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Montana Legislative Services Division

Legal Services Office

TO: Environmental Quality Council Members
FROM: Helen Thigpen, Staff Attorney
RE: EQC Administrative Rule Review
DATE: August 2012

I. EQC Rule Review

The EQC plays a significant role in the administrative rulemaking process and is required to review administrative rules from several agencies. As part of this process, legal staff for the EQC notifies the EQC of proposed, amended, or repealed administrative rules and of any concerns regarding the rulemaking process.

The EQC is responsible for reviewing administrative rules from the following agencies:

- Department of Environmental Quality (DEQ)
- Department of Fish, Wildlife, and Parks (FWP)
- Department of Natural Resources and Conservation (DNRC)

The EQC is also responsible for reviewing administrative rules from the entities and boards administratively attached to these agencies, including the following:

- Board of Environmental Review
- Board of Oil and Gas Conservation
- Fish, Wildlife, and Parks Commission

There are several possibilities for EQC involvement in the rulemaking process. The EQC may take one or any combination of the following actions:

- Request an agency's rulemaking records for checking compliance with MAPA. Section 2-4-402(2)(a), MCA.
- Prepare written recommendations for the adoption, amendment, or rejection of a rule and submit those recommendations to the agency proposing the rule and submit oral or written testimony at a rulemaking hearing. Section 2-4-402(2)(b), MCA.
- Require that a rulemaking hearing be held in accordance with the provisions of sections 2-4-302 through 2-4-305, MCA. Section 2-4-402(2)(c), MCA.
- Institute, intervene in, or otherwise participate in proceedings involving Title 2, chapter 4, MCA, in state and federal court and before administrative agencies. Section 2-4-402(2)(d), MCA.

- Review the incidence and conduct of administrative proceedings. Section 2-4-402(2)(e), MCA.
- Poll the Legislature by mail to determine whether a proposed rule is consistent with the intent of the Legislature. The results of the poll are admissible in any court proceeding involving the validity of the proposed or adopted rule. Sections 2-4-403 and 2-4-404, MCA.
- Require an economic impact statement relating to the adoption of a rule. Section 2-4-405, MCA.
- Object to all or some portion of a proposed or adopted rule and delay the adoption of the rule for 6 months or delay the effective date of the rule until the day after final adjournment of the next legislative session. Sections 2-4-305(9), 2-4-306(4)(c), and 2-4-406(4), MCA.
- Recommend a rule adoption or change. Section 2-4-411, MCA.

II. Update on Current Agency Administrative Rulemaking Activity

** (Current through August 22, 2012) **

A. Department of Environmental Quality

Visit <http://deq.mt.gov/dir/legal/default.mcp> for electronic access to DEQ rule notices.

Notice of Proposed Rules With Upcoming Public Hearings

MAR Notice No.	Public Hearing Date	Where	Comment Due Date	Purpose
17-337	September 7, 2012, at 2:30 p.m.	Room 111, Metcalf Building, 1520 East 6th Ave., Helena, MT.	September 14, 2012	(Board of Environmental Review) (Air Quality) Notice of Public Hearing on Proposed Amendment - Incorporation by Reference of Current Federal Regulations - Other Materials Into Air Quality Rules.
17-338	September 5, 2012, at 1:00 p.m.	Room 35, Metcalf Building, 1520 East 6th Avenue, Helena, MT.	September 12, 2012	(Board of Environmental Review) (Water Quality) Notice of Public Hearing on Proposed Amendment and Repeal - Montana Pollutant Discharge Elimination System Permits - Permit Exclusions - Application Requirements - Incorporations by Reference.

Proposed Rules After Public Hearing But Prior to Final Adoption:

MAR Notice No.	Public Hearing Date	Where	Comment Due Date	Purpose
17-334	July 12, 2012, at 11:00 a.m.	Room 35 Metcalf Building, 1520 East 6th Ave., Helena, MT	July 12, 2012	(Board of Environmental Review) (Air Quality) Notice of Public Hearing on Proposed Amendment - Definitions -

				Review of Major Stationary Sources and Major Modifications--Source Applicability - Exemptions.
17-335	July 12, 2012, at 1:30 p.m.	Conference Room, Agency Legal Services Bureau, Department of Justice, 1712 9th Ave., Helena, MT	July 12, 2012	(Board of Environmental Review and the Department) (Reclamation) (Water Quality) (Subdivisions) (CECRA) (Underground Storage Tanks) Notice of Public Hearing on Proposed Amendment and Repeal - Department Circular DEQ-7 - Definitions - Incorporations by Reference - C-3 Classification Standards - General Treatment Standards - General Prohibitions - Water-Use Classification - Descriptions for Ponds and Reservoirs Constructed for Disposal of Coal Bed Methane Water - G-1 Classification Standards.
12-336	July 27, 2012, at 9:00 a.m.	Room 111, Metcalf Building, 1520 East 6th Ave., Helena, MT	August 7, 2012	(Board of Environmental Review and the Department) (Water Quality) (Subdivisions/On-Site Subsurface Wastewater Treatment) (Public Water and Sewage System Requirements) (Solid Waste Management) Notice of Public Hearing on Proposed Amendment - Definitions - Exclusions From Permit Requirements - Subdivisions - Wastewater Treatment Systems - Plans for the Public Water Supply or Wastewater System - Fees - Operation and Maintenance Requirements for Land Application or Incorporation of Septage - Grease Trap Waste - Incorporation by Reference.
17-276	NA	NA	November 8, 2012	(Board of Environmental Review) (Water Quality) Notice of Extension of Comment Period on Proposed Amendment - Outstanding Resource Water Designation for the Gallatin River.

B. Department of Fish, Wildlife, and Parks

Visit <http://fwp.mt.gov/news/publicNotices/armRules/> for electronic access to FWP rules notices.

Proposed Rules After Public Hearing But Prior to Final Adoption:

MAR Notice No.	Public Hearing Date	Where	Comment Due Date	Purpose
12-375	Several hearing dates	Several hearing locations	April 13, 2012	Notice of Public Hearings on Proposed Amendment and Adoption – Upland Game Bird Enhancement Program.
12-377	June 14, 2012, at 6:30 p.m.	Fish, Wildlife and Parks Headquarter offices, 1420 East 6th Avenue, Helena, MT	July 22, 2012	(Fish, Wildlife and Parks Commission) Notice of Public Hearing on Proposed Amendment - Adding Tilapia as a Controlled Species.
12-378	June 22, 2012 at 6:00 p.m.	Department of Fish, Wildlife and Parks, 1420 East 6th Avenue, Helena, MT	June 29, 2012	(Fish, Wildlife and Parks Commission) Notice of Public Hearing on Proposed Adoption - Deer Licenses Separated From Nonresident Big Game Combination Licenses.
12-379	June 21, 2012 at 6:00 p.m.	Department of Fish, Wildlife and Parks, 1420 East 6th Avenue, Helena, MT	June 29, 2012	(Fish, Wildlife and Parks Commission) Notice of Public Hearing on Proposed Adoption - License Auctions and Lotteries.

C. Department of Natural Resources and Conservation

Visit <http://www.dnrc.mt.gov/PublicInterest/Notices/Default.asp#AdminRules> for electronic access to DNRC rules notices.

Notice of Proposed Rules With Upcoming Public Hearings

MAR Notice No.	Public Hearing Date	Where	Comment Due Date	Purpose
36-22-165	August 23, 2012, at 10:00 a.m.	Fred Buck Conference Room, Water Resources Building, 1424 9th Ave., Helena, MT	August 23, 2012	Notice of Public Hearing on Proposed Amendment - Water Right Permitting.

Proposed Rules After Public Hearing But Prior to Final Adoption:

MAR Notice No.	Public Hearing Date	Where	Comment Due Date	Purpose
36-22-144	July 11, 2012, at 1:00 p.m.	Director's Conference Room, DNRC, 1625 11th Ave., Helena, MT	July 19, 2012	(Board of Land Commissioners and the Department) Notice of Extension of Comment Period on Proposed Adoption - State-Owned Navigable Waterways.
36-22-167	July 19, 2012 at 1:00 p.m.	Fred Buck Conference Room, Water Resources Building 1424 9th Ave, Helena MT	July 19, 2012	Notice of Public Hearing on Proposed Repeal, Amendment, and Adoption - Dam Safety - Permitting.

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