



ADMINISTRATIVE RULES OF MONTANA



17.50.1005 WETLANDS

- (1) A new Class II or Class IV landfill unit, or a lateral expansion of an existing Class II or Class IV landfill unit, may not be located in wetlands, unless the owner or operator submits to the department for approval the following demonstrations:
 - (a) when applicable under 33 USC 1344 (Section 404 of the Federal Clean Water Act, as amended) or applicable Montana wetlands laws, clear rebuttal of the presumption that a practicable alternative to the proposed landfill is available that does not involve wetlands;
 - (b) the construction and operation of a Class II or Class IV landfill unit will not:
 - (i) cause or contribute to violations of any applicable Montana water quality standard;
 - (ii) violate any applicable toxic effluent standard or prohibition under 33 USC 1317 (Section 307 of the Federal Clean Water Act, as amended);
 - (iii) jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under 16 USC 1531 through 1544 (the Endangered Species Act of 1973, as amended); or
 - (iv) violate any requirement under 33 USC 1401 through 1447(f) (the Marine Protection, Research, and Sanctuaries Act of 1972, as amended) for the protection of a marine sanctuary;
 - (c) the Class II or Class IV landfill unit will not cause or contribute to significant degradation of wetlands. The owner or operator shall demonstrate the integrity of the Class II or Class IV landfill unit and its ability to protect ecological resources, by addressing the following factors:
 - (i) erosion, stability, and migration potential of native wetland soils, muds, and deposits used to support the Class II or Class IV landfill unit;
 - (ii) erosion, stability, and migration potential of dredged and fill materials used to support the Class II or Class IV landfill unit;
 - (iii) the volume and chemical nature of the waste managed in the Class II or Class IV landfill unit;
 - (iv) impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;
 - (v) the potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

- (vi) any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected;
- (d) to the extent required under 33 USC 1344 (Section 404 of the Federal Clean Water Act, as amended) or applicable Montana wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands, as defined by acreage and function, by first avoiding impacts to wetlands to the maximum extent practicable as required by (1)(a), then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions, e.g., restoration of existing degraded wetlands or creation of artificial wetlands; and
- (e) sufficient information is available to make a reasonable determination with respect to these demonstrations.

Authorizing statute(s): 75-10-204, MCA

Implementing statute(s): 75-10-204, MCA

History: NEW, 2010 MAR p. 317, Eff. 2/12/10.