

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

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| In the matter of the amendment) | NOTICE OF PUBLIC HEARING |
| of ARM 17.50.802, 17.50.803,) | ON PROPOSED AMENDMENT |
| 17.50.809, 17.50.811,) | |
| 17.50.812, 17.50.813 and) | (SEPTAGE CLEANING AND |
| 17.50.815 pertaining to) | DISPOSAL) |
| cesspool, septic tank and) | |
| privy cleaners) | |

TO: All Concerned Persons

1. On November 19, 2003, at 10:00 a.m., the Department of Environmental Quality will hold a public hearing in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., November 10, 2003, to advise us of the nature of the accommodation that you need. Please contact Pat Crowley, Community Services Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-5294; fax (406) 444-1374; or email pcrowley@state.mt.us.

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

17.50.802 DEFINITIONS In addition to the definitions in 75-10-1202, MCA, the following definitions apply in this subchapter:

(1) through (26) remain the same.

(27) "Privy" means a covered or uncovered facility for placement of non-water-carried toilet wastes where the wastes are discharged directly into a seepage pit without treatment in a septic tank or are discharged into a watertight vault.

(28) through (38) remain the same.

AUTH: ~~37-41-103~~, 75-10-1202, MCA

IMP: ~~Title 37, chapter 41, 75-10-1201~~, 75-10-1202, MCA

REASON: This amendment is needed to clarify that the term "privy" is the general term that includes all types of latrines, rather than only a specific type of latrine. The amendment clarifies that a portable toilet, which is defined as a "sealed pit privy" is included in the definition of "privy."

Section 37-41-103 and Title 37, chapter 41, MCA, are being deleted from the history note because the 1999 Legislature repealed Title 37, chapter 41, MCA. See Section 12, Chapter 378, Laws of 1999.

(n) certification by a local health officer or a the local health officer's designated representative that the proposed land application site meets all applicable state and local requirements; and

(o) the signature of the land owner, facility operator, or designated representative of the owner or operator, granting permission to use the site for land application, disposal, or treatment;

(p) a sketch or map showing the area available for land application after setback requirements are met, and the distance from the area to neighboring houses; and

(q) for land application sites, a certification by the land owner that the land owner is aware that:

(i) the use of the site or crops from the site may be restricted under the requirements of ARM 17.50.811;

(ii) the land application rate is limited by the rate at which septage may be land-applied as specified in ARM 17.50.809(12) and 17.50.816(6);

(iii) the operational practices for pathogen and vector attraction reduction in ARM 17.50.811 must be followed; and

(iv) the department, local health officer, or the local health officer's designated representative may inspect, and the land owner is required to allow inspection of, the land application site as provided in ARM 17.50.812.

(3) through (10) remain the same.

AUTH: 75-10-1202, MCA

IMP: 75-10-1202, 75-10-1211, 75-10-1212, MCA

REASON: The amendment of (1)(a), which requires that an applicant supply the applicant's full legal name, filed or registered organizational name, and federal tax identification number is necessary to allow the Department to have an accurate database. Licensees are given unique identification names by the Department and may hold a variety of different permits. This change would clearly identify which person or business was issued a license and would enable the Department to cross-reference all permits and approved activities. This proposed amendment would also make it easier for the Department to contact or correspond with an applicant or licensee, and would help the Department perform its compliance assistance and enforcement work.

The addition of (1)(f), which requires the annual reporting of the amount and kinds of pumpings applied to each land application site, is necessary for the Department to be able to calculate whether over-application is occurring. Since pumpings may be applied only at agronomic uptake rates to prevent the contamination of ground water, the amount of pumpings applied must be available for the Department to make the determination.

The addition of (1)(h), which requires inspection of vehicles by the local health officer or the local health officer's designated representative in the county where the business is located for proper spreading and screening equipment, is necessary to ensure that the licensee is properly

equipped to land-apply material in a manner protective of human health and the environment. Only one certification, obtained in the county of business location, would be required. This would reduce the need for a licensee or applicant to travel to all of the counties in which a licensee does business, but still assure the Department that the licensee has the proper equipment. The requirement that trucks be inspected prior to being placed in service allows for the licensees to change and upgrade equipment while ensuring that each vehicle is properly equipped.

The amendment of (2)(a), which requires that a property owner supply the owner's full legal name, the business name as filed or registered with the Montana Secretary of State, and federal tax identification number, if available, is necessary to allow the Department to have an accurate database. The Department gives sites unique identification names by place and property owner and a variety of different permits or approvals might exist at the site. This change would clearly identify the sites and would enable the Department to cross-reference all permits.

The amendment of (2)(m), which requires specific information on vector attraction and pathogen reduction and a listing of equipment the licensee uses to manage land-applied waste, is necessary for the Department to evaluate management practices for conformance with the rules and ensure that the licensee has the proper equipment to implement the practices. It would also enable the Department to evaluate whether grazing is restricted on a site, a key element during field inspections.

The addition of (2)(p), which specifies the content of a map or sketch that must accompany the application, is necessary because the map or sketch will inform the Department of the actual area available for land application and the location of nearby neighbors. These items are necessary so the Department can evaluate the acreage available for land application and calculate the amount of septage that may be applied to a site. They would also alert the Department to possible conflicting uses in the vicinity of the site and may dictate alternative management practices that may need to be followed either regularly or on a seasonal basis. For example, some sites may require alkali treatment to avoid odor impacts, have restrictions placed on them for the types of pumpings that can be placed on the site, or have restrictions imposed on site use during the winter.

The addition of (2)(q), which specifies that the owner of land application sites must certify the owner's awareness of crop, use, and access restrictions, and that inspections may occur, is necessary so that land owners are fully aware of the consequences of allowing land application. For example, pastures that receive septage that has not been alkali-stabilized may not be grazed for 30 days after application. Land owners must also be aware that the application rate is dependent upon crop nutrient requirements and that proper management techniques must be followed. This is necessary because many land owners provide tillage services and crop management for the licensees and they need to be aware of the

rule requirements. Because the Department or local health officers or representatives may inspect disposal sites, it is necessary to require an applicant or licensee to give the land owner notice and obtain the land owner's certification of awareness that the Department may inspect the land owner's property.

17.50.809 SPECIFIC SITE CRITERIA (1) A person may not apply pumpings to land within 500 feet of any occupied or inhabitable building.

(2) through (14) remain the same.

(15) The local health officer or the local health officer's designated representative may reject sites for proximity to neighbors or public water supplies, but in no case may a site be within 500 feet of an occupied or inhabitable building or within 100 feet of a drinking water source.

(16) The local health officer or the local health officer's designated representative may withdraw approval of previously approved sites due to changing land use patterns or the proximity to new drinking water sources or public water supplies.

AUTH: ~~37-41-103~~ 75-10-1202, MCA

IMP: ~~37-41-103~~ 75-10-1202, MCA

REASON: The proposed amendment to (1) would add the phrase "or inhabitable" after the word "occupied." This amendment is necessary to ensure that seasonally inhabited or uninhabited buildings that may subsequently become inhabited have the same setbacks as ones currently occupied. Many cabins are occupied only seasonally, and some buildings may be temporarily vacant. However, those residents should have the same health and environmental protection as residents of currently occupied buildings.

The addition of (15), which would allow a local health officer or a designated representative to reject a site for proximity to neighbors or public water supplies, is necessary because it would allow local authorities flexibility in site approval based on local conditions. Sites that would otherwise meet minimum Department criteria may not be acceptable from a local use point of view. Impacts to public water supplies would have a greater effect on more people than the possible impact to a single private well. Public water supplies are required to delineate source water protection zones. Land application in these zones could be a cause for concern to the users, and the local officials should have the ability to address these concerns.

The addition of (16), which would allow local authorities to withdraw site approval for changing land use patterns or the proximity to new drinking water sources or public water supplies, is necessary to account for changes that may occur in the future surrounding a previously acceptable site. Land use patterns in Montana can change rapidly from year to year. A site that was once acceptable due to its remote location could

become surrounded by subdivisions. The proposed addition would make explicit the authority of local officials to withdraw approval from previously approved sites. This proposed addition would leave the power of site approval or withdrawal at the local level.

17.50.811 OPERATION AND MAINTENANCE REQUIREMENTS FOR LAND APPLICATION OR INCORPORATION OF SEPTAGE (1) through (8) remain the same.

(9) A person applying septage to land shall first screen the septage to remove non-putrescible wastes and shall dispose of the non-putrescible wastes in a Class II solid waste management facility licensed in accordance with 75-10-221, MCA.

(10) A person applying septage to land shall apply it with a spreader bar, splash plate, or other dispersive mechanism approved by the department.

AUTH: 75-10-204, 75-10-1202, MCA

IMP: 75-10-204, 75-10-1202, MCA

REASON: The proposed addition of (9) and (10) would require a licensee to screen septage prior to land application to remove wastes that do not decompose and to apply the wastes in a dispersed manner by using a splash plate or spreader bar. The additions are necessary to address two of the most significant causes for complaints at septage land application sites - litter and the application of wastes in a narrow stream directly from the truck. The use of a screen to remove litter from septage and the use of a splash plate is recommended by the USEPA in its publication, "Process Design Manual, Land Application of Sewage Sludge and Domestic Septage" p. 136 (EPA/625/R-95/001). The application of septage in a narrow band suppresses vegetative growth in pastures, at least temporarily, whereas spread septage does not have the same effect and makes nitrogen available for immediate plant use.

17.50.812 INSPECTIONS AND ENFORCEMENT (1) remains the same.

(2) The department and local health officer or the local health officer's designated representative may inspect disposal sites and appropriate records to determine if a violation of Title 75, chapter 10, part 12, MCA, or this subchapter is occurring or has occurred.

(3) Applicants, licensees and owners of disposal sites shall allow inspections conducted under this rule.

AUTH: 75-10-204, 75-10-205, 75-10-1222, MCA

IMP: 75-10-204, 75-10-1211, 75-10-1220, 75-10-1222, MCA

REASON: The addition of the phrase "and local health officer or the local health officer's designated representative" to (2) makes explicit that the local health officer or the local health officer's designated representative also have the authority, along with the Department, to inspect active disposal

sites and records for compliance. This is necessary because the local health departments have primary responsibility for local health matters and provide the Department with the ability to respond quickly to possible problems by using a local person. This would provide the citizens with better protection for human health and the environment.

ARM 17.50.812 contains the authorization for the Department and local health officers or local health officer's designated representatives to inspect disposal sites and records, and the Department is proposing to add a requirement to ARM 17.50.812 that applicants, licensees, and owners allow inspections. The Department is proposing to delete existing ARM 17.50.813(3), which concerns the duty of licensees to make records available for inspection, because ARM 17.50.813 concerns recordkeeping requirements, not inspections. The Department believes it is more appropriate to have the provision concerning inspections of records located in ARM 17.50.812 rather than ARM 17.50.813.

The addition of (3) requires that the licensee and owner of disposal sites allow inspections. This is necessary to explicitly require licensees to allow the Department or local health officials to inspect records and sites so they may ascertain whether an applicant, licensee or land owner of a disposal site is complying with the laws and rules.

17.50.813 RECORDKEEPING REQUIREMENTS (1) through (2) remain the same.

~~(3) Licensees shall make the records required in this rule available for inspection by the department during reasonable business hours.~~

(3) Licensees shall submit records required in (1) to the department on the following schedule:

(a) for the period of January 1 through March 31, by April 15;

(b) for the period of April 1 through June 30, by July 15;

(c) for the period of July 1 through September 30, by October 15;

(d) for the period of October 1 through December 31, by January 15.

AUTH: 75-10-1202, MCA

IMP: 75-10-1202, MCA

REASON: The proposed deletion of existing (3) is discussed under the reason for ARM 17.50.812, above. The proposed addition of new (3) would require licensees to make quarterly reports of septic pumping records to the Department. This is needed because failure of licensees to keep adequate records is the single most common violation found during inspections. This would enable the Department to better verify the amount and kinds of material generated and land-applied and enable the Department to better advise licensees if the department noticed applications approaching the agronomic uptake rate. The Department would also be able to better use staff resources by reviewing records in the office, providing a review for all

licensees and not just the ones the Department was able to visit in the field.

17.50.815 GREASE TRAP WASTES (1) through (6) remain the same.

- (7) Grease trap waste, dewatered or not, may be:
 - (a) and (b) remain the same.
 - (c) land-applied under the following conditions:
 - (i) in accordance with ARM 17.50.811~~(2)~~(3)(a) or (b) for disposal of septage; or
 - (ii) and (8) remain the same.

AUTH: 75-10-1202, MCA
IMP: 75-10-1202, MCA

REASON: ARM 17.50.815 was adopted as a new rule at page 848, Issue No. 10 of the Montana Administrative Register, published May 25, 2001. It concerns the management of grease trap pumpings. The Department intended that (7)(c)(i) of that rule refer to ARM 17.50.811(3)(a) and (b) of the septic pumper rules that require that land-applied septage be injected below the surface or tilled into the soil, so that land application of grease trap waste would be governed by those requirements. However, the rule amendment incorrectly cited ARM 17.50.811(2)(a) and (b). ARM 17.50.811(2)(a) and (b) do not exist. ARM 17.50.811(2) concerns application of bulk septage or other materials to public contact sites or home lawns or gardens. The proposed amendment to ARM 17.50.815(7)(c)(i) is necessary to correct this error by referencing the proper subsections.

The Department also is proposing minor editorial revisions that are necessary to clarify the rules, but that are not intended to change the meaning of the rules.

4. Concerned persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Pat Crowley, Community Services Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-5294; fax (406) 444-1374; or email pcrowley@state.mt.us no later than 5:00 p.m., December 3, 2003. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Norman Mullen, attorney, has been designated to preside over and conduct the hearing.

6. The Department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air

quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to Elois Johnson, Paralegal, at ejohnson@state.mt.us, or may be made by completing a request form at any rules hearing held by the Department.

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

DEPARTMENT OF ENVIRONMENTAL QUALITY

By: Jan P. Sensibaugh
JAN P. SENSIBAUGH, DIRECTOR

Reviewed by:

David M. Rusoff
DAVID M. RUSOFF, Rule Reviewer

Certified to the Secretary of State, October 20, 2003.