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## Montana Legislative Services Division

### Legal Services Office

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TO: Environmental Quality Council  
FROM: Helen Thigpen, Staff Attorney  
RE: Summary of Recent Rulemaking Activity from DEQ, FWP, and DNRC  
DATE: August 26, 2013

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The following is a brief summary of recently proposed and adopted administrative rules from DEQ, FWP, and DNRC. Please visit the following link for additional information on rulemaking and legislative committee oversight responsibilities:

<http://leg.mt.gov/css/Committees/Interim/2013-2014/EQC/Rules/rules-table.asp>.

#### A. Department of Environmental Quality

- **For electronic access to DEQ rule notices visit:**  
<http://deq.mt.gov/dir/legal/default.mcp>

#### *Pending Administrative Rules:*

- **Subdivisions – Fee Schedules – Changes in Subdivision.** MAR notice number 17-349. DEQ will hold a hearing on September 17, 2013, at 1:00 p.m. in Room 111, Metcalf Building, Helena, Montana. Public comment will be accepted through September 19, 2013. DEQ is proposing to increase fees for reviewing subdivision applications. The Department states that “the fees have not been increased since 2009 and it is necessary to raise fees to maintain minimum subdivision program functions.” According to the Department, “the fee increase will affect approximately 500 applicants in the next year for a total cumulative impact of approximately \$150,000 in increased subdivision revenue.”
- **Underground Storage Tanks – Performance Standards for New UST Systems – Upgrading Existing UST Systems.** MAR notice number 17-348. DEQ will hold a hearing on August 28, 2013, at 1:00 p.m. in Room 111, Metcalf Building, Helena, Montana. Public comment will be accepted through September 6, 2013. DEQ is proposing to amend rules regarding performance standards for new UST systems and for upgrading existing UST systems. DEQ is proposing to remove the language in ARM 17.56.201 that requires corrosion protection for pipes that may contain regulated substances. Similar language will be removed from ARM 17.56.202, which addresses upgrading existing UST systems.

- **Infectious Waste Management.** MAR notice number 17-347. DEQ will hold a hearing on September 9, 2013, at 9:30 a.m. in Room 111, Metcalf Building, Helena, Montana. Public comment will be accepted through September 16, 2013. DEQ is proposing to adopt eight new rules regarding uniform standards for the inspection, transportation, storage, and management of infectious waste as defined in 75-10-1003, MCA. The rules do not apply to the generation, storage, or transportation of infectious waste regulated under 75-10-1006, MCA, or infectious waste generated by individual households.
- **Water quality – Subdivisions/On-Site Subsurface Wastewater Treatment – Public Water and Sewage Systems Requirements – Extension of Comment Period – Adoption of DEQ Circular 4.** MAR notice number 17-343. The Board of Environmental Review (BER) is proposing to adopt revisions to DEQ Circular 4 (standards for subsurface wastewater treatment systems). The complete text of the proposed amendments is available on the department's website at <http://www.deq.mt.gov/wqinfo/Sub/default.mcp>. Notice of the proposal was originally published on December 20, 2012. The BER received a request for an extension of the comment period since the notice was published during the holidays. As a result, the BER extended the comment period through February 8, 2013. On June 6, 2013, the BER published an “amended notice of proposed amendment and extension of comment period” to accept comments through July 5, 2013.

*Adopted Administrative Rules:*

- **Hazardous Waste – Incorporation by Reference – Code of Federal Regulations.** MAR notice number 17-346. Adopted June 6, 2013. No public comments or testimony were received. A public hearing was not requested as provided in 2-4-302(4), MCA, and the rules were adopted exactly as proposed.
- **Solid Waste Management and Resource Recovery Plan.** MAR notice number 17-345. Adopted August 8, 2013. DEQ held a hearing on May 3, 2013, regarding the proposed adoption by reference of the 2013 Solid Waste Management and Recovery Plan. The department received seven comments regarding the proposed adoption. The rules were amended exactly as proposed.
- **Alternative Energy Revolving Loan Program.** MAR notice number 17-344. Adopted April 25, 2013. No public comments or testimony was received. A public hearing was not requested as provided in 2-4-302(4), MCA, and the rules were adopted exactly as proposed.

**B. Department of Fish, Wildlife, and Parks**

- **For electronic access to FWP rule notices visit:**  
<http://fwp.mt.gov/news/publicNotices/armRules/>

*Pending Administrative Rules:*

- **Salvage Permits. MAR notice number 12-392.** The Commission is proposing to adopt rules to implement HB 247, which authorizes individuals to salvage certain animals killed in vehicular collisions. The proposed rules provide that an individual may salvage and possess deer, elk, moose, or antelope accidentally killed as a result of a vehicle collision, provided the carcass is presented to a peace officer or department regional office during regular business hours within 24 hours of taking possession of the animal, the carcass is disposed of in accordance with 75-10-213, MCA, and the meat is used for human consumption. No public hearing is contemplated, but a hearing may be held if requested as provided in MAPA.
- **Recreational use on Lake Alva, Harpers Lake, and Lake Marshall. MAR notice number 12-385.** The Commission is proposing to amend three rules and to adopt one new rule regarding recreational use on Lake Alva, Harpers Lake, and Lake Marshall. The proposed rules would limit Lake Alva to a controlled no wake speed and limit Harpers Lake and Lake Marshall to manually operated watercraft and watercraft powered by electric motors. The notice was published on May 19, 2013, and public comments were accepted through June 14, 2013.
- **Recreational use on Echo Lake, Abbott Lake, and Peterson Lake. MAR notice number 12-386.** The Commission proposed rules prohibiting wake speeds on Abbot Lake and Peterson Lake when Echo Lake is at flood stage to address safety concerns. The notice was published on January 17, 2013, and a public hearing was held on February 19, 2013. MAPA requires rules to be adopted within 6 months of publication. Because the rule was not adopted within 6 months of the date the notice was published in the MAR, the Commission will need to re-notice the proposal if it intends to move forward with the proposed rule.

*Temporary Emergency Rules:*

- **Temporary Emergency Rule – Silver Run Wildlife Management Area Temporary Emergency Closure.** FWP adopted a temporary emergency rule closing the Silver Run Wildlife Management Area to public occupation, hunting, and recreation due to the Rock Creek wildfire burning near Red Lodge, Montana.
- **Temporary Emergency Rule – Closing the Clark Fork River from Big Eddy Fishing Access Site to Dry Creek Fishing Access Site in Mineral County.** The Commission adopted a temporary emergency rule closing a portion of the Clark Fork River located in Mineral County for fire suppression efforts. The Commission states that the “rule is effective as long as this stretch of river is needed as a source of water for fire suppression

efforts.” (Note: 2-4-304, MCA, provides that a temporary emergency rule cannot be effective for more than 120 days).

- **Temporary Emergency Rule – Closing the Smith River from Camp Baker to Eden Bridge.** The Commission adopted a temporary emergency rule closing a portion of the Smith River to recreation due to bear activity. According to news reports, the stretch of the river that was closed has been reopened, but a notice repealing the rule does not appear to have been filed as indicated in the proposal notice.

**C. Department of Natural Resources and Conservation**

- **For electronic access to DNRC rule notices visit:**  
<http://dnrc.mt.gov/PublicInterest/Notices/Default.asp>

*Pending Administrative Rules:*

- **Water Rights – Definition of “Combined Appropriation”.** MAR notice number 36-22-175. DNRC will hold a hearing on September 19, 2013, at 10:00 a.m. in the Fred Buck Conference Room, Water Resources Building, 1424 Ninth Ave., Helena, Montana. Public comments will be accepted through September 19, 2013. The Department is proposing to amend the definition of what constitutes a “combined appropriation” for purposes of implementing the Montana Water Use Act.

*Adopted Administrative Rules:*

- **Water Right Permitting.** MAR notice number 36-22-174. Adopted July 25, 2013. The department held a hearing on June 26, 2013, regarding the proposed amendment and adoption of rules regarding temporary water right leasing, change authorizations, and stream depletions zones. The rules were adopted on July 25, 2013, with slight modifications.
- **Water Well Contractors’ Fees.** MAR notice number 36-22-172. Adopted May 9, 2013. The department held a hearing April 10, 2013, to consider an amendment to increase fees pertaining to the Board of Water Well Contractors. No public comments were received, and the rules were adopted exactly as proposed.

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