



ENVIRONMENTAL QUALITY COUNCIL

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August 24, 2018

To: Environmental Quality Council Members
From: Erin Bills, Legal Staff
Re: Legislative Administrative Rule Review Report¹

MAR NOTICE NUMBER: 12-505

AGENCY/BOARD: The Fish and Wildlife Commission

RULE CLASSIFICATION: Substantive

SUBJECT: Grizzly Bear Demographic Objectives for the Northern Continental Divide Ecosystem

NOTICE DESCRIPTION: Notice of Public Hearings on Proposed Adoption and Transfer of ARM 12.9.103

SUMMARY OF RULE: The Fish and Wildlife Commission proposes to adopt one new rule concerning grizzly bear demographic objectives. The proposed rule provides, in relevant part, that "[u]pon delisting from the Endangered Species Act, management of the grizzly bear and its habitat in the Northern Continental Divide Ecosystem (NCDE) will be guided by the Conservation Strategy for Grizzly Bears in the Northern Continental Divide Ecosystem (NCDE Conservation Strategy)." The commission reasons that adopting objectives of the NCDE Conservation Strategy into administrative rule "demonstrates Montana's commitment to maintaining a recovered grizzly bear population in the NCDE."

¹Pursuant 75-1-324, MCA, the Environmental Quality Council (EQC) is responsible for reviewing administrative rules within its jurisdiction. Staff for the EQC has prepared this report for informational purposes only. This report does not represent any action or opinion of the EQC and does not preclude additional action that may be taken by the EQC pursuant to its authority under the Montana Administrative Procedure Act (Title 2, chapter 4, MCA).

NOTES: The commission will hold public hearings on the proposed adoption of the rule at the following locations:

- September 18 at 6:30 p.m., at the Heritage Hall at Great Falls College - MSU, 2100 16th Avenue S., Great Falls, Montana;
- September 19 at 6:30 p.m., at Conrad High School, 308 South Illinois, Conrad, Montana;
- September 26 at 6:30 p.m., at the Holiday Inn Downtown, 200 S. Pattee Street, Missoula, Montana; and
- September 27 at 6:30 p.m., at the Arts and Technology Building at Flathead Valley Community College, 777 Grandview Drive, Kalispell, Montana.

Public comment will be accepted until October 26, 2018.

FULL TEXT OF NOTICE: The full text of the notice proposal may be found online at <http://mtrules.org/gateway/ShowNoticeFile.asp?TID=8751>.

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MAR NOTICE NUMBER: 12-506

AGENCY/BOARD: Department of Fish, Wildlife, and Parks

RULE CLASSIFICATION: Emergency Rule

SUBJECT: Beartooth Wildlife Management Area in Lewis and Clark County

NOTICE DESCRIPTION: Notice of Adoption of an Emergency Rule

SUMMARY OF RULE: The Department of Fish, Wildlife, and Parks adopted an emergency rule on August 13, 2018, closing the Beartooth Wildlife Management Area as a result of a wildland fire.

NOTES: As of August 24, 2018, this rule had not been rescinded.

FULL TEXT OF NOTICE: The full text of the notice proposal may be found online at <http://mtrules.org/gateway/ShowNoticeFile.asp?TID=8753>.

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MAR NOTICE NUMBER: 17-392

AGENCY/BOARD: Department of Environmental Quality

RULE CLASSIFICATION: Substantive

SUBJECT: Adoption of a New Version of Department Circular DEQ-8

NOTICE DESCRIPTION: Notice of Amendment - Subdivisions

SUMMARY OF RULE: This rule was originally noticed September 22, 2017, as a notice of public hearing on proposed amendments to the subdivision review process and adoption of a new version of the department circular DEQ-8. On March 16, 2018, the department published a notice amending its proposed amendments to ARM 17.36.310 and ARM 17.36.345. On August 10, 2018, the department published another notice amending its proposed amendment to ARM 17.36.310 relating to storm drainage.

FULL TEXT OF NOTICE: The full text of the notice proposal may be found online at <http://mtrules.org/gateway/ShowNoticeFile.asp?TID=8726>.

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MAR NOTICE NUMBER: 17-398

AGENCY/BOARD: Department of Environmental Quality

RULE CLASSIFICATION: Substantive

SUBJECT: Energy Development and Conservation

NOTICE DESCRIPTION: Notice of Public Hearing on Proposed Adoption - Energy

SUMMARY OF RULE: Chapter 344, L. 2015, requires the Department of Environmental Quality to adopt rules pertaining to energy contracts entered into on or after October 1, 2015. On August 10, 2018, the department proposed thirteen new rules concerning energy contracts. The department proposes to adopt rules to:

- I. Provide definitions to clarify the terms used in the energy performance contracting program. The department reasons that the proposed definitions under New Rule I provide uniformity in interpretation of key terms.
- II. Comply with current building codes and industry standards. The department reasons that adoption by reference of these rules is necessary to the implementation

of local government and state agency energy performance contracts under Title 90, chapter 4, part 11, MCA.

- III. Require solicitation, evaluation, and maintenance of energy service provider qualifications. As required under 90-4-1111, MCA, the department reasons that this rule provides for evaluation of submitted qualifications based on the following: (1) knowledge and experience with energy performance contracts; (2) ability to guarantee cost-effectiveness; (3) financial stability; and (4) other factors determined necessary by the department.
- IV. Delist an energy service provider if it failed to maintain qualifications established under 90-4-1111(2), MCA. The department reasons that this rule establishes a procedure for disqualification and delisting of energy service providers who are not in compliance with statutory requirements. The rule also includes disciplinary procedures for failure to comply with qualifications.
- V. Provide specific guidance on the energy performance contract process. The department reasons that it is necessary to explain the options to an entity during the contract process.
- VI. Determine cost-effectiveness when an energy performance contract includes multiple cost-saving measures and/or includes multiple buildings or facilities. The department reasons that New Rule VI clarifies that cost-effectiveness is determined based on the entire project and that cost-saving measures with higher levels of cost-effectiveness may offset measures that are less cost-effective or not cost-effective.
- VII. Establish an energy performance contract term and process. The department reasons that it is necessary to: (1) set a minimum term; (2) set a sequential process for performance contracting; (3) state the components that an entity must deem to be satisfactory before signing the certificate of acceptance for the contract; (4) ensure that project shortfall payment are not negotiated until the initial monitoring period has lapsed; (5) ensure that an energy service provider charges for costs associated with services provided; (6) ensure that an energy performance contract not move forward until funding is secured; and (7) protect the entity from charges incurred by the energy service provider when project financing has not been secured.
- VIII. Measure and verify guaranteed cost savings. The department reasons that the performance of an energy performance contract requires measurement and verification of cost savings by applying the internationally recognized approach under the International Performance Measurement and Verification Protocol (IPMVP) and the Federal Energy Management Program's Measurement and Verification Guidelines.
- IX. Guarantee cost savings and project financing. The department reasons that it is

necessary to ensure energy performance contracts are cost effective.

- X. Establish criteria to determine guaranteed cost savings for new construction and change of use. The department reasons that it is reasonably necessary to specify how building baseline utility may be determined, to limit operation and maintenance savings for rented or leased property to only current tenancies, and to exclude new construction from an energy performance contract unless the construction was a cost-saving measure.
- XI. Establish a standard method for determining escalation rates. The department reasons that this rule is necessary because energy service providers often use escalation rates in their cash flow analyses to demonstrate the cost-effectiveness of a project.
- XII. Require open book pricing. The department reasons that open book pricing allows the entity to review the accounting records, including calculations used, related to the energy performance contract to ensure that the entity pays only for the actual cost plus agreed-upon markups for the project.
- XIII. Establish energy service provider reporting requirements. The department reasons that this rule is necessary to provide the department with the information needed to evaluate the effectiveness of energy performance contracting in the state.

NOTES: On September 6 at 10 a.m., the department will hold a public hearing on the proposed adoption of the rule in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana. Public comment will be accepted until September 13, 2018.

FULL TEXT OF NOTICE: The full text of the notice proposal may be found online at <http://mtrules.org/gateway/ShowNoticeFile.asp?TID=8719>.

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MAR NOTICE NUMBER: 17-400

AGENCY/BOARD: Department of Environmental Quality

RULE CLASSIFICATION: Substantive

SUBJECT: Underground Storage Tanks

NOTICE DESCRIPTION: Notice of Public Hearing on Proposed Adoption and Amendment

SUMMARY OF RULE: The Department of Environmental Quality proposes to adopt and amend rules pertaining to underground storage tanks containing petroleum and chemical substances. The department reasons that the proposed new rules and proposed amendments to ARM Title 17, chapter 56, are necessary to the state's program

authorization and to ensure the state is no less stringent than federal underground storage tank regulations.

NOTES: On September 14 at 10 a.m., the department will hold a public hearing on the proposed adoption of the rule in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana. Public comment will be accepted until September 21, 2018.

FULL TEXT OF NOTICE: The full text of the notice proposal may be found online at <http://mtrules.org/gateway/ShowNoticeFile.asp?TID=8764>.

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MAR NOTICE NUMBER: 36-22-197

AGENCY/BOARD: Department of Natural Resources and Conservation and the Board of Oil and Gas Conservation

RULE CLASSIFICATION: Substantive

SUBJECT: Fracturing of oil and gas wells

NOTICE DESCRIPTION: Notice of Public Hearing on Proposed Amendment and Repeal

SUMMARY OF RULE: The Department of Natural Resources and Conservation proposes to amend rules pertaining to fracturing of oil and gas wells and repeal ARM 36.22.1244 pertaining to the producer's certificate of compliance. The board reasons that the amendments are necessary to ensure consistency with statutory changes required by Chapter 316, L. 2017.

NOTES: On September 17 at 2 p.m., the department and board will hold a public hearing on the proposed amendments and repeal at 2535 St. Johns Avenue, Billings, Montana. Public comment will be accepted until September 24, 2018.

FULL TEXT OF NOTICE: The full text of the notice proposal may be found online at <http://mtrules.org/gateway/ShowNoticeFile.asp?TID=8760>.

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