



Montana Legislative Services Division

Legal Services Office

TO: Environmental Quality Council
FROM: Helen Thigpen
DATE: September 7, 2011
RE: Legislative Administrative Rule Review Report

Pursuant to 75-1-324 and 5-5-215, MCA, the Environmental Quality Council is responsible for reviewing administrative rules within its jurisdiction. Staff for the Environmental Quality Council has prepared this report for informational purposes only. This report does not represent any action or opinion of the Environmental Quality Council and does not preclude additional action that may be taken by the Environmental Quality Council pursuant to its authority under the Montana Administrative Procedure Act (Title 2, chapter 4, MCA).

MAR NOTICE NUMBER:

17-328

AGENCY/BOARD:

Department of Environmental Quality

RULE CLASSIFICATION: (e.g. substantive/interpretative/emergency/temporary)

Substantive

SUBJECT:

Underground Storage Tanks – Petroleum Mixing Zones – Senate Bill 9

NOTICE DESCRIPTION: (e.g. proposal notice/adoption notice)

Notice of public hearing on proposed amendment

SUMMARY OF RULE(S):

DEQ is proposing to adopt rules to implement Senate Bill 9, which authorizes a petroleum mixing zone to be used in a corrective action plan to correct a release that may have occurred from a petroleum storage tank.

SB 9 defines a “petroleum mixing zone” as an area where water quality standards for petroleum and petroleum constituents may be exceeded subject to certain conditions and restrictions.

Under SB 9, a “corrective action plan prepared by the owner, operator, or department for any petroleum storage tank release may include the establishment of a petroleum mixing zone”. The Petroleum Tank Release Compensation Board may request that a corrective action plan be amended to include a petroleum mixing zone.

The rules proposed by DEQ implement SB 9 and are summarized as follows:

- The proposed amendments to ARM 17.56.101 incorporate the term “petroleum mixing zone” into the definition section.
- The proposed amendments to ARM 17.56.605 provide a petroleum mixing zone as a cleanup alternative that may be selected by the tank owner or operator.
- The proposed amendments to ARM 17.56.607 are more extensive and set forth certain criteria for the resolution of a release with a petroleum mixing zone.
 - The amendments authorize DEQ to recategorize a “resolved with a petroleum mixing zone” release as active if DEQ has received information indicating that further corrective action is necessary. An example of information that may cause DEQ to recategorize a release is information pertaining to the “removal, alteration, or failure to maintain department-approved institutional controls, engineering controls, or physical conditions”.
 - The proposed amendments require DEQ to send a letter to the owner or operator describing the conditions and controls that must be maintained if the release is categorized as resolved (applies to all releases categorized as resolved). See ARM 17.56.607(6).
 - Proposed new subsection (10) sets forth the requirements that must be met before a release may be categorized as resolved with a petroleum mixing zone (i.e. the mixing zone cannot be located within 500 feet of an existing drinking water well or surface water and notice is placed on the deed).
 - Proposed new subsection (11) requires DEQ to send a “no further-action letter” to the owner or operator if DEQ categorizes a release as resolved with a petroleum mixing zone, which must describe the conditions for maintaining the petroleum mixing zone.
 - Proposed new subsection (12) allows institutional controls, engineering controls, physical conditions, and notices placed on deeds that are required to categorize a release as resolved with a mixing zone to be removed under certain circumstances.

This is summary of the rules proposed by DEQ to implement SB 9. There are additional amendments in the proposed rules that are not discussed here. Please see the hard copy of the rule notice for additional information.

NOTES: (e.g. hearing dates)

A hearing is scheduled on the above-referenced rules on September 28, 2011, at 10 a.m., at the Department of Environmental Quality, Room 122, 1100 North Last Chance Gulch, Helena, Montana.

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