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Montana Legislative Services Division

Legal Services Office

TO: Environmental Quality Council Members
FROM: Helen Thigpen, Staff Attorney
DATE: May 2012 (*Update*)
RE: EQC Administrative Rule Review

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 As part of this process, legal staff for the EQC notifies the EQC of proposed, amended, or repealed administrative rules and of any concerns regarding the rulemaking process.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 Conservation
- Fish, Wildlife, and Parks Commission

There are several possibilities for EQC involvement in the rulemaking process. The EQC may take one or any 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. Rules Adopted After the March 2012 EQC Meeting

**** (Current through April 26, 2012) ****

A. Department of Environmental Quality

- 17-324 Notice of Amendment, Adoption, and Repeal - Strip and Underground Mine Reclamation Act.

B. Department of Fish, Wildlife, and Parks

- 12-372 (Fish, Wildlife and Parks Commission) Notice of Amendment, Adoption and Repeal - Raptor Propagation.
- 12-373 (Fish, Wildlife and Parks Commission) Notice of Amendment and Adoption - Falconry.

C. Department of Natural Resources and Conservation

- 36-22-160 Notice of Repeal and Adoption - Application Procedures and Loan Requirements of the Renewable Resources Grant and Loan Program.
- 12-374 (Fish, Wildlife and Parks Commission) Notice of Adoption, Amendment, and Repeal - No Wake Zones Surrounding Commercial Marinas.
- 17-329 (Water Treatment Systems and Operators) Notice of Amendment - Definitions - Classification of Systems - Certification of Operators - Examinations - Certified Operator in Charge of System -- Exceptions.

III. Update on Current Agency Administrative Rulemaking Activity

**** (Current through April 26, 2012) ****

A. Department of Environmental Quality

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

Proposed Rules With No Public Hearing Contemplated

MAR Notice No.	Public Hearing Date	Where	Comment Due Date	Purpose
17-332	None unless requested	NA	May 10, 2012 (comment period extended to May 24, 2012)	(CECRA Remediation) Amended Notice of Proposed Amendment and Extension of Comment Period - Incorporation by Reference. No Public Hearing Contemplated.

Proposed Rules After Public Hearing But Prior to Final Adoption:

MAR Notice No.	Public Hearing Date	Where	Comment Due Date	Purpose
17-331	March 2, 2012, at 1:30 p.m.	Room 111, Metcalf Building, Department of Environmental Quality, 1520 East Sixth Avenue, Helena, Montana	March 8, 2012	(Board of Environmental Review) (Public Water and Sewage System Requirements) Notice of Public Hearing on Proposed Amendment - Treatment Requirements - Control Tests - Testing and Sampling Records and Reporting Requirements - Definitions - Incorporation by Reference - Cross-Connections: Regulatory Requirements - Voluntary Cross-Connection Control Programs: Application Requirements - Standards and Requirements for Cross-Connection Control
17-276	NA	NA	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.

Notice of Proposed Rules With Upcoming Public Hearings

MAR Notice No.	Public Hearing Date	Where	Comment Due Date	Purpose
12-376	Several hearing dates are scheduled for May 2012 in various locations across the State. See full notice for additional information	Various locations statewide	June 1, 2012	Notice of Public Hearings on Proposed Adoption - Bodies of Water Identified as Contaminated With Eurasian Watermilfoil

Proposed Rules After Public Hearing But Prior to Final Adoption:

MAR Notice No.	Public Hearing	Where	Comment Due Date	Purpose
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	Date			
12-375	Several hearing dates are scheduled for April 2012 in various locations across the State. See full notice for additional information.	Various locations statewide	April 13, 2012	Notice of Public Hearings on Proposed Amendment and Adoption – Upland Game Bird Enhancement Program.

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.

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