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June 27, 2012

To: Environmental Quality Council Members
From: Jason Mohr, Legislative Environmental Policy Office
Re: EQC staff review of biennial compliance and enforcement reports

Background

As directed by the Environmental Quality Council at its January meeting, staff reviewed compliance and enforcement reports from the Departments of Environmental Quality (DEQ), Natural Resources and Conservation (DNRC), and Agriculture. The 2007 Legislature passed this reporting requirement. Section 75-1-314, MCA, requires biennial reports to the EQC from the three departments with the following information:

- Activities and efforts taking place to promote compliance assistance and education
- Size and description of the regulated community and the estimated proportion of that community that is in compliance
- Number, description, method of discovery, and significance of noncompliances, including those noncompliances that are pending
- Description of how the department has addressed the noncompliances identified...and a list of the noncompliances left unresolved
- When practical, reporting...should include quantitative trend information.

EQC compliance and enforcement reports are a combination of data – such as the number of instances of noncompliance – and subjective narrative – such as a description of how an agency resolves instances of noncompliance. A review by EQC staff found no one agency is meeting all aspects of Section 75-1-314, MCA, nor is one agency failing in all aspects. For example, two out of three agency reports did not estimate the proportion of the regulated community in compliance with state laws and rules. Also, two of three agencies did not describe their own process to follow-up on violations or instances of noncompliance. Within each agency, programs alternately met – or skipped – requirements of the law.

In January, the EQC voted to keep these compliance and enforcement reports from the three agencies, as part of the HB142 review of statutorily required advisory councils and reports. At that time, the council also directed staff to review these reports in an effort to bring consistency to the final product -- and to more closely align with the law.

EQC
July 19, 2012
Exhibit 5

As a result, EQC staff developed a template for future EQC compliance and enforcement reports. This template essentially mirrors the requirements under law.

Use of a template may provide advantages. For example, legislators may find consistent reports a valuable tool to compare current enforcement efforts with past efforts. Additionally, a consistent layout may allow legislators to make program-by-program comparisons.

EQC staff estimates that agency staff should experience little additional workload adjusting their compliance report to match the template. In conversations with agency staff, much of the regulatory information required in the reports is used by agency staff in everyday regulatory tasks.

EQC staff met or communicated with staff from each agency responsible for compiling their respective compliance and enforcement reports. All agencies indicated they will use the template while drafting their next biennial compliance and enforcement report for the EQC, which will be some time in the 2014-15 biennium.

Please find attached the template, which outlines the content sections for future EQC compliance and enforcement reports.

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Content sections for RJC compliance and enforcement reports

Compliance assistance and education activities

- **Statute** (Section 75-1-314, MCA): "The activities and efforts taking place to promote compliance assistance and education"
- **Analysis:** This section serves functionally as an overview of the regulatory program, specifically agencies' outreach efforts
- **Suggested content:** Narrative description of how agencies "promote compliance assistance and education"

Regulated community

- **Statute:** "The size and description of regulated community and the estimated proportion of that community that is in compliance"
- **Analysis:** This section identifies and quantifies the regulated community. As such, it is a mix of data and narrative description
- **Suggested content:**
 - Data: size of regulated community; estimated proportion of regulated community in compliance
 - Narrative: description of the regulated community

Noncompliances

- **Statute:** "The number, description, method of discovery, and significance of noncompliance, including those noncompliances that are pending"
- **Analysis:** This section discusses what agencies do to uncover instances of noncompliance (violations)
- **Suggested content** is a mix of data and narrative, including:
 - Data: number of instances of noncompliance/violations, pending instances of noncompliances/violations
 - Narrative: methods of discovery (how program investigates complaints, conducts inspections, etc.), significance of these instances of noncompliance/violations

Enforcement efforts

- **Statute:** "A description of how department has addresses the noncompliances identified...and a list of noncompliances left unresolved"
- **Analysis:** This section discusses agencies' enforcement efforts -- how they follow up on violations. Statute specifically asks for a list of unresolved noncompliances
- **Suggested content:**
 - Data: list of unresolved instances of noncompliance
 - Narrative: description of agency follow-up on issues of noncompliance

Trend information

- **Statute:** "When practical, reporting required...should include quantitative trend information"
- **Analysis:** This section appears to be the most subjective area. The law asks for quantitative trend information for each of the above areas "when practical"
- **Suggested content:** Agencies could identify trends in compliance assistance and education, trends they see in the regulated community, trends in complaints or what they discover in investigations, and trends in agency follow-up. This would likely be a narrative section, unless the program tracks relevant data