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Montana Legislative Services Division

Legal Services Office

TO: Environmental Quality Council
FROM: Helen Thigpen, Staff Attorney
RE: Summary of Recent Rulemaking Activity
DATE: August 22, 2014

The following is a brief summary of administrative rules that were recently proposed or adopted by DEQ, FWP, and DNRC. Staff provides regular updates on rulemaking at the following website: <http://leg.mt.gov/css/Committees/Interim/2013-2014/EQC/Rules/rules-table.asp>.

A. Department of Environmental Quality

- **For electronic access to DEQ rule notices visit:**
<http://deq.mt.gov/dir/legal/default.mcp>

Pending Administrative Rules:

- **Methamphetamine Cleanup.** MAR Notice No. 17-366. The Department is proposing several revisions to the methamphetamine cleanup rules, including revisions to various definitions, decontamination standards, and contractor certification and renewal. A public hearing is scheduled for September 11, 2014, at 1:30 p.m., Room 136-137, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana. Public comment will be accepted through September 18, 2014.
- **Water Quality – Montana Pollutant Discharge Elimination System (MPDES) Permits.** MAR Notice No. 17-365. The Board of Environmental Review is proposing several amendments to MPDES rules pertaining to permit requirements, definitions, exclusions, designation procedures, application procedures, and general permits. A complete description of the proposed amendments may be accessed at www.mtrules.org. A public hearing is scheduled for August 27, 2014, at 9:30 a.m., in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana. Public comment will be accepted through September 4, 2014.
- **Underground Storage Tanks – Release Categorization.** MAR Notice No. 17-364. The Department is proposing to amend the categorization rule “to allow for closure of petroleum release sites where the available scientific data indicates that site-specific conditions are sufficiently protective of human health and safety and the environment to justify resolution of the release even though the petroleum mixing zone (PMZ) extends beyond 500 feet from its source or extends to within 500 feet of drinking water wells or surface water.” A public hearing is scheduled for August 27, 2014, at 1:30 p.m., in Room 111, Metcalf Building, 1520 East Sixth Ave., Helena, Montana. Public comment will be accepted through September 4, 2014.

- **Air Quality – Review of Major Stationary Sources and Major Modifications – Source Applicability and Exemptions and Source Impact Analysis.** MAR Notice No. 17-361. The Board of Environmental Review is proposing to amend rules pertaining to major stationary source and major modification review. The Board is proposing to amend rules pertaining to Significant Impact Levels and Significant Monitoring Concentrations. The amendments are in response to national litigation concerning a 2010 final rule from the Environmental Protection Agency (EPA) regarding PM-2.5. The United States Court of Appeals for the District of Columbia struck down portions of EPA’s New Source Review-Prevention of Significant Deterioration rules that exempted certain permit applicants from compiling and submitting ambient monitoring data. According to the Board, the amendments are being proposed to ensure that Montana’s requirements conform to federal regulations. A public hearing was held July 16, 2014. Public comment was accepted through July 24, 2014.
- **Air Quality – Air Quality Permit Application Fees.** MAR Notice No. 17-360. The Board of Environmental Review is proposing to increase application fees for: (1) a facility subject to New Source Review major modification; (2) a new or modified MAQP for a facility subject to Title V operating permits; and (3) a new Title V operating permit, renewal, or modification. According to the Board, current permit application fees do not cover application processing costs. A public hearing was held July 16, 2014. Public comment was accepted through July 24, 2014.
- **Subdivisions - On-Site Subsurface Wastewater Treatment - Subdivision Applications and Review.** MAR Notice No. 17-358. DEQ is proposing to adopt two new rules pertaining to subdivision applications and review. Proposed new rule 1 applies to re-writes of certificates of subdivision approval when no new subdivision has been proposed. The rule codifies existing Department procedures, provides guidance to applicants, and authorizes the Department to approve modifications for lot layouts. New rule II establishes requirements for storm drainage, water supply, and sewage systems for plans and specifications that must be submitted by a professional engineer under existing administrative rule. Several additional amendments to existing administrative rules pertaining to subdivision applications and review are also being proposed. A public hearing was held May 19, 2014. Public comment was accepted through May 22, 2014.

Administrative Rules Adopted after July 2014 EQC Meeting:

- **Hazardous Waste – Incorporation by Reference.** MAR Notice No. 17-362. The Department amended one rule pertaining to hazardous waste. The proposed rule incorporated by reference the most recent version of the Code of Federal Regulations. A public hearing was held July 21, 2014. Public comment was accepted through July 24, 2014. The Department adopted the rule exactly as proposed. No public comment was received.
- **Subdivisions - On-Site Subsurface Wastewater Treatment - Public Water and Sewage System Requirements.** MAR Notice No. 17-359. The Board of Environmental Review amended administrative rules pertaining to sewage systems, definitions, horizontal setbacks, floodplains, plans for public sewage systems, and fees. A public hearing was held May 19, 2014, and public comment was accepted through May 22, 2014. The Department adopted the rule with revisions on July 28, 2014.

- **Water Quality - Numeric Nutrient Standards - Degradation Authorization - Specific Restrictions for Surface Water Mixing Zones - Standard Mixing Zones for Surface Water.** MAR Notice No. 17-356. The Board of Environmental Review proposed to adopt Department Circular DEQ-12A for base numeric nutrient standards for total nitrogen and total phosphorous. A detailed description of the Board’s proposal is provided in the proposal notice, which may be accessed at the following website: <http://www.leg.mt.gov/css/Committees/Interim/2013-2014/EQC/Rules/rules-table.asp>. A public hearing was held March 24, 2014. An informal question and answer session was held earlier in the day, prior to the hearing for MAR Notice No. 17-355. Public comment was accepted through April 1, 2014. The Department adopted the notice on July 28, 2014.
- **Water Quality - Nutrient Standards Variances.** MAR Notice No. 17-355. The Department proposed to adopt rules for variances from the base numeric nutrient standards that are proposed to be adopted by the Board of Environmental Review in MAR Notice No. 17-356. A public hearing was held March 24, 2014. An informal question and answer session was held prior to the hearing. Public comment was accepted through April 1, 2014. The Department adopted the notice on July 28, 2014.
- **Water Quality - Adoption by Reference - Plans for Public Water Supply or Public Sewage System.** MAR Notice No. 17-354. The Board of Environmental Review proposed to amend the subdivision rules to update references to DEQ-1, “Standards for Water Works,” and DEQ-3, “Standards for Small Water Systems,” to the 2014 editions. The amendments were proposed to make the design standards consistent with the standards provided in the Recommended Standards for Water Works (also known as the 10 States Standards). The BER also proposed to incorporate the 2014 editions of DEQ-10, “Standards for the Development of Springs for Public Water Systems” and DEQ-16, “Standards for Hauled Water Cisterns for Noncommunity Public Systems.” In addition, the Board proposed to amend rules regarding plans for public water supply or public sewage systems. A more detailed description is provided in the proposal notice. A public hearing was held March 7, 2014, and public comment was accepted through March 13, 2014. The Board adopted the notice on July 28, 2014.

Rule Hearing Cancelled:

- **Subdivisions – On-Site Subsurface Wastewater Treatment – Sewage Systems (Operation and Maintenance, Ownership, Easements, and Agreements).** MAR Notice No. 17-363. The Department proposed to amend rules relating to sewage systems. The proposed rules would revise the ownership requirements for public sewage systems for compliance with 75-6-126, MCA, allow the Department to require the creation of an ownership entity for multiple-user systems, clarify when easements may be required, and clarify the types of systems that require user agreements. The proposed rules would also clarify that existing public sewage systems are subject to the requirements in Title 75, chapter 6, MCA (and applicable rules), require existing sewage systems to comply with the setback requirements in ARM 17.36.323 while retaining the option of obtaining a waiver, and allow the use of holding tanks in certain cases. A public hearing was scheduled for July

23, 2014, but was canceled after the Department determined that additional rule changes were necessary.

B. Department of Fish, Wildlife, and Parks

- **For electronic access to FWP rule notices visit:**
<http://fwp.mt.gov/news/publicNotices/armRules/>

Pending Administrative Rules:

- **Shooting Range Grants.** MAR Notice 12-415. On October 9, 2014, the Department is proposing to amend the shooting range grant rules to require grant applications to be postmarked before February 1 instead of May 1. The Department states that the amendment will allow recipients more time to complete projects. A definition of “existing assets” is also being proposed. No public hearing is scheduled. Public comment was accepted through August 8, 2014.
- **Wolf Management Stamps.** MAR Notice No. 12-437. On June 26, 2014, the Department published a proposed adoption notice to adopt a rule to create wolf management stamps for individuals interested in donating to wolf management. Residents or nonresidents may purchase the stamp for \$20. After administrative costs are paid, money received from wolf management stamps will be directed towards grants awarded through the livestock lost reduction program, wolf monitoring, habitat protection, and education, and the hiring of additional wardens within occupied wolf habitat. No public hearing was initially scheduled. However, on July 24, 2014, the Department issued a notice stating that it had received a sufficient number of requests for a public hearing. Several public hearings were subsequently held throughout the state. Public comment will be accepted through August 22, 2014.
- **Hunters Against Hunger Program.** MAR Notice No. 12-416. On September 4, 2014, the Department is proposing to adopt one new rule regarding the hunters against hunger program. The proposed rule would require the Department to annually distribute all funds from the hunters against hunger account to federally tax exempt nonprofit organizations with a mission to distribute food and provide charitable services to those in need. No public hearing is scheduled. Public comment was accepted through July 25, 2014.
- **Whitefish River – Boating Rules.** MAR Notice No. 12-406. On April 10, 2014, the Commission held a public hearing regarding proposed rules to limit Whitefish River to manually and electric powered watercraft from its confluence at the railroad trestle south of Whitefish Lake outlet to the bridge on JP Road. Public comment was originally received through April 18, 2014. The Commission revised the notice and extended the public comment period through August 8, 2014.
- **Commercial Use Rules.** MAR Notice No. 12-404. The State Parks and Recreation Board is proposing to amend, adopt, and repeal rules related to commercial use at state

fishing access sites and state parks. In general, the Department is proposing to incorporate references to the newly created State Parks and Recreation Board, clarify or delete defined terms, clarify the scope and applicability of the commercial use rules, provide that permits are no longer required for individual commercial photographers, provide that the commercial use rules do not apply to block management lands or to concession contracts, describe the circumstances under which a commercial use permit may be revoked or suspended, allow fee adjustments in certain circumstances, and discontinue the term “restricted use permit.” A public hearing was scheduled for June 3, 2014. Public comment was accepted through June 13, 2014.

Administrative Rules Adopted after July 2014 EQC Meeting:

- **Fish Importation.** MAR Notice No. 12-414. On August 11, 2014, the Department adopted several rules pertaining to fish importation. A public hearing was held July 9, 2014. Public comment was accepted through July 18, 2014.
- **Exotic Species Classification.** MAR Notice No. 12-411. On August 11, 2014, the Fish and Wildlife Commission amended rules pertaining to exotic species classification. A public hearing was held May 21, 2014, and public comment was accepted through May 30, 2014.
- **Unauthorized Placement of Fish into Public Waters.** MAR Notice No. 12-403. The Fish and Wildlife Commission adopted new rules regarding the placement of live fish into the state’s waters without the authorization of the Department. Several public hearings were held throughout the state. Public comment was accepted through March 21, 2014, and the rules were adopted July 14, 2014.

C. Department of Natural Resources and Conservation

- **For electronic access to DNRC rule notices visit:**
<http://dnrc.mt.gov/PublicInterest/Notices/Default.asp>

Pending Administrative Rules:

None.

Administrative Rules Adopted after July 2014 EQC Meeting:

None.