

17.8.740 DEFINITIONS For the purposes of this subchapter:

(1) "Best available control technology (BACT)" means an emission limitation (including a visible emission standard), based on the maximum degree of reduction for each pollutant subject to regulation under 42 U.S.C. 7410, et seq. or 75-2-101, et seq., MCA, that would be emitted from any proposed emitting unit or modification which the department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such emitting unit or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such contaminant. In no event may application of BACT result in emission of any regulated air pollutant that would exceed the emissions allowed by any applicable standard under ARM Title 17, chapter 8, subchapter 3, and this subchapter. If the department determines that technological or economic limitations on the application of measurement methodology to a particular class of emitting units would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice, or operational standard or combination thereof, to require the application of BACT. Such standard must, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation and must provide for compliance by means that achieve equivalent results.

(2) "Construct" or "construction" \_\_\_\_\_

means:

(a) initiation of on-site fabrication, erection, or installation of an emitting unit or control equipment including, but not limited to:

- (i) installation of building supports or foundations;
- (ii) laying of underground pipework; or
- (iii) construction of storage structures; or
- (b) the installation of any portable or temporary equipment or facilities.

(3) "Day" means calendar day unless otherwise stated.

(4) "Emitting unit" means:

(a) any equipment that emits or has the potential to emit any regulated air pollutant under the Clean Air Act of Montana through a stack(s) or vent(s); or

(b) any equipment from which emissions consist solely of fugitive emissions of a regulated air pollutant under the Clean Air Act of Montana.

(5) "Existing emitting unit" means an emitting unit that was in existence and operating or was capable of being operated on March 16, 1979, or for which the department had issued a permit by that date.

(6) "Facility" means any real or personal property that is either stationary or portable and is located on one or more contiguous or adjacent properties under the control of the same owner or operator and that emits or has the potential to emit any air pollutant subject to regulation under the Clean Air Act of Montana or the Federal Clean Air Act, including associated control equipment that affects or would affect the nature, character, composition, amount, or environmental impacts of air pollution and that has the same two-digit standard industrial classification code. A facility may consist of one or more emitting units.

(7) "Install" or "installation" means to set into position and connect or adjust for use.

(8) "Modify" does not include routine maintenance, repair, or replacement but means:

(a) construction or changes in operation at a facility or emitting unit for which the department has issued a Montana air quality permit under this chapter, except when a permit is not required under ARM 17.8.745;

(b) construction or changes in operation at a facility or emitting unit for which a Montana air quality permit has not been issued under this chapter but that subjects the facility or emitting unit to the requirements of ARM 17.8.743;

(c) construction or changes in operation at a facility or emitting unit that would violate any condition in the facility's Montana air quality permit, any board or court order, any control plan within the Montana state implementation plan, or any rule in this chapter, except as provided in ARM 17.8.745;

(d) construction or changes in operation at a facility or emitting unit that would qualify as a major modification of a major stationary source under subchapters 8, 9, or 10 of this chapter;

(e) construction or changes in operation at a facility or emitting unit that would affect the plume rise or dispersion characteristics of emissions in a manner that would cause or contribute to a violation of an ambient air quality standard or an ambient air increment, as defined in ARM 17.8.804; or

(f) any change in operation that affects emissions and that was not previously permitted, except that a change in operation that does not result in an increase in emissions because of the change is not a modification.

(9) "Montana air quality permit" means a preconstruction permit issued under this subchapter that may include requirements for the construction and subsequent operation of an emitting unit(s) or facility.

(11) "New or modified emitting unit" means an emitting unit that was not constructed or upon which construction was not commenced prior to March 16, 1979.

(12) "Owner or operator" means the owner of a facility or other person designated by the owner as responsible for overall operation of the facility.

(13) "Potential to emit" means the maximum capacity of a facility or emitting unit, within physical and operational design, to emit a pollutant. Any physical or operational limitation on the capacity of the facility or emitting unit to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, is treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions are not considered in determining potential to emit.

(a) have associated fixed capital costs in excess of 50% of the fixed capital cost necessary to construct a comparable, entirely new emitting *unit*;

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(b) change the design of the emitting unit, including associated control equipment; or

(c) increase the potential to emit of the emitting unit.

(15) "Secondary emissions" means emissions that would occur as a result of the construction or operation of a facility or emitting unit, but do not come from the facility or emitting unit itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the facility or emitting unit which causes the secondary emissions. Secondary emissions may include, but are not limited to:

(a) emissions from trains coming to or from the facility or emitting unit;

(b) emissions from any off-site support facility that otherwise would not be constructed or increase its emissions as a result of the construction or operation of the facility or emitting unit. (History: 75-2-111, 75-2-204, MCA; IMP, 75-2-211, MCA; NEW, 2002 MAR p. 3567, Eff. 12/27/02.)

17.8.743 MONTANA AIR QUALITY PERMITS--WHEN REQUIRED

(1) Except as provided in ARM 17.8.744 and 17.8.745, a person may not construct, install, modify, or operate any of the following without first obtaining a Montana air quality permit issued by the department:

(a) a new facility or emitting unit with the potential to emit airborne lead in an amount greater than five tons per year or a modification to an existing facility or emitting unit that results in an increase in the facility or emitting unit's potential to emit airborne lead by an amount greater than 0.6 tons per year;

(b) ~~asphalt concrete plants, mineral crushers, and~~ mineral screens that have the potential to emit more than 15 tons per year of any airborne pollutant, other than lead, that is regulated under this chapter;

(c) ~~any incinerator, as defined in 75-2-103(11), MCA, and that is subject to the requirements of 75-2-215, MCA;~~

(d) any facility or emitting unit upon which construction commenced, or that was installed, before November 23, 1968, when that facility or emitting unit is modified after that date and the modification increases the potential to emit by more than 25 tons per year of any airborne pollutant, other than lead, that is regulated under this chapter; or

(e) any other facility or emitting unit upon which construction was commenced, or that was installed, after November 23, 1968, that is not specifically excluded under ARM 17.8.744, and that has the potential to emit more than 25 tons per year of any airborne pollutant, other than lead, that is regulated under this chapter.

(2) An owner or operator who has submitted an application and received a completeness determination from the department pursuant to ARM 17.8.759 may, prior to receiving a Montana air quality permit, initiate the following seasonal construction activities that, when completed, would have no anticipated increases in emissions of regulated air pollutants associated with them:

- (a) installing concrete foundation work;
- (b) installing below-ground plumbing;
- (c) installing ductwork; or
- (d) other infrastructure and/or excavation work involving the same.

(3) Notwithstanding the ability to undertake the construction activities described above, the department may issue a letter instructing the owner or operator to immediately cease such activities pending a final determination on an application if it finds that the proposed project would result in a violation of the state implementation plan or would interfere with the attainment or maintenance of any federal or state ambient air quality standard.

(4) Nothing in (2) obligates the department to issue a Montana air quality permit. An owner or operator who has received a completeness determination and who elects to engage in initial construction activities accepts the regulatory risks of engaging in such activities. The owner or operator acknowledges that the department may subsequently order cessation of initial construction activities, ultimately decline to issue a Montana air quality permit, or issue a permit that diminishes or renders useless the value of work completed prior to permit issuance. In voluntarily choosing to engage in such activities while knowing of these risks, the owner or operator agrees that, in the event the department seeks injunctive relief to halt or prohibit construction, no irreparable harm has resulted in any way to the owner or operator from these activities.

(5) The provisions of (2) do not supersede any other local, state, or federal requirements associated with the activities set forth therein. (History: 75-2-111, 75-2-204, MCA; IMP, 75-2-211, MCA; NEW, 2002 MAR p. 3567, Eff. 12/27/02.)

#### **17.8.744 MONTANA AIR QUALITY PERMITS--GENERAL EXCLUSIONS**

(1) A Montana air quality permit is not required under ARM 17.8.743 for the following:

- (a) residential fireplaces, barbecues, and similar devices for recreational, cooking, or heating use;
- (b) mobile emitting units, including motor vehicles, trains, aircraft, and other such self-propelled vehicles;
- (c) laboratory equipment used for chemical or physical analysis;
- (d) any activity or equipment associated with the use of agricultural land or the planting, production, harvesting, or storage of agricultural crops (this exclusion does not apply to the processing of agricultural products by commercial businesses);
- (e) emergency equipment installed in hospitals or other public institutions or buildings for use when the usual sources of heat, power, or lighting are temporarily unobtainable or unavailable;
- (f) emergency equipment installed in industrial or commercial facilities for use when the usual sources of heat, power, or lighting are temporarily unobtainable or unavailable and when the loss of heat, power, or lighting causes, or is likely to cause, an adverse effect on public health or facility safety. Emergency equipment use extends only to those uses that alleviate such adverse effects on public health or facility safety;
- (g) any activity or equipment associated with the construction, maintenance, or use of roads except emitting units for which a permit is required under ARM 17.8.743;
- (h) open burning, which is regulated under ARM Title 17, chapter 8, subchapter 6, and an open burning permit may be required under that subchapter;
- (i) drilling rig stationary engines and turbines that do not have the potential to emit more than 100 tons per year of any pollutant regulated under this chapter and that do not operate in any single location for more than 12 months;
- (j) temporary process or emission control equipment, replacing malfunctioning process or emission control equipment, and meeting the requirements of ARM 17.8.110(7) through (9);
- (k) routine maintenance, repair, or replacement of equipment and equipment used to perform routine maintenance, repair, or replacement.

(History: 75-2-111, 75-2-204, 75-2-234, MCA; IMP, 75-2-211, 75-2-234, MCA; NEW, 2002 MAR p. 3567, Eff. 12/27/02.)

#### **17.8.745 MONTANA AIR QUALITY PERMITS--EXCLUSION FOR DE MINIMIS CHANGES**

(1) A Montana air quality permit is not required under ARM 17.8.743 for de minimis changes as specified below:

- (a) Construction or changed conditions of operation at a facility for which a Montana air quality permit has been issued that do not increase the facility's potential to emit by more than five tons per year of any pollutant except:
  - (i) any construction or changed conditions of operation at a facility that would violate any condition in the facility's existing Montana air quality permit or any applicable rule contained in this chapter is prohibited, except as allowed in (2);
  - (ii) any construction or changed conditions of operation at a facility that would qualify as a major modification of a major stationary source under subchapters 8, 9, or 10 of this chapter;
  - (iii) any construction or changed conditions of operation at a facility that would affect the plume rise or dispersion characteristics of the emissions in a manner that would cause or contribute to a violation of an ambient air quality standard or an ambient air increment, as defined in ARM 17.8.804;
  - (iv) any construction or improvement project with a potential to emit more than five tons per year may not be artificially split into smaller projects to avoid permitting under this subchapter; and
  - (v) emission reductions obtained through offsetting within a facility are not included when determining the potential emission increase from construction or changed conditions of operation, unless such reductions are made federally enforceable.
- (b) The owner or operator of any facility making a de minimis change pursuant to (1)(a) shall notify the department if the change would include addition of a new emissions unit, a change in control equipment, stack height, stack diameter, stack flow, stack gas temperature, source location, or fuel specifications, or would result in an increase in source capacity above its permitted operation.
- (c) The following are excluded from the notice requirements of (1)(b):
  - (i) day-to-day fluctuations of the parameters described in (1)(b), occurring as a result of the design or permitted operations of the facility, including startup and shutdown of emission sources at the facility; and
  - (ii) addition, modification, or replacement of pumps, valves, flanges, and similar emission sources. The department shall develop, maintain, and update a list of emission sources it believes qualify for exclusion from the notice requirements. Upon request, the department shall provide a copy of the list to interested persons.
- (d) If notice is required under (1)(b), the owner or operator shall submit the following information to the department in writing at least ten days prior to startup or use of the proposed de minimis change or as soon as reasonably practicable in the event of an unanticipated circumstance causing the de minimis change:
  - (i) a description of the proposed de minimis change requiring notice, including the anticipated date of the change;
  - (ii) sufficient information to calculate the potential emissions resulting from the proposed de minimis change; and
  - (iii) if applicable, an explanation of the unanticipated circumstance causing the change.
- (e) The notice requirements under (1)(d) do not supersede, or otherwise change, any requirements in 40 CFR Parts 60, 61, or 63.

(2) A Montana air quality permit may be amended pursuant to ARM 17.8.764, for changes made under (1)(a)(i) that would otherwise violate an existing condition in the permit. Conditions in the permit concerning control equipment specifications, operational procedures, or testing, monitoring, record keeping, or reporting requirements may be modified if the modification does not violate any statute, rule, or the state implementation plan. Conditions in the permit establishing emission limits, or production limits in lieu of emission limits, may be changed or added under (1)(a), if the owner or operator agrees to such changes or additions. (History: 75-2-111, 75-2-204, MCA; IMP, 75-2-211, MCA; NEW, 2002 MAR p. 3567, Eff. 12/27/02; AMD, 2010 MAR p. 1292, Eff. 5/28/10.)

#### **17.8.748 NEW OR MODIFIED EMITTING UNITS--PERMIT APPLICATION REQUIREMENTS**

(1) The owner or operator of a proposed new or modified facility or emitting unit that is subject to ARM 17.8.743, shall, no later than 180 days before construction begins, or if construction is not required, no later than 120 days before installation, modification, or operation begins, submit an application to the department for a Montana air quality permit on an application form provided by the department. The department may, for good cause shown, waive or shorten the time required for filing the application.

(2) The department may provide pre-application consultation and nonbinding, advisory opinions regarding any potential issues identified by the owner or operator that may arise regarding the permit application.

(3) A permit application submitted pursuant to this subchapter must contain certification by a responsible official of truth, accuracy, and completeness. This certification must state that, based on information and belief formed after reasonable inquiry, the statements and information in the application are true, accurate, and complete. The following persons are authorized to sign an application on behalf of the owner or operator of a new or modified facility or emitting unit(s) :

(a) an application submitted by a corporation or a limited liability company must be signed by an individual specified in the corporate bylaws or the limited liability company operating agreement as having the authority to bind the corporation or limited liability company in contracts, liabilities, and other company obligations;

(b) an application submitted by a partnership or a sole proprietorship must be signed by a general partner or the proprietor respectively;

(c) an application submitted by a municipal, state, federal or other public agency must be signed by a principal executive officer, appropriate elected official, or other duly authorized employee; and

(d) an application submitted by an individual must be signed by the individual or the individual's authorized agent.

(4) An application for a Montana air quality permit must include the following:

(a) a map and diagram showing the location of the proposed new or modified facility or emitting unit(s) . The map and diagram must also include the location of each associated stack, the property involved, the height and outline of associated buildings, and the height and outline of each associated stack;

(b) a description of the proposed new or modified facility or emitting unit(s) , including data on expected production capacity, raw materials to be processed, and major equipment components;

(c) a description of any control equipment to be installed;

(d) a description of the composition, volume and temperatures of the effluent stream, including the nature and extent of air contaminants emitted, quantities and means of disposal of collected contaminants, and the air quality relationship of these factors to conditions created by existing stacks or emitting units or stacks associated with the proposed new or modified emitting unit(s) ;

(e) normal and maximum operating schedules;

(f) drawings, blueprints, specifications, or other information adequate to show the design and operation of process and air pollution control equipment involved;

(g) process flow diagrams showing material balances;

(h) a detailed schedule of construction or modification;

(i) a description of shakedown procedures to the extent shakedown is expected to affect emissions, and the anticipated duration of the shakedown period for each new or modified emitting unit;

(j) any other information requested by the department that is necessary for the department to review the application and determine whether the new or modified facility or emitting unit(s) will comply with applicable standards and rules;

(k) information regarding site characteristics necessary to conduct an assessment of impacts under the Montana Environmental Policy Act, 75-1-101 , et seq., MCA, as required on the application form; and

(l) the appropriate air quality permit application fee required under ARM 17.8.504.

(5) An applicant is not required to submit information previously filed with the department. If an applicant does not want to submit information that has been submitted previously to the department, the applicant shall specify in the application the information previously submitted, and, wherever possible, shall specify the date upon which the information was submitted. Any information the department determines is in its possession becomes part of the application.

(6) Section 75-2-105 , MCA, specifies the procedure for filing a declaratory judgment action to establish the existence, and confidential status of, trade secret information provided in a permit application.

(7) An applicant for a permit shall notify the public of the application by legal publication in a newspaper of general circulation in the area affected by the application. The notice must be published within ten days before, or after, submittal of the application. The form of the notice must be as provided to the applicant by the department.

History: 75-2-111, 75-2-204, MCA; IMP, 75-2-211, MCA; NEW, 2002 MAR p. 3567, Eff. 12/27/02.

#### **17.8.749 CONDITIONS FOR ISSUANCE OR DENIAL OF PERMIT**

(1) When the department issues a Montana air quality permit, the permit must authorize the construction and operation of the facility or emitting unit subject to the conditions in the permit and to the requirements of this subchapter. The permit must contain any conditions necessary to assure compliance with the Federal Clean Air Act, with the Clean Air Act of Montana and rules adopted under those acts.

~~(2) The permit may contain a schedule for specified permit conditions to become effective, subject to the time limits stated in ARM 17.8.762. The department may extend a deadline specified in the schedule, but an extension may not exceed five years.~~

(3) A Montana air quality permit may not be issued for a new or modified facility or emitting unit unless the applicant demonstrates that the facility or emitting unit can be expected to operate in compliance with the Clean Air Act of Montana and rules adopted under that Act, the Federal Clean Air Act and rules promulgated under that Act (as incorporated by reference in ARM 17.8.767), and any applicable requirement contained in the Montana State Implementation Plan (as incorporated by reference in ARM 17.8.767), and that it will not cause or contribute to a violation of any Montana or national ambient air quality standard.

(4) The department shall issue a Montana air quality permit for the following unless the department demonstrates that the emitting unit is not expected to operate in compliance with applicable rules, standards, or other requirements:

(a) emitting units constructed or installed between November 23, 1968, and March 16, 1979; and

(b) emitting units constructed or installed before November 23, 1968, and modified between November 23, 1968, and March 16, 1979.

(5) In a Montana air quality permit, the department shall identify those conditions that are derived from state law, and are not derived from the Federal Clean Air Act, 42 U.S.C. 7401, et seq., the Montana State Implementation Plan, or other federal air quality requirements. Compliance with these conditions is not required by the state implementation plan, and is not necessary for attainment or maintenance of federal ambient air quality standards. These conditions must be identified in the permit as "state-only," and are not intended by the department to be enforceable under federal law.

(6) Nothing in this subchapter obligates the department to issue a Montana air quality permit. The department may subsequently order cessation of initial construction activities, decide not to issue the permit, or issue a permit that diminishes or renders useless the value of work completed prior to permit issuance.

(7) If the department denies an application for a Montana air quality permit it shall notify the applicant in writing of the reasons for the permit denial and advise the applicant of the right to appeal the department's decision to the board as provided in 75-2-211 or 75-2-213, MCA, as applicable.

(8) If the department denies an application for a Montana air quality permit, it may not accept any further air quality permit application from the owner or operator for that project for which the permit was sought until:

(a) the time for requesting a hearing before the board has expired; or

(b) if a hearing before the board is requested, the board has issued a final decision in the matter; or

(c) the applicant has submitted additional information in writing that adequately addresses the reasons for denial.

(History: 75-2-111, 75-2-204, MCA; IMP, 75-2-211, MCA; NEW, 2002 MAR p. 3567, Eff. 12/27/02; AMD, 2003 MAR p. 2272, Eff. 10/17/03; AMD, 2016 MAR p. 1164, Eff. 7/9/16.)

#### **17.8.752 EMISSION CONTROL REQUIREMENTS**

(1) The owner or operator of a new or modified facility or emitting unit for which a Montana air quality permit is required by this subchapter shall install on the new or modified facility or emitting unit the maximum air pollution control capability that is technically practicable and economically feasible, except that:

(a) BACT must be utilized.

(i) Existing emitting units and those emitting units constructed or installed after March 16, 1979, that were not previously subject to this subchapter become subject to this rule when any modification to the emitting unit requires a Montana air quality permit; however, only the specific emitting unit that is modified becomes subject to this rule.

(b) The lowest achievable emission rate must be met to the extent required by ARM Title 17, chapter 8, subchapters 9 and 10, for those emitting units subject to those subchapters.

(2) The owner or operator of a new or modified facility or emitting unit for which a permit is required by this subchapter shall operate all equipment to provide the maximum air pollution control for which it was designed.

(History: 75-2-111, 75-2-204, MCA; IMP, 75-2-211, MCA; NEW, 2002 MAR p. 3567, Eff. 12/27/02.)

#### **17.8.755 INSPECTION OF PERMIT**

(1) Current Montana air quality permits must be made available for department inspection at the location of the facility or emitting unit for which the permit has been issued, unless the permittee and the department mutually agree on a different location.

(History: 75-2-111, 75-2-204, MCA; IMP, 75-2-211, MCA; NEW, 2002 MAR p. 3567, Eff. 12/27/02.)

#### **17.8.756 COMPLIANCE WITH OTHER REQUIREMENTS**

- (1) This subchapter does not relieve any owner or operator of the responsibility for complying with any applicable federal or Montana statute, rule or board or court order, except as specifically provided in this subchapter.
- (2) Issuance of a Montana air quality permit does not affect the responsibility of a permittee to comply with the applicable requirements of any control strategy contained in the Montana State Implementation Plan.
- (3) A permittee may not commence operation of a facility or emitting unit if construction, modification or installation has been completed in such a manner that the facility or emitting unit cannot operate in compliance with applicable statutes, rules, or requirements specified in the permit.
- (History: 75-2-111, 75-2-204, MCA; IMP, 75-2-211, MCA; NEW, 2002 MAR p. 3567, Eff. 12/27/02.)

#### **17.8.759 REVIEW OF PERMIT APPLICATIONS**

- (1) Except for applications subject to ARM 17.8.760, when an application for a permit does not require an environmental impact statement, the application is not considered filed until the owner or operator has submitted to the department all required fees and all information and completed application forms.
- (2) The department shall notify the applicant in writing within 30 days after receiving an application if an application is incomplete. The notice must list the reasons the application is considered incomplete, any additional information required, and the date by which the applicant must submit any additional required information. If the requested additional information is not submitted by the date specified by the department in the notice, the application is considered withdrawn unless the applicant requests in writing an extension of time for submission of the additional information. If the department receives additional application information, whether prior to a determination of completeness or in response to a notice of incompleteness, the 30-day application completeness review period begins again.
- (3) Within 40 days after receiving a complete application for a permit, the department shall make a preliminary determination as to whether the permit should be issued, issued with conditions, or denied.
- (4) After making a preliminary determination, the department shall notify those members of the public who requested such notification subsequent to the notice required by ARM 17.8.748 and the applicant of the department's preliminary determination. The notice must specify that comments may be submitted on the information submitted by the applicant and on the department's preliminary determination. The notice must also specify the following:
- (a) that a complete copy of the application and the department's analysis of the application is available from the department and in the air quality control region where the emitting unit is located;
- (b) the date by which all comments on the preliminary determination must be submitted in writing, which must be within:
- (i) 30 days after the notice is mailed for applications subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661 or the provisions of 75-2-215, MCA, or applications that require preparation of an environmental impact statement; or
- (ii) 15 days after the notice is mailed for all other applications, except as provided in (5) ; and
- (c) the date by which a final decision must be made pursuant to 75-2-211 (9) , MCA.
- (5) The department may, on its own action, or at the request of the applicant or member of the public, extend by 15 days the period within which public comments may be submitted as described in (4) (b) (ii) and the date for issuing a final decision on a permit application as described in 75-2-211 (9) (b) , MCA, if the department finds that an extension is necessary to allow the department to make an informed decision.
- (a) Any request for an extension, as provided under (5) , by the applicant or a member of the public must be submitted to the department by the date that written comments on the preliminary determination originally were due.
- (b) The department shall extend the comment period if the preliminary determination contains one or more requirements of 40 CFR part 63, as incorporated by reference in this chapter, that require a 30-day comment period.
- (c) The department shall notify the applicant of any extensions granted under (5) .
- (6) The time for issuing a final decision may be extended for 30 days by written agreement of the department and the applicant. The department may grant additional 30-day extensions at the request of the applicant.
- (History: 75-2-111, 75-2-204, MCA; IMP, 75-2-211, MCA; NEW, 2002 MAR p. 3567, Eff. 12/27/02; AMD, 2003 MAR p. 2272, Eff. 10/17/03; AMD, 2005 MAR p. 2663, Eff. 12/23/05.)

#### **17.8.760 ADDITIONAL REVIEW OF PERMIT APPLICATIONS**

- (1) When an application for a Montana air quality permit requires an environmental impact statement under the Montana Environmental Policy Act, 75-1-101 , et seq., MCA, the procedures for public review are those required by the Montana Environmental Policy Act and the rules adopted by the board and department to implement the Act, ARM Title 17, chapter 4, subchapter 6, and ARM 17.4.701 through 17.4.703.
- (2) When an application for a Montana air quality permit is also an application for certification under the Major Facility Siting Act, public review is governed by the rules implementing that Act, ARM Title 17, chapter 20.
- (History: 75-2-111, 75-2-204, 75-20-216, MCA; IMP, 75-2-211, 75-20-216, MCA; NEW, 2002 MAR p. 3567, Eff. 12/27/02.)

#### **17.8.762 DURATION OF PERMIT**



(1) A Montana air quality permit is in effect until the permit is revoked under ARM 17.8.763, amended under ARM 17.8.764, or modified under ARM 17.8.748. Portions of a Montana air quality permit may be revoked, amended, or modified without invalidating the remainder of the permit.

(2) A permit issued prior to construction or installation of a new or modified facility or emitting unit may provide that the permit or a portion of the permit will expire unless construction or installation is commenced within the time specified in the permit, which may not be less than one year or more than three years after the permit is issued. (History: 75-2-111, 75-2-204, MCA; IMP, 75-2-211, MCA; NEW, 2002 MAR p. 3567, Eff. 12/27/02.)

#### **17.8.763 REVOCATION OF PERMIT**

(1) The department may revoke a Montana air quality permit or any portion of a permit upon written request of the permittee, or for violation of any requirement of the Clean Air Act of Montana, rules adopted under that Act, the Federal Clean Air Act and rules promulgated under that Act (as incorporated by reference in ARM 17.8.767), or any applicable requirement contained in the Montana State Implementation Plan (as incorporated by reference in ARM 17.8.767).

(2) The department shall notify the permittee in writing of its intent to revoke a permit or a portion of a permit. The department's decision to revoke a permit or any portion of a permit becomes final when 15 days have elapsed after the permittee's receipt of the notice unless the permittee requests a hearing before the board.

(3) When the department has attempted unsuccessfully by certified mail, return receipt requested, to deliver a notice of intent to revoke a permit to a permittee at the last address provided by the permittee to the department, the permittee is deemed to have received the notice on the date that the department publishes the last of three notices of revocation, once each week for three consecutive weeks, in a newspaper published in the county in which the permitted facility was located, if a newspaper is published in the county or if no newspaper is published in the county in a newspaper having a general circulation in the county.

(4) When the department revokes a permit under this rule, the permittee may request a hearing before the board. A hearing request must be in writing and must be filed with the board within 15 days after receipt of the department's notice of intent to revoke the permit. Filing a request for a hearing postpones the effective date of the department's decision until issuance of a final decision by the board.

(5) A hearing under this rule is governed by the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA.

(History: 75-2-111, 75-2-204, MCA; IMP, 75-2-211, MCA; NEW, 2002 MAR p. 3567, Eff. 12/27/02; AMO, 2003 MAR p. 2272, Eff. 10/17/03; AMO, 2011 MAR p. 568, Eff. 4/15/11.)

17.8.764 ADMINISTRATIVE AMENDMENT TO PERMIT (1) The department may amend a Montana air quality permit, or any portion of a permit, for the following reasons:

(a) changes in any applicable rules adopted by the board;

(b) changes in operation that do not result in an increase in emissions. The owner or operator of a facility may not increase the facility's emissions beyond permit limits unless the increase meets the criteria in ARM 17.8.745 for a de minimis change not requiring a permit, or unless the owner or operator applies for and receives another permit in accordance with ARM 17.8.748, 17.8.749, 17.8.752, 17.8.755, and 17.8.756, and with all applicable requirements in ARM Title 17, chapter 8, subchapters 8, 9, and 10;

(c) administrative errors in the permit that do not affect substantive provisions of the permit.

(2) The department shall notify the permittee in writing of any proposed amendments to the permit. The department shall serve the notice as provided for in ARM 17.8.749. The permit is deemed amended in accordance with the notice when 15 days have elapsed after service of the notice unless the permittee requests a hearing before the board.

(3) When the department amends a permit under this rule, the permittee may request a hearing before the board. A hearing request must be in writing and must be filed with the board within 15 days after service of the department's notice of intent to amend the permit. Filing a request for hearing postpones the effective date of the department's decision until issuance of a final decision by the board.

(4) A hearing under this rule is governed by the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA. (History: 75-2-111, 75-2-204, MCA; IMP, 75-2-211, MCA; NEW, 2002 MAR p. 3567, Eff. 12/27/02.)

#### **17.8.765 TRANSFER OF PERMIT**

- (1) A Montana air quality permit may be transferred from one location to another if:
- (a) the department receives a complete notice of intent to transfer location, including:
    - (i) written notice of intent to transfer location on forms provided by the department; and
    - (ii) documentation that the permittee has published notice of the intended transfer by means of a legal publication in a newspaper of general circulation in the area to which the transfer is to be made. The notice must include a statement that public comment will be accepted by the department for 15 days after the date of publication and that comments should be addressed to: Air Quality Permitting Section, Air and Waste Management Bureau, Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901;
  - (b) the permitted facility will operate in the new location for less than one year;
  - (c) the permitted facility can be expected to operate in compliance with:
    - (i) the Federal Clean Air Act, the Clean Air Act of Montana and rules adopted under those acts, including the ambient air quality standards; and
    - (ii) the Montana State Implementation Plan.
  - (d) the owner or operator of the permitted facility complies with ARM Title 17, chapter 8, subchapters 8, 9 and 10, as applicable.
- (2) A Montana air quality permit may be transferred from one owner or operator to another if the department receives written notice of intent to transfer, including the names and authorized signatures of the transferor and the transferee.
- (3) The department may not approve or conditionally approve a permit transfer if approval would result in a violation of the Clean Air Act of Montana or rules adopted under that Act, including the ambient air quality standards. If the department does not approve, conditionally approve, or deny a permit transfer within 30 days after receipt of a complete notice of intent to transfer, as described in (1) (a) or (2) , the transfer is deemed approved.
- (History: 75-2-111, 75-2-204, MCA; IMP, 75-2-211, MCA; NEW, 2002 MAR p. 3567, Eff. 12/27/02.)

#### **17.8.767 INCORPORATION BY REFERENCE**

- (1) For the purposes of this subchapter, the board hereby adopts and incorporates by reference:
- (a) 40 CFR Part 51, subpart I, specifying requirements for state programs for issuing Montana air quality permits;
  - (b) 40 CFR Part 51, Appendix M, specifying recommended test methods for state implementation plans;
  - (c) 40 CFR Part 52, subpart BB specifying the Montana state implementation plan for controlling air pollution in Montana;
  - (d) 40 CFR Part 60, specifying standards of performance for new stationary sources;
  - (e) 40 CFR Part 61, specifying emission standards for hazardous air pollutants;
  - (f) Tables 4-1 and 4-3 of the Department of Environmental Quality Air Quality Health Risk Assessment Procedures/Model, January 1995;
  - (g) 42 USC 7412, et seq., listing hazardous air pollutants.
- (2) A copy of materials incorporated by reference in this subchapter is available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901.
- (3) Copies of federal materials also may be obtained from:
- (a) National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161; phone: (800) 553-6847 or (703) 605-6000; fax: (703) 605-6900; e-mail: [orders@ntis.gov](mailto:orders@ntis.gov); web: <http://www.ntis.gov>;
  - (b) National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242-0419; phone: (800) 490-9198 or (513) 489-8190; fax: (513) 489-8695; e-mail: [ncepiml@one.net](mailto:ncepiml@one.net); web: <http://www.epa.gov/ncepiml>;
  - (c) U.S. Government Printing Office, Information Dissemination (Superintendent of Documents), P.O. Box 371954, Pittsburgh, PA 15250-7954; phone: (866) 512-1800 or (202) 512-1800; fax: (202) 512-2104; e-mail: [orders@gpo.gov](mailto:orders@gpo.gov); web: <http://www.gpoaccess.gov>; and
  - (d) the libraries of each of the ten EPA regional offices.
- (4) Copies of the CFR may be obtained from the U.S. Government Printing Office, as described in (3)(c).
- (History: 75-2-111, 75-2-204, MCA; IMP, 75-2-211, 75-2-215, MCA; NEW, 2002 MAR p. 3567, Eff. 12/27/02; AMD, 2005 MAR p. 959, Eff. 6/17/05.)