



TO: Chairman Vincent and Chairman Connell
EQC Members, WPIC Members

FROM: George Mathieus, Deputy Director

DATE: August 28, 2018

RE: 2019 proposed legislation

The following is a list of DEQ's proposed legislation that has been approved through the Executive Planning Process for introduction to the 2019 Legislature. The department would appreciate your review of these proposals and consideration for pre-introduction.

1. Create grant program to remove lead from schools:

Issue: Lead in drinking water is primarily an issue with plumbing leading to, and inside, a building. Just because a public water supply does not test high for lead in its compliance samples does not mean all buildings connected that water system are low, or free, of lead. In EPA's Lead & Copper Rule, a school connected to a public water system does not meet the criteria established for a sampling site. Therefore, most schools are not sampled by the water system yet they serve the portion of the population that is the most sensitive to lead contamination.

Proposal: In 2018, DEQ and DPHHS worked together to create rules that ensure schools are sampling for lead and removing or replacing sources of lead in drinking water. This legislation increases the connection fee for public water supplies from \$2/connection to \$4/connection to create a grant program for DEQ to assist schools with the sampling and replacement of sources of lead.

2. Revise Sanitation in Subdivision Act:

Issue: HB 507 (2017 Rep. Mandeville) created a pilot program to improve DEQ's subdivision review. HB 507 has a sunset date of October 2019.

Proposal: DEQ and stakeholders have determined that HB 507 has improved the subdivision process so it should become permanent including process improvements that have been identified while implementing the legislation. This legislation will expand the Municipal Facilities Exclusion to eliminate redundant reviews and make it simpler and faster for development to take place if they will have municipal facilities. This bill also includes clean-up provisions.

3. Variance statute:

Issue: DEQ has successfully implemented two water quality standards variances authorized under state law including nutrient variances and variances under 85-5-222(2). This implementation has helped identified areas that need improvement/expansion.

Proposal: This bill consolidates those two variances under a single statute, makes changes based on the lessons learned from the implementation of those two laws, and expands the criteria for variances to make it consistent with federal regulations and provide dischargers with more options for variances as they move toward meeting protective water quality standards.

4. Amendments of the Voluntary Cleanup and Redevelopment Act (VCRA) to provide clarification and additional time for groundwater cleanup.

Issue: In late 2016, DEQ solicited feedback on VCRA from stakeholders who prepared, paid for, or were otherwise involved in the submittal of Voluntary Cleanup Plans (VCPs) under VCRA. Based on the feedback received, and experience with the VCRA process, DEQ has identified two areas where clarification are needed to assist with implementation and provide appropriate flexibility,

Proposal: 1.) Allow property owners to grant access for remedial investigation and for remedial activities once those activities have been identified. 2.) Add flexibility in addressing groundwater contamination at sites where it may take longer than 60 months to meet water quality standards.

5. Expand use of Junk Vehicle Recycling Funds to allow demolition and disposal of “junk” mobile homes

Issue: Present law does not include abandoned mobile homes in the junk vehicle definition. All money received from the sale of junk vehicles or from recycling of the material and all motor vehicle wrecking facility license fees must be remitted to the state, as provided in 15-1-504. Subject to legislative fund transfers, the money must be used for the control, collection, recycling, and disposal of junk vehicles and component parts and for the removal of abandoned vehicles.

Proposal: This would allow individual counties to utilize part of their current Junk Vehicle grant to remove and dispose of abandoned and/or unsightly mobile homes.

6. Expand use of Motor Vehicle Disposal & Recycling Fund to promote Materials Management in Montana

Issue: From time to time, revenue collected under Motor Vehicle Disposal & Recycling Fund (75-10-532 MCA) achieves a fund balance that exceeds what is necessary to fully fund grants to counties and other expenses.

Proposal: DEQ proposes to expand fund authority to serve as a business incubator and educational outreach in the materials management areas of recycling, reuse and waste reduction. DEQ believes that materials management businesses have excellent potential for long-term viability, but may simply need no-interest or grant startup funding, especially in rural areas. This funding switch would replace general fund appropriated during the 2018 special legislative session.

Success of this pilot could be measured by: number of employees; rate of financial return on investment; pounds/tons and types of waste diverted from landfills; long-term sustainability of the business or organization and overall recycling education awareness.

7. DEQ Opencut Mining Proposals

A. Schedule of Fees

Issue: The Act currently provides for production-based fees to be calculated by operators and paid on an annual basis, but does not require application fees, etc. The Opencut Program is in need of funding to fulfill its statutory duties within statutory deadlines.

Proposal: Add a provision for DEQ rulemaking to develop and implement a schedule of fees for permit and amendment applications, reinstatements, bond releases, and other operator applications and requests for agency action.

B. Weather Disapproval

Issue: Under current law, DEQ is required to process permits within statutory time frames without any regard to whether staff can make “boots on the ground” site inspections.

Proposal: Amend Section 82-432(4)(a), MCA, to provide that the permit processing times required thereby shall be stayed where accumulated or imminently pending snowfall or other inclement site conditions preclude the Department from inspecting the site and making the findings required by Section 82- 434(2) and (3).

C. Meaningful Review

Issue: The Department receives applications that meet the legal definition of complete, but lack sufficient information for DEQ to conduct meaningful technical review. The Department needs the ability to reject both permit applications and amendment applications to minimize multiple deficiency reviews. The goal would be a more efficient application process.

Proposal: Add provision which requires applicants to submit permit and amendment applications which are sufficient to allow the Program to conduct a meaningful review. This legislation could include factors for guided discretion on DEQ’s part to determine whether the application at issue is sufficient to permit meaningful review.

D. Term of Permit

Issue: There is currently no definition of “Term of Permit” and it would be good public policy to formally establish a reasonable limit on the term of permits, while enabling operators w/expired permits to “reinstate” old, outdated permits to current Act standards. There is no process for expired permits in current law. At present, operators must use the existing amendment process to extend a permit before it expires

Proposal: The proposal would: a) Codify BER ruling that the “term of permit” is from DEQ’s approval to the permitted reclamation date; b) Create the option for operators to “reinstate” an expired permit by following the current permit application process; and c) Define a maximum term of permit and/or define a mandatory permit renewal period.

E. State Historic Preservation Office Consultation

Issue: The Opencut Act requires that DEQ consult with the State Historic Preservation Office (SHPO) upon receipt of a complete application. This post submittal requirement can cause significant challenges with Opencut applications where cultural/archaeological resources are present at the site.

Proposal: Have the operator submit a SHPO report as part of a “complete” application. This would provide the operator the ability to assesses cultural resources & determine mitigations (including avoidance) before submitting an Opencut application to DEQ.

F. Establish a Statute of Limitations for Appealing an Opencut Bond Release Decision

Issue: The Opencut Act currently does not contain any statute of limitations on the time in which an interested party can appeal a bond release to the Board of Environmental Review. As a result, final agency action on bond releases can be subjected to challenge in perpetuity.

Proposal: Add statute of limitations for appeals of bond releases.

G. Clarify and Improve the Opencut Bond Forfeiture Process

Issue: The Opencut Act indicates potential limitations as to when a bond can be forfeited. Also at present, there is no mechanism for the automatic suspension of a permit upon cancellation of the bond.

Proposal: Modify the Act so DEQ may forfeit a bond where the operator fails to commence or complete reclamation within the time required by the permit; (b) adding a subsection to provide that upon the cancelation and non-replacement of a bond, the permit is suspended by operation of law, although the permit may be reinstated upon the provision of a replacement bond, and; (c) including a provision in the same subsection authorizing the Department to permit a 30-day grace period where an operator’s diligent and earnest efforts to attain compliance require additional time.

H. Eliminate Archaic “Contract” Language

Issue: There is still language in the Opencut Act that references “mining and reclamation contracts.” Current law references “permits.”

Proposal: Remove archaic language.