



Montana Legislative Services Division

Legal Services Office

TO: Water Policy Interim Committee Members
FROM: Cori Hach, Staff Attorney
RE: Administrative Rule Report for September 2020 Meeting

The Department of Environmental Quality has filed the following Notice of Adoption with the Secretary of State for publication in the Montana Administrative Register (MAR). The Department of Natural Resources and Conservation and Department of Fish, Wildlife, and Parks have not filed any notices related to water quality or quantity since the June 10, 2020 WPIC meeting. Full text for the notice summarized below is available at <http://www.mtrules.org> (search by notice number).

DEPARTMENT OF ENVIRONMENTAL QUALITY:

MAR Notice Number: 17-412

Notice Description: Notice of Adoption

Subject: Adoption of a new rule pertaining to natural and nonanthropogenic water quality standards

Summary: Section 75-5-222, MCA, states that the DEQ may not apply a standard to a water body for water quality that is more stringent than the nonanthropogenic condition of the water body. For such bodies of water where the natural level for certain conditions is elevated above the otherwise applicable water quality standards, the nonanthropogenic condition is the standard. The Yellowstone River is one such water body because nearby geothermal sources cause the naturally occurring arsenic concentrations to exceed the otherwise applicable state water quality standards.

The new rule establishes nonanthropogenic-based water quality standards based on the existing concentrations of arsenic in certain segments of the Yellowstone River. It also establishes a framework so that other waterbodies, waterbody segments, or groups of waterbodies within specific geographic regions can be incorporated into the rule at a later time.

Notes/hearing: A virtual public hearing was held on June 17, 2020. Public comment was due on June 19, 2020.

Adoption Notice Notes: The Board of Environmental Review received 25 comments on various aspects of the proposed rule including questions and comments on intake credits,

mixing zones, human health implications of the standards, the derivation and implementation of the annual median concentrations, and the application of the rulemaking framework to future nonanthropogenic standards. The Board of Environmental Review responded to each comment in the Notice of Adoption and adopted the new rule exactly as proposed.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION:

None.

FISH, WILDLIFE AND PARKS:

None.