

**Environmental Quality Council  
Agency Oversight/MEPA Subcommittee**

**2001-2002**

**Final Workplan**

**September 12, 2001**



## **1. Introduction**

The Environmental Quality Council (EQC) has assigned a three-member subcommittee to assist the Council in its responsibilities for conducting oversight of natural resource agencies within the jurisdiction of the EQC (Agency Oversight) and for reviewing the implementation of the Montana Environmental Policy Act (MEPA). The subcommittee has adopted a workplan for the interim that has been approved by the EQC. The subcommittee will prepare findings and make recommendations to the EQC regarding these topics.

### **Subcommittee members:**

Rep. Christopher Harris, chair

Rep. Debby Barrett

Mr. Howard Strause

### **Staff:**

Larry Mitchell 444 -1352 or [lamitchell@mt.gov](mailto:lamitchell@mt.gov)

topics: primary staff

Krista Lee Evans 444-3957 or [klee@mt.gov](mailto:klee@mt.gov)

topics: sage grouse

### **Workplan Summary and Purpose:**

This work plan addresses the following topics:

- MEPA
- Agency Oversight
  - CECRA - Orphan Share Program
  - Sage grouse issues
  - Statutory duties
  - Optional oversight

Background information, goals, and tasks are outlined for each topic. The workplan includes a projected subcommittee timeline. The purpose of the workplan is to provide a basic framework that will assist the subcommittee and staff in conducting its work and producing tangible results given the time and resources available to the subcommittee. The workplan is a flexible document, particularly in the case of this subcommittee's assigned topic of agency oversight. The subcommittee will need to refine its goals and tasks as information is gathered and evaluated and, especially, if additional topics are assigned. Key decision-making points are highlighted in the timeline and under each topic.

## **2. Work Plan Process Steps**

The EQC and its subcommittees generally follow these steps to assure a meaningful interim:

1. Subcommittee development and EQC approval of a realistic workplan that becomes the framework for the subcommittee's interim work.
2. Subcommittee/EQC training and information gathering.
3. Information/issue analysis.
4. Subcommittee findings and recommendations for policy changes (if any).
5. Full EQC adoption or modification of any subcommittee recommendations.
6. Drafting of legislation (if any) and assignment of sponsors.

Key to any successful EQC interim activity is the active solicitation and participation of the public, the affected or regulated community, and agency comment and involvement.

## **3. Montana Environmental Policy Act - MEPA**

### **Background**

The Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3 provides the basis and the means for implementing the environmental policy of Montana. It also establishes the EQC and describes some of its duties and responsibilities. During the 1999-2000 interim, the EQC conducted a major study of MEPA implementation. The study resulted in several findings and recommendations. The 2001 legislature enacted seven bills that amended how MEPA is implemented.

The EQC allocated 0.40 full-time equivalents (FTE) or 136 days of staff time to MEPA duties during the 2001-2002 interim.

### **Goals**

1. Evaluate findings and recommendations of 1999-2000 report to identify need for further action.
2. Assist agencies and the public in MEPA implementation.

3. Monitor the implementation of MEPA generally and identify any impacts of the 2001 legislative changes.
4. Make findings and recommendations to the EQC regarding MEPA implementation.

### **Tasks**

1. Maintain the EQC environmental review document database  
Who: Staff  
Timeline: ongoing effort
2. Provide a comparative list of 1999-2000 MEPA study findings and recommendations before and after 2001 legislative changes.  
Who: Staff  
Timeline: by September 2001 meeting
3. Evaluate remaining need for action based on 1999-2000 MEPA study and incorporate into workplan. Solicit agency responses to study recommendations.  
Who: Subcommittee, Staff  
Timeline: by December 2001 meeting
4. Identify and summarize MEPA litigation initiated during interim. Focus on judicial review of recent legislative changes.  
Who: Staff, agencies, and subcommittee.  
Timeline: an agenda item at each subcommittee meeting. Brief report to EQC at September 2002 meeting.
5. Review model rules for changes required by 2001 legislative changes. Solicit agency input to need for policy or rule changes.  
Who: Staff, agencies  
Timeline: preliminary review at September 2001 meeting, followup as needed. Panel discussion at December 2001 meeting.
6. Revise MEPA handbook  
Who: Staff  
Timeline: by Sept 2002 meeting

## **4. Agency Oversight**

### **Background**

The EQC has broad statutory authority for reviewing the environmental policies and programs of the state and specific authority to review draft legislation, administrative rules, and program monitoring and evaluation for the departments of Environmental Quality, Natural Resources and Conservation, and Fish, Wildlife, and Parks. Other state laws require that certain agencies or programs present information to the EQC on a periodic basis.

The EQC has requested that the subcommittee assist the Council in its agency and program oversight role. Given the limited resources assigned to the subcommittee, the wide range of statutory obligations and optional oversight issues that may develop during the interim, the subcommittee recommends the following relationship between the EQC and the subcommittee:

***The subcommittee will conduct oversight on the topics provided in this workplan.***

***Statutory oversight responsibilities of the EQC will remain the obligation of the full EQC.***

***The subcommittee may accept assignment of additional oversight duties from the EQC only if sufficient time and resources are available or if the adopted subcommittee workplan is modified to allow for a reprioritization of topics, goals, and tasks.***

The EQC has allocated 0.25 full-time equivalents (FTE) or 85 days of staff time to Agency Oversight duties during the 2001-2002 interim.

### **SUBCOMMITTEE SELECTED OVERSIGHT TOPICS**

#### **General Subcommittee Goals**

- Conduct a detailed analysis of the issue, program, or policy and provide any findings and recommendations to the agencies, the EQC, and to the legislature.
- Obtain information from a broad range of participants and interested persons.

#### **Topic**

- ? **Comprehensive Environmental Cleanup and Responsibility Act (CECRA) - Orphan Share Program**

**Background** - The 1997 legislature established a process that allocated liability for the remediation of contaminated sites among all persons responsible for a site including the allocation of a share of the financial responsibility to the state if the site has an “orphan” responsible party. Orphan shares of remediation responsibility arise from liable persons who are bankrupt or defunct. Funds have been allocated and appropriated to the orphan share account to cover these remedial costs. Very few sites have successfully gone through the Controlled Allocation of Liability Act (CALA) since its inception.

### **Goals**

- Develop a thorough understanding of the site remediation process in the State of Montana, particularly the Controlled Allocation of Liability process.
- Identify any impediments to the utilization of the orphan share process in conducting site remediation on qualified sites.
- Make recommendations as needed.

### **Tasks**

1. Identify issues and perceived problems  
Who: Subcommittee and staff  
Timeline: at September 2001 meeting
2. Remediation 101 - Agency presentation on CECRA generally and CALA/Orphan Share programs specifically  
Who: DEQ staff  
Timeline: December 2001
3. Review agency staffing and program resources and remediation site prioritization  
Who: Staff and subcommittee  
Timeline: by Feb 2002
4. Financial analysis of state orphan share program  
Who: EQC staff and LFA staff  
Timeline: by February 2002
5. Case studies of CALA/Orphan Share  
Who: Staff and CALA participants  
Timeline: initially by December 2001 - Panel at February 2002 meeting
6. Draft briefing paper with findings and recommendations to EQC.  
Who: Staff  
Timeline: May 2002

## Topic

- ? **Potential adoption of statewide management guidelines for sage grouse and sage grouse habitat in Montana.**

**Background** - In May 1999, the western sage grouse in Washington was petitioned for listing under the Endangered Species Act. As a result of this petition, the Western Association of Fish and Wildlife Agencies developed "*Guidelines to manage sage grouse populations and their habitats.*" The guidelines were published in the Wildlife Society bulletin.

As with other species which may face listing under the Endangered Species Act, states can often avoid a listing if they can prove to the US Fish and Wildlife Service that the state has a conservation plan sufficient to address the species and the concerns associated with that species.

The Montana Department of Fish, Wildlife, and Parks is in the process of developing a statewide conservation plan for sage grouse. The Department has established a working group of individuals representing all areas of interest to assist them in developing the statewide conservation plan.

In May, 2001 the National Wildlife Federation filed an appeal challenging a Forest Service decision regarding the Big Sheep Allotments on the Beaverhead-Deerlodge National Forest. The appeal addressed the District Ranger's Decision Notice and Finding of No Significant Impact and the accompanying Environmental Assessment. One of the issues addressed in the appeal was the fact that the forest service did not implement the "*Guidelines to manage sage grouse populations and their habitats*" that were developed by WAFWA as a condition of the permit renewals on the Big Sheep Allotments.

## **Goals**

- ? Obtain a better understanding of sage grouse related activities in Montana.
- ? Provide oversight to the Department of Fish, Wildlife and Parks through out the development and adoption of the statewide Conservation Plan for sage grouse.

## **Tasks**

1. Briefing on DFWP Conservation Plan and Sage Grouse Technical Committee  
Who: Rep Barrett, EQC Staff, DFWP  
Timeline: September 2001 and as requested by subcommittee
2. Update on interagency appeals and litigation.  
Who: EQC Staff and party's legal counsel if available  
Timeline: September 2001 and as requested by subcommittee



3. Draft Conservation Plan provided to full EQC for review and comment.  
Who: EQC Staff  
Timeline: When the draft is available (October, 2001)

### Topic

? **Agency Compliance and Enforcement reporting.**

**Background** - As the result of EQC requested legislation enacted following the 1995-1996 EQC Compliance and Enforcement interim study, the DEQ, DNRC, and Dept. of Agric are required to report biennially certain compliance and enforcement activities and information. (Section 75-1-314, MCA). The agencies have reported this information to the EQC twice; in the fall of 1997 and at the final EQC meeting in 1999. This biennial information is compiled on a fiscal year basis. The information is not available until after July of the even-numbered year. This interim the report would typically be reviewed at the September 2002 EQC meeting which is usually too late for any EQC analysis.

### **Goals**

- Determine if the policy is necessary and if the product is useful.
- Make recommendations to the agencies and to the EQC.

### **Tasks**

1. Review past reports  
Who: Staff and subcommittee  
Timeline: by February 2002
2. Meet with the appropriate agency staff to discuss reporting requirements  
Who: Agency panel  
Timeline: February 2002
3. Make recommendations to agencies and EQC  
Who: Subcommittee  
Timeline: May 2002

### Topic

? **Beaverhead - Big Hole river biennial rule**

**Background** - The Fish, Wildlife and Parks Commission has adopted a seasonal biennial rule that governs the use of portions of the Beaverhead and Big Hole rivers during fishing season. Concerns about the adoption of the rule and its impacts were raised with the Governor's office which requested that the EQC review the adoption of this rule. The full EQC held a hearing on the matter in May 2001 and the Council voted to review the matter further. The Subcommittee has accepted the role of conducting a detailed analysis of the

rule, its adoption, and impacts.

### **Goal**

- Perform the rule review oversight functions of an interim legislative committee.

### **Tasks**

1. Solicit written response from department regarding the rule and its adoption.  
Who: Subcommittee and staff  
Timeline: By September 2001 meeting
2. Compare agency response to Council request  
Who: Staff and Subcommittee  
Timeline: December 2001
3. Make recommendation to full EQC regarding adoption of biennial rule  
Who: Subcommittee  
Timeline: December 2001

## 5. Timeline

The timeline is based on the EQC meeting timeline. Subcommittee meetings will take place on or before the EQC meeting and the timeline will be revised as subcommittee meeting dates are set.

### 2001

Sept. 10-11	Subcommittee meeting in Colstrip
?	Review 1999-2000 EQC MEPA recommendations and 2001 legislative changes
?	Review model rules for needed changes - preliminary
?	Update on MEPA litigation
?	Identify issues involving CECRA/CALA program
?	Briefing on DFWP Conservation Plan and Sage Grouse Technical Committee
?	Update on sage grouse issue - interagency appeals and litigation
?	Solicit DFWP response to Beaverhead - Big Hole river rule letter.
Sept. 10	EQC meeting in Colstrip
?	Submit workplan to EQC for approval

Dec. 10	Subcommittee meeting?
?	Identify need for followup on any 1999-2000 MEPA recommendations
?	Agency panel and discussion on MEPA issues
?	Update on MEPA litigation
?	Identify need for MEPA handbook revision
?	Presentation on CECRA process
?	Identification of CALA case studies
?	Update on Sage Grouse issue as requested
?	Review of Beaverhead - Big Hole river rule and make recommendation to EQC.
Dec. 11	EQC meeting
?	Subcommittee report to EQC
?	Facilitate oversight agenda items as needed

## 2002

Feb. 7	Subcommittee meeting?
	? Update on MEPA litigation
	? Panel of CALA case studies
	? Financial review of state orphan share CECRA program
	? CECRA staffing review
	? Review compliance and enforcement reports
	? Meet with compliance and enforcement reporting agencies
Feb. 8	EQC meeting
	? Subcommittee report to EQC
	? Facilitate oversight agenda items as needed

May 9	Subcommittee meeting?
	? Update on MEPA litigation
	? Progress report on MEPA recommendations followup
	? MEPA handbook draft progress
	? Decision on public comment for subcommittee documents and reports
	? Draft CALA briefing paper
	? Decision on compliance and enforcement reporting
May 10	EQC meeting
	? Subcommittee report to EQC
	? Facilitate oversight agenda items as needed

July 25	<p>Subcommittee meeting?</p> <ul style="list-style-type: none"> <li>? Update on MEPA litigation</li> <li>? Final Subcommittee decisions on findings and recommendations to EQC for proposed legislation or other recommendations on or before this date unless special subcommittee meeting is held prior to September 12.</li> <li>? Review of revised MEPA handbook</li> <li>? Final CALA briefing paper</li> </ul>
July 26	<p>EQC meeting</p> <ul style="list-style-type: none"> <li>? Subcommittee briefing to EQC on potential legislative proposals</li> <li>? Draft recommendations to EQC</li> <li>? Facilitate oversight agenda items as needed</li> </ul>

Sept 12-13	<p>Final EQC meeting</p> <ul style="list-style-type: none"> <li>? Decision by EQC on proposed legislation, if any</li> <li>? Selection of bill sponsors</li> <li>? EQC approval of revised MEPA handbook</li> <li>? Report to EQC on MEPA litigation</li> <li>? Facilitate oversight agenda items as needed</li> </ul>
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