



To: Chairman Mike Lang and Chairman Jeff Welborn
EQC Members, WPIC Members

From: DEQ Director Chris Dorrington

Date: August 24, 2022

RE: 2023 Proposed Legislation

The following is a list of DEQ's proposed legislation that has been approved through the Executive Planning Process for introduction to the 2023 Legislature. The department would appreciate your review of these proposals and consideration for pre-introduction. DEQ staff will be available at EQC on Sept. 8-9 and at WPIC on Aug. 31 to provide additional information and respond to questions.

1. Revise the permitting of incinerators:

Issue: Since its adoption, the statutes guiding the permitting of incinerators has primarily applied to the permitting of human and animal crematoriums, which is not what it was intended to cover. Additionally, these requirements apply to thermal oxidizers and regenerative thermal oxidizers--which are used to control emissions. This was flagged for regulatory reform and ranked #1 by the agency for efficiencies and streamlined permitting.

Proposal: The proposed legislation exempts pollution control equipment from incinerator permitting requirements. The draft also allows for a permit by registration program for animal and human crematoriums of a certain size. This will allow crematoriums to be permitted through a shorter, streamlined registration process that will be adopted by rule. Requirements for public notification and a health risk assessment will be addressed in rulemaking.

2. Provide for a definition of "completion or abandonment of operations" in hard rock mining:

Issue: As DEQ moves forward on pressing for mining plans and updated bonds at sites where activity has not occurred, questions have been raised by stakeholders about the differences in statute pertaining to mines being abandoned or complete.

Proposal: The proposed legislation will clarify the definition of abandonment and establish that DEQ does not have the authority to determine when a mine and/or mine resource is "complete" and no longer viable. DEQ would retain the authority to determine when an operation is "abandoned" and the proposed legislation would clarify under what circumstance DEQ would make that determination (for example, bond is not current, and reclamation is not completed). The issue of "completion or abandonment" is contained in 82-4-336, MCA.

3. Revise applicable hard rock mining fees and establish a hard rock mining permitting program account:

Issue: DEQ's implementation of the Montana Mining Reclamation Act (MMRA) currently totals approximately \$1.13 Million in Natural Resource Operations (NRO) and \$510K in

General Fund. The hard rock mining fees have not changed since they were established in 2001. The fees collected are not directed to MMRA implementation and are not commensurate with the workload.

Proposal: The implementation of the MMRA is currently funded with General Fund and NRO. This bill would add a 3rd funding sources to the MMRA implementation and would take some pressure off the General Fund needed for MMRA implementation. If this legislation were passed, DEQ's implementation of the MMRA would total approximately \$1.13M in NRO, \$255K in General Fund, and \$255K in Fees.

4. Generally, revise the energy grant and loan programs administered by DEQ:

Issue: The Alternative Energy Revolving Loan Program (AERLP) is a \$4.48M direct lending program managed by DEQ that has been capitalized by air quality penalties and a one-time federal grant in 2010. Over the past four years DEQ has issued an average of 52 loans annually, totaling an average of \$1,178,270 in loan funds. The program is constrained by outdated and arbitrary requirements and does not provide an avenue for partnership with private lenders.

Proposal: This legislation will modernize and improve the program while providing: 1) a framework to efficiently deploy federal funding coming under the Infrastructure Investment and Jobs Act (IIJA), 2) a mechanism for DEQ to leverage the expertise and reach of private lenders in providing energy enhancement financing to more consumers and small businesses. And 3) redefine the program to focus on energy conservation and alternative energy resources for homeowners, with a legislatively established prioritization for funding.

5. Provide funding and authorization for Montana to join the Interstate Mining Compact Commission (IMCC):

Issue: Montana is currently an associate member of the IMCC and has been for the last 4 years. At the close of the fifth year, the associate membership ceases or the other voting members are asked to vote to extend the associate status. Montana would benefit from joining as a full member vs. an associate member. Potential benefits of joining IMCC as a full voting member include: 1) They provide a voice at the federal level for any law changes that are being proposed – such as current federal reform of hard rock mining laws. 2) They advocate for additional funding to states. Full membership is required on how to move forward and what are the priorities of the coal states.

Proposal: Montana would be required to adopt the IMCC Compact via legislation. Since the Compact is both a statute in each of the States adopting it and a contract among the party States, it must be enacted in substantially identical form by each party jurisdiction. Annual fees are roughly \$30,000.

6. Establish a Spill Reporting and Cleanup Act:

Issue: DEQ is unaware of hundreds of spills/releases along roadways each year. When DEQ does learn, we send a violation letter to the owner/operator of the mobile source that had the spill/release, characterizing it as an improper disposal of solid waste without a permit. Sending a violation letter for an unpermitted disposal of a waste, an activity that would not be permitted in these circumstances, is not the most effective or direct regulatory scheme.

Proposal: Establish a statutory requirement, housed within Title 75, chapter 10, MCA, to report and cleanup spills and releases from vehicles, trucks, and other mobile sources. Moving to a direct requirement to report and cleanup spills and releases will reduce the volume of petroleum and other products being abandoned along Montana roadways.

7. Remove “relatively low risk” definition from Petroleum Brownfields Act:

Issue: Prior to passage of the BUILD Act in 2018, brownfields funding could not be used on high priority properties and properties addressed by Leaking Underground Storage Tank (LUST) trust funds and the Oil Pollution Act. In 2018 the EPA Brownfields BUILD Act removed the requirement that petroleum brownfields properties be of "Relatively Low Risk". This change now allows brownfields funding to be administered on properties that are high priority and have been addressed through LUST trust funds or the Oil Pollution Act.

Proposal: The redevelopment of many commercial properties throughout Montana is complicated by the presence or perceived presence of contamination. The Brownfields program assists through assessment and cleanup of eligible properties to facilitate redevelopment. Deleting the definition of "Relatively low risk", which is Section 75-11-403 (2)(h), will allow Brownfields funding and assistance to be administered to more properties throughout Montana.

8. Repeal Detachable Metal Beverage Container Opener statutes:

Issue: The original intent of the statute was aimed at old style aluminum cans that had removable pull tabs to open the container. These cans have been phased out in recent years. The Governor's Red Tape Initiative, including Regulatory Reform, tasks state agencies with removing outdated or unnecessary statutes that could impact small businesses in Montana. This ranked within the top 5 candidates for regulatory reform in DEQ.

Proposal: Repeal 75-10-301, 302, and 303, MCA, for Detachable Beverage Container Openers.

9. Repeal third-party permission at state superfund order sites:

Issue: Statute requires third parties performing remedial activities at state superfund order sites to notify and obtain DEQ permission prior to conducting the work. Enforcement options are limited, and DEQ's oversight costs reviewing third party work plans are billed to the potentially liable persons. Handling and disposing of contaminated media are regulated by other DEQ programs, and worker safety is regulated by the Montana Department of Labor & Industry and federal government.

Proposal: Deleting the first sentence in 75-10-711(9), MCA, will reduce the financial and scheduling impacts to local governments, contractors, developers, potentially liable persons, and state agencies. Worker safety and proper handling and disposal of contaminated media is addressed in other statutes that protect human health and the environment.

10. Increase public water supply connection fees:

Issue: DEQ has not increased connection fees since 1998 and the costs to administer the Montana Public Water Supply Act has increased greatly as federal requirements have increased and become more complex. The fee increase will ensure continued support of the

September 11, 2022

Page 4 of 5

program amidst these changes. The ability to increase fees will provide additional support to communities with new technology, two FTEs to fulfill our federal Safe Drinking Water Act primacy requirement, and to provide technical assistance to public water systems and operators. Additionally, DEQ needs to continue supporting sampling of lead in schools.

Proposal: The application of the proposed fee increase will generate approximately \$906,319 in the first year, \$897,609 in the second, \$899,312 in the third and \$901,100. This addition will support two additional FTE and reduce the programs/agencies' reliance of general fund in the future.

