ENVIRONMENTAL QUALITY COUNCIL

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TODD EVERTS, Legislative Environmental Analyst

February 16, 2010

TO: Environmental Quality Council (EQC) Members

FR: Todd Everts, EQC Staff Attorney

RE: EQC Administrative Rulemaking Authority and Current Administrative Rules Updates

As a part of the EQC's statutory agency oversight responsibilities, the full EQC will receive an update at each meeting on the status of agency administrative rulemaking activities.

EQC Administrative Rulemaking Oversight Statutory Authority

The requirement that the EQC review administrative rules is found in 75-1-324(10), MCA.

The Montana Administrative Procedure Act (MAPA), Title 2, Chapter 4, MCA, governs how state agencies may adopt administrative rules. An administrative rule is a type of law that implements a law adopted by the Legislature or by initiative. If the law is repealed or changed, the administrative rule must be repealed or changed to conform. MAPA provides that:

- An agency must have specific authority in law to adopt rules (2-4-301, MCA).
- Notice of the proposed rule must be published in the Montana Administrative Register, which is printed by the Secretary of State. The notice must comply with specific time lines and provision requirements. (2-4-302, MCA).
- Interested parties notified include the primary legislative sponsor of the bill that enacted the section of law authorizing the administrative rulemaking process. The purpose of the notification to the legislative sponsor is to obtain the legislator's comments, inform the legislator of the date by which each step of the rulemaking process must be completed, and provide the legislator with information about the time periods during which the legislator may comment on the proposed rules (2-4-302, MCA).

EQC
MARCH 5, 2010
EXHIBIT 1

- An agency must consider all oral and written submissions respecting a proposed rule (2-4-305, MCA).

- A rule must include a citation to the specific grant of rulemaking authority and must be "reasonably necessary to effectuate the purpose of the statute " (2-4-305, MCA).

The provisions governing the Legislative review of rules is in Title 2, Ch. 4, parts 3 and 4, MCA. The EQC may:

- Request records for checking compliance with MAPA (2-4-402(2)(a), MCA).

- Submit written recommendations and participate in hearings on rule adoption (2-4-402(2)(b), MCA).

- Require that a hearing be held on rule adoption (2-4-402(2)(c), MCA).

- Institute or participate in legal proceedings relating to rules (2-4-402(2)(d), MCA).

- Review the incidence and conduct of administrative proceedings (2-4-402(2)(e), MCA).

- Commence a poll on an objection to a rule (2-4-403, MCA).

- Require an economic impact statement relating to the adoption of a rule (2-4-405).

- Object to a rule not adopted in conformance with MAPA (2-4-406, MCA).

- Recommend rule adoption or changes (2-4-411, MCA).

- Object to a proposed rule and require up to a 6-month delay in adoption (2-4-305(9) and 2-4-306(4) MCA).

Failure of a committee to object to a rule proceeding is not admissible in court.

The agency must report to the committee any judicial proceedings relating to the construction or interpretation of laws on committee review of rules and may report judicial proceedings relating to the agency's rules. (2-4-410, MCA).

Update on Current Agency Administrative Rulemaking Processes

Department of Environmental Quality

For electronic access to DEQ rule notices visit the following site:
http://www.deq.state.mt.us/dir/legal/hearing.asp

Notice of Proposed Rules With Upcoming Public Hearings:

Public Hearing Date	Where	Comment Due Date	Purpose
1:30 p.m. March 11, 2010	RM 35, Metcalf Building	5:00 p.m. March 18, 2010	Notice of public hearing and proposed amendment pertaining to Montana air quality permits - exclusions for de minimis changes. MAR Notice No. 17-302
1:30 p.m. March 10, 2010	Rm 136/137, Metcalf Building	5:00 p.m. March 11, 2010	Notice of public hearing on proposed amendments pertaining to certification exams for public water systems. MAR Notice No. 17-301

Proposed Rules Post Public Hearing But Pre Final Adoption

Public Hearing Date	Where	Comment Due Date	Purpose
		5:00 p.m. April 23, 2010	Notice of Extension of Comment Period pertaining to outstanding resource water designation for the Gallatin River. MAR Notice No. 17-276C
1:30 p.m. February 3, 2010	Rm 122, Last Chance Gulch Building.	5:00 p.m. February 11, 2010	Notice of Public Hearing on Proposed Amendments pertaining to reporting of confirmed releases, adoption by reference, and release categorization for underground storage tanks. MAR Notice No. 17-300.
None	NA	January 21, 2010	Notice of Proposed Amendments pertaining to bonding letters under the Montana Strip and Underground Mining Act. MAR Notice No. 17-298.

1:30 p.m. January 13, 2010	Rm 35, Metcalf Building	5:00 p.m. January 21, 2010	Notice on Public Hearing on Proposed Amendments pertaining to public water and sewage system fees. MAR Notice No. 17-297.

Department of Fish, Wildlife, and Parks

For electronic access to FWP rule notices visit the following site:
http://fwp.mt.gov/publicnotices/category.aspx?c=27

Notice of Proposed Rules With Upcoming Public Hearings:

None.

Proposed Rules Post Public Hearing But Pre Final Adoption

None

Department of Natural Resources and Conservation

For electronic access to DNRC Rule Notices, visit the following site:
http://dnrc.mt.gov/About_Us/notices.asp

Notice of Proposed Rules With Upcoming Public Hearings:

None.

Proposed Rules Post Public Hearing But Pre Final Adoption

Public Hearing Date(s)	Where	Comment Due Date	Purpose
7:00 p.m. on February 3, 2010, Kalispell and February 4, 2010, Seeley Lake	NA	February 11, 2010	Notice of Public Hearing on Proposed Repeal, Amendment, and Adoption regarding new surface leasing rules and cabin site leasing rules. MAR Notice No. 36-22-143.

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