

Department of Environmental Quality  
Proposed Legislation 2014-2015

**1. General Housekeeping Revisions of the Strip and Underground Mine Reclamation Act**

Purpose: This bill would make the following amendments to the Montana Strip and Underground Mine Reclamation Act:

- A. Eliminate the requirement that multiple copies of documents be submitted to the department.
- B. Allow a permit applicant to file a copy of a permit application with the county clerk and recorder or at another facility approved by the department. Currently the statute allows for filing only at the county clerk and recorder.
- C. Allow publication of notice of receipt of a permit application in any newspaper of general circulation in the area of the proposed operation. Current statute requires publication in a daily newspaper.
- D. Eliminate the requirement that maps in permit applications be certified as correct.
- E. Provide that the department may order an underground coal mine operator to replace a water supply that has been adversely affected by that operation. Currently the statute only authorizes the department to require replacement of water supplies adversely affected by surface coal mining operations.
- F. Allow a person to administratively appeal a department decision to list a person in the applicant/violator system, which is a nationwide information system maintained by the Office of Surface Mining, Reclamation and Enforcement.
- G. Clearly provide that a drill hole prospecting operation that does not substantially disturb the land surface requires a short-form prospecting permit and not a long-form prospecting permit.

Justification:

A. The document handling and storage process now in place within the department only requires that one copy be submitted, while the law requires multiple copies. When DEQ receives a hard copy application, it is scanned and entered into an electronic document management system, allowing the document to be viewed at multiple locations at the same time. This change would reduce the amount of paper or electronic copies submitted to the department. For companies that continue to deal in paper, this would be a significant cost savings

B. With the acceptance of electronic versions of a permit application a computer is required wherever the permit is made available. Therefore, a facility such as a public library is probably more appropriate than the clerk and recorder's office.

C. This change would provide a better notification to the affected public. Many of the current and potential coal developments are located in counties that have newspapers that are published weekly and not daily. By requiring publication in a daily newspaper, the notice currently is published in a newspaper that may not be of general circulation in the area of the development.

D. This requirement is duplicative of other permitting requirements. Additionally, there are currently laws and rules that identify which types of maps need to be certified by a professional engineer. Since there is no federal counterpart to this rule, it is not needed to satisfy federal requirements. Removing it would enable more efficient electronic submittals of maps.

E. Limiting replacement authority to surface coal mining operations creates ambiguity in the statute because other provisions in the statute indicate that the statute applies to all coal mining operations, both surface and underground. There is no reason to exclude underground mining operators from the replacement requirement. The proposed legislation would clarify and make replacement requirements consistent for both strip and underground mining.

F. The Office of Surface Mining maintains an automated information system of applicant, permittee, operator, violation, and related data to assist in implementing the Surface Mining Control and Reclamation Act of 1977. This automated information system is known as the applicant/violator system, or AVS. The AVS is necessary to guarantee that information related to ownership and control of coal mining operations is readily available to the department to ensure that rules relating to the issuance, suspension, and revocation of coal prospecting and operating permits due to current or historical violations are complied with. In order to maintain primacy, the department must input Montana-specific information into the AVS and use the AVS in making its permit decisions. This includes providing a hearing to persons that the department proposes to list in the AVS. In October of 2009, the Office of Surface Mining directed the department to adopt rules to implement the state's obligations related to the AVS. The hearing requirement described above necessitates this amendment.

G. In the 2011 Session, the department worked with Senator Olson on passing SB 286, which provided for a shortened process to receive a coal prospecting permit if certain conditions were met. It has become clear that the adopted statutory language is not easily followed. The purpose of this bill is to clarify the language in Section 82-4-226, MCA.

**2. Revise the Montana Underground Storage Tank Act to provide that underground pipes at oil refineries that are under corrective action orders pursuant to the Montana Hazardous Waste Act are exempt from regulation under Montana Underground Storage Tank Act.**

Purpose: Remove unnecessary duplicative regulation and provide regulatory certainty.

Justification: When releases from underground pipes at refineries occur, DEQ requires corrective action under the Montana Hazardous Waste Act. Corrective action can be required using either of two mechanisms: a permit or an order. Requiring corrective action under an order rather than a permit is sometimes advantageous to both DEQ and the refinery operators. However, refinery operators may be reluctant to consent to cleanup orders rather than permits because issuance of an order does not exempt them from the Montana Underground Storage Tank Act (UST Act), which may contain different or duplicative requirements and procedures. On the other hand, the refinery operator is exempt from the UST Act if corrective action is taking place under a hazardous waste permit. This bill would extend this exemption from the UST Act to corrective action under hazardous waste orders and thereby facilitate use of this cleanup mechanism.

**3. Require Methamphetamine Lab Clean-ups**

Purpose: Require compliance with the state's clean-up standards and rules for properties known to be contaminated by the manufacture of methamphetamine. The Clandestine Meth Lab clean-up program establishes state standards for decontaminating properties to ensure the protection of the public's health and safety.

Justification: The program currently is voluntary. Requiring contaminated properties to comply with the established decontamination standards will protect the public from being unknowingly exposed to hazardous meth production chemicals.

**4. Modify the criteria for exemption from the requirement to have a certified operator for certain water distribution systems.**

Purpose: Modify the certified operator exemption for certain drinking water distribution systems to make the certified operator requirement coextensive with the monitoring and reporting requirement. This modification would update the existing exemption for a water distribution system from the requirement to have a certified operator if the distribution system is not required to monitor and report under Montana's public water supply law and rules.

Justification: Title 37, Chapter 42, MCA, contains Montana's water and wastewater treatment system operator certification law. This law requires the use of certified operators for water treatment, water distribution, and wastewater treatment systems. In 1999, this law was amended to provide that water distribution systems that meet certain criteria are exempt from the requirement to use a certified operator. The purpose of this amendment was to require certified operators only for those systems that are required to monitor and report under the public water supply laws and rules. However, the monitoring and reporting requirements are now different than the criteria contained in 37-42-302. As a result, some systems that are required to monitor and report are not required to use certified operators. The proposed legislation would achieve the intent of the 1999 bill and make the certified operator requirement coextensive with the monitoring and reporting requirement.

#### **5. Require Permits for Cooling Water Intake Structures**

Purpose: Authorize the Board of Environmental Review to adopt rules establishing technology-based requirements for cooling water intake structures.

Justification: The federal Clean Water Act requires use of best technology available in the location, design, construction, and capacity of cooling water intake structures in order to minimize adverse environmental impact, particularly to aquatic life. The Act also provides that these requirements be implemented in the facility's water discharge permit. As part of Montana's delegation agreement with EPA, the department must implement these requirements in state water discharge permits.

Current water quality statutes authorize adoption of technology-based effluent standards for discharges of industrial wastes from these facilities, but they do not authorize adoption of requirements for intake structures. This amendment would give the Board of Environmental Review authority to adopt rules to implement these requirements.