



## Montana Legislative Services Division

### Legal Services Office

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TO: Water Policy Interim Committee Members  
FROM: Cori Hach, Staff Attorney  
RE: Administrative Rule Report for June 2019 Meeting

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Since the last meeting of the Water Policy Interim Committee (WPIC), the Department of Environmental Quality and Department of Natural Resources and Conservation have filed the following notices with the Secretary of State for publication in the Montana Administrative Register (MAR). The Department of Fish, Wildlife, and Parks has not filed any notices related to water quality or quantity. Full text for each notice summarized below is available at <http://www.mtrules.org> (search by notice number).

#### DEPARTMENT OF ENVIRONMENTAL QUALITY:

##### Notice of Proposed Rules:

None.

##### Adopted Rules – Not Reviewed by Committee:

Ground Water Standards Incorporated by Reference into Department Circular DEQ-7, MAR 17-403: This rule amended ARM 17.56.608 to provide human health ground water criteria for the following: diallate; dioxane, 1,4-; iron; manganese; perfluorooctane sulfonate (PFOS); and perfluorooctanoic acid (PFOA). Five of the proposed criteria (diallate; dioxane, 1,4-; iron; PFOS; and PFOA) are equivalent to comparable federally recommended guidelines. The proposed manganese criterion is more stringent than comparable federal guidelines. In addition, ARM 17.24.645, 17.24.646, 17.30.502, 17.30.619, 17.30.702, 17.30.1001, 17.36.345, 17.55.109, and 17.56.507 were updated to cross-reference the updated version of the Department Circular DEQ-7. The Board of Environmental Review and the Department of Environmental Quality initially published a notice of public hearing on December 21, 2018. After that hearing on February 5, 2019, the proposed rulemaking generated more comments than anticipated, so on February 22, 2019, the Board and Department announced that an additional hearing would be held on March 19, 2019, and the public comment period would be extended for an additional 45 days. The public comment period therefore ended on May 3, 2019. A notice of adoption has not yet been published.

Definitions - Department Circulars DEQ-1, DEQ-2, and DEQ-3 - Setbacks Between Water Wells and Sewage Lagoons, MAR 17-404: This rule adopted a new rule and amended ARM 17.30.1001, 17.30.1334, 17.36.103, 17.36.345, 17.38.101, and 17.50.819 to insert appropriate

references to the new rule. The new rule establishes setbacks between sewage lagoons and water wells to protect water wells from bacterial and viral pathogens originating from sewage lagoons. The rule provides two methods for determining the appropriate setback between a sewage lagoon and a water well. The rule also includes instructions for determining the amount of pathogen reduction and acceptable methods and technical requirements for determining parameters. A hearing was held on January 17, 2019, and concerned parties were instructed to submit comments on or before January 28, 2019. A notice of adoption has not yet been published.

**Adopted Rules – Memo Sent out of Committee Review Prior to Adoption/Amendment:**

Water Quality – 401 Certification, MAR 17-399: Adopted, effective December 21, 2018, as proposed. The Board of Environmental Review amended rules concerning state water quality certification under section 401 of the federal Clean Water Act, specifically pertaining to the application for certification, tentative determination by the department, public notice and final determination by the department, and the appeal process to the board.

**DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION:**

**Notice of Proposed Rules**

None.

**Adopted Rules – Not Reviewed by Committee:**

Burlington Northern and Santa Fe Somers Site Controlled Groundwater Area, MAR 36-22-199: Adopted, effective December 7, 2018, as proposed. This rule designated a Burlington Northern and Santa Fe Railway Company's Somers Railyard Controlled Groundwater Area (BNSF Somers CGWA). The BNSF Somers CGWA spans an area of approximately 86.4 acres located in the unincorporated town of Somers, Montana. No new groundwater appropriations or changes to existing groundwater appropriations are allowed within the lateral boundaries of the BNSF Somers CGWA as shown above. The cited necessity for the imposition of controlled pumping conditions is the existence of a primary groundwater plume comprised of polycyclic aromatic hydrocarbons (PAH), phenolic constituents, and benzene and a secondary groundwater plume of PAH and benzene with phenol constituents below Record of Decision cleanup levels.

Lockwood Solvent Groundwater Plume Site Controlled Groundwater Area, MAR 36-22-198: Adopted, effective October 5, 2018, with amendments. This rule designated a Lockwood Solvent Groundwater Plume Site Controlled Groundwater Area (LSGPS CGWA). The LSGPS CGWA spans an area of approximately 331 acres located east of Billings, Montana. With exceptions as noted in the rule, the Department may not accept or process applications for any new or existing groundwater developments within the lateral boundaries of the LSGPS CGWA. The cited necessity for the imposition of nonpumping conditions is risk to human health and safety based on the existence of chlorinated solvent contamination in soil and groundwater from a historical tanker truck trailer manufacturing and repair facility and chemical repackaging and distribution

company. Exposure to chlorinated solvents can occur through inhalation, ingestion, and skin contact or skin absorption.

Location of Wells, MAR 36-22-194: This rule amends ARM 36.21.634 and ARM 36.21.638 for the purpose of ensuring consistency with the rules proposed by DEQ in 17-404, MAR (discussed in the DEQ section, above). The rule adds a definition of “sewage lagoon” and makes an amendment to cross-reference the new rule proposed in 17-404. The proposed rule was published on December 21, 2018, and a hearing was held on January 18, 2019. Subsequently, DNRC learned that certain interested parties were not initially notified of the public hearing, so an additional public hearing was held on February 22, 2019. A notice of adoption has not yet been published.

**Adopted Ruled – Memo Sent out of Committee Review Prior to Adoption:**

None.