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Montana Legislative Services Division

Legal Services Office

TO: Environmental Quality Council Members
FROM: Helen Thigpen, Staff Attorney
RE: EQC Administrative Rule Review
DATE: December 14, 2011

I. EQC Rule Review

The EQC plays a significant role in the administrative rulemaking process and is required to review administrative rules from several agencies. As part of this process, legal staff for the EQC notifies the EQC of proposed, amended, or repealed administrative rules and of any concerns regarding the rulemaking process.

The EQC is responsible for reviewing administrative rules from the following agencies:

- Department of Environmental Quality (DEQ)
- Department of Fish, Wildlife, and Parks (FWP)
- Department of Natural Resources and Conservation (DNRC)

The EQC is also responsible for reviewing administrative rules from the entities and boards administratively attached to these agencies, including the following:

- Board of Environmental Review
- Board of Oil and Gas
- Fish, Wildlife, and Parks Commission

There are several possibilities for EQC involvement in the rulemaking process. The EQC may take any one or combination of the following actions:

- Request an agency's rulemaking records for checking compliance with MAPA. Section 2-4-402(2)(a), MCA.
- Prepare written recommendations for the adoption, amendment, or rejection of a rule and submit those recommendations to the agency proposing the rule and submit oral or written testimony at a rulemaking hearing. Section 2-4-402(2)(b), MCA.

- Require that a rulemaking hearing be held in accordance with the provisions of sections 2-4-302 through 2-4-305, MCA. Section 2-4-402(2)(c), MCA.
- Institute, intervene in, or otherwise participate in proceedings involving Title 2, chapter 4, MCA, in state and federal court and before administrative agencies. Section 2-4-402(2)(d), MCA.
- Review the incidence and conduct of administrative proceedings. Section 2-4-402(2)(e), MCA.
- Poll the Legislature by mail to determine whether a proposed rule is consistent with the intent of the Legislature. The results of the poll are admissible in any court proceeding involving the validity of the proposed or adopted rule. Sections 2-4-403 and 2-4-404, MCA.
- Require an economic impact statement relating to the adoption of a rule. Section 2-4-405, MCA.
- Object to all or some portion of a proposed or adopted rule and delay the adoption of the rule for 6 months or delay the effective date of the rule until the day after final adjournment of the next legislative session. Sections 2-4-305(9), 2-4-306(4)(c), and 2-4-406(4), MCA.
- Recommend a rule adoption or change. Section 2-4-411, MCA.

II. Update on Current Agency Administrative Rulemaking Activity

**** (Current through December 14, 2011) ****

A. Department of Environmental Quality

Visit <http://deq.mt.gov/dir/legal/default.mcp.x> for electronic access to DEQ rule notices.

Proposed Rules:

MAR Notice No.	Public Hearing Date	Where	Comment Due Date	Purpose
17-324	January 18, 2012, at 1:30 p.m.	Room 111, Metcalf Building, Department of Environmental Quality, Helena, Montana	January 23, 2012.	Notice of Public Hearing on Proposed Amendment, Adoption, and Repeal – Strip and Underground Mine Reclamation Act
17-276			November 8, 2011	Notice of Extension of Comment Period on Proposed Amendment – Outstanding Resource Water Designation for the Gallatin River

B. Department of Fish, Wildlife, and Parks

Visit <http://fwp.mt.gov/news/publicNotices/armRules/> for electronic access to FWP rules notices.

Proposed Rules:

MAR Notice No.	Public Hearing Date	Where	Comment Due Date	Purpose
12-373	None unless requested		December 30, 2011	Notice of Proposed Amendment and Adoption - Falconry
12-372	None unless requested		December 30, 2011	Notice of Proposed Amendment, Adoption, and Repeal - Raptor Propagation

C. Department of Natural Resources and Conservation

Visit <http://www.dnrc.mt.gov/PublicInterest/Notices/Default.asp#AdminRules> for electronic access to DNRC rules notices.

Proposed Rules:

MAR Notice No.	Public Hearing Date	Where	Comment Due Date	Purpose
36-22-158	December 6, 2011 December 7, 2011	Hampton Inn, 1140 Highway 2, West Kalispell, Montana Seeley Lake Community Hall, 2348 Highway 83, Seeley Lake, Montana	December 8, 2011	Notice of Public Hearing on Proposed Adoption and Amendment - Establishment of Lease Rental Rates, Lease Assignments, and Sale Procedures for State Cabinsites
36-22-161	November 17, 2011	Cobblestone Community Center, 242 South Woodard Avenue, Absarokee, Montana	November 25, 2011	Notice of Public Hearing on Proposed Adoption - Horse Creek Controlled Groundwater Area