

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 36.14.204, 36.14.205,) PROPOSED AMENDMENT
36.14.206, and 36.14.207 pertaining)
to dam safety hazard determinations)

TO: All Concerned Persons

1. On July 19, 2024, at 10:00 a.m., the Department of Natural Resources and Conservation (DNRC) will hold a public hearing at the DNRC building in the Montana Conference Room, first floor, located at 1539 Eleventh Avenue, Helena, Montana, and via Zoom, to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting: <https://mt-gov.zoom.us/j/89850962753?pwd=VIVtajRQRkpkZnN5OHRieXhTQXk1dz09>; Meeting ID: 898 5096 2753; Password: 535283; or
- b. Dial by Telephone: +1 646 558 8656; Meeting ID: 898 5096 2753; Password: 535283; Find your local number: <https://mt-gov.zoom.us/u/kcTC9uKbyD>

2. The department will provide 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 accommodation, contact the department no later than 5:00 p.m. on July 8, 2024, 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, P.O. Box 201601, Helena, Montana, 59620-1601; telephone (406) 444-6615; Montana Relay 711; or e-mail DNRCOAH@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

36.14.204 APPLICATION (1) remains the same.

(2) An application must be made on a form provided by the department and must contain at least the following:

(a) through (c) remain the same.

(d) evaluation of the potential flooded area caused by dam failure or a written request for the department to conduct a simplified dam breach evaluation;

(d) remains the same but is renumbered (e).

~~(e)~~(f) an ~~inspection~~ application fee of \$125.

(3) remains the same.

AUTH: 85-15-110, MCA
IMP: 85-15-209, MCA

REASON: The proposed amendment is necessary because it provides both dam owners and the department flexibility to respond to applications more quickly and at lower cost to certain applicants. Subsection (2)(d) is amended to permit a dam owner either to employ their own engineer to provide their own evaluation, or to request a simplified, conservative evaluation performed by the department. Subsection (2)(f) is amended to clarify that the fee owed is for the application, and not merely any inspection performed by the department.

36.14.205 APPLICATION PROCESSING PROCEDURES

- (1) The department shall:
- (a) remains the same.
 - ~~(b) arrange for a field investigation with the dam owner to gather data or information to make a hazard determination;~~
 - (c) and (d) remain the same but are renumbered (b) and (c).

AUTH: 85-15-110, MCA
IMP: 85-15-209, MCA

REASON: The proposed amendment is necessary due to the proposed amendment to ARM 36.14.204. If ARM 36.14.204 is amended to permit an applicant to elect either to provide their own evaluation or request a simplified department evaluation, there may be circumstances in which the department may not need to arrange for a field investigation with the dam owner to gather data or information to make a hazard determination. The proposed amendment is necessary to reflect that the field investigation described in this provision is no longer mandatory in all cases.

36.14.206 CRITERIA FOR DETERMINATION (1) and (2) remain the same.

- (3) For purposes of the hazard determination classification in this ~~section~~ rule, the following apply:;
- (a) and (b) remain the same.
 - (c) The breach flow hydrograph and downstream routing of the breach flows ~~will~~ may be estimated by the department either by visual determination or dam breach modeling techniques.

AUTH: 85-15-110, MCA
IMP: 85-15-209, MCA

REASON: The proposed amendment is necessary due to the proposed amendment to ARM 36.14.204. If ARM 36.14.204 is amended to permit an applicant to elect either to provide their own evaluation or request a simplified department evaluation, there may be circumstances in which the department may not need to estimate the breach flow hydrograph and downstream routing of breach flows by visual determination or dam breach techniques. The proposed amendment

is necessary to reflect that the analysis described in this provision is no longer mandatory in all cases.

36.14.207 CHANGE IN CLASSIFICATION (1) A high-hazard dam owner may request the department to reconsider a hazard determination.

(a) remains the same.

(b) The owner shall pay for reasonable inspection, analysis, and processing costs incurred by the department as a result of the reconsideration.

(2) remains the same.

AUTH: 85-15-110, MCA

IMP: 85-15-209, MCA

REASON: The proposed amendment is necessary to address the fact that the costs incurred by the department in responding to a request for change in classification are not limited to inspection costs. The department also incurs costs related to analyzing and processing the request. This amendment permits the department to require payment of its reasonable costs related to inspection, analysis, and processing the request.

The proposed amendment may increase costs associated with a request for change in classification for dam owners who elect to hire an engineer to develop application materials. There are 2,678 privately owned, state-regulated dams in Montana that could be affected by the proposed amendment. The estimate of additional cost of choosing to hire an engineer to develop application materials may vary widely and ranges between zero and thousands of dollars.

Dam owners who choose not to hire an engineer to develop application materials will not be exposed to increased costs. If a dam owner chooses not to hire an engineer to develop application materials, the DNRC will perform a simplified analysis at no additional cost to the applicant.

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 to: Martin Balukas, Department of Natural Resources and Conservation, 1539 Eleventh Avenue, P.O. Box 201601, Helena, Montana, 59620-1601; telephone (406) 444-6852; or e-mail DNRCOAH@mt.gov, and must be received no later than 5:00 p.m., July 19, 2024.

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. Written requests may be mailed or delivered to the contact person in paragraph 2 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 amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Cameron Boster
Cameron Boster
Rule Reviewer

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

Certified to the Secretary of State June 11, 2024.