



ADMINISTRATIVE RULES OF MONTANA

17.56.607 RELEASE CATEGORIZATION

- (1) The department shall categorize all releases from USTs and PSTs regulated under this chapter as active, transferred, resolved, ground water management, or resolved with a petroleum mixing zone releases.
- (2) Releases that do not meet the criteria set forth in (3), (4), (7), or (10) must be categorized as active.
- (3) The department may categorize a release as transferred if another state or federal program assumes jurisdiction over the facility and all releases and threatened releases of hazardous or deleterious substances from USTs or PSTs regulated under this chapter are to be addressed by that program at the facility. The department shall notify the owner or operator before categorizing the release as transferred. The notice must state which state or federal program has jurisdiction over the release.
- (4) The department may categorize a release as resolved if the department has determined that all cleanup requirements have been met and that conditions at the site ensure present and long-term protection of human health, safety, and the environment. The following requirements must also be met before a release may be categorized as resolved:
 - (a) documented investigations, conducted in accordance with ARM 17.56.604, identify the extent or absence of contamination in the soil, ground water, surface water, and other environmental media relevant to the release;
 - (b) risks to human health, safety and the environment from residual contamination at the site have been evaluated using methods listed in (4)(b)(i) or (ii) and the evaluation indicates that unacceptable risks do not exist and are not expected to exist in the future. The department considers a total hazard index that does not exceed 1.0 for noncarcinogenic risks, and a total cancer risk that does not exceed 1×10^{-5} , to be an acceptable risk level. Owners or operators, or other persons may, with department approval, use either of the following methods to evaluate risks from a release:
 - (i) Tier 1 evaluation using Montana Risk-based Correction Action Guidance for Petroleum Releases (RBCA) for evaluation of risks to human health, safety and the environment associated with surface and subsurface soil and ground water contamination; or
 - (ii) a site-specific risk assessment method approved by the department for evaluation of risks to human health, safety, and the environment associated with contamination, or likely contamination, that demonstrates to the department's satisfaction that current and potential future exposure pathways are incomplete;

- (c) all appropriate corrective actions associated with the release and required by the department, including compliance monitoring and confirmatory sampling, have been completed;
 - (d) all free product has been removed to the maximum extent practicable; and
 - (e) all applicable environmental laws associated with the release have been met. These applicable requirements may include, but are not limited to, air quality, drinking water and monitoring well requirements, solid waste management requirements, hazardous waste management requirements, national pollutant discharge elimination system (NPDES) and Montana pollutant discharge elimination system (MPDES) requirements, underground injection controls and standards, UST requirements, noxious weed control, ground water and surface water quality standards, nondegradation requirements, storm water requirements, and requirements for the protection of endangered species, historic sites, wetlands and floodplains.
- (5) The department may recategorize a resolved or a resolved with a petroleum mixing zone release as active if the department receives information with which it determines that further corrective action is necessary. Such information may include, but is not limited to, changes in land use or site conditions, including removal, alteration, or failure to maintain department-approved institutional controls, engineering controls, or physical conditions, that may increase the potential for adverse impacts to human health, safety, or to the environment from residual contamination. The department shall notify the owner or operator of the department's determination to recategorize a resolved release as active.
- (6) If a release is categorized as resolved, the department shall send a letter to the owner or operator that:
- (a) states that, based on information available, no further corrective action will be required at that time;
 - (b) requires that all monitoring wells, piezometers, and other ground water sampling points either be abandoned or maintained by the owner or operator in accordance with applicable rules and requirements;
 - (c) describes the nature, extent, concentration, and location of any residual contamination;
 - (d) describes any institutional controls, engineering controls, or physical conditions that must be maintained to protect human health, safety, or the environment from residual contamination;
 - (e) states the reasons why the department believes the release does not pose a present or future risk to human health, safety, or to the environment; and
 - (f) states that the department reserves the right to conduct or to require further corrective action if a new release occurs or if the department receives new or different information related to the release.
- (7) The department may categorize a release as ground water management if:
- (a) site conditions satisfy all criteria listed under (4)(a) and (d);
 - (b) risk evaluations conducted in accordance with (4)(b) demonstrate that there are no unacceptable risks to human health, safety, ecological receptors, surface water, or aquatic sediments from exposure or likely exposure to contamination;

- (c) all cleanup actions required by the department have been completed except for continued monitoring required under (8);
 - (d) ground water quality parameters exceed:
 - (i) a water quality standard or nondegradation requirement;
 - (ii) a standard established as a drinking water maximum contaminant level published in 40 CFR Part 141; or
 - (iii) a risk-based screening level published in RBCA;
 - (e) ground water performance monitoring and natural attenuation data collected in accordance with U.S. Environmental Protection Agency Office of Solid Waste and Emergency Response Directive 9200.4-17P indicate that the extent, magnitude, and concentration of the dissolved contaminant plume have been stable or decreasing under fluctuating hydrogeologic conditions for a period of monitoring that is determined by the department to be sufficient to detect unacceptable risks to human health, safety, or to the environment;
 - (f) the source area contamination has been eliminated, controlled, or reduced to the maximum extent practicable, in accordance with U.S. Environmental Protection Agency Office of Solid Waste and Emergency Response Directive 9200.4-17P, and any remaining source area contamination presents a low long-term threat to human health, safety or to the environment;
 - (g) documented investigations demonstrate that taking additional or different cleanup action is not feasible and will not meet site corrective action objectives within a reasonable timeframe as compared to monitored natural attenuation; and
 - (h) institutional controls are in place to ensure that identified risks to human health and safety are reduced to acceptable levels. For the purposes of this rule, institutional controls must consist of:
 - (i) deed restrictions or restrictive covenants that run with the land and that have been approved by the department and duly recorded;
 - (ii) a designated controlled ground water area as provided for in 85-2-506, MCA;
 - (iii) environmental control easements created and approved in accordance with 76-7-101 through 76-7-213, MCA; or
 - (iv) another method approved by the department that has been shown to ensure that risk to human health has been reduced to acceptable levels.
- (8) If the department categorizes a release as ground water management, the owner or operator shall monitor ground water in accordance with a monitoring program developed for the site and approved by the department.
- (a) The monitoring program must specify the location, frequency, and type of sampling required to evaluate site conditions and confirm that residual contamination at the site is either decreasing in extent and concentration or remaining stable.
 - (b) The frequency of monitoring must not be less often than one monitoring event every three years.

- (c) Monitoring must continue until the corrective action objectives for the site are achieved and the release may be categorized as resolved in accordance with (4).
 - (d) In developing a ground water monitoring program, the department shall consider:
 - (i) the nature, extent, and concentration of the contaminant plume;
 - (ii) the locations of human health and environmental receptors relative to the predicted migration path of the plume;
 - (iii) historical or reasonably anticipated land use in the area; and
 - (iv) any other factors that the department determines may affect the risk from residual contamination to human health, safety, or the environment.
- (9) If the department categorizes a release as ground water management, the department shall send a letter to the owner or operator that:
- (a) states that contamination from the release will be addressed by monitored natural attenuation;
 - (b) contains the information in (6)(b), (c), and (e);
 - (c) states the reasons why the department believes that the release does not pose an unacceptable present or future risk to human health, safety, or ecological receptors;
 - (d) includes a monitoring program that complies with (8);
 - (e) includes a schedule for review of any institutional controls;
 - (f) states that the release is not categorized as resolved and documents all conditions that preclude the site from being categorized as resolved; and
 - (g) states that the department may require further remedial investigation or corrective action to determine whether the requirements in (4) are met if the owner, operator or department proposes to recategorize the release as resolved.
- (10) The department may categorize a release as resolved with a petroleum mixing zone and send a letter to the owner or operator in accordance with (11), if the department has determined that conditions at the site ensure present and long-term protection of human health, safety, and the environment and that residual petroleum in soil and ground water will continue to be remediated through natural attenuation processes without additional intervention, active cleanup, or monitoring. The following requirements must also be met before a release may be categorized as resolved with a petroleum mixing zone:
- (a) the petroleum mixing zone is included in a corrective action plan and all the conditions set forth in 75-11-508, MCA, are met;
 - (b) documented investigations, conducted in accordance with ARM 17.56.604, identify the extent or absence of contamination in the soil, ground water, surface water, or other environmental media;
 - (c) all free product has been removed to the maximum extent practicable;
 - (d) risk evaluations conducted in accordance with (4)(b) demonstrate that there are no unacceptable risks to human health, safety, ecological receptors, surface water, or aquatic sediments from exposure or likely exposure to contamination;

- (e) all appropriate corrective actions associated with the release have been completed and no further corrective actions are reasonably required by the department;
- (f) all applicable environmental laws listed in (4)(e) associated with the release have been met, except that ground water quality exceeds a water quality standard for petroleum or petroleum constituents. In addition, ground water quality may exceed a nondegradation requirement or a standard established as a drinking water maximum contaminant level published in 40 CFR Part 141 for petroleum or petroleum constituents;
- (g) ground water performance monitoring indicates that the extent, magnitude, and concentration of the dissolved contaminant plume have been stable or decreasing under fluctuating hydrogeologic conditions for a period of monitoring that is determined by the department to be sufficient to detect unacceptable risks to human health and safety;
- (h) the source area contamination has been removed to the maximum extent practicable, and any remaining source area contamination does not pose an unacceptable present or future risk to human health, safety, or the environment;
- (i) at the downgradient boundary of a petroleum mixing zone, the concentration of any petroleum constituent does not exceed a water quality standard adopted pursuant to 75-5-301, MCA. The downgradient boundary of a petroleum mixing zone must be determined by documented investigations conducted in accordance with ARM 17.56.604;
- (j) a petroleum mixing zone must remain within the facility property boundary unless a recorded easement, a restrictive covenant, or another institutional control approved by the department on an adjoining property allows the petroleum mixing zone to extend off the facility property. For purposes of this rule, the term "facility property" means a single parcel or contiguous parcels on which one or more petroleum storage tanks are or were located, provided that contiguous parcels must be under single ownership at the time the petroleum mixing zone is established;
- (k) a petroleum mixing zone may not extend either beyond 500 feet from the origin of the release or within 500 feet of an existing drinking water well or surface water unless the department determines, in writing and based on site-specific circumstances, that distances not meeting the 500-foot criteria, as specified in the determination, will ensure present and long-term protection of human health and safety and of the environment in the specific circumstances. In making this determination, the department shall consider the following factors:
 - (i) the specific contaminants and concentrations involved;
 - (ii) the nature, hydrogeologic characteristics, and quality of the aquifer(s) involved;
 - (iii) the nature and quality of any well or surface water potentially affected;
 - (iv) the degree of certainty that site-specific scientific data supports the determinations made pursuant to (c), (d), (g), and (h); and
 - (v) any other consideration determined by the department to be relevant in the particular circumstances.
- (l) department-approved institutional controls, engineering controls, or physical conditions are in place to ensure that identified risks to human health and safety are reduced to acceptable

levels. For the purposes of this rule, institutional controls, engineering controls, or physical conditions may consist of:

- (i) easements, deed restrictions, or restrictive covenants that run with the land and that have been approved by the department and duly recorded;
 - (ii) a designated controlled ground water area as provided for in 85-2-506, MCA;
 - (iii) environmental control easements created and approved in accordance with 76-7-101 through 76-7-213, MCA; and
 - (iv) an engineering control, physical condition, or other method or condition approved by the department and designed to ensure that risk to human health has been reduced to acceptable levels; and
- (m) a notice is placed on the deed of all parcels of real property on which the facility is located that the source of the release is resolved with a petroleum mixing zone. This deed notice must describe the nature and location of the residual contamination remaining in the soil and ground water at the facility and must describe all institutional controls, engineering controls, physical conditions, or other controls or conditions required to maintain the petroleum mixing zone.
- (11) If the department categorizes a release as resolved with a petroleum mixing zone, the department shall send a no-further-action letter to the owner or operator. The letter must describe the following conditions required to maintain the petroleum mixing zone:
- (a) no further corrective action will be required to address the release provided that all institutional controls, engineering controls, physical conditions, or other department-approved controls or conditions are maintained;
 - (b) residual contamination from the release will be addressed by natural attenuation processes designed to reduce residual concentrations of contaminants to levels that meet all applicable environmental laws, listed in (4)(e), at a point in the future;
 - (c) all monitoring wells, piezometers, and other ground water sampling points either be abandoned or maintained by the owner or operator in accordance with applicable rules and requirements and as directed by the department. Monitoring well maintenance requirements include reasonable well maintenance necessary to avoid waste or contamination of ground water in accordance with Title 37, chapter 43, MCA. Maintenance does not include monitoring of ground water level, flow, or quality, unless there is a unique, overriding, site-specific, impact-related reason to require monitoring;
 - (d) the nature, extent, concentration, and location of any residual contamination is defined and will not expand or increase;
 - (e) the release does not pose an unacceptable present or future risk to human health, safety, or ecological receptors;
 - (f) there be a schedule for review of any institutional controls;
 - (g) a statement that the department may require further documentation of site conditions to determine whether the requirements in (4) are met if the owner, operator, or department proposes to recategorize the release as resolved; and

- (h) a statement that the department reserves the right to conduct or to require further investigation or corrective action if a new release occurs or if the department receives new or different information related to the release.
- (12) Institutional controls, engineering controls, physical conditions, and notices placed on deeds, required to categorize a release as resolved with a petroleum mixing zone under (10), may be removed when the department determines that residual petroleum contamination in ground water exceeding a parameter listed in (10)(f) is no longer present or when the release is categorized as resolved in accordance with (4).

Authorizing statute(s): 75-11-319, 75-11-505, MCA

Implementing statute(s): 75-11-309, 75-11-505, MCA

History: NEW, 2005 MAR p. 87, Eff. 1/14/05; AMD, 2007 MAR p. 2124, Eff. 12/21/07; AMD, 2010 MAR p. 1502, Eff. 6/25/10; AMD, 2011 MAR p. 2279, Eff. 10/28/11; AMD, 2014 MAR p. 2774, Eff. 11/7/14; AMD, 2016 MAR p. 1694, Eff. 9/24/16; AMD, 2017 MAR p. 186, Eff. 2/4/17; AMD, 2024 MAR p. 253, Eff. 2/10/24.