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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: April 25, 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 - 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 is scheduled for May 19, 2014, at 1:30 p.m., in Room 111, Metcalf Building, 1520 East Sixth Ave., Helena, Montana. Public comment will be 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 is scheduled for May 19, 2014, at 9:00 a.m., in Room 111, Metcalf Building, 1520 East Sixth Ave., Helena, Montana. Public comment will be accepted through May 22, 2014.

- **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 is scheduled. Public comment was accepted through April 14, 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.

- **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.

Administrative Rules Adopted after March 2014 EQC Meeting:

- **Water quality - Temporary Water Quality Standards.** MAR Notice No. 17-352. The Board of Environmental Review published notice of a public hearing on January 30, 2014, to consider extending the temporary water quality standards for Daisy Creek, from its headwaters to its confluence with the Stillwater River in the Yellowstone River drainage area, to June 4, 2019. A public hearing was held on February 20, 2014, and public comment was accepted through February 27, 2014. The Board amended the rule exactly as proposed on April 10, 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:

- **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 is scheduled for May 21, 2014, at 7:00 p.m., 1420 East 6th Ave., Helena, Montana. Public comment will be accepted through May 30, 2014.
- **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.

Administrative Rules Adopted after March 2014 EQC Meeting:

- **Gray Wolf Management.** MAR Notice No. 12-401. The Fish and Wildlife Commission published notice of proposed rulemaking on October 31, 2013, to amend rules pertaining to gray wolf management. The Commission proposed to clarify references within the rules to delisting; clarify the Commission's authority to establish

harvest seasons; remove language addressing specific management objectives and tools; clarify the Department's responsibility and oversight of wolf conservation and management; and clarify rules in response to SB 200 (2013), which allows lethal control by landowners in certain cases. Several hearings were held throughout the month of December. Comments were accepted through December 20, 2013. The Commission adopted the rules with variations on April 24, 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 March 2014 EQC Meeting:

- **Appointment of Hearing Examiners and Temporary Leases.** MAR Notice No. 36-22-177. The Department published notice on January 30, 2014, to amend rules regarding the appointment of hearing examiners in contested cases. The proposal prohibits a person from being appointed a hearings examiner if the same person was involved with the preliminary determination on the application. The Department also proposed to amend the temporary leasing rules to clarify how consumptive volume for irrigation is determined. A public hearing was held on February 27, 2014, and public comment was accepted through February 27, 2014. The Department adopted the proposed changes on March 27, 2014. No written comments or testimony were received.