

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rule I regarding the Bitterroot Valley) PROPOSED ADOPTION
Sanitary Landfill Controlled)
Groundwater Area)

To: All Concerned Persons

1. On July 11, 2023, at 6:00 p.m., the Department of Natural Resources and Conservation will hold a public hearing at the Groff Conference Center, located at Farmers State Bank, 103 Main Street, Victor, Montana, 59875, to consider the proposed adoption of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on June 30, 2023, to advise us of the nature of the accommodation that you need. Please contact Jamie Price, Department of Natural Resources and Conservation, 1539 Eleventh Avenue, PO Box 201601, Helena, MT 59620-1601, 406-444-6615, or e-mail DNRCOAH@mt.gov.

3. The department proposes to adopt the following rule:

NEW RULE I BITTERROOT VALLEY SANITARY LANDFILL CONTROLLED
GROUNDWATER AREA

(1) There is designated a Bitterroot Valley Sanitary Landfill Controlled Groundwater Area (BVSL CGWA). The BVSL CGWA is an area of approximately 80 acres located approximately 0.80 miles south of the unincorporated town of Victor, Montana, and is generally described as follows:

(a) The BVSL CGWA includes the Bitterroot Valley Sanitary Landfill historic waste disposal pit (Facility) and the designated area where hazardous or deleterious substances exceed Montana Numeric Water Quality Standards, or the pumping of groundwater may induce contaminant migration. The area includes 80 acres located within the following legal description: S1/2S1/2 Section 31 T8N R20W; N1/2N1/2NW1/4 Section 6 T7N R20W.

(b) A map of the area within the BVSL CGWA described in (1)(a) is posted on the department's website.

(2) The following controls apply in the BVSL CGWA:

(a) Water from the upper aquifer layers where contamination exceeding DEQ-7 standards is present may not be appropriated for potable use. Water from the deeper aquifer may be appropriated for potable use with express prior written approval from the Montana Department of Environmental Quality (DEQ) pursuant to (2)(c).

(b) Except as provided in (2)(c), no new groundwater developments or changes to existing groundwater appropriations are allowed within the BVSL CGWA, and the department may not accept or process any of the following for groundwater:

- (i) a Notice of Completion pursuant to 85-2-306(3), MCA;
- (ii) a Replacement Well Notice, Form 634;
- (iii) an Application for Beneficial Water Use Permit, Form 600GW; or
- (iv) an Application for Change of Appropriation Right, Form 606.

(c) New uses, or changes of existing uses, of groundwater within the BVSL CGWA may not occur for any purpose other than monitoring water quality and quantity without the express prior written approval from DEQ. The department may accept and process the following applications and forms pursuant to 85-2-311 and 85-2-402, MCA, when the application or form is accompanied by documentation of prior written approval from DEQ and the applicant demonstrates the withdrawals will not contribute to expansion of the contaminated plume outside of the BVSL CGWA boundaries:

- (i) an Application for Beneficial Use Permit, Form 600;
- (ii) an Application for Change of Appropriation Right, Form 606; or
- (iii) a Redundant Well Construction Notice, Form 635.

(3) Monitoring wells within the boundaries of the BVSL CGWA must be approved by DEQ. The integrity of all monitoring wells must be maintained, no seals may be removed on any closed wells, and no wells may be abandoned within the BVSL CGWA without the express prior written approval of DEQ. Monitoring wells must be installed, maintained, and abandoned in compliance with ARM Title 36, chapter 21.

(4) An applicant for a Water Use Permit, Change Authorization, or for authorization to drill a well within the boundary of the BVSL CGWA pursuant to (2)(c) must establish by clear and convincing evidence that:

- (a) the well will be constructed in a manner that prohibits the contaminant from using the well as a migration pathway to another aquifer;
 - (b) the proposed well driller possesses a valid Montana Well Driller License;
- and

(c) the proposed well driller has experience drilling wells in state-controlled groundwater areas, State Superfund facilities, or Federal Superfund sites.

(5) If groundwater within the BVSL CGWA is restored to acceptable conditions, the petitioner or other qualifying petitioners may request the CGWA designation be lifted or changed in size.

(6) This rule revokes and replaces the department's February 9, 2004, Order Designating Controlled Groundwater Area In Matter of Petition No. 76H-30003426 and May 28, 2004, Modification to Order Designating Controlled Groundwater Area In Matter of Petition No. 76H-30003426.

AUTH: 85-2-506, 85-2-508, MCA

IMP: 85-2-506, 85-2-508, MCA

REASON: Section 85-2-506, MCA, authorizes the department to designate temporary or permanent controlled groundwater areas. The Department of Environmental Quality (Petitioner) filed a petition to modify the existing Bitterroot Valley Sanitary Landfill Controlled Groundwater Area (BVSL CGWA) with the department on February 22, 2022. The BVSL CGWA was established by the department's February 9, 2004, Order Designating Controlled Groundwater Area.

The Petitioner proposes to modify the existing BVSL CGWA boundary and reduce its size from 328 acres to approximately 80 acres. Data collected since the original BVSL CGWA establishes a reduction in the size of the contaminated groundwater plume. Currently only two wells within the existing BVSL CGWA boundaries continue to exhibit contaminants of concern exceeding DEQ-7 standards. A reduction in size of the BVSL CGWA will safely reduce regulations affecting the development of groundwater in those areas where hazardous or deleterious substances no longer exceed Montana Numeric Water Quality Standards, and the pumping of groundwater will not induce contaminant migration. The restriction of groundwater appropriations within the boundaries of the BVSL CGWA as modified by the proposed rule is necessary to protect public health, safety, and welfare.

The Petition and the department's Determination to Proceed with Rulemaking are available for review on the department's website.

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 in writing to: Martin Balukas, Department of Natural Resources and Conservation, 1539 Eleventh Avenue, P.O. Box 201601, Helena, MT 59620-1601, 406-444-6835, or e-mail at DNRCOAH@mt.gov, and must be received no later than 5:00 p.m., on July 12, 2023.

5. Martin Balukas, Department of Natural Resources and Conservation, has been designated to preside over and conduct this 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, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 2 above or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sosmt.gov/ARM/Register>.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Amanda Kaster
Amanda Kaster
Director
Natural Resources and Conservation

/s/ Brian Bramblett
Brian Bramblett
Rule Reviewer

Certified to the Secretary of State May 30, 2023.