ENVIRONMENTAL QUALITY COUNCIL

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August 26, 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 If the law is repealed or changed, the administrative rule must be repealed or changed to conform.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).

EQC
SEPTEMBER 14, 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 or delay the effective date of the rules until the day after final adjournment of the regular session of the legislature (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
		5:00 p.m. November 12, 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	Where	Comment Due Date	Purpose
August 25, 2010, 6:00 p.m.	DFWP Headquarters, Helena	September 3, 2010	Notice of Public Hearing and Proposed Amendment adoption pertaining to exotic species. MAR Notice No. 12-364

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

None.

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