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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: June 23, 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:

- **Subdivisions – On-Site Subsurface Wastewater Treatment – Sewage Systems (Operation and Maintenance, Ownership, Easements, and Agreements).** MAR Notice No. 17-363. The Department is proposing to amend rules relating to sewage systems. The proposed rules 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 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 is scheduled for July 23, 2014, at 1:00 p.m., in Room 40, Metcalf Building, 1520 East Sixth Ave., Helena, Montana. Public comment will be accepted through July 24, 2014.
- **Hazardous Waste – Incorporation by Reference.** MAR Notice No. 17-362. The Department is proposing to amend one rule pertaining to hazardous waste. The proposed rule would incorporate by reference the most recent version of the Code of Federal Regulations. A public hearing is scheduled for July 21, 2014, at 10:00 a.m., in Room 111, Metcalf Building, 1520 East Sixth Ave., Helena, Montana. Public comment will be accepted through July 24, 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 is scheduled for July 16, 2014, at 2:00 p.m., in Room 111, Metcalf Building, 1520 East Sixth Ave., Helena, Montana. Public comment will be 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 is scheduled for July 16, 2014, at 1:00 p.m., in room 111, Metcalf Building, 1520 East Sixth Ave., Helena, Montana. Public comment will be accepted through July 24, 2014.
- **Subdivisions - On-Site Subsurface Wastewater Treatment - Public Water and Sewage System Requirements.** MAR Notice No. 17-359. The Board of Environmental Review is proposing to amend 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, at 1:30 p.m., in Room 111, Metcalf Building, 1520 East Sixth Ave., Helena, Montana. Public comment was accepted through May 22, 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, at 9:00 a.m., in Room 111, Metcalf Building, 1520 East Sixth Ave., Helena, Montana. Public comment was accepted through May 22, 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 is proposing to adopt Department Circular DEQ-12A for numeric nutrient standards for total nitrogen and total phosphorous. DEQ-12A is proposed to be incorporated into the surface water quality classifications and the nondegradation rules. 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, at 2:00 p.m., in Room 111, Metcalf Building, 1520 East Sixth Ave., Helena, Montana. 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.

- **Water Quality - Nutrient Standards Variances.** MAR Notice No. 17-355. The Department is proposing 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, at 10:00 a.m., in Room 111 of the Metcalf Building, 1520 E. Sixth Ave., Helena, Montana. An informal question and answer session was held prior to the hearing. Public comment was accepted through April 1, 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 is proposing 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 are being 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 is also proposing 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 is proposing 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, at 1:30 p.m., in Room 111, Metcalf Building, 1520 East Sixth Ave., Helena, Montana. Public comment was accepted through March 13, 2014.

Administrative Rules Adopted after May 2014 EQC Meeting:

- **Comprehensive Environmental Cleanup and Responsibility Act (CECRA) - Incorporation by Reference.** MAR Notice No. 17-357. The Department is proposing to incorporate by reference the most recent version of the regional screening levels for chemical contaminants. The EPA updated the regional screening levels in 2013. The Department is also proposing to adopt the new report on background concentrations of inorganic constituents in Montana soils. No public hearing was scheduled. Public comment was accepted through April 14, 2014.
- **Air quality - Incorporation by Reference - Publication Dates.** MAR Notice No. 17-353. The Board of Environmental Review is proposing to amend the air quality rules to adopt the current editions of federal and state statutes, regulations, and rules that are incorporated by reference into the air quality rules. A public hearing was held March 10, 2014, at 1:30 p.m., in Room 40, Metcalf Building, 1520 East Sixth Ave., Helena, Montana. Public comment was accepted through March 27, 2014.

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:

- **Wolf Management Stamps.** MAR Notice No. 12-437. On September 4, 2014, the Department is proposing 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 is scheduled. Public comment will be accepted through July 25, 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 will be accepted through July 25, 2014.
- **Fish Importation.** MAR Notice No. 12-414. The Department is proposing to amend several rules pertaining to fish importation by classifying fish pathogens as either Class A or Class B pathogens. Class A pathogens are those that have been determined to pose a substantial threat to the health of state fisheries. If detected during the importation process, the importation request will be denied. According to the Department, Class B pathogens pose less of a threat and may be allowed on a case by case basis. A public hearing is scheduled for July 9, 2014, at 6:00 p.m., at the Fish, Wildlife, and Parks headquarters, 1420 East 6th Ave., Helena, Montana. Public comment will be accepted through July 18, 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, at 6:00 p.m., at the Fish, Wildlife, and Parks headquarters, 1420 East 6th Ave., Helena, Montana. Public comment was accepted through June 13, 2014.

- **Exotic Species Classification.** MAR Notice No. 12-411. The Fish and Wildlife Commission is proposing to amend rules pertaining to exotic species classification. The proposal would add old world quail and wallaroo to the list of controlled species and red-eared slider, argali sheep, and urial sheep to the list of prohibited species. A public hearing was held May 21, 2014, at 7:00 p.m., 1420 East 6th Ave., Helena, Montana. Public comment was accepted through May 30, 2014.

Administrative Rules Adopted after May 2014 EQC Meeting:

- **Unauthorized Placement of Fish into Public Waters.** MAR Notice No. 12-403. The Fish and Wildlife Commission is proposing to adopt new rules regarding the placement of live fish into the state's waters without the authorization of the Department. The rules outline the Department's response to the unauthorized placement of fish into state waters. The rules will require the Department to prepare an action plan for responding to an unauthorized species and outline various management actions available to the agency. Several public hearings were scheduled throughout the state. Public comment was accepted through March 21, 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 May 2014 EQC Meeting:

None.

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