

BEFORE THE BOARD OF OIL AND GAS CONSERVATION AND  
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 pertaining to notification of ) PROPOSED ADOPTION  
application for permit to drill )

To: All Concerned Persons

1. On October 26, 2016, at 2:00 p.m., the Department of Natural Resources and Conservation and the Board of Oil and Gas Conservation will hold a public hearing at 2535 St. Johns Avenue, Billings, 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 September 16, 2016, to advise us of the nature of the accommodation that you need. Please contact Jim Halvorson, Montana Board of Oil and Gas Conservation, 2535 St. Johns Avenue, Billings, MT 59102; telephone (406) 656-0040; fax (406) 655-6015; e-mail jhalvorson@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I NOTIFICATION OF APPLICATION FOR PERMIT TO DRILL

(1) For the purposes of this rule, "occupied structure" means any building suitable for human occupancy or for carrying on business, including a residence, school, office, or hospital, but not including outbuildings such as, but not limited to sheds, barns, or garages.

(2) An applicant for a permit to drill a new well under ARM 36.22.601 must provide reasonable notice of the intent to file an application to all owners of record of an occupied structure within 1,320 feet of the proposed well.

(a) The notice must advise each owner that the application is eligible for administrative approval unless a demand for an opportunity to be heard is filed with the board within 14 days of an owner having received the notice.

(b) The applicant must file proof of the notice required by this rule with its application to the board.

(c) The owner may waive, in writing, their opportunity to request a hearing any time within the 14-day period. If waived, the application will be immediately eligible for administrative approval.

(3) The staff of the board shall refer an application for permit to drill to the board for notice and public hearing at the next regularly scheduled hearing if an owner of an occupied structure, as to any application for permit to drill for which the owner received notice, files a demand for an opportunity to be heard concerning the application in the form set forth in (5).

- (4) In those instances where such requests for a permit to drill have been the subject of notice and public hearing, the board shall, after such hearing, either:
- (a) enter its order granting such permit under such conditions as the board shall find proper and necessary; or
  - (b) enter its order denying the application for the permit.
- (5) A demand for opportunity to be heard concerning an application for permit to drill for which notice is required must:
- (a) be in writing; and
  - (b) set forth the name, address, and telephone number of each party making the demand, and demonstrate standing to demand an opportunity to be heard by providing a notarized, written statement declaring ownership of the occupied structure within 1,320 feet from the proposed well, which statement must include the owner's signature, the date of signature, and the declaration "I declare under penalty of perjury and under the laws of the state of Montana that the foregoing is true and correct"; and
  - (c) set forth the specific reasons why the party requests a hearing regarding the issuance of the proposed drilling permit; and
  - (d) be received by the board no later than 14 days after the date the notice is received by the owner. Service of such demand may be made on the board personally, by mail, by e-mail, or by FAX transmission; and
  - (e) be simultaneously served upon the applicant for the permit by written copy mailed or FAX transmitted to the address or number set forth in the published notice. A certificate of such service must accompany the demand as filed with the board.

AUTH: 82-11-111, MCA

IMP: 82-11-122, 82-11-127, 82-11-134, 82-11-141, MCA

REASON: The proposed new rule would require reasonable notice of proposed drilling operations to owners of record of occupied structures. The proposed new rule also would provide a process for those owners to demand a board hearing on the application for a permit to drill. Both the notice requirement and the opportunity for a hearing are proposed in response to public inquiries about the board establishing setback requirements for wells. After consideration of public comment during several board meetings, the board proposes this notification rule, not a specific setback rule. This proposed rule would allow the board to consider establishing conditions for issuance of a drilling permit near an occupied structure.

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 Jim Halvorson, Montana Board of Oil and Gas Conservation, 2535 St. Johns Avenue, Billings, MT 59102; telephone (406) 656-0040; fax (406) 655-6015; or e-mail [jhalvorson@mt.gov](mailto:jhalvorson@mt.gov), and must be received no later than 5:00 p.m. on October 26, 2016.

5. Jim Halvorson, Board of Oil and Gas Conservation, has been designated to preside over and conduct the public 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 that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. 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 KarenDe Herman, P.O. Box 201601, 1625 Eleventh Avenue, Helena, MT 59620; fax (406) 444-5258; e-mail KDHerman@mt.gov; 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 department's web site at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered.

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/ Linda Nelson  
LINDA NELSON  
Chair, Board of Oil and Gas Conservation

/s/ Rob Stutz  
ROB STUTZ  
Rule Reviewer

Certified to the Secretary of State August 22, 2016.