



ENVIRONMENTAL QUALITY COUNCIL

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TODD EVERTS, Legislative Environmental Analyst

December 18, 2009

TO: Environmental Quality Council (EQC) Members

FR: Todd Everts, EQC Staff Attorney

RE: EQC Administrative Rulemaking Authority and Current Administrative Rules Updates

As a part of the EQC's statutory agency oversight responsibilities, the full EQC will receive an update at each meeting on the status of agency administrative rulemaking activities.

EQC Administrative Rulemaking Oversight Statutory Authority

The requirement that the EQC review administrative rules is found in 75-1-324(10), MCA.

The Montana Administrative Procedure Act (MAPA), Title 2, Chapter 4, MCA, governs how state agencies may adopt administrative rules. An administrative rule is a type of law that implements a law adopted by the Legislature or by initiative. If the law is repealed or changed, the administrative rule must be repealed or changed to conform. MAPA provides that:

- An agency must have specific authority in law to adopt rules (2-4-301, MCA).
- Notice of the proposed rule must be published in the Montana Administrative Register, which is printed by the Secretary of State. The notice must comply with specific time lines and provision requirements. (2-4-302, MCA).
- Interested parties notified include the primary legislative sponsor of the bill that enacted the section of law authorizing the administrative rulemaking process. The purpose of the notification to the legislative sponsor is to obtain the legislator's comments, inform the legislator of the date by which each step of the rulemaking process must be completed, and provide the legislator with information about the time periods during which the legislator may comment on the proposed rules (2-4-302, MCA).

- An agency must consider all oral and written submissions respecting a proposed rule (2-4-305, MCA).
- A rule must include a citation to the specific grant of rulemaking authority and must be "reasonably necessary to effectuate the purpose of the statute " (2-4-305, MCA).

The provisions governing the Legislative review of rules is in Title 2, Ch. 4, parts 3 and 4, MCA. The EQC may:

- Request records for checking compliance with MAPA (2-4-402(2)(a), MCA).
- Submit written recommendations and participate in hearings on rule adoption (2-4-402(2)(b), MCA).
- Require that a hearing be held on rule adoption (2-4-402(2)(c), MCA).
- Institute or participate in legal proceedings relating to rules (2-4-402(2)(d), MCA).
- Review the incidence and conduct of administrative proceedings (2-4-402(2)(e), MCA).
- Commence a poll on an objection to a rule (2-4-403, MCA).
- Require an economic impact statement relating to the adoption of a rule (2-4-405).
- Object to a rule not adopted in conformance with MAPA (2-4-406, MCA).
- Recommend rule adoption or changes (2-4-411, MCA).
- Object to a proposed rule and require up to a 6-month delay in adoption (2-4-305(9) and 2-4-306(4) MCA).

Failure of a committee to object to a rule proceeding is not admissible in court.

The agency must report to the committee any judicial proceedings relating to the construction or interpretation of laws on committee review of rules and may report judicial proceedings relating to the agency's rules (2-4-410, MCA).

Update on Current Agency Administrative Rulemaking Processes

Department of Environmental Quality

For electronic access to DEQ rule notices visit the following site:
<http://www.deq.state.mt.us/dir/legal/hearing.asp>

Notice of Proposed Rules With Upcoming Public Hearings:

Public Hearing Date	Where	Comment Due Date	Purpose
Not set yet. BER to decide on adoption of Notice on December 11, 2009.	NA	NA	Notice of proposed amendment and adoption. In the matter of the amendment of ARM 17.8.501, 17.8.504, 17.8.601, 17.8.740, 17.8.743, 17.8.744, 17.8.745, 17.8.801, 17.8.901, 17.8.1201, pertaining to definitions, fees, and permits, and the adoption of New Rules I through XX pertaining to temporary greenhouse gas emission rules
Not set yet. BER to decide on adoption of Notice on December 11, 2009.	NA	NA	Notice of Proposed Amendment in the matter of the amendment of ARM 17.38.106 pertaining to engineering fees for public water supply and sewer systems.

Proposed Rules Post Public Hearing But Pre Final Adoption

Public Hearing Date	Where	Comment Due Date	Purpose
		5:00 p.m. November 20, 2009	Notice of Extension of Comment Period on Proposed Amendment, Adoption, and Repeal (CECRA Remediation - Definitions, Facility Listing, Facility Ranking, and Delisting a facility on the CECRA Priority List, Incorporation by Reference, Proper and Expeditious Notice, Third-party Remedial Actions at Order Sites, Additional Remedial Actions Not Precluded, Orphan Share Reimbursement, and Purpose - MAR Notice No. 17-296)
10:30 a.m. November 6, 2009	Room 35, Metcalf Building, 1520 East Sixth Avenue, Helena MT	5:00 p.m. November 12, 2009	Notice of Public Hearing on Proposed Adoption (Subdivisions - Fee Schedules and Changes in Subdivision - MAR Notice No. 17-295)
10:30 a.m. November 6, 2009	Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana	5:00 p.m. November 13, 2009	Notice of Public Hearing on Proposed Adoption (Hazardous Waste - Hazardous Waste Fees, Registration of Generators, Information Requests, and Annual Reports - MAR Notice No. 17-294)

Department of Fish, Wildlife, and Parks

For electronic access to DFWP rule notices visit the following site:

<http://fwp.mt.gov/publicnotices/category.aspx?c=27>

Notice of Proposed Rules With Upcoming Public Hearings:

Public Hearing Date	Where	Comment Due Date	Purpose
No Public Hearing	NA	December 24, 2009.	Notice of proposed amendment in the matter of the amendments of ARM 12.11.3215 regarding recreational water use on Holter Lake.

Proposed Rules Post Public Hearing But Pre Final Adoption

Public Hearing Date	Where	Comment Due Date	Purpose
6:00 p.m. September 16, 2009	Red Lion Colonial Inn, 2301 Colonial Drive, Helena, Montana	September 28, 2009	Notice of Public Hearing on Proposed Amendment (Commercial Use Rules in Montana - MAR Notice No. 12-351)

Department of Natural Resources and Conservation

For electronic access to DNRC Rule Notices, visit the following site:
http://dnrc.mt.gov/About_Us/notices.asp

Notice of Proposed Rules With Upcoming Public Hearings:

None.

Proposed Rules Post Public Hearing But Pre Final Adoption

Public Hearing Date(s)	Where	Comment Due Date	Purpose
June 29, 2009	Fred Buck Conference Room at DNRC, 1424 Ninth Avenue, Helena, Montana	June 29, 2009	Notice of Adoption of Proposed Amendment regarding ARM 36.12 1901, Filing a Change of Application and 36.12.1902, Change Application - Historic Use

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