ENVIRONMENTAL QUALITY COUNCIL

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TODD EVERTS, Legislative Environmental Analyst

April 19, 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 If the law is repealed or changed, the administrative rule must be repealed or changed to conform.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 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).

- 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

Public Hearing Date	Where	Comment Due Date	Purpose
1:30 p.m., May 11, 2010	RM 111, Metcalf Building	5:00 p.m., May 13, 2010	Notice of Public Hearing on Proposed Amendment (Public Water and Sewage System Requirements - Incorporation by Reference, Maximum Inorganic Chemical Contaminant Levels, Etc. - MAR Notice No. 17-304)
2:00 p.m., May 11, 2010	RM 111, Metcalf Building	5:00 p.m., June 1, 2010	Notice of Public Hearing on Proposed Amendment (Water Quality, Subdivisions, CECRA, Underground Storage Tanks - Department Circular DEQ-7 - MAR Notice No. 17-303)
		5:00 p.m., May 14, 2010	Notice of Extension of Comment Period on Proposed Amendment, Adoption, and Repeal (CECRA Remediation - Facility Ranking, and Delisting a facility on the CECRA Priority List, Incorporation by Reference, Proper and Expeditious Notice, Third-party Remedial Actions at Order Sites, Additional Remedial Actions Not Precluded, Orphan Share Reimbursement, and Purpose - MAR Notice No. 17-296)
		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

Department of Fish, Wildlife, and Parks

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

Notice of Proposed Rules

Public Hearing Date(s)	Where	Comment Due Date	Purpose
6:00 p.m. on April 14, 2010	DFWP Region 1 Office in Kalispell	April 22, 2010	Notice of Public Hearing and Proposed Amendments to Rule and Adoption regarding recreational water use on Lake 5, in Kalispell.

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

Public Hearing Date(s)	Where	Comment Due Date	Purpose
9:00 a.m. on May 13, 2010	Fred Bucks Conference room, DNRC Building, Helena	May 13, 2010. Postmarked by this date.	Notice of Public Hearing and Proposed Amendments to Rule regarding the Board of Water Well Contractors. MAR No. 36-22-137
1:00 p.m. on May 12, 2010	Director's Conference Room, DNRC Building, Helena	May 13, 2010, 5:00 p.m.	Notice of Public Hearing and Proposed Amendments to Rule regarding procedures for the issuance of oil and gas leases. MAR No. 36-22-141

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. [DNRC has completed an Environmental Assessment (EA) on these proposed rules. The EA is out for public comment until May 5, 2010.]

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