, 69-3906; amd. Sec. 1, Ch. 129, L. 1993; amd. Sec. 1, Ch. 502, L. 1993; amd. Sec. 1, Ch. 639, L. 1993; amd. Sec. 178, Ch. 418, L. 1995; amd. Secs. 523, 568, Ch. 546, L. 1995; amd. Sec. 1, Ch. 236, L. 2005; amd. Sec. 4, Ch. 445, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 445 inserted definitions of associated supporting infrastructure and energy development project; and made minor changes in style. Amendment effective May 5, 2009.

Applicability: Section 12, Ch. 445, L. 2009, provided: "[This act] applies to judicial and board of environmental review hearing and appeal proceedings initiated on or after [the effective date of this act]." Effective May 5, 2009.

75-2-104. Limitations — personal cause of action unabridged — venue. (1) This chapter may not be construed to:

(a) grant to the board any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works, or shops;

(b) affect the relations between employers and employees with respect to or arising out of any condition of air contamination or air pollution;

(c) supersede or limit the applicability of any law or ordinance relating to sanitation, industrial health, or safety; or

(d) abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of a person to damages or other relief on account of injury to persons or property and to maintain an action or other appropriate proceeding.

(2) A judicial challenge to a permit issued pursuant to this chapter by a party other than the permit applicant or permitholder must include the party to whom the permit was issued unless otherwise agreed to by the permit applicant or permitholder. All judicial challenges of permits for projects with a project cost, as determined by the court, of more than $1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.

(3) An action to challenge a permit decision pursuant to this chapter must be brought in the county in which the permitted activity will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur.

(4) A judicial action or proceeding pursuant to this chapter for an equine slaughter or processing facility must comply with 81-9-240 and 81-9-241.

History: (1) thru (3)En. Sec. 19, Ch. 313, L. 1967; Sec. 69-3922, R.C.M. 1947; (4)En. Sec. 18, Ch. 313, L. 1967; amd. Sec. 24, Ch. 349, L. 1974; Sec. 69-3921, R.C.M. 1947; R.C.M. 1947, 69-3921(4), 69-3922; amd. Sec. 8, Ch. 361, L. 2003; amd. Sec. 5, Ch. 337, L. 2005; amd. Sec. 4, Ch. 416, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 416 inserted (4) requiring that a judicial action for an equine slaughter or processing facility must comply with 81-9-240 and 81-9-241. Amendment effective October 1, 2009.

Cross-References

Indemnification for damage to air resources, Title 15, ch. 38.
Workers' compensation — liability, Title 39, ch. 71, part 4.
Workers' compensation — claim, Title 39, ch. 71, part 6.
Montana Clean Indoor Air Act of 1979, Title 50, ch. 40.

Occupational safety and health, Title 50, ch. 71.
Mine safety, Title 50, ch. 72.
Mining operation — preventive measures, 82-4-231.

75-2-105. Confidentiality of records. (1) Records or other information concerning air pollutant sources that are furnished to or obtained by the board or department are a matter of public record and open to public use. However, any information unique to the owner or operator of an air pollutant source that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if the owner or operator wishes the information to enjoy confidential status. The department must be served in the action and may intervene as a party in the action. A trade secret not intended to be public when submitted to the board or department must be submitted in writing and clearly marked as confidential. However, emission data and operating permits issued by the department pursuant to 75-2-217 through 75-2-219 may not be considered confidential for the purposes of this section.

(2) This section does not prevent the use of records or information by the board or department in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere if the analyses or summaries do not identify an owner or operator or reveal information otherwise made confidential by this section.

History: En. Sec. 15, Ch. 313, L. 1967; amd. Sec. 22, Ch. 349, L. 1974; amd. Sec. 1, Ch. 248, L. 1975; R.C.M. 1947, 69-3918; amd. Sec. 2, Ch. 502, L. 1993.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.
Uniform Declaratory Judgments Act — procedure, Title 27, ch. 8, part 3.
Uniform Trade Secrets Act, Title 30, ch. 14, part 4.

75-2-106. Small business compliance assistance advisory council — duties — secretary — meetings. (1) The small business compliance assistance advisory council, established in 2-15-2110, shall:

(a) render advisory opinions concerning the effectiveness of the small business stationary source technical and environmental compliance assistance program administered by the department;

(b) make periodic reports to the appropriate federal agency concerning the compliance of the small business stationary source technical and environmental compliance assistance program with the requirements of the federal Clean Air Act, 42 U.S.C. 7401, et seq.;

(c) review information for small business stationary sources to ensure that the information is understandable by the lay person and recommend changes to make the information understandable;

(d) consult with the small business stationary source representative provided for in 75-2-109 regarding problems faced by small business stationary sources concerning the implementation and application of the requirements of this chapter; and

(e) perform other duties necessary to meet the requirements of the federal Clean Air Act.

(2) The council shall elect a presiding officer from among its membership.

(3) The secretary of the council must be an employee of the department assigned to the small business stationary source technical and environmental compliance assistance program. The secretary shall keep all records of meetings and actions taken by the council and is responsible for the development and dissemination of any reports and advisory opinions of the council.

(4) The council shall hold at least one regular meeting each calendar year and keep a summary record of its proceedings that is open to the public for inspection. Special meetings may be called by the presiding officer or a majority of the council members. The secretary shall provide advance notice of the time and place for meetings to each member of the council.

History: En. Sec. 15, Ch. 502, L. 1993.

75-2-107. Small business stationary source technical and environmental compliance assistance program — duties. (1) The department shall establish a small business stationary source technical and environmental compliance assistance program.

(2) The program shall:

(a) provide information to small business stationary sources on compliance methods and technologies, pollution prevention, and accidental release detection and prevention;

(b) assist small business stationary sources in determining applicable requirements under this chapter and in receiving permits in a timely and efficient manner;

(c) provide small business stationary sources timely notice of their rights and obligations under this chapter;

(d) provide information to small business stationary sources regarding the availability of audit services that are useful for determining compliance status with the requirements of this chapter; and

(e) perform other duties as may be necessary to meet the requirements of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

History: En. Sec. 16, Ch. 502, L. 1993.

75-2-108. Small business stationary sources — exceptions — waivers. (1) Upon petition, the department may designate a source to be a small business stationary source for purposes of receiving assistance from the small business stationary source technical and environmental compliance assistance program if the stationary source does not emit more than 100 tons per year of all air pollutants and:

(a) is a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.;

(b) emits 50 tons or more per year of an air pollutant; or

(c) emits more than 75 tons per year of all air pollutants.

(2) After notice and an opportunity for public comment, the department may grant a petition submitted under subsection (1) upon finding that the source of air pollutants does not have sufficient technical and financial capabilities to meet the requirements of this chapter without the assistance of the small business stationary source technical and environmental compliance assistance program.

(3) After notice and opportunity for public comment, the department may exclude from the definition of small business stationary source in 75-2-103 a category or subcategory of sources that the department determines to have sufficient technical and financial capabilities to meet the requirements of this chapter without the assistance of the small business stationary source technical and environmental compliance assistance program. The department may make this determination only after consulting with the appropriate federal agencies under Subchapter V of the federal Clean Air Act.

History: En. Sec. 17, Ch. 502, L. 1993.

75-2-109. Small business stationary source representative — duties. (1) The department shall establish a small business stationary source representative position that is not located in a regulatory program of the department and not subject to direct supervision by a regulatory program of the department.

(2) The small business stationary source representative shall represent the interests of small business stationary sources before the department and other appropriate local, state, and federal agencies concerning the implementation and application of the requirements of this chapter. In addition, the representative shall provide assistance to small business stationary sources in meeting the requirements of this chapter. In carrying out these activities, the representative shall:

(a) monitor the activities of the small business stationary source technical and environmental compliance assistance program;

(b) review and provide comments and recommendations to the department, local air pollution control programs, and the appropriate federal agencies regarding the development and implementation of regulations pertaining to air quality that impact small business stationary sources;

(c) facilitate and promote the participation of small business stationary sources in the development of new regulations pertaining to air quality that impact small business stationary sources;

(d) assist in the preparation and dissemination of reports and other information regarding the applicability of the requirements of this chapter to small business stationary sources;

(e) assist in the preparation of guideline documents by the small business stationary source technical and environmental compliance assistance program to ensure that these documents are readily understandable by the lay person;

(f) assist small business stationary sources and their trade associations to encourage voluntary compliance with the requirements of this chapter;

(g) cooperate with appropriate local, state, and federal agencies and private sector financial institutions to assist small business stationary sources in locating financial assistance necessary for compliance with the requirements of this chapter;

(h) consult with the small business compliance assistance advisory council regarding problems faced by small business stationary sources concerning the implementation and application of the requirements of this chapter; and

(i) perform other duties as may be necessary to meet the requirements of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(3) Subject to Article II, section 9, of the Montana constitution, the small business stationary source representative may not provide information that the representative obtains from a small business stationary source to the department for use in any administrative or judicial action to enforce the requirements of this chapter, unless the information discloses a violation that constitutes an imminent and substantial danger to human health, safety, or the environment.

History: En. Sec. 18, Ch. 502, L. 1993; amd. Sec. 1, Ch. 491, L. 2001.

75-2-110 reserved.

75-2-111. Powers of board. The board shall, subject to the provisions of 75-2-207:

(1) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant to that section, except that, for purposes other than agricultural open burning, the board may not adopt permitting requirements or any other rule relating to:

(a) any agricultural activity or equipment that is associated with the use of agricultural land or the planting, production, processing, harvesting, or storage of agricultural crops by an agricultural producer and that is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a; or

(b) a commercial operation relating to the activities or equipment referred to in subsection (1)(a) that remains in a single location for less than 12 months and is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;

(2) hold hearings relating to any aspect of or matter in the administration of this chapter at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who must be present at all hearings and take full stenographic notes of all proceedings, transcripts of which will be available to the public at cost.

(3) issue orders necessary to effectuate the purposes of this chapter;

(4) by rule require access to records relating to emissions;

(5) by rule adopt a schedule of fees required for permits, permit applications, and registrations consistent with this chapter;

(6) have the power to issue orders under and in accordance with 42 U.S.C. 7419.

History: En. Sec. 6, Ch. 313, L. 1967; amd. Sec. 17, Ch. 349, L. 1974; R.C.M. 1947, 69-3909(1) thru (4); amd. Sec. 1, Ch. 560, L. 1979; amd. Sec. 1, Ch. 652, L. 1991; amd. Sec. 7, Ch. 471, L. 1995; amd. Sec. 1, Ch. 231, L. 2003; amd. Sec. 1, Ch. 256, L. 2007; amd. Sec. 100, Ch. 2, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 2 in (1)(a) at end and in (1)(b) at end substituted "7661a" for "7661". Amendment effective October 1, 2009.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

Board of Environmental Review, 2-15-3502.

75-2-112. Powers and responsibilities of department. (1) The department is responsible for the administration of this chapter.

(2) The department shall:

(a) by appropriate administrative and judicial proceedings, enforce orders issued by the board;

(b) secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract or otherwise;

(c) prepare and develop a comprehensive plan for the prevention, abatement, and control of air pollution in this state;

(d) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter;

(e) encourage local units of government to handle air pollution problems within their respective jurisdictions on a cooperative basis and provide technical and consultative assistance for this. If local programs are financed with public funds, the department may contract with the local government to share the cost of the program. However, the state share may not exceed 30% of the total cost.

(f) encourage and conduct studies, investigations, and research relating to air contamination and air pollution and their causes, effects, prevention, abatement, and control;

(g) determine, by means of field studies and sampling, the degree of air contamination and air pollution in the state;

(h) make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of this state and make recommendations to appropriate public and private bodies with respect to this;

(i) collect and disseminate information and conduct educational and training programs relating to air contamination and air pollution;

(j) advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and any interested persons or groups;

(k) consult, on request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof concerning the efficacy of this device or system or the air pollution problems which may be related to the source, device, or system. Nothing in this consultation relieves a person from compliance with this chapter, rules in force under it, or any other provision of law.

(l) accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States, for the purpose of carrying out this chapter. Funds received under this section shall be deposited in the state treasury to the account of the department.

(3) The department may assess fees to the applicant for the analysis of the environmental impact of an application to redesignate the classification of any area, except those areas within the exterior boundaries of a reservation of a federally recognized Indian tribe, under the classifications established by 42 U.S.C. 7470 through 7479 (prevention of significant deterioration of air quality). The determination of whether or not a fee will be assessed is to be on a case-by-case basis.

History: (1)En. Sec. 4, Ch. 313, L. 1967; amd. Sec. 14, Ch. 349, L. 1974; Sec. 69-3907, R.C.M. 1947; (2)En. 69-3909.1 by Sec. 18, Ch. 349, L. 1974; Sec. 69-3909.1, R.C.M. 1947; R.C.M. 1947, 69-3907, 69-3909.1; (3)En. Sec. 2, Ch. 560, L. 1979.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.
Eligibility for state aid, 75-2-302.
Enforcement by Department, 75-2-401.

75-2-113. Terminated. Sec. 5, Ch. 673, L. 1989.

History: En. Sec. 1, Ch. 673, L. 1989.

75-2-114. Terminated. Sec. 5, Ch. 673, L. 1989.

History: En. Sec. 2, Ch. 673, L. 1989.

75-2-115 through 75-2-120 reserved.

75-2-121. Advisory council. The advisory council shall act in an advisory capacity to the department on matters relating to air pollution.

History: En. Sec. 5, Ch. 313, L. 1967; amd. Sec. 16, Ch. 349, L. 1974; R.C.M. 1947, 69-3908(4).

Cross-References
Composition of Council, 2-15-2106.

75-2-122. Presiding officer — secretary. (1) A presiding officer must be elected by the advisory council from among its number.

(2) The secretary of the advisory council must be a member of the staff of the department, designated by the director. The secretary shall keep all records of meetings of and actions taken by the council. The secretary shall keep the advisory council advised as to actions taken by persons in response to recommendations and orders issued under this chapter and shall perform other duties as determined by the advisory council, not inconsistent with rules and policies adopted under this chapter or specific authority otherwise given the advisory council.

History: En. Sec. 5, Ch. 313, L. 1967; amd. Sec. 16, Ch. 349, L. 1974; R.C.M. 1947, 69-3908(1), (3); amd. Sec. 2489, Ch. 56, L. 2009.

Compiler's Comments
2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References
Term of office, 2-15-2106.

75-2-123. Meetings. The advisory council shall hold at least two regular meetings each calendar year and shall keep a summary record of its proceedings that must be open to the public for inspection. Special meetings may be called by the presiding officer and must be called by the presiding officer on receipt of a written request signed by two or more members of the advisory council. Notice of the time and place for meetings must be given in advance to each member of the advisory council by the secretary.

History: En. Sec. 5, Ch. 313, L. 1967; amd. Sec. 16, Ch. 349, L. 1974; R.C.M. 1947, 69-3908(2); amd. Sec. 2490, Ch. 56, L. 2009.

Compiler's Comments
2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References
Right of public participation in government, Art. II, sec. 8, Mont. Const.
Public participation in governmental operations, Title 2, ch. 3.

Part 2
Standards, Permits, and Variances

Part Cross-References
Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.
Energy emergency — power of Governor to suspend pollution control standards, 90-4-310.

75-2-201. Classifying and reporting air contaminant sources. (1) The board may classify air contaminant sources which in its judgment may cause or contribute to air pollution according to levels and types of emissions and other characteristics which relate to air pollution and may require reporting for any such class or classes. Such classifications shall be made with special reference to effects on health, economic and social factors, and physical effects on property and may be applied to the state as a whole or to any designated area.

(2) Any person operating or responsible for the operation of air contaminant sources of any class for which the rules of the board may require reporting shall make reports containing such information as may be required concerning location, size and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions and any other matter relevant to air pollution which is available or reasonably capable of being assembled.

History: En. Sec. 7, Ch. 313, L. 1967; R.C.M. 1947, 69-3910.

75-2-202. Board to set ambient air quality standards. (1) The board shall establish ambient air quality standards for the state.

(2) Ambient air quality standards for fluorides shall be established through limitations upon the concentration of fluorides in forage grasses, hay, and silage.

History: En. Sec. 6, Ch. 313, L. 1967; amd. Sec. 17, Ch. 349, L. 1974; R.C.M. 1947, 69-3909(5); amd. Sec. 1, Ch. 565, L. 1981.

Cross-References
Compliance with air standards for facility siting, 75-20-401.

75-2-203. Board to set emission levels. (1) The board may establish the limitations of the levels, concentrations, or quantities of emissions of various pollutants from any source necessary to prevent, abate, or control air pollution. Except as otherwise provided in or pursuant to this section, such levels, concentrations, or quantities shall be controlling, and no emission in excess thereof shall be lawful.

(2) In any area where the concentration of air pollution sources or of population or where the nature of the economy or of land and its uses so require, the board may fix more stringent requirements governing the emission of air pollutants than those in effect pursuant to subsection (1) of this section.

(3) The board may by rule use any widely recognized measuring system for measuring emission of air contaminants.

(4) Should federal minimum standards of air pollution be set by federal law, the board may, if necessary in some localities of this state, set more stringent standards by rule.

History: En. Sec. 10, Ch. 313, L. 1967; R.C.M. 1947, 69-3913.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-2-204. Rules relating to construction, installation, alteration, operation, or use. The board may by rule prohibit the construction, installation, alteration, operation, or use of a machine, equipment, device, or facility that it finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, unless the owner or operator has obtained a permit under this part or has registered the source of air contaminants with the department if the source is in a category for which only registration is required by the rules adopted to implement this part.

History: En. Sec. 8, Ch. 313, L. 1967; amd. Sec. 1, Ch. 185, L. 1975; amd. Sec. 4, Ch. 140, L. 1977; R.C.M. 1947, 69-3911(1); amd. Sec. 3, Ch. 502, L. 1993; amd. Sec. 2, Ch. 231, L. 2003.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-2-205. Public hearings on rules. No rule and no amendment or repeal thereof may take effect except after public hearing on due notice and after the advisory council has been given, at the time of publication, the proposed text to comment thereon. Such notice shall be given and any hearing conducted in accordance with the provisions of the Montana Administrative Procedure Act and rules made pursuant thereto.

History: En. Sec. 14, Ch. 313, L. 1967; amd. Sec. 9, Ch. 140, L. 1977; R.C.M. 1947, 69-3917(1); amd. Sec. 3, Ch. 560, L. 1979.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

75-2-206. Study of effects of sulfur dioxide on health and environment. (1) To the extent that funds are available, the board shall conduct an ongoing study in areas of Montana where there are major industrial sources of sulfur dioxide. The study shall concentrate on the effects on human health and the environment of ambient sulfur dioxide concentrations separately and in conjunction with particulates.

(2) Notwithstanding other funding sources to pay for the study, the board may accept funds and grants from private and public sources.

History: En. Sec. 2, Ch. 504, L. 1987.

75-2-207. State regulations no more stringent than federal regulations or guidelines — exceptions — procedure. (1) After April 14, 1995, except as provided in subsections (2) and (3) or unless required by state law, the board or department may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The board or department may incorporate by reference comparable federal regulations or guidelines.

(2) (a) The board or department may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if:

(i) a public hearing is held;

(ii) public comment is allowed; and

(iii) the board or the department makes a written finding after the public hearing and comment period that is based on evidence in the record that the proposed standard or requirement:

(A) protects public health or the environment;

(B) can mitigate harm to the public health or the environment; and

(C) is achievable with current technology.

(b) The written finding required under subsection (2)(a)(iii) must reference information and peer-reviewed scientific studies contained in the record that form the basis for the board's or the department's conclusion. The written finding must also include information from the hearing record regarding costs to the regulated community that are directly attributable to the proposed standard or requirement.

(c) (i) A person or entity affected by a rule of the board or department adopted after January 1, 1990, and before April 14, 1995, that the person or entity believes is more stringent than comparable federal regulations or guidelines may petition the board or department to review the rule.

(ii) If the board or department determines that the rule is more stringent than comparable federal regulations or guidelines, the board or department shall either revise the rule to conform to the federal regulations or guidelines or follow the process provided in subsections (2)(a) and (2)(b) within a reasonable period of time, not to exceed 6 months after receiving the petition.

(iii) A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The board or department may charge a petition filing fee in an amount not to exceed $250.

(iv) A person may also petition the board or department for a rule review under subsection (2)(a) if the board or department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted board or department rule.

(3) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1).

History: En. Sec. 2, Ch. 471, L. 1995; amd. Sec. 1, Ch. 536, L. 2001.

75-2-208 through 75-2-210 reserved.

75-2-211. Permits for construction, installation, alteration, or use. (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) (a) Except as provided in 75-1-208(4)(b), 75-2-234, and subsections (2)(b) and (2)(c) of this section, not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(b) Except as provided in subsection (2)(e), the owner or operator of an oil or gas well facility shall file the permit application with the department no later than January 3, 2006, or 60 days after the initial well completion date, whichever is later. For purposes of this section, the initial well completion date for an oil or gas well facility is:

(i) for an oil or gas well facility producing oil, the date when the first oil is produced through wellhead equipment into lease tanks from the ultimate producing interval after casing has been run; and

(ii) for an oil or gas well facility producing gas, the date when the oil or gas well facility is capable of producing gas through wellhead equipment from the ultimate producing interval after casing has been run.

(c) An owner or operator who complies with subsection (2)(b) may construct, install, or use equipment necessary to complete or operate an oil or gas well facility without a permit until the department's decision on the application is final. If the owner or operator does not comply with subsection (2)(b), the owner or operator may not operate the oil or gas well facility and is liable for a violation of this section for every day of construction, installation, or operation of the facility.

(d) The board shall adopt rules establishing air emission control requirements applicable to an oil or gas well facility during the time from the initial well completion date until the department's decision on the application is final.

(e) The provisions of subsections (2)(b) and (2)(c) do not apply to an oil or gas well facility subject to the federal air permitting provisions of 42 U.S.C. 7475 or 7503.

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) Except as provided in 75-1-205(4) and 75-1-208(4)(b), if an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application:

(i) within 180 days after the department's receipt of a filed application, as provided in subsection (8), if the department prepares the environmental impact statement;

(ii) within 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, within 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, is not subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661a, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application, except as provided in subsection (14).

(c) If an application does not require the preparation of an environmental impact statement and is subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661a, the department shall notify the applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

(d) Except as provided in subsection (9)(e), if an application does not require the preparation of an environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8).

(e) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications within the time period provided for in 75-2-215(3)(e).

(f) The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(g) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) Except as provided in 75-2-213, when the department approves or denies the application for a permit under this section, a person who is directly and adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) Except as provided in 75-2-213:

(a) the department's decision on the application is not final until 15 days have elapsed from the date of the decision;

(b) the filing of a request for hearing does not stay the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

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

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

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

(12) The board shall provide, by rule, a period of 30 days in which the public may submit comments on draft air quality permits for applications that:

(a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661a;

(b) are subject to the requirements of 75-2-215; or

(c) require the preparation of an environmental impact statement.

(13) The board shall provide, by rule, a period of 15 days in which the public may submit comments on draft air quality permits not subject to subsection (12).

(14) The board shall provide, by rule, the basis upon which the department may extend by 15 days:

(a) the period as provided in subsection (13) in which the public may submit comments on draft air quality permits not subject to subsection (12); and

(b) the period for notifying an applicant of its final decision on approval or denial of an application, as provided in subsection (9)(b).

(15) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or creation of:

(i) general permits covering multiple similar sources; or

(ii) other permits covering multiple similar sources.

(b) Rules adopted pursuant to subsection (15)(a) may provide for construction and operation under the permit upon authorization by the department or upon notice to the department.

History: En. Sec. 8, Ch. 313, L. 1967; amd. Sec. 1, Ch. 185, L. 1975; amd. Sec. 4, Ch. 140, L. 1977; R.C.M. 1947, 69-3911(part); amd. Sec. 4, Ch. 560, L. 1979; amd. Sec. 1, Ch. 196, L. 1983; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 652, L. 1991; amd. Sec. 4, Ch. 502, L. 1993; amd. Sec. 2, Ch. 639, L. 1993; amd. Sec. 1, Ch. 85, L. 1995; amd. Sec. 1, Ch. 273, L. 1997; amd. Sec. 1, Ch. 221, L. 1999; amd. Sec. 4, Ch. 299, L. 2001; amd. Sec. 1, Ch. 588, L. 2001; amd. Sec. 1, Ch. 99, L. 2003; amd. Sec. 3, Ch. 231, L. 2003; amd. Sec. 1, Ch. 188, L. 2005; amd. Sec. 2, Ch. 236, L. 2005; amd. Sec. 6, Ch. 337, L. 2005; amd. Sec. 101, Ch. 2, L. 2009; amd. Sec. 5, Ch. 445, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 2 in (9)(b) near middle, in (9)(c) near middle, and in (12)(a) at end substituted "7661a" for "7661". Amendment effective October 1, 2009.

Chapter 445 in (10) in first sentence at beginning inserted exception clause, and substituted "directly and adversely affected" for "jointly or severally adversely affected"; in (11) inserted exception clause; and made minor changes in style. Amendment effective May 5, 2009.

Applicability: Section 12, Ch. 445, L. 2009, provided: "[This act] applies to judicial and board of environmental review hearing and appeal proceedings initiated on or after [the effective date of this act]." Effective May 5, 2009.

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

Air pollution control equipment — determination of use for tax purposes, 15-6-135.

Fund structure, 17-2-102.

Environmental impact statement, 75-1-201.

Requirement that siting of facility includes air permit — application — decision, 75-20-211, 75-20-401.

Dairy products manufacturing plant — approval of air pollutant control by Department of Environmental Quality, 81-22-403.

75-2-212. Variances — renewals — filing fees. (1) A person who owns or is in control of a plant, building, structure, process, or equipment may apply to the board for an exemption or partial exemption from rules governing the quality, nature, duration, or extent of emissions of air pollutants. The application must be accompanied by information and data that the board may require. The board may grant an exemption or partial exemption if it finds that:

(a) the emissions occurring or proposed to occur do not constitute a danger to public health or safety; and

(b) compliance with the rules from which an exemption is sought would produce hardship without equal or greater benefits to the public.

(2) An exemption or partial exemption may not be granted pursuant to this section except after public hearing on due notice and until the board has considered the relative interests of the applicant, other owners or property likely to be affected by the emissions, and the general public.

(3) The exemption or partial exemption may be renewed if a complaint is not made to the board because of it or if, after the complaint has been made and duly considered at a public hearing held by the board on due notice, the board finds that renewal is justified. A renewal may not be granted except on application. An application must be made at least 60 days before the expiration of the exemption or partial exemption. Immediately before application for renewal, the applicant shall give public notice of the application in accordance with rules of the board. A renewal pursuant to this subsection must be on the same grounds and subject to the same limitations and requirements as provided in subsection (1).

(4) An exemption, partial exemption, or renewal is not a right of the applicant or holder but may be granted at the discretion of the board. However, a person adversely affected by an

exemption, partial exemption, or renewal granted by the board may obtain judicial review as provided by 75-2-411.

(5) This section and an exemption, partial exemption, or renewal granted pursuant to this section may not be construed to prevent or limit the application of the emergency provisions and procedures of 75-2-402 to a person or the person's property.

(6) A person who owns or is in control of a plant, building, structure, process, or equipment, which are called facilities, who applies to the board for an exemption or partial exemption or a renewal of an exemption or partial exemption from a rule governing the quality, nature, duration, or extent of emissions of air pollutants shall submit with the application for variance a sum of not less than $500 or 2% of the cost of the equipment to bring the facility into compliance with the rule for which a variance is sought, whichever is greater, but not to exceed $80,000. The department shall prepare a statement of actual costs, and funds in excess of this must be returned to the applicant. The person requesting the variance shall describe the facility in sufficient detail, with accompanying estimates of cost and verifying materials, to permit the department to determine with reasonable accuracy the sum of the fee. For a renewal of an exemption or partial exemption, if a public hearing, environmental impact statement, or appreciable investigation by the department is not necessary, the minimum filing fee applies or the fee may be waived by the department. The filing fee must be deposited in the state special revenue fund provided for in 17-2-102. It is the intent of the legislature that the revenue derived from the filing fees must be used by the department to:

(a) compile the information required for rendering a decision on the request;

(b) compile the information necessary for any environmental impact statements;

(c) offset the costs of a public hearing, printing, or mailing; and

(d) carry out its other responsibilities under this chapter.

History: En. Sec. 13, Ch. 313, L. 1967; amd. Sec. 1, Ch. 186, L. 1975; amd. Sec. 8, Ch. 140, L. 1977; R.C.M. 1947, 69-3916; amd. Sec. 1, Ch. 265, L. 1983; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2491, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

75-2-213. Energy development project — hearing and procedures. (1) (a) When the department approves or denies the application for a permit under 75-2-211 for an energy development project, the applicant or a person who has provided the department with formal comments and who is directly and adversely affected by the department's decision may request a hearing before the board. If the department provided an opportunity for public comment on the application, the request for a hearing must be limited to those issues raised in comments made to the department during the comment period unless the issues are related to a material change in federal or state law made during the comment period, to a judicial decision issued after the comment period, or to a material change to the draft permit, which was submitted for public comment, made by the department in the final permit decision and upon which the public did not have a meaningful opportunity to comment. The request for hearing must be filed within 30 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed with the request for a hearing.

(b) (i) If a hearing is requested by a person other than the applicant for or permittee of an energy development project, the applicant or permittee may, by filing a written election with the board within 15 days of receipt of the request for hearing, elect to have the matter proceed to hearing before the board or to have the matter submitted directly to the district court for judicial review of the agency decision. The party who requests the hearing may elect to have the matter submitted either to the board for a hearing or to the district court for judicial review by submitting a written election to the board with the request for hearing. If there are conflicting elections between the parties, the matter must proceed to district court.

(ii) If the applicant or permittee is not the person who requested the hearing and has elected to have the matter submitted to the district court, the person who submitted the request for a hearing shall file a petition for review of the permit decision within 15 days of receipt of notice from the permittee. If the person who requested the hearing has elected to have the matter proceed to district court, that person shall file a petition in district court within 15 days of filing the request.

(iii) The petition must be limited to matters raised in the request for hearing and must be filed in the county in which the facility is located.

(iv) If a party does not elect to submit the matter directly to district court, the matter must proceed through the contested case process before the board pursuant to the Montana Administrative Procedure Act.

(v) The board or the district court shall apply the laws and rules in place when the department issued its decision, and the board or the district court may not consider any issue that was not presented to the department for the department's consideration during the formal comment period unless the issue is related to a material change in federal or state law made during the comment period, to a judicial decision issued after the comment period, or to a material change to the draft permit, which was submitted for public comment, made by the department in the final permit decision and upon which the public did not have a meaningful opportunity to comment.

(c) (i) Except as provided in subsection (1)(c)(ii), if the person requesting the hearing is not the applicant or permittee of an energy development project, the board or the district court shall require a written undertaking to be given by the party requesting the hearing for the payment of costs and damages incurred by the permit applicant and its employees if the request for a hearing or judicial review was for an improper purpose designed to harass, cause unnecessary delay, or improperly interfere with the issuance of the permit without a reasonable basis in law or fact.

(ii) The board or the district court may not require a written undertaking if the party requesting the hearing is an indigent person.

(d) If grounds for requesting the hearing are based on alleged error in applying best available control technology requirements, the board or the district court shall give deference to the best available control technology determination made by the department. The board or the district court may not reject the best available control technology determination unless the determination was incorrect as a matter of law or the factual basis for the determination was clearly erroneous.

(2) The board shall issue a final decision within 4 months from the close of the hearing on the merits or, if no hearing is held, within 3 months from the date that briefing by the parties is complete unless the applicant or permittee and the party other than the applicant or permittee agree in writing to an extension of time. The board shall require the parties to prepare the case for hearing without unreasonable delay.

(3) (a) Any requirement in a permit to commence construction, installation, or alteration within a certain time period is tolled during a contested case or judicial review proceeding, but not by more than 12 months, unless the applicant or permittee in its discretion waives the tolling in writing.

(b) If there are multiple appeals of one permit, tolling under this subsection (3) may not exceed a total of 12 months for all appeals.

(c) The applicant may not engage in construction during the period that the time period is tolled under subsection (3)(a).

(4) The department shall, for good cause shown, waive for up to 1 year any requirement that construction of an energy development project must proceed with due diligence. During the period that a waiver is in effect, an air quality permit does not expire because construction of an energy development project failed to proceed with due diligence.

History: En. Sec. 1, Ch. 445, L. 2009.

Compiler's Comments

Effective Date: Section 11, Ch. 445, L. 2009, provided that this section is effective on passage and approval. Approved May 5, 2009.

Applicability: Section 12, Ch. 445, L. 2009, provided: "[This act] applies to judicial and board of environmental review hearing and appeal proceedings initiated on or after [the effective date of this act]." Effective May 5, 2009.

75-2-214 reserved.

75-2-215. Solid or hazardous waste incineration — additional permit requirements. (1) Until the department has issued an air quality permit pursuant to 75-2-211 that includes the conditions required by this section, a person may not construct, install, alter, or

use a solid or hazardous waste incinerator or a boiler or industrial furnace subject to the provisions of 75-10-406, except as provided in subsection (2).

(2) An existing or permitted solid or hazardous waste incinerator or a boiler or industrial furnace subject to the provisions of 75-10-406 is subject to the provisions of subsection (1) only if it incinerates or uses as fuel or would incinerate or use as fuel solid or hazardous waste in an amount, form, kind, or content that changes the nature, character, or composition of its emissions from its design or permitted operation.

(3) The department may not issue a permit to a facility described in subsection (1) until:

(a) the owner or operator has provided to the department's satisfaction:

(i) a characterization of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from any existing emission source at the facility; and

(ii) an estimate of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from the incineration of solid or hazardous waste or the use of hazardous waste as fuel for a boiler or industrial furnace, as proposed in the permit application or modification;

(b) if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the applicant has published, in the county where the project is proposed, at least three notices, in accordance with the procedures identified in 7-1-4127, describing the proposed project;

(c) if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the department has conducted a public hearing on an environmental review prepared pursuant to Title 75, chapter 1, and, as appropriate, provided additional opportunities for the public to review and comment on the permit application or modification;

(d) the department has reached a determination that the projected emissions and ambient concentrations will constitute a negligible risk to the public health, safety, and welfare and to the environment; and

(e) the department has issued a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, if a license or permit is required. The decision to issue, deny, or alter a permit pursuant to 75-2-211 and this section must be made within 30 days from when the department issues a license pursuant to 75-10-221 or a permit pursuant to 75-10-406 or within 90 days after the receipt of a complete application for a permit or a permit alteration under 75-2-211 and this section, whichever is later.

(4) The department shall require the application of air pollution control equipment, engineering, or other operating procedures as necessary to provide reductions of air pollutants, including hazardous air pollutants, equivalent to or more stringent than those achieved through the best available control technology.

(5) The board may by rule provide for general air quality permits under the provisions of 75-2-211 and this section. The rules must cover numerous similar classes or categories of incinerators and boilers or industrial furnaces.

(6) This section does not relieve an owner or operator of a solid or hazardous waste incinerator or a boiler or industrial furnace that is not included under subsection (1) from the obligation to obtain any permit otherwise required under this chapter or rules implementing this chapter.

History: En. Sec. 5, Ch. 696, L. 1989; amd. Sec. 1, Ch. 605, L. 1991; amd. Sec. 2, Ch. 129, L. 1993; amd. Sec. 3, Ch. 639, L. 1993; amd. Sec. 69, Ch. 354, L. 2001.

75-2-216. Adoption of rules for solid or hazardous waste incinerator permits. The department shall proceed in a reasonable and timely manner in adopting rules implementing 75-2-215.

History: En. Sec. 1, Ch. 16, Sp. L. July 1992; amd. Sec. 16, Ch. 112, L. 1997.

75-2-217. Operating permit program — exemptions — general requirements — duration. (1) The board shall provide by rule for the issuance, expiration, modification, amendment, suspension, revocation, and renewal of operating permits as part of an operating permit program to be administered by the department under this chapter. The board shall promulgate rules that are consistent with the operating permit framework and guidelines outlined in Subchapter V of the federal Clean Air Act and implementing regulations.

(2) This section applies to all sources of air pollutants that are subject to the provisions of Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.

(3) A person may not violate any requirement of an operating permit issued under 75-2-218 and this section or operate any source required to have a permit under this section without having complied with the requirements of the operating permit program administered by the department pursuant to 75-2-218, 75-2-219, and this section.

(4) The board may by rule provide for the exemption of one or more source categories, in whole or in part, from all or part of the requirements of this section if the board determines that compliance with the requirements of this section is impracticable, infeasible, or unnecessarily burdensome for the sources. The board may premise this determination upon a similar determination by the appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(5) The board may by rule provide for general operating permits covering numerous similar sources.

(6) An operating permit issued by the department under 75-2-218 and this section is effective for a period not to exceed 5 years and may be renewed.

(7) The operating permit program administered by the department pursuant to this section must include the following:

(a) adequate procedures that are streamlined and reasonable for:

(i) expeditiously determining when applications are complete;

(ii) processing applications; and

(iii) expeditiously reviewing permit actions, including application renewals or revisions;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, compliance certification, and reporting;

(f) deadlines for submitting permit applications and compliance plans that are not later than 12 months after the source becomes subject to the operating permit requirement;

(g) deadlines for submitting permit renewal applications that are not later than 6 months before expiration of the existing operating permit;

(h) requirements for compliance plans that must be submitted with permit and renewal applications, including schedules of compliance and progress reports;

(i) requirements and procedures for periodic certification of source compliance with permit requirements, including the prompt reporting of any deviations from permit requirements;

(j) requirements for submission of any plans, specifications, or other information that the department considers necessary under this section;

(k) conditions and procedures for the transfer of operating permits;

(l) requirements and procedures for suspension, modification, amendment, and revocation of permits by the department for cause, including the modification or amendment of permits before renewal or termination to incorporate applicable limitations or requirements effective after permit issuance;

(m) requirements and procedures for incorporating into permits and permit renewals all applicable emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(n) requirements and procedures for permit modification and amendment;

(o) procedures for tracking activities conducted under general permits;

(p) requirements and procedures for issuing a single operating permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location;

(q) requirements and procedures for allowing changes within a permitted facility without requiring a permit amendment if the changes are not prohibited under this chapter and do not exceed the emissions allowable under the permit; and

(r) other requirements necessary for the department to obtain the authorization to administer an operating permit program under the provisions of Subchapter V of the federal Clean Air Act.

History: En. Sec. 9, Ch. 502, L. 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

75-2-218. Permits for operation — application completeness — action by department — application shield — review by board. (1) An application for an operating permit or renewal is not considered filed until the department has determined that it is complete. An application is complete if all fees required under 75-2-220 and all information and completed application forms required under 75-2-217 have been submitted. A complete application must contain all of the information required for the department to begin processing the application. If the department fails to notify the applicant in writing within 60 days after submittal of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed on the date of the department's receipt of the application. The department may request additional information after a completeness determination has been made. The board shall adopt rules that contain criteria for use in determining both when an application is complete and when additional information is required after a completeness determination has been made.

(2) Except as provided in 75-1-208(4)(b) and subsection (3) of this section, the department shall, consistent with the procedures established under 75-2-217, approve or disapprove a complete application for an operating permit or renewal and shall issue or deny the permit or renewal within 18 months after the date of filing. Failure of the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(3) The board may by rule provide for a transition schedule for both the submittal to the department of initial applications for operating permits by existing sources and action by the department on these initial permit applications. The board may require that one-third of all operating permit applications required for existing sources be submitted within the first calendar year after the adoption of rules implementing an operating permit program under 75-2-217.

(4) If an applicant submits a timely and complete application for an operating permit, the applicant's failure to hold a valid operating permit is not a violation of 75-2-217. If an applicant submits a timely and complete application for an operating permit renewal, the expiration of the applicant's existing operating permit is not a violation of 75-2-217. The applicant shall continue to be subject to the terms and conditions of the expired operating permit until the operating permit is renewed and is subject to the application of 75-2-217. The applicant is not entitled to the protection of this subsection if the delay in final action by the department on the application results from the applicant's failure to submit in a timely manner information requested by the department to process the application.

(5) Except as provided in subsection (8), if the department approves or denies an application for an operating permit or the renewal, modification, or amendment of a permit under 75-2-217 and this section, any person that participated in the public comment process required under 75-2-217(7) may request a hearing before the board. The request for a hearing must be filed within 30 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(6) (a) Except as provided in subsection (8), the department's decision on any application is not final until 30 days have elapsed from the date of the decision.

(b) Except as provided in subsection (8), the filing of a request for hearing does not stay the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for an informal hearing, that:

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

(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the hearing.

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

(7) The requirements of subsections (5) and (6) also apply to any action initiated by the department to suspend, revoke, modify, or amend an operating permit issued under this section.

(8) The denial by the department of an application under 75-2-217 and this section is not subject to review by the board or judicial review if the basis for denial is the written objection of the appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(9) Compliance with an operating permit granted or renewed under 75-2-217 and this section is considered to be compliance with the requirements of this chapter only if the permit expressly includes those requirements or an express determination that those requirements are not applicable. This subsection does not apply to general permits provided for under 75-2-217.

History: En. Sec. 10, Ch. 502, L. 1993; amd. Sec. 5, Ch. 299, L. 2001; amd. Sec. 2, Ch. 491, L. 2001; amd. Sec. 4, Ch. 231, L. 2003; amd. Sec. 3, Ch. 236, L. 2005.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

75-2-219. Permits for operation — limitations. Sections 75-2-217 and 75-2-218 may not be construed to:

(1) affect the department's issuance of a permit for the construction, installation, alteration, or use of a source of air pollutants pursuant to 75-2-211 or 75-2-215;

(2) restrict the board's authority to adopt regulations providing for a single air quality permit system; or

(3) affect permits, allowances, phase II compliance schedules, or other acid rain provisions under Subchapter IV of the federal Clean Air Act, 42 U.S.C. 7651, et seq.

History: En. Sec. 11, Ch. 502, L. 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

75-2-220. Fees — special assessments — late payment assessments — credit. (1) Concurrent with the submittal of a permit application required under this chapter and annually for the duration of the permit, the applicant shall submit to the department a fee sufficient to cover the reasonable costs, direct and indirect, of developing and administering the permitting requirements in this chapter, including:

(a) reviewing and acting upon the application;

(b) implementing and enforcing the terms and conditions of the permit. This amount does not include any court costs or other costs associated with an enforcement action. If the permit is not issued, the department shall return this portion of the fee to the applicant.

(c) emissions and ambient monitoring;

(d) preparing generally applicable regulations or guidance;

(e) modeling, analysis, and demonstrations;

(f) preparing inventories and tracking emissions;

(g) providing support to sources under the small business stationary source technical and environmental compliance assistance program; and

(h) all other costs required to be recovered pursuant to Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.

(2) In recovering the costs described in subsection (1), the department may assess an application fee based on estimated actual emissions or an annual fee based on actual emissions

of air pollutants regulated under this chapter, including but not limited to volatile organic compounds, each air pollutant regulated under section 7411 or 7412 of the federal Clean Air Act, 42 U.S.C. 7401, et seq., and each air pollutant subject to a national primary ambient air quality standard.

(3) The board shall by rule provide for the annual adjustment of all fees assessed for operating permit applications under 75-2-217 and 75-2-218 to account for changes to the consumer price index, as required by Subchapter V of the federal Clean Air Act.

(4) In addition to the fee required under subsection (1), the board may order the assessment of additional fees required to fund specific activities of the department that are directed at a particular geographic area if the legislature authorizes the activities and appropriates funds for the activities, including emissions or ambient monitoring, modeling analysis or demonstrations, or emissions inventories or tracking. Additional assessments may be levied only on those sources that are within or are believed by the department to be impacting the geographic area. Before the board may require the fees, it shall first determine, after opportunity for hearing, that the activities to be funded are necessary for the administration or implementation of this chapter, that the amount of the requested fees is appropriate, that the assessments apportion the required funding in an equitable manner, and that the department has obtained the necessary appropriation. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(5) (a) If the applicant or permitholder fails to pay in a timely manner a fee required under subsection (1), in addition to the fee, the department may:

(i) impose a penalty not to exceed 50% of the fee, plus interest on the required fee computed as provided in 15-1-216; or

(ii) revoke the permit consistent with those procedures established under this chapter for permit revocation.

(b) Within 1 year of revocation, the department may reissue the revoked permit after the applicant or permitholder has paid all outstanding fees required under subsections (1) and (4), including all penalties and interest provided for under this subsection (5). In reissuing the revoked permit, the department may modify the terms and conditions of the permit as necessary to account for changes in air quality occurring since revocation.

(c) The board shall by rule provide for the implementation of this subsection (5), including criteria for imposition of the sanctions described in this subsection (5).

(6) The board may by rule allow the reduction of a fee required under this section for an operating permit or permit renewal to account for the financial resources of a category of small business stationary sources.

(7) As a condition of the continuing validity of a permit issued by the department under this chapter prior to October 1, 1993, the board may by rule require the permitholder to pay the fees under subsections (1) and (4).

(8) For an existing source of air pollutants that is subject to Subchapter V of the federal Clean Air Act and that is not required to hold an air quality permit from the department as of October 1, 1993, the board may, as a condition of continued operation, require by rule that the owner or operator of the source pay the fees under subsections (1) and (4).

(9) (a) The department shall give written notice of the fee to be assessed and the basis for the department's fee assessment under this section to the owner or operator of the air pollutant source. The owner or operator may appeal the department's fee assessment to the board within 20 days after receipt of the written notice.

(b) An appeal must be based upon the allegation that the fee assessment is erroneous or excessive. An appeal may not be based on the amount of the fee contained in the schedule adopted by the board.

(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of the notice required in subsection (9)(a).

(d) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection (9).

(10) The department may not charge more than one fee annually to a source of air pollutants for the costs identified in subsection (1).

(11) The total of the fees charged to an applicant under subsections (1) and (4) of this section must be reduced by the amount of any credit accruing to the applicant under 75-2-225. The department may not increase fee assessments beyond legislative appropriation levels to adjust for any credit claimed under 75-2-225. The credit applied under 75-2-225 may not limit the department's ability to collect fees sufficient to cover the reasonable costs, both direct and indirect, of developing and administering the permitting requirements of this chapter.

History: En. Sec. 12, Ch. 502, L. 1993; amd. Sec. 5, Ch. 51, L. 1997; amd. Sec. 53, Ch. 427, L. 1999; amd. Sec. 5, Ch. 516, L. 2001.

Compiler's Comments

Termination Provision Repealed: Section 3, Ch. 159, L. 2009, repealed sec. 9, Ch. 712, L. 1991, secs. 4 and 5, Ch. 542, L. 1995, sec. 1, Ch. 411, L. 1997, secs. 4, 5, 6, and 7, Ch. 398, L. 2001, sec. 8, Ch. 516, L. 2001, secs. 3 and 5, Ch. 129, L. 2005, and secs. 1, 2, 3, 4, 5, 6, 7, and 8, Ch. 569, Laws of 2005, which terminated amendments to this section December 31, 2011. Effective July 1, 2009.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

75-2-221. Deposit of air quality permitting fees. (1) All money collected by the department pursuant to 75-2-111 and 75-2-220 must be deposited in an account in the state special revenue fund to be appropriated by the legislature to the department for the development and administration of the permitting requirements of this chapter.

(2) Upon request, the expenditure by the department of funds in this account may be audited by a qualified auditor at the end of each fiscal year. The cost of the audit must be paid by the person requesting the audit.

History: En. Sec. 13, Ch. 502, L. 1993; amd. Sec. 2, Ch. 221, L. 1999; amd. Sec. 5, Ch. 231, L. 2003.

75-2-222 and 75-2-223 reserved.

75-2-224. Definitions. For the purposes of 75-2-224 through 75-2-227, unless otherwise required by the context, the following definitions apply:

(1) "Applicant" means a person submitting a permit application for which the person is required to pay a fee under 75-2-220 and includes a permitholder who pays an annual fee.

(2) "Postconsumer glass" means glass or glass-like material that has:

(a) served its final intended use;

(b) been discarded by an individual, commercial enterprise, or other entity after having fulfilled its intended application or use in Montana;

(c) useful physical or chemical properties remaining after having served a specific purpose and that would normally be disposed of as solid waste, as defined in 75-10-203, by a consumer, processor, or manufacturer.

(3) (a) "Recycled material" means a substance, compound, conglomeration, mixture, or the like that is composed, in whole or in part, of postconsumer glass.

(b) Material that contains postconsumer glass is recycled material for the purposes of this section if the postconsumer glass is used as or is a component of:

(i) fill, aggregate, or surface material used in construction or road construction;

(ii) sandblasting material;

(iii) landscaping material; or

(iv) a sandstone replacement in the manufacture of cement.

(c) The uses included in subsection (3)(b) are not exclusive, and other uses of postconsumer glass as a substitute for the use or consumption of new material may also be considered by the department as recycled material.

History: En. Sec. 1, Ch. 516, L. 2001.

Compiler's Comments

Termination Provision Repealed: Section 3, Ch. 159, L. 2009, repealed sec. 9, Ch. 712, L. 1991, secs. 4 and 5, Ch. 542, L. 1995, sec. 1, Ch. 411, L. 1997, secs. 4, 5, 6, and 7, Ch. 398, L. 2001, sec. 8, Ch. 516, L. 2001, secs. 3 and 5, Ch. 129, L. 2005, and secs. 1, 2, 3, 4, 5, 6, 7, and 8, Ch. 569, Laws of 2005, which terminated this section December 31, 2011. Effective July 1, 2009.

75-2-225. Amount and duration of credit — how claimed. (1) An applicant may receive a credit against the fees imposed in 75-2-220 for using postconsumer glass in recycled material if the applicant qualifies under 75-2-226.

(2) An applicant qualifying for a credit under 75-2-226 is entitled to claim a credit, as provided in subsection (3) of this section, for using postconsumer glass in recycled material in the calendar year subsequent to the calendar year in which the postconsumer glass was used in recycled material.

(3) (a) The amount of the credit that may be claimed under this section is $8 for each ton of postconsumer glass that was used as a substitute for nonrecycled material in the calendar year prior to the calendar year for which the applicant is paying fees for permits under 75-2-220.

(b) The maximum credit allowable in any calendar year for fees payable under 75-2-220 is $2,000 or the total amount of fees due, whichever is less.

History: En. Sec. 2, Ch. 516, L. 2001; amd. Sec. 1, Ch. 129, L. 2005; amd. Sec. 1, Ch. 159, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 159 in (2) at beginning deleted "Subject to 75-2-226(2)"; and made minor changes in style. Amendment effective July 1, 2009.

Termination Provision Repealed: Section 3, Ch. 159, L. 2009, repealed sec. 9, Ch. 712, L. 1991, secs. 4 and 5, Ch. 542, L. 1995, sec. 1, Ch. 411, L. 1997, secs. 4, 5, 6, and 7, Ch. 398, L. 2001, sec. 8, Ch. 516, L. 2001, secs. 3 and 5, Ch. 129, L. 2005, and secs. 1, 2, 3, 4, 5, 6, 7, and 8, Ch. 569, Laws of 2005, which terminated this section December 31, 2011. Effective July 1, 2009.

75-2-226. Credit for use of postconsumer glass. (1) The following requirements must be met for an applicant to be entitled to a credit for the use of postconsumer glass:

(a) The postconsumer glass must have been used in recycled material in the calendar year prior to the calendar year in which the applicant is applying for and paying for permits under 75-2-220.

(b) (i) The applicant claiming a credit must be a person who, as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that uses postconsumer glass in recycled materials. The use of postconsumer glass as recycled material may be a minor or nonprofit part of a business otherwise engaged in a business activity.

(ii) The applicant may but need not operate or conduct a business that uses postconsumer glass as recycled material. If more than one person has an interest in a business with qualifying uses of postconsumer glass, they may allocate all or any part of the allowable credit among themselves and their successors or assigns.

(c) The business must have been owned or leased by the applicant claiming the credit during the calendar year prior to the calendar year for which the permit fees are due under 75-2-220, except as otherwise provided in subsection (1)(b), and must have used postconsumer glass in recycled material during the calendar year prior to the calendar year for which the credit is claimed.

(d) The postconsumer glass used in recycled material may not be an industrial waste generated by the person claiming the credit unless:

(i) the person generating the waste historically has disposed of the waste onsite or in a licensed landfill; and

(ii) standard industrial practice has not generally included the reuse of the waste in the manufacturing process.

(2) The credit provided by this section is not in lieu of any other incentive to which the applicant otherwise may be entitled under Title 15 or this chapter.

(3) A credit otherwise allowable under this section that is not used by the applicant in the calendar year for which the permits are applied may not be:

(a) carried forward to offset an applicant's permit fees for any succeeding calendar year; or

(b) carried back to offset an applicant's permit fees for any preceding calendar year.

History: En. Sec. 3, Ch. 516, L. 2001; amd. Sec. 2, Ch. 129, L. 2005; amd. Sec. 2, Ch. 159, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 159 deleted former (2) that read: "(2) A credit under this section may be claimed by an applicant for a business only if the qualifying postconsumer glass was used in recycled material before January 1, 2010"; and made minor changes in style. Amendment effective July 1, 2009.

Termination Provision Repealed: Section 3, Ch. 159, L. 2009, repealed sec. 9, Ch. 712, L. 1991, secs. 4 and 5, Ch. 542, L. 1995, sec. 1, Ch. 411, L. 1997, secs. 4, 5, 6, and 7, Ch. 398, L. 2001, sec. 8, Ch. 516, L. 2001, secs. 3 and 5, Ch. 129, L. 2005, and secs. 1, 2, 3, 4, 5, 6, 7, and 8, Ch. 569, Laws of 2005, which terminated this section December 31, 2011. Effective July 1, 2009.

75-2-227. Postconsumer glass qualifying for credit — rulemaking. (1) The department shall adopt rules describing postconsumer glass and recycled material that qualify for the credit authorized by 75-2-226.

(2) In addition to the public participation provisions of Title 2, chapter 4, the department shall maintain a register of interested persons and experts in the field of recycling postconsumer glass. The department shall mail a notice to the interested persons identified under this subsection of the department's contemplated actions, soliciting their views on possible solutions or courses of action.

History: En. Sec. 4, Ch. 516, L. 2001.

Compiler's Comments

Termination Provision Repealed: Section 3, Ch. 159, L. 2009, repealed sec. 9, Ch. 712, L. 1991, secs. 4 and 5, Ch. 542, L. 1995, sec. 1, Ch. 411, L. 1997, secs. 4, 5, 6, and 7, Ch. 398, L. 2001, sec. 8, Ch. 516, L. 2001, secs. 3 and 5, Ch. 129, L. 2005, and secs. 1, 2, 3, 4, 5, 6, 7, and 8, Ch. 569, Laws of 2005, which terminated this section December 31, 2011. Effective July 1, 2009.

Cross-References

Interested persons' rulemaking notice, 2-4-302.

75-2-228 and 75-2-229 reserved.

75-2-230. Commercial hazardous waste incinerators — additional permit requirements. (1) In addition to the requirements under 75-2-231, the department shall require the owner or operator of an existing commercial hazardous waste incinerator or an applicant for an air quality permit for a commercial hazardous waste incinerator to submit a plan that requires the cessation of the burning of hazardous waste if site-specific monitoring determines that inversion conditions, as defined by department rule, exist. The department shall consider the proximity of the commercial hazardous waste incinerator to populated areas when determining the appropriate plan content. The plan must include a site-specific ambient air quality and meteorological monitoring program in order to establish the conditions under which the burning of commercial hazardous waste must be halted and conditions under which the burning of commercial hazardous waste may be resumed. Conditions of the plan must be incorporated as a condition of the facility's permit.

(2) When, because of the proximity of a commercial hazardous waste incinerator to populated areas, the department determines that continuing monitoring is appropriate, the department shall require the owner or operator of an existing commercial hazardous waste incinerator or an applicant for an air quality permit for a commercial hazardous waste incinerator to provide telemetering service to the department with an immediate notification system activated when emissions approach or exceed permitted limits.

History: En. Sec. 1, Ch. 498, L. 1995.

75-2-231. Medical waste and hazardous waste incineration — additional permit requirements. (1) Because of the potential emission of chlorinated dioxins, furans, heavy metals, and carcinogens as a result of the incineration of medical waste and hazardous waste and the potential health risk these chemicals pose, the board shall adopt rules establishing additional permit requirements for commercial medical waste and commercial hazardous waste incinerators. For the purposes of this section, the term "commercial medical waste incinerator" does not include hospital or medical facility incinerators that primarily incinerate medical waste generated onsite. The board shall adopt rules that:

(a) regulate the type and amount of plastic and other materials in the medical waste stream and hazardous waste stream that may be a source of chlorine, in order to minimize the potential emission of chlorinated dioxins, furans, and carcinogens;

(b) require commercial medical waste and commercial hazardous waste incinerators to achieve the lowest achievable emission rate to prevent the public health risk from air emissions or ambient concentrations from exceeding the negligible risk standard required by 75-2-215 and any applicable federal allowable intake standards, as determined pursuant to subsection (3), for dioxins, furans, heavy metals, and other hazardous air pollutants;

(c) implement the requirements of subsection (2), including establishing procedures and standards for the collection of high-quality scientific information and for the submission of the information by the applicant;

(d) establish procedures for the monitoring, testing, and inspection of:

(i) the medical waste stream and hazardous waste stream, including heavy metals and possible precursors to the formation of chlorinated dioxins, furans, and carcinogens;

(ii) combustion, including destruction and removal efficiencies; and

(iii) emissions, including continuous emission monitoring and air pollution control devices; and

(e) are necessary to implement the provisions of this section and to coordinate the requirements under this section with the requirements contained in 75-2-211 and 75-2-215.

(2) A person who applies for an air quality permit or alteration pursuant to 75-2-211 and 75-2-215 for a commercial medical waste incinerator or commercial hazardous waste incinerator shall provide, to the satisfaction of the department, the following information:

(a) a dispersion model of emissions, using approved methods, and those studies that are necessary to identify the potential community exposure;

(b) an analysis of the potential pathways for human exposure to air contaminants, particularly chlorinated dioxins, furans, heavy metals, and other carcinogens, including the potential for inhalation, ingestion, and physical contact by the affected communities; and

(c) a quantitative analysis of the estimated total possible human exposure to chlorinated dioxins, furans, heavy metals, and carcinogens for the affected communities.

(3) The department may not issue or alter an air quality permit pursuant to this chapter until the department has determined, based upon an analysis of the information provided by the applicant pursuant to subsection (2) and other necessary and relevant data, that the public health risk from air emissions or ambient concentrations of chlorinated dioxins, furans, heavy metals, and other hazardous air pollutants will not exceed the negligible risk standard required by 75-2-215 and any applicable federal standards for allowable intake, as determined by the department after a review of established and relevant federal standards and guidelines.

(4) This section may not be construed in any way to:

(a) require the board to promulgate standards for the allowable intake of any substances for which the federal government has not established standards;

(b) allow the board to promulgate standards for the allowable intake of any substances for which the federal government has established standards that are more stringent than the federal standards; or

(c) limit or otherwise impair the duty of the department under 75-2-215 to determine that emissions and ambient concentrations will constitute a negligible risk as required by 75-2-215(3)(d), including emissions and ambient concentrations of dioxins, furans, heavy metals, and carcinogens, before issuing an air quality permit pursuant to 75-2-211 and 75-2-215.

History: En. Sec. 4, Ch. 639, L. 1993; amd. Sec. 2, Ch. 498, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

75-2-232. Disclosure statement required. (1) An air quality permit for a commercial medical waste or commercial hazardous waste incinerator may not be issued, transferred, or altered pursuant to 75-2-211 and 75-2-215 without an application under this section. Before an application for the issuance, transfer, or alteration of a permit under 75-2-211 and 75-2-215 for a commercial medical waste or commercial hazardous waste incinerator may be approved, the applicant and each principal with respect to the applicant shall submit to the department a disclosure statement containing the following information:

(a) the name, business address, and social security number of the applicant and each principal;

(b) a description of any civil and administrative complaint filed within 5 years before the date of the application against the applicant or a principal for the violation of an environmental protection law and whether the complaint resulted in a civil or administrative penalty;

(c) a description of all judgments of criminal conviction entered against the applicant or a principal for the violation of an environmental protection law within 5 years before the date of the application; and

(d) a description of all judgments of criminal conviction entered against the applicant or a principal for the violation of an environmental protection law within 5 years before the date of the application in another state that resulted from the operation of a medical waste incinerator or a commercial hazardous waste incinerator. For the purposes of this subsection (d), an

environmental protection law of another state means a law or administrative rule adopted pursuant to a law regulating solid or hazardous waste or underground storage tanks or protecting the air or water resource.

(2) A disclosure statement, as required in subsection (1), must be executed under oath or affirmation and is subject to the penalty for perjury. The department may verify and investigate the information contained in a statement required under this section.

(3) A person required to file a disclosure statement under this section shall provide assistance or information requested by the department that is related to the statement and shall cooperate in an inquiry or investigation conducted by the department under subsection (2).

History: En. Sec. 5, Ch. 639, L. 1993.

75-2-233. Denial or modification of permit — mitigating factors. (1) The department may deny an application for the issuance, transfer, or alteration of a permit under 75-2-211 and 75-2-215 for a commercial medical waste or commercial hazardous waste incinerator or impose additional conditions on a permit pursuant to subsection (2) if within 5 years before the date of the application:

(a) a judgment of criminal conviction of an environmental protection law has been entered against the applicant or a principal;

(b) a civil or administrative complaint for a violation of an environmental protection law has resulted in the assessment of a penalty against the applicant or a principal;

(c) the applicant or a principal has a history of repeated violations of environmental protection laws; or

(d) a judgment or criminal conviction for a violation described in 75-2-232(1)(d) has been entered against the applicant or a principal.

(2) As provided under subsection (1), the department may impose additional conditions on a permit related to permit length, inspections, monitoring, recordkeeping, and reporting.

(3) In making the decision to deny an application or to impose conditions on a permit pursuant to subsection (1), the department shall consider the following mitigating factors:

(a) the nature and gravity of the violation of environmental protection laws or violations described in 75-2-232(1)(d);

(b) the degree of culpability of the applicant or a principal;

(c) the applicant's or principal's cooperation with the state or federal agencies involved in the complaints and convictions referred to in 75-2-232; and

(d) the applicant's or principal's dissociation from other persons or entities convicted of acts referred to in 75-2-232.

History: En. Sec. 6, Ch. 639, L. 1993.

75-2-234. Registration. The board may adopt rules for the registration of certain classes of sources of air contaminants in lieu of a permit application required under 75-2-211(2).

History: En. Sec. 7, Ch. 231, L. 2003.

Part 3
Local Air Pollution Control

75-2-301. Local air pollution control programs — consistency with state and federal regulations — procedure for public notice and comment required. (1) After public hearing, a municipality or county may establish and administer a local air pollution control program if the program is consistent with this chapter and is approved by the board.

(2) If a local air pollution control program established by a county encompasses all or part of a municipality, the county and each municipality shall approve the program in accordance with subsection (1).

(3) (a) Except as provided in subsection (5), the board by order may approve a local air pollution control program that:

(i) subject to subsection (4), provides by rule, ordinance, or local law for requirements compatible with, more stringent than, or more extensive than those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212, 75-2-215, 75-2-217 through 75-2-219, and 75-2-402 and rules adopted under these sections;

(ii) provides for the enforcement of requirements established under subsection (3)(a)(i) by appropriate administrative and judicial processes; and

(iii) provides for administrative organization, staff, financial resources, and other resources necessary to effectively and efficiently carry out the program. As part of meeting these requirements, a local air pollution control program may administer the permit fee provisions of 75-2-220. The permit fees collected by a local air pollution control program must be deposited in a county special revenue fund to be used by the local air pollution control program for administration of permitting activities.

(b) Board approval of a rule, ordinance, or local law that is more stringent than the comparable state law is subject to the provisions of subsection (4).

(4) (a) A local air pollution control program may, subject to approval by the board, adopt a rule, ordinance, or local law to implement this chapter that is more stringent than comparable state or federal regulations or guidelines only if:

(i) a public hearing is held;

(ii) public comment is allowed; and

(iii) the board or the local air pollution control program makes a written finding after the public hearing and comment period that is based on evidence in the record that the proposed local standard or requirement:

(A) protects public health or the environment of the area;

(B) can mitigate harm to the public health or the environment; and

(C) is achievable with current technology.

(b) The written finding required under subsection (4)(a)(iii) must reference information and peer-reviewed scientific studies contained in the record that form the basis for the board's or the local air pollution control program's conclusion. The written finding must also include information from the hearing record regarding costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(c) (i) A person or entity affected by a rule, ordinance, or local law approved or adopted after January 1, 1996, and before May 1, 2001, that the person or entity believes is more stringent than comparable state or federal regulations or guidelines may petition the board or the local air pollution control program to review the rule, ordinance, or local law.

(ii) If the board or local air pollution control program determines that the rule, ordinance, or local law is more stringent than state or federal regulations or guidelines, the board or local air pollution control program shall either revise the rule, ordinance, or local law to conform to the state or federal regulations or guidelines or follow the process provided in subsections (4)(a) and (4)(b) within a reasonable period of time, not to exceed 6 months after receiving the petition.

(5) Except for those emergency powers provided for in 75-2-402, the board may not delegate to a local air pollution control program the authority to control any air pollutant source that:

(a) requires the preparation of an environmental impact statement in accordance with Title 75, chapter 1, part 2;

(b) is subject to regulation under the Montana Major Facility Siting Act, as provided in Title 75, chapter 20; or

(c) has the potential to emit 250 tons a year or more of any pollutant subject to regulation under this chapter, including fugitive emissions, unless the authority to control the source was delegated to a local air pollution control program prior to January 1, 1991.

(6) If the board finds that the location, character, or extent of particular concentrations of population, air pollutant sources, or geographic, topographic, or meteorological considerations or any combination of these make impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the board may determine the boundaries within which the program is necessary and require it as the only acceptable alternative to direct state administration.

(7) If the board has reason to believe that any part of an air pollution control program in force under this section is either inadequate to prevent and control air pollution in the jurisdiction to which the program relates or is being administered in a manner inconsistent with this chapter, the board shall, on notice, conduct a hearing on the matter.

(8) If, after the hearing, the board determines that any part of the program is inadequate to prevent and control air pollution in the jurisdiction to which it relates or that it is not accomplishing the purposes of this chapter, it shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

(9) If the jurisdiction fails to take these measures within the time required, the department shall administer within that jurisdiction all of the provisions of this chapter, including the terms contained in any applicable board order, that are necessary to correct the deficiencies found by the board. The department's control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements in the affected jurisdiction. The cost of the department's action is a charge on the jurisdiction.

(10) If the board finds that the control of a particular air pollutant source because of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and economically performed at the state level, it may direct the department to assume and retain control over that air pollutant source. A charge may not be assessed against the jurisdiction. Findings made under this subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(11) A jurisdiction in which the department administers all or part of its air pollution control program under subsection (9) may, with the approval of the board, establish or resume an air pollution control program that meets the requirements of subsection (3).

(12) A municipality or county may administer all or part of its air pollution control program in cooperation with one or more municipalities or counties of this state or of other states.

(13) Local air pollution control programs established under this section shall provide procedures for public notice, public hearing, public comment, and appeal for any proposed new or revised rules, ordinances, or local laws adopted pursuant to this section. The procedures must comply with the following requirements:

(a) The local air pollution control program shall create and maintain a list of interested persons who wish to be informed of actions related to rules, ordinances, or local laws adopted by the local air pollution control program.

(b) At least 30 days prior to the adoption, revision, or repeal of a rule, ordinance, or law, the local air pollution control program shall give written notice of its intended action.

(c) The notice required under subsection (13)(b) must include:

(i) a statement of the terms or substance of the intended action or a description of the subjects and issues affected by the intended action;

(ii) an explanation of the procedure for a person to be included on the list of interested persons established pursuant to subsection (13)(a);

(iii) an explanation of the procedures and deadlines for presentation of oral or written comments related to the intended action;

(iv) an explanation of the process for requesting a public hearing as provided in subsection (13)(f); and

(v) the rationale for the intended action. The rationale must:

(A) include an explanation of why the intended action is reasonably necessary to implement the goals and purposes of the local air pollution control program;

(B) specifically address those intended actions for which there are no similar state or federal regulations or guidelines; and

(C) be written in plain, easily understood language.

(d) For the purposes of subsection (13)(c)(v), a statement of authority to adopt a rule, ordinance, or local law does not, standing alone, constitute a showing of reasonable necessity for the intended action.

(e) The local air pollution control program shall mail a copy of the proposed rule, ordinance, or local law to all interested persons on the list established pursuant to subsection (13)(a) who have made timely requests to be included on the list.

(f) If at least 10 of the persons who will be directly affected by the proposed rule, ordinance, or local law request a public hearing, the local air pollution control program shall hold a hearing to hear comments from the public on the intended action.

(g) The local air pollution control program shall prepare a written response to all comments submitted in writing or presented at the public hearing for consideration prior to adoption, revision, or repeal of the proposed rule, ordinance, or local law.

(h) A person who submits a written comment on a proposed action or who attends a public hearing in regard to a proposed action must be informed of the final action.

History: En. Sec. 16, Ch. 313, L. 1967; amd. Sec. 23, Ch. 349, L. 1974; R.C.M. 1947, 69-3919; amd. Sec. 5, Ch. 560, L. 1979; amd. Sec. 1, Ch. 141, L. 1991; amd. Sec. 19, Ch. 502, L. 1993; amd. Sec. 8, Ch. 471, L. 1995; amd. Sec. 2, Ch. 536, L. 2001.

Cross-References

Montana Administrative Procedure Act — legislative review of rules — application, Title 2, ch. 4.

State regulations no more stringent than federal regulations or guidelines, 75-2-207.

75-2-302. State and federal aid. (1) Any local air pollution control program meeting the requirements of this chapter and rules made pursuant thereto shall be eligible for state aid in an amount up to 30% of the locally funded annual operating cost thereof.

(2) Federal aid granted to the state for developing or maintaining a local air pollution control program that is subsequently granted to a local program is not considered state aid.

(3) Subdivisions of the state may make application for, receive, administer, and expend any federal aid for the control of air pollution or the development and administration of programs related to air pollution control, provided the program is currently approved by the board under 75-2-301.

History: En. Sec. 17, Ch. 313, L. 1967; R.C.M. 1947, 69-3920; amd. Sec. 2, Ch. 141, L. 1991.

Part 4
Enforcement, Appeal, and Penalties

75-2-401. Enforcement — notice — order for corrective action — administrative penalty. (1) When the department believes that a violation of this chapter, a rule adopted under this chapter, or a condition or limitation imposed by a permit issued pursuant to this chapter has occurred, it may cause written notice to be served personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this chapter, the rule, or the permit condition or limitation alleged to be violated and the facts alleged to constitute a violation. The notice may include an order to take necessary corrective action within a reasonable period of time stated in the order or an order to pay an administrative penalty, or both. The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing.

(2) If, after a hearing held under subsection (1), the board finds that violations have occurred, it shall issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action or assess an administrative penalty, or both. As appropriate, an order issued as part of a notice or after a hearing may prescribe the date by which the violation must cease; time limits for particular action in preventing, abating, or controlling the emissions; or the date by which the administrative penalty must be paid. If, after a hearing on an order contained in a notice, the board finds that a violation has not occurred or is not occurring, it shall rescind the order.

(3) (a) An action initiated under this section may include an administrative civil penalty of not more than $10,000 for each day of each violation, not to exceed a total of $80,000. If an order issued by the board under this section requires the payment of an administrative civil penalty, the board shall state findings and conclusions describing the basis for its penalty assessment.

(b) Administrative penalties collected under this section must be deposited in the alternative energy revolving loan account established in 75-25-101.

(c) Penalties imposed by an administrative order under this section may not be assessed for any day of violation that occurred more than 2 years prior to the issuance of the initial notice and order by the department under subsection (1).

(d) In determining the amount of penalty to be assessed for an alleged violation under this section, the department or board, as appropriate, shall consider the penalty factors in 75-1-1001.

(e) The department may bring a judicial action to enforce a final administrative order issued pursuant to this section. The action must be filed in the district court of the county in

which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.

(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing conducted under this section.

(5) Instead of issuing the order provided for in subsection (1), the department may either:

(a) require that the alleged violators appear before the board for a hearing at a time and place specified in the notice and answer the charges complained of; or

(b) initiate action under 75-2-412 or 75-2-413.

(6) This chapter does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

(7) In connection with a hearing held under this section, the board may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of the parties.

History: En. Sec. 11, Ch. 313, L. 1967; amd. Sec. 20, Ch. 349, L. 1974; amd. Sec. 6, Ch. 140, L. 1977; R.C.M. 1947, 69-3914; amd. Sec. 6, Ch. 560, L. 1979; amd. Sec. 1, Ch. 218, L. 1983; amd. Sec. 5, Ch. 502, L. 1993; amd. Sec. 21, Ch. 591, L. 2001; amd. Sec. 5, Ch. 487, L. 2005.

Cross-References

Montana Administrative Procedure Act — contested cases — application, Title 2, ch. 4, part 6.

Montana Administrative Procedure Act — judicial review of agency action, Title 2, ch. 4, part 7.

75-2-402. Emergency procedure. (1) Any other law to the contrary notwithstanding, if the department finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the department shall order persons causing or contributing to the air pollution to immediately reduce or discontinue the emission of air contaminants. Upon issuance of this order, the department shall fix a place and time within 24 hours for a hearing to be held before the board. Within 24 hours after the commencement of the hearing and without adjournment, the board shall affirm, modify, or set aside the order of the department.

(2) In the absence of a generalized condition such as that referred to in subsection (1), if the department finds that emissions from the operation of one or more air contaminant sources are causing imminent danger to human health or safety, it may order the person responsible for the operation in question to reduce or discontinue emissions immediately, without regard for 75-2-401. In this event, the requirements for hearing and affirmance, modification, or setting aside of orders as provided in subsection (1) apply.

(3) This section does not limit any power which the governor or any other officer may have to declare an emergency and act on the basis of this declaration, whether the power is conferred by statute or constitutional provisions or inheres in the office.

(4) Nothing in 75-2-205 may be construed to require a hearing before the issuance of an emergency order pursuant to this section.

History: (1) thru (3)En. Sec. 12, Ch. 313, L. 1967; amd. Sec. 21, Ch. 349, L. 1974; amd. Sec. 7, Ch. 140, L. 1977; Sec. 69-3915, R.C.M. 1947; (4)En. Sec. 14, Ch. 313, L. 1967; amd. Sec. 9, Ch. 140, L. 1977; Sec. 69-3917, R.C.M. 1947; R.C.M. 1947, 69-3915, 69-3917(2).

Cross-References

Declaration of emergency — authority of Governor, 10-3-104.

Local emergency — declaration, 10-3-402.

Energy emergencies — suspension of controls by Governor, 90-4-310.

75-2-403. Inspections. (1) The department or an authorized representative, for the purpose of ascertaining the state of compliance with this chapter or a rule, order, or permit in force under this chapter, may enter and inspect, at any reasonable time, any property, premises, or place, except a private residence, on or at which:

(a) an air contaminant source is located or is being constructed or installed;

(b) an emissions-related activity is conducted, such as air contaminant emissions or ambient concentration sampling, testing, or monitoring, or an activity in which samples are gathered, processed, or stored; or

(c) records are kept as required under this chapter or a rule, order, or permit made or issued under this chapter, for the purpose of inspecting those records. The authority granted under this subsection (c) does not limit the department's right to inspect any property, premises, or place,

except a private residence, under subsections (1)(a) and (1)(b) if records are also kept at those sites.

(2) A person may not refuse entry or access to an authorized representative of the department who presents appropriate credentials when the department requests entry for purposes of inspection. A person may not obstruct, hamper, or interfere with an inspection.

(3) The department or an authorized representative must be provided access and must be allowed to copy, at reasonable times, any record that is required to be kept under this chapter or a rule, order, or permit made or issued under this chapter.

(4) The department or an authorized representative may inspect, at reasonable times, any facility, equipment, practices, or operations regulated or required under this chapter or a rule, order, or permit made or issued under this chapter.

(5) The department or an authorized representative must be allowed to sample or monitor, at reasonable times, substances or parameters for the purpose of ensuring compliance with the provisions of this chapter or a rule, order, or permit made or issued under this chapter.

(6) At the owner's or operator's request, the owner or operator of the premises shall receive a report stating all facts found that relate to compliance status.

(7) Inspections under this section must be conducted in compliance with all applicable federal or state rules or requirements for workplace safety and with all source-specific facility workplace safety rules or requirements. The source shall inform the inspector of all applicable workplace safety rules or requirements at the time of the inspection.

History: En. Sec. 9, Ch. 313, L. 1967; amd. Sec. 19, Ch. 349, L. 1974; amd. Sec. 5, Ch. 140, L. 1977; R.C.M. 1947, 69-3912; amd. Sec. 2, Ch. 218, L. 1983; amd. Sec. 2, Ch. 85, L. 1995.

Cross-References

Searches and seizures — right of private individuals to be secure, Art. II, sec. 11, Mont. Const.

75-2-404 through 75-2-410 reserved.

75-2-411. Judicial review. (1) A person aggrieved by an order of the board or local control authority may apply for rehearing upon one or more of the following grounds and upon no other grounds:

(a) the board or local control authority acted without or in excess of its powers;

(b) the order was procured by fraud;

(c) the order is contrary to the evidence;

(d) the applicant has discovered new evidence, material to the applicant, that the applicant could not with reasonable diligence have discovered and produced at the hearing; or

(e) competent evidence was excluded to the prejudice of the applicant.

(2) The petition must be in a form and filed at a time that the board prescribes.

(3) (a) Within 30 days after the application for rehearing is denied or, if the application is granted, within 30 days after the decision on the rehearing, an aggrieved party may appeal to the district court of the judicial district of the state that is the situs of property affected by the order.

(b) The appeal must be taken by serving a written notice of appeal upon the presiding officer of the board. Service must be made by the delivery of a copy of the notice to the presiding officer and by filing the original with the clerk of the court to which the appeal is taken. Immediately after service upon the board, the board shall certify to the district court the entire record and proceedings, including all testimony and evidence taken by the board. Immediately upon receiving the certified record, the district court shall fix a day for filing of briefs and hearing arguments on the cause and shall cause a notice of the dates to be served upon the board and the appellant.

(c) The court shall hear and decide the cause upon the record of the board. The court shall determine whether or not the board regularly pursued its authority, whether or not the findings of the board were supported by substantial competent evidence, and whether or not the board made errors of law prejudicial to the appellant.

(4) Either the board or the person aggrieved may appeal from the decision of the district court to the supreme court. The proceedings before the supreme court must be limited to a review of the record of the hearing before the board and of the district court's review of that record.

History: En. Sec. 14, Ch. 313, L. 1967; amd. Sec. 9, Ch. 140, L. 1977; R.C.M. 1947, 69-3917(3) thru (5); amd. Sec. 2492, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Montana Administrative Procedure Act — judicial review, Title 2, ch. 4, part 7.

75-2-412. Criminal penalties — injunction preserved. (1) A person is guilty of an offense under this section if that person knowingly:

(a) violates a provision of this chapter or a rule, order, or permit made or issued under this chapter;

(b) makes a false material statement, representation, or certification on a form required under this chapter or in a notice or report required by a permit under this chapter; or

(c) renders inaccurate a monitoring device or method required under this chapter.

(2) A person guilty of an offense under subsection (1) is subject to a fine of not more than $10,000 per violation or imprisonment for a period not to exceed 2 years, or both. This offense must be classified as a misdemeanor. Each day of each violation constitutes a separate violation.

(3) Fines collected under this section, except fines collected by an approved local air pollution control program, must be deposited in the state general fund.

(4) Action under this section is not a bar to enforcement of this chapter or of a rule, order, or permit made or issued under it by injunction or other appropriate civil or administrative remedy. The department may institute and maintain in the name of the state any enforcement proceedings.

History: En. Sec. 18, Ch. 313, L. 1967; amd. Sec. 24, Ch. 349, L. 1974; R.C.M. 1947, 69-3921(1) thru (3), (5); amd. Sec. 3, Ch. 218, L. 1983; amd. Sec. 42, Ch. 557, L. 1987; amd. Sec. 6, Ch. 502, L. 1993.

Cross-References

Injunctions — Supreme Court jurisdiction, 3-2-205.
Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.
Injunctions, Title 27, ch. 19.
Execution of fine, 46-19-102.

75-2-413. Civil penalties — venue — effect of action — presumption of continuing violation under certain circumstances. (1) (a) A person who violates any provision of this chapter, a rule adopted under this chapter, or any order or permit made or issued under this chapter is subject to a civil penalty not to exceed $10,000 for each violation. Each day of each violation constitutes a separate violation. The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil penalty is in lieu of the criminal penalty provided for in 75-2-412, except for civil penalties for violation of the operating permit program required by Subchapter V of the federal Clean Air Act.

(b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty factors in 75-1-1001.

(2) (a) Action under subsection (1) is not a bar to enforcement of this chapter or of a rule, order, or permit made or issued under this chapter by injunction or other appropriate civil remedies.

(b) An action under subsection (1) or to enforce this chapter or a rule, order, or permit made or issued under this chapter may be brought in the district court of any county where a violation occurs or is threatened or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.

(3) If the department has notified a person operating a commercial hazardous waste incinerator of a violation and if the department makes a prima facie showing that the conduct or events giving rise to the violations are likely to have continued or recurred past the date of notice, the days of violation are presumed to include the date of the notice and every day after the notice until the person establishes that continuous compliance has been achieved. This presumption may be overcome to the extent that the person operating a commercial hazardous waste incinerator can prove by a preponderance of evidence that there were intervening days when a violation did not occur, that the violation was not continuing in nature, or that the telemetering device was compromised or otherwise tampered with.

(4) Money collected under this section must be deposited in the alternative energy revolving loan account established in 75-25-101. This subsection does not apply to money collected by an approved local air pollution control program.

History: En. 69-3921.1 by Sec. 1, Ch. 98, L. 1975; amd. Sec. 2, Ch. 308, L. 1977; R.C.M. 1947, 69-3921.1; amd. Sec. 16, Ch. 560, L. 1979; amd. Sec. 4, Ch. 218, L. 1983; amd. Sec. 7, Ch. 502, L. 1993; amd. Sec. 3, Ch. 85, L. 1995; amd. Sec. 3, Ch. 498, L. 1995; amd. Sec. 22, Ch. 591, L. 2001; amd. Sec. 6, Ch. 487, L. 2005.

Cross-References

Duties related to state matters, 7-4-2716.

Injunctions, Title 27, ch. 19.

75-2-414 through 75-2-420 reserved.

75-2-421. Persons subject to noncompliance penalties — exemptions. (1) Except as provided in subsection (2), the department may assess and collect a noncompliance penalty from any person who owns or operates:

(a) a stationary source (other than a primary nonferrous smelter that has received a nonferrous smelter order under 42 U.S.C. 7419) that is not in compliance with any emission limitation specified in an order of the board, emission standard, or compliance schedule under the state implementation plan approved by the federal environmental protection agency;

(b) a stationary source that is not in compliance with an emission limitation, emission standard, standard of performance, or other requirement under this chapter or 42 U.S.C. 7411, 7412, 7477, or 7603;

(c) a stationary source that is not in compliance with any other requirement under this chapter or any requirement of Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.; or

(d) any source referred to in subsections (1)(a), (1)(b), or (1)(c) that has been granted an exemption, extension, or suspension under subsection (2) or that is covered by a compliance order, or a primary nonferrous smelter that has received a primary nonferrous smelter order under 42 U.S.C. 7419, if that source is not in compliance with any interim emission control requirement or schedule of compliance under the extension, order, or suspension.

(2) Notwithstanding the requirements of subsection (1), the department may, after notice and opportunity for a public hearing, exempt any source from the requirements of 75-2-421 through 75-2-429 with respect to a particular instance of noncompliance that:

(a) the department finds is de minimis in nature and in duration;

(b) is caused by conditions beyond the reasonable control of the source and is of no demonstrable advantage to the source; or

(c) is exempt under 42 U.S.C. 7420(a)(2)(B) of the federal Clean Air Act.

(3) Any person who is jointly or severally adversely affected by the department's decision may request, within 15 days after the department renders its decision, upon affidavit setting forth the grounds for it, a hearing before the board. A hearing must be held under the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

History: En. Sec. 7, Ch. 560, L. 1979; amd. Sec. 8, Ch. 502, L. 1993.

Cross-References

Montana Administrative Procedure Act — hearing, 2-4-612.

75-2-422. Amount of noncompliance penalty — late charge. (1) The amount of the penalty which shall be assessed and collected with respect to any source under 75-2-421 through 75-2-429 shall be equal to:

(a) the amount determined in accordance with the rules adopted by the board, which shall be no less than the economic value which a delay in compliance after July 1, 1979, may have for the owner of such source, including the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period not to exceed 10 years, operation and maintenance costs foregone as a result of noncompliance, and any additional economic value which such a delay may have for the owner or operator of such source; minus

(b) the amount of any expenditure made by the owner or operator of that source during any such quarter for the purpose of bringing that source into and maintaining compliance with such requirement, to the extent that such expenditures have not been taken into account in the calculation of the penalty under subsection (1)(a).

(2) To the extent that any expenditure under subsection (1)(b) made during any quarter is not subtracted for such quarter from the costs under subsection (1)(a), such expenditure may be subtracted for any subsequent quarter from such costs. In no event may the amount paid be less than the quarterly payment minus the amount attributed to actual cost of construction.

(3) If the owner or operator of any stationary source to whom notice is issued under 75-2-425 does not submit a timely petition under 75-2-425(2)(b) or submits a petition which is denied and if the owner or operator fails to submit a calculation of the penalty assessment, a schedule for payment, and the information necessary for independent verification thereof, the department may enter into a contract with any person who has no financial interest in the matter to assist in determining the amount of the penalty assessment or payment schedule with respect to such source. The cost of carrying out such contract may be added to the penalty to be assessed against the owner or operator of such source.

(4) Any person who fails to pay the amount of any penalty with respect to any source under 75-2-421 through 75-2-429 on a timely basis shall be required to pay in addition a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be equal to 20% of the aggregate amount of such person's penalties and nonpayment penalties with respect to such source which are unpaid as of the beginning of such quarter.

History: En. Sec. 8, Ch. 560, L. 1979.

Cross-References

Montana Administrative Procedure Act — rulemaking, Title 2, ch. 4, part 2.

75-2-423. Manner of making payment. (1) The assessed penalty required under 75-2-421 through 75-2-429 shall be paid in quarterly installments for the period of covered noncompliance. All quarterly payments, determined without regard to any adjustment or any subtraction under 75-2-422(1)(b), after the first payment shall be equal.

(2) The first payment shall be due on the date 6 months after the date of issuance of the notice of noncompliance under 75-2-425 with respect to any source. Such first payment shall be in the amount of the quarterly installment for the upcoming quarter, plus the amount owed for any preceding period within the period of covered noncompliance for such source.

(3) For the purpose of this section, the term "period of covered noncompliance" means the period which begins on the date of issuance of the notice of noncompliance under 75-2-425 and ends on the date on which such source comes into or, for the purpose of establishing the schedule of payments, is estimated to come into compliance with such requirement.

History: En. Sec. 9, Ch. 560, L. 1979.

75-2-424. Adjustment of fee. (1) The department shall adjust from time to time the amount of the penalty assessment calculated or the payment schedule proposed by such owner or operator under 75-2-425(2)(a) if the department finds after notice and opportunity for a hearing on the record that the penalty or schedule does not meet the requirements of 75-2-421 through 75-2-429.

(2) Upon making a determination that a source with respect to which a penalty has been paid under 75-2-421 through 75-2-429 is in compliance and is maintaining compliance with the applicable requirement, the department shall review the actual expenditures made by the owner or operator of such source for the purpose of attaining and maintaining compliance and shall make a final adjustment within 180 days after such source comes into compliance and:

(a) provide reimbursement with interest to be paid by the state at appropriate prevailing rates for overpayment by such person; or

(b) assess and collect an additional payment with interest at appropriate prevailing rates for any underpayment by such person.

History: En. Sec. 10, Ch. 560, L. 1979.

Cross-References

Montana Administrative Procedure Act — contested cases — hearing procedure, Title 2, ch. 4, part 6.

75-2-425. Notice of noncompliance — challenge. (1) The department shall give a brief but reasonably specific notice of noncompliance to each person who owns or operates a source subject to 75-2-421(1) which is not in compliance as provided in that subsection, within 30 days after the department has discovered the noncompliance.

(2) Each person to whom notice has been given pursuant to subsection (1) shall:

(a) calculate the amount of penalty owed (determined in accordance with 75-2-422(1)) and the schedule of payments (determined in accordance with 75-2-423) for each source and, within 45 days after issuance of the notice of noncompliance, submit that calculation and proposed schedule, together with the information necessary for an independent verification thereof, to the department; or

(b) submit to the board a petition within 45 days after the issuance of such notice, challenging such notice of noncompliance or alleging entitlement to an exemption under 75-2-421(2) with respect to a particular source.

(3) Each person to whom notice of noncompliance is given shall pay the department the amount determined under 75-2-422 as the appropriate penalty unless there has been a final determination granting a petition filed pursuant to subsection (2)(b).

History: En. Sec. 11, Ch. 560, L. 1979.

Cross-References

Montana Administrative Procedure Act — contested cases — hearing procedure, Title 2, ch. 4, part 6.

75-2-426. Hearing on challenge. (1) The board shall provide a hearing on the record and make a decision (including findings of fact and conclusions of law) not later than 90 days after the receipt of any petition under 75-2-425(2)(b) with respect to such source.

(2) If the petition is denied, the petitioner shall submit the material required by 75-2-425(2)(a) to the department within 45 days of the date of decision.

History: En. Sec. 12, Ch. 560, L. 1979.

Cross-References

Montana Administrative Procedure Act — contested cases — applicability, Title 2, ch. 4, part 6.

75-2-427. Deposit of noncompliance penalty fees. All noncompliance penalties collected by the department pursuant to 75-2-421 through 75-2-429 shall be deposited in the state special revenue fund until a final determination and adjustment have been made as provided in 75-2-424 and amounts have been deducted by the department for costs attributable to implementation of 75-2-421 through 75-2-429 and for contract costs incurred pursuant to 75-2-422(3), if any. After a final determination has been made and additional payments or refunds have been made, the penalty money remaining shall be transferred to the state general fund.

History: En. Sec. 13, Ch. 560, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Fund structure, 17-2-102.

75-2-428. Effect of new standards on noncompliance penalty. In the case of any emission limitation, emission standard, or other requirement approved or adopted by the board under this chapter after July 1, 1979, and approved by the federal environmental protection agency as an amendment to the state implementation plan, which is more stringent than the emission limitation or requirement for the source in effect prior to such approval or promulgation, if any, or where there was no emission limitation, emission standard, or other requirement approved or adopted before July 1, 1979, the date for imposition of the noncompliance penalty under 75-2-421 through 75-2-429 shall be the date on which the source is required to be in full compliance with such emission limitation, emission standard, or other requirement or 3 years after the approval or promulgation of such emission limitation or requirement, whichever is sooner.

History: En. Sec. 14, Ch. 560, L. 1979.

75-2-429. Effect of noncompliance penalty on other remedies. (1) Any orders, payments, sanctions, or other requirements under 75-2-421 through 75-2-428 shall be in addition to any other permits, orders, payments, sanctions, or other requirements established under this chapter and shall in no way affect any civil or criminal enforcement proceedings brought under 75-2-412 or 75-2-413.

(2) The noncompliance penalties collected pursuant to 75-2-421 through 75-2-428 are intended to be cumulative and in addition to any other remedies, procedures, and requirements authorized by this chapter.

History: En. Sec. 15, Ch. 560, L. 1979.

Part 5
Asbestos Control

75-2-501. Short title. This part may be cited as the "Asbestos Control Act".
History: En. Sec. 1, Ch. 581, L. 1989.

75-2-502. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Accreditation" means a certificate issued by the department that permits a person to work in an asbestos-related occupation.

(2) "Asbestos" means asbestiform varieties of chrysotile, amosite, crocidolite, anthophyllite, tremolite, or actinolite.

(3) "Asbestos project" means the encapsulation, enclosure, removal, repair, renovation, placement in new construction, demolition of asbestos in a building or other structure, or the transportation or disposal of asbestos-containing waste. The term does not include a project that involves less than 3 square feet in surface area or 3 linear feet of pipe.

(4) "Asbestos-related occupation" means an inspector, management planner, project designer, contractor, supervisor, or worker for an asbestos project.

(5) "Department" means the department of environmental quality provided for in 2-15-3501.

(6) "Person" means an individual, partnership, corporation, sole proprietorship, firm, enterprise, franchise, association, state or municipal agency, political subdivision of the state, or any other entity.
History: En. Sec. 2, Ch. 581, L. 1989; amd. Sec. 179, Ch. 418, L. 1995.

75-2-503. Rulemaking authority — issuance of permits. (1) The department shall, subject to the provisions of 75-2-207, adopt rules establishing standards and procedures for accreditation of asbestos-related occupations and control of the work performed by persons in asbestos-related occupations. The rules must be consistent with federal law and include but are not limited to:

(a) standards for training course review and approval;

(b) standards for accreditation of applicants for asbestos-related occupations;

(c) examination requirements for accreditation of applicants for asbestos-related occupations;

(d) requirements for renewal of accreditation, including periodic refresher courses;

(e) revocation of accreditation;

(f) inspection requirements for asbestos projects and asbestos-related occupations credentials;

(g) criteria to determine whether and what type of control measures are necessary for an asbestos project and whether a project is completed in a manner sufficient to protect public health, including criteria setting allowable limits on indoor airborne asbestos. A determination of whether asbestos abatement of a structure is necessary may not be based solely upon the results of airborne asbestos testing.

(h) requirements for issuance of asbestos project permits and conditions that permitholders shall meet;

(i) standards for seeking injunctions, criminal and civil penalties, or emergency actions;

(j) advance notification procedures and issuance of permits for asbestos projects; and

(k) fees, which must be commensurate with costs, for:

(i) review and approval of training courses;

(ii) application for and renewal of accreditation by a person seeking to pursue an asbestos-related occupation;

(iii) issuance and administration of asbestos project permits, including annual asbestos project permits for facilities; and

(iv) requested inspections of asbestos projects.

(2) For asbestos projects having a cost of $3,000 or less, the department shall issue asbestos project permits within 7 calendar days following the receipt of a properly completed permit application and the appropriate fee.

History: En. Sec. 3, Ch. 581, L. 1989; amd. Sec. 51, Ch. 16, L. 1991; amd. Sec. 9, Ch. 471, L. 1995; amd. Sec. 1, Ch. 25, L. 2003.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

75-2-504. Facility permits. The department shall provide by rule a procedure for the issuance of an annual asbestos project permit to any facility that has an asbestos health and safety program meeting department criteria and that continuously employs accredited asbestos workers. This permit allows a facility to conduct asbestos projects within the confines of the facility's controlled area during the period for which the permit is in force. The provisions of this permit may not preclude state and federal requirements for asbestos project notification.

History: En. Sec. 4, Ch. 581, L. 1989; amd. Sec. 2, Ch. 25, L. 2003.

75-2-505 through 75-2-507 reserved.

75-2-508. Asbestos control account. (1) There is an asbestos control account in the state special revenue fund. There must be deposited in the account all money received from fees collected under this part.

(2) Funds in the account are allocated to the department for the purpose of funding the costs of implementing and operating the asbestos control program established under this part.

History: En. Sec. 1, Ch. 596, L. 1991; amd. Sec. 1, Ch. 293, L. 1999.

75-2-509 and 75-2-510 reserved.

75-2-511. Accreditation requirements — restrictions. (1) To qualify for accreditation in a particular asbestos-related occupation, a person must:

(a) (i) successfully complete an asbestos-related training course for that occupation approved by the department or the United States environmental protection agency; and

(ii) pass an examination approved by the department;

(b) satisfactorily demonstrate equivalent previous training or experience in the occupation as prescribed by department rule; or

(c) have successfully completed an asbestos-related training course for that occupation, approved by the United States environmental protection agency, during the time period immediately following the passage of this part and ending on December 31, 1989.

(2) After January 1, 1990, a person may not:

(a) engage in an asbestos-related occupation unless accredited in that occupation by the department;

(b) conduct an asbestos project without a permit from the department or violate the conditions of a permit;

(c) contract with or employ in an asbestos-related occupation a person not accredited in that occupation by the department; or

(d) offer a training course for an asbestos-related occupation to meet the accreditation requirements of this section unless the department approves the course.

(3) A person who applies for accreditation shall submit the fees and follow procedures prescribed by department rule.

History: En. Sec. 5, Ch. 581, L. 1989.

75-2-512. Repealed. Sec. 3, Ch. 596, L. 1991.

History: En. Sec. 6, Ch. 581, L. 1989.

75-2-513. Records. A person engaged in an asbestos project shall maintain the records required by department rule concerning the nature of project activities.

History: En. Sec. 7, Ch. 581, L. 1989.

75-2-514. Civil penalties — venue for actions to recover. (1) (a) A district court may assess a civil penalty of not more than $25,000 a day upon a person that violates any provision of this part, a rule adopted under this part, or a permit or order issued under this part. In the case of a continuing violation, each day the violation continues constitutes a separate violation.

(b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty factors in 75-1-1001.

(2) An action under this section is not a bar to enforcement by injunction or other appropriate civil or administrative remedies.

(3) Penalties provided for in subsection (1) are recoverable in an action brought by the department. The action must be filed in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.

History: En. Sec. 9, Ch. 581, L. 1989; amd. Sec. 2, Ch. 596, L. 1991; amd. Sec. 2, Ch. 293, L. 1999; amd. Sec. 7, Ch. 487, L. 2005.

75-2-515. Administrative enforcement. (1) The department may deny, suspend, or revoke the accreditation of a person that:

(a) fraudulently or deceptively obtains or attempts to obtain accreditation;

(b) fails to meet the qualifications for accreditation or fails to comply with the requirements of this part, a rule adopted under this part, or a permit or order issued under this part; or

(c) fails to meet an applicable federal or state standard for asbestos projects.

(2) When the department believes that a violation of this part, a rule adopted under this part, or a permit or order issued under this part has occurred, it may serve written notice of the violation personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this part or the rule, permit, or order alleged to be violated and the facts alleged to constitute a violation. The notice may include an order to take necessary corrective action within a reasonable period of time stated in the order, an order to pay an administrative civil penalty, or both. An order becomes final unless, within 30 days after the order is received, the person that has been named requests, in writing, a hearing before the board.

(3) On receipt of a hearing request, the board shall schedule a hearing. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to any hearing conducted under this section. If, after a hearing, the board finds that a violation has not occurred or is not occurring, it shall rescind the order.

(4) (a) An action initiated under this section may include an administrative civil penalty of not more than $10,000 for each day of each violation, not to exceed a total of $80,000. Any order issued by the department under this section requiring payment of an administrative civil penalty must specify the basis for the penalty assessment.

(b) A penalty may not be assessed under this section for any day of violation that occurred more than 3 years prior to the department issuing the order requiring payment of the penalty.

(c) In determining the amount of a penalty assessed to a person under this section, the department shall consider the penalty factors in 75-1-1001.

(5) In addition to or instead of issuing an order under subsection (2), the department may:

(a) require the alleged violator to appear before the board for a hearing at a time and place specified in the notice of hearing to answer the charges complained of; or

(b) initiate action under 75-2-514.

History: En. Sec. 3, Ch. 293, L. 1999; amd. Sec. 8, Ch. 487, L. 2005.

75-2-516. Criminal penalties. (1) A person convicted of purposely or knowingly violating any provision of this part, a rule adopted under this part, or a permit or order issued under this part is guilty of a misdemeanor.

(2) A prosecution under this section is not a bar to enforcement by injunction or other appropriate civil or administrative remedies.

History: En. Sec. 4, Ch. 293, L. 1999.

Cross-References

Injunctions, Title 27, ch. 19.

Misdemeanor penalty when none specified, 46-18-212.

75-2-517. Injunctions. The department may institute and maintain in the name of the state, actions for injunctive relief, as provided in Title 27, chapter 19, to:

(1) immediately restrain a person from engaging in an unauthorized activity that is endangering or causing damage to public health or the environment;

(2) enjoin a violation of this part, a rule adopted under this part, an order issued under this part, or a permit issued under this part, without the necessity of prior revocation of the permit; or

(3) require compliance with this part, a rule adopted under this part, or a permit or order issued under this part.

History: En. Sec. 5, Ch. 293, L. 1999.

Cross-References
Remedies for public nuisances, 27-30-202.

75-2-518. Inspections — sampling. (1) (a) At any reasonable time and upon presentation of credentials, an employee or agent of the department may enter upon and inspect any place at which:

(i) an asbestos project is being conducted;

(ii) asbestos-containing material from an asbestos project is stored; or

(iii) records pertinent to an asbestos project are maintained.

(b) The employee or agent of the department may have access to and may copy any records relating to an asbestos project for the purpose of enforcing the provisions of this part, rules adopted under this part, or a permit or order issued under this part.

(2) During an inspection under this section, the employee or agent of the department may take samples of any suspected asbestos-containing material, including samples from any vehicle in which asbestos-containing waste materials are transported. If the employee or agent of the department takes a sample of any suspected asbestos-containing material, prior to leaving the premises, the employee or agent shall give to the person in charge of the asbestos project a receipt describing the sample taken and, if requested, a portion of each sample equal in volume or weight to the portion retained. If an analysis is made of the samples, a copy of the results of the analysis must be furnished to the person in charge of the asbestos project.

History: En. Sec. 6, Ch. 293, L. 1999.

75-2-519. Cleanup orders. The department may issue a cleanup order to any person that has deposited asbestos-containing material or that has disturbed asbestos-containing material or that owns any property where the asbestos-containing material is located when the material poses an immediate threat to public health or the environment or is likely to pose a threat to public health or the environment in the immediate future. The order may direct the person to clean up and transport the asbestos-containing material to an authorized disposal facility, to treat the material so as to render it nonhazardous, or to take other necessary actions.

History: En. Sec. 7, Ch. 293, L. 1999.

Cross-References
Contested cases, Title 2, ch. 4, part 6.

CHAPTER 3
RADON CONTROL

Part 1 — General Provisions
(Renumbered)

Part 2 — Control of Radioactive Substances
(Renumbered)

Part 3 — Disposal of Large Quantities of Radioactive Material
(Renumbered)

Part 4 — Enforcement, Appeal, and Penalties
(Renumbered)

Part 5 — Northwest Interstate Compact on Low-Level Radioactive Waste Management
(Renumbered)

Part 6 — Montana Radon Control Act

Part 1
General Provisions
(Renumbered)

75-3-101. Renumbered 50-79-101. Sec. 13, Ch. 73, L. 1997.

75-3-102. Renumbered 50-79-102. Sec. 13, Ch. 73, L. 1997.

75-3-103. Renumbered 50-79-103. Sec. 13, Ch. 73, L. 1997.

75-3-104. Renumbered 50-79-104. Sec. 13, Ch. 73, L. 1997.

75-3-105. Renumbered 50-79-105. Sec. 13, Ch. 73, L. 1997.

75-3-106. Renumbered 50-79-106. Sec. 13, Ch. 73, L. 1997.

75-3-107. Renumbered 50-79-107. Sec. 13, Ch. 73, L. 1997.

75-3-108. Renumbered 50-79-108. Sec. 13, Ch. 73, L. 1997.

Part 2
Control of Radioactive Substances
(Renumbered)

75-3-201. Renumbered 50-79-201. Sec. 13, Ch. 73, L. 1997.

75-3-202. Renumbered 50-79-202. Sec. 13, Ch. 73, L. 1997.

75-3-203. Renumbered 50-79-203. Sec. 13, Ch. 73, L. 1997.

75-3-204. Renumbered 50-79-204. Sec. 13, Ch. 73, L. 1997.

Part 3
Disposal of Large Quantities of Radioactive Material
(Renumbered)

75-3-301. Renumbered 50-79-301. Sec. 13, Ch. 73, L. 1997.

75-3-302. Renumbered 50-79-302. Sec. 13, Ch. 73, L. 1997.

75-3-303. Renumbered 50-79-303. Sec. 13, Ch. 73, L. 1997.

75-3-304. Renumbered 50-79-304. Sec. 13, Ch. 73, L. 1997.

Part 4
Enforcement, Appeal, and Penalties
(Renumbered)

75-3-401. Renumbered 50-79-401. Sec. 13, Ch. 73, L. 1997.

75-3-402. Renumbered 50-79-402. Sec. 13, Ch. 73, L. 1997.

75-3-403. Renumbered 50-79-403. Sec. 13, Ch. 73, L. 1997.

75-3-404. Renumbered 50-79-404. Sec. 13, Ch. 73, L. 1997.

75-3-405. Renumbered 50-79-405. Sec. 13, Ch. 73, L. 1997.

75-3-406. Renumbered 50-79-406. Sec. 13, Ch. 73, L. 1997.

75-3-407. Renumbered 50-79-407. Sec. 13, Ch. 73, L. 1997.

75-3-408 and 75-3-409 reserved.

75-3-410. Renumbered 50-79-410. Sec. 13, Ch. 73, L. 1997.

Part 5
Northwest Interstate Compact on
Low-Level Radioactive Waste Management
(Renumbered)

75-3-501. Renumbered 50-79-501. Sec. 13, Ch. 73, L. 1997.

75-3-502. Renumbered 50-79-502. Sec. 13, Ch. 73, L. 1997.