

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

In the matter of the adoption of New Rule I ) NOTICE OF PUBLIC HEARING ON  
regarding the Burlington Northern and Santa ) PROPOSED ADOPTION  
Fe Somers Site Controlled Groundwater )  
Area )

To: All Concerned Persons

1. On October 16, 2018, at 1:30 p.m., the Department of Natural Resources and Conservation will hold a public hearing at the Department of Natural Resources and Conservation, North Western Land Office (NWLO) Conference Room (Room 149), 655 Timberwolf Parkway, Kalispell, Montana, 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 September 28, 2018, to advise us of the nature of the accommodation that you need. Please contact Millie Heffner, Department of Natural Resources and Conservation, PO Box 201601, 1424 Ninth Avenue, Helena, MT 59620-1601; telephone (406) 444-0581; fax (406) 444-0533; or e-mail mheffner@mt.gov.

3. The department proposes to adopt the following rule:

NEW RULE I BURLINGTON NORTHERN AND SANTA FE RAILWAY  
COMPANY'S SOMERS RAILYARD SITE CONTROLLED GROUNDWATER AREA

(1) There is designated a Burlington Northern and Santa Fe Railway Company's Somers Railyard Controlled Groundwater Area (BNSF Somers CGWA). The BNSF Somers CGWA means an area of approximately 86.4 acres located in the unincorporated town of Somers, Montana, and is generally described as follows:

(a) the proposed BNSF Somers CGWA covers an area approximately 0.135 square miles and is generally located in the unincorporated town of Somers. The boundaries are wholly within: SW Section 24, T27N, R21W; and NW Section 25, T27N, R21W and further described as:

A parcel of land located in the Southwest quarter of Section 24 and in the Northwest quarter of Section 25, Township 27 North, Range 21 West, P.M., M., Flathead County, Montana, being more particularly described as follows: Commencing at the Northeast corner of the Southwest quarter of the Southwest quarter of said Section 24 and the POINT-OF-BEGINNING; thence S 03°25'04" W a distance of 153.61 feet; thence S 86°27'32" E a distance of 188.36 feet; thence S 28°32'30" E a distance of 492.78 feet; thence S 09°32'26" E a distance of 763.33 feet; thence S 03°25'56" W a distance of 663.91 feet; thence N 86°30'48" W a distance of 593.14 feet; thence S 02°38'58" W a distance of 730.90 feet; thence S 61°40'25" E a distance of 210.96 feet; thence S 06°10'44" E a distance of 47.13 feet;

thence S 65°31'51" W a distance of 541.91 feet; thence S 55°10'30" W a distance of 88.93 feet; thence N 01°28'21" E a distance of 436.94 feet; thence N 04°09'55" E a distance of 81.46 feet; thence N 08°26'19" W a distance of 81.44 feet; thence N 20°52'32" W a distance of 67.04 feet; thence N 28°38'20" W a distance of 74.04 feet; thence N 29°37'53" W a distance of 73.85 feet; thence N 20°06'06" W a distance of 106.72 feet; thence N 18°48'22" W a distance of 227.77 feet; thence N 17°03'46" W a distance of 344.14 feet; thence N 08°00'21" W a distance of 83.55 feet; thence N 06°12'39" W a distance of 80.22 feet; thence with a curve turning to the right with a delta angle of 05°05'40", with an arc length of 19.39 feet, with a radius of 218.11 feet, with a chord bearing of N 74°31'22" W, with a chord length of 19.39 feet; thence N 71°58'32" W a distance of 102.00 feet; thence with a curve turning to the right with a delta angle of 08°07'00", with an arc length of 157.94 feet, with a radius of 1114.92 feet, with a chord bearing of N 67°55'02" W, with a chord length of 157.81 feet; thence N 63°51'32" W a distance of 108.50 feet; thence with a curve turning to the left with a central angle of 05°59'28", with an arclength of 86.46 feet, with a radius of 826.85 feet, with a chord bearing of N 66°51'16" W, with a chord length of 86.42 feet; thence N 04°51'10" E a distance of 55.89 feet; thence N 57°40'48" W a distance of 157.39 feet; thence N 03°25'15" E a distance of 1497.92 feet; thence S 42°24'16" E a distance of 11.60 feet; thence S 03°51'59" W a distance of 15.18 feet; thence S 60°44'54" E a distance of 395.49 feet; thence S 86°08'05" E a distance of 950.31 feet to the POINT-OF-BEGINNING, containing 86.491 acres.

(b) a map of the area within the BNSF Somers CGWA described in (1)(a) is posted at <http://dnrc.mt.gov/divisions/water/water-rights/controlled-ground-water-areas/burlington-northern-and-santa-fe-railway-companys-somers-railyard>.

(2) No new groundwater appropriations or changes to existing groundwater appropriations are allowed within the lateral boundaries of the BNSF Somers CGWA as shown above.

(3) New and existing groundwater monitoring wells and remediation wells approved by the United States Environmental Protection Agency are allowed within the boundaries of the BNSF Somers CGWA. New and existing monitoring wells and remediation wells within the BNSF Somers CGWA must comply with the well construction standards set forth in ARM Title 36, chapter 21.

(4) Recorded deed restrictions to replace the prior deed notifications, and to restrict use of all property within the subject area will be done by BNSF.

(5) Once the site is remediated, and the groundwater 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 May 9, 2003 Order Designating Controlled Groundwater Area In the Matter of Petition No. 76LJ-30005258.

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

REASONABLE NECESSITY: Section 85-2-506, MCA, authorizes the department to designate temporary or permanent controlled groundwater areas. A petition to designate a controlled groundwater area was filed with the department by

the Flathead City-County Board of Health (Petitioner). The Petitioner proposes to revise a permanent CGWA boundary and add more restrictive groundwater withdrawals for the Burlington Northern Santa Fe Railway Company's Somers site, a former tie treating plant, due to water quality concerns. The purpose of the original CGWA approved by the department in 2003, was to restrict groundwater withdrawals from the alluvial aquifer for any purpose other than remediation to protect human health. Data collected since the original CGWA designation show exceedance levels of constituents of concern (COC). A groundwater plume comprised of polycyclic aromatic hydrocarbons (PAH), phenolic constituents, and benzene extends from the former Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) lagoon source in a northeasterly to easterly direction. A second groundwater plume of PAH and benzene with phenol constituents below Record of Decision (ROD) cleanup levels extends north from the aboveground storage tanks (AST) area. The petition states that the plumes are stable overall under non-pumping conditions and concentrated near source areas where non-aqueous phase liquid (NAPL) remains as intermittent and disconnected small lenses and stringers up to 60 feet beneath the two source areas in the alluvial aquifer.

The proposed restrictions on groundwater development are needed to protect human health and safety.

A determination to initiate rulemaking proceedings was issued by the department on May 21, 2018.

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 Millie Heffner, Department of Natural Resources and Conservation, P.O. Box 201601, 1424 Ninth Avenue, Helena, MT 59620; fax (406) 444-0533; or e-mail [mheffner@mt.gov](mailto:mheffner@mt.gov), and must be received no later than 5:00 p.m. on October 16, 2018.

5. James D. Ferch, 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 Aliselina Strong, P.O. Box 201601, 1539 Eleventh Avenue, Helena, MT 59620; fax (406) 444-2684; e-mail [astrong@mt.gov](mailto:astrong@mt.gov); or may be made by completing a request form at any rules hearing held by the department.

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

8. 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/ John E. Tubbs  
JOHN E. TUBBS  
Director  
Natural Resources and Conservation

/s/ Barbara Chillcott  
BARBARA CHILLCOTT  
Rule Reviewer

Certified to the Secretary of State August 28, 2018.