



MONTANA
LOGGING
ASSOCIATION

Environmental Quality Council
P.O. Box 201704
Helena, MT 59620-1704

September 15, 1999

Exhibit 5
Water Policy Subcommittee 9/22/99

Dear EQC Members:

I am writing this letter to you on behalf of the membership of the Montana Logging Association. We are very concerned about two new proposed Federal Rules that will profoundly affect TMDL implementation in Montana and the rest of the Nation. We believe that these new rules, if implemented, would change the face of agricultural and forestry land use and would further cripple these beleaguered industries. Your leadership is well known with respect to this issue and includes the sponsorship and passage of HB 546 in 1997 and HB 392 in 1999. We will be sending a similar letter to the Montana Congressional Delegation, but feel that it is vitally important for the Montana Legislature to weigh-in regarding this Federal rulemaking and to use the EQC to help make it's voice heard on this important matter.

After careful review of the proposed rules, it seems clear to us that if implemented; these changes would completely negate the considerable progress made regarding TMDL's in Montana. While there are some helpful changes contained in the proposed rules, for the most part, this Federal rulemaking is a giant leap backwards for Montana's TMDL efforts. We are especially concerned regarding the proposed rule re-designating silvicultural activities as point sources requiring permitting under the NPDES storm water discharge system. This action would remove all incentive for the implementation of forestry BMP's as the improvement of any forest road drainage using BMP's would require engaging in a lengthy permitting process that would also trigger Section 7 ESA Consultation with the USFWS in Bull trout watersheds. Forest landowners would simply choose to leave their road system as is rather than enter into the murky world of NPDES permits Endangered Species Consultation and the inevitable delay and bureaucratic red tape.

Montana's Forestry BMP program has been acknowledged as a great success, receiving the EPA's Non-Point Pollution Prevention Award in 1991. We are continually improving application and effectiveness of Forestry BMP's through special training programs, technical practice modification and practice and application on the ground. Implementation monitoring is conducted biennially and affirms the effectiveness of these practices. There is absolutely no sensible motive for turning this program into an expensive, regulatory, permit-based system, unless the goal is to eliminate forest management in threatened and impaired watersheds.

There are other troubling new rules, including the new requirement for an implementation plan to be submitted with each TMDL, which will cause interminable

delay. It will be challenging enough, given the required time frames of the Clean Water Act that are already being litigated, to address watershed plans (TMDL's) for Threatened and Impaired waters, let alone attempt to draw-up implementation plans involving hundreds and thousands of independent landowners in any one TMDL. Another onerous rule will require load allocations for atmospheric deposition – even though this pollution may come from other countries and other continents! It is our considered opinion that these new rules, if adopted, would shoot the Montana TMDL program squarely in both feet. EPA is requiring that comments on these new rules are received or postmarked by October 22, 1999. This does not leave enough time for effective analysis and comment regarding these complicated proposals.

We are asking you to help Montana landowners, ranchers, loggers and log haulers, forest products companies and their workers and all related support industries who have already made the commitment to improve water quality as part of conducting their business. The EPA must be informed from the grass roots that these proposed rules concerning the addition of an implementation plan, the calculation of load allocations for atmospheric deposition, the re-designation of some non-point sources as point sources and other onerous elements, will only serve to bring Montana's progress on TMDL's to a screeching halt. At a minimum, we respectfully request that you request the comment period be extended to enable all affected parties to comment substantively on this complicated issue.

I will be attending the Libby EQC meeting next week and will be available for any specific questions you may have regarding the probable effect from our perspective of these new proposed rules.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patrick Heffernan".

Patrick Heffernan, MLA Staff Forester

cc. MLA Board of Directors, Senator Lorents Grosfield, Senator Vicki Cocchiarella, Mark Simonich – MTDEQ, Cary Hegreberg – MWPA, Greg Schildwachter – IFA, Brian Sugden – Plum Creek.