



ENVIRONMENTAL QUALITY COUNCIL

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JOE CARROLL, Legal Staff

To: Environmental Quality Council
From: Joe Carroll, EQC attorney
Date: January 12, 2024

Re: Administrative Rule Review

Introduction

The Montana Administrative Procedure Act (MAPA) mandates and empowers the Environmental Quality Council (EQC) to review administrative rule proposals made by the Department of Fish, Wildlife, and Parks (FWP), the Department of Environmental Quality (DEQ), the Department of Natural Resources and Conservation (DNRC), and entities attached to them, except that the Water Policy Interim Committee reviews rule proposals where the primacy concern is the quality or quantity of water.¹

EQC's obligation is fulfilled by attorney review of administrative rule proposals made by DNRC, FWP, and DEQ for procedural compliance with MAPA. Part of that review is to briefly summarize and present current rule proposals at EQC meetings. EQC's review role can be furthered by council members asking questions about rule proposals. Procedural questions about MAPA and rule proposals may be directed to council staff. Substantive questions about a particular rule proposal should be directed to the relevant department.

¹ 2-4-402(1), MCA; 75-1-324(10), MCA; 5-5-231(1)(e), MCA.

EQC does not need to take any action during administrative rule review. Taking no action allows the agency to carry on with the MAPA process. EQC may take actions by a majority vote that impact the MAPA process, including:

- requesting rulemaking records from the department;²
- requiring the department to hold a hearing if one has not been scheduled already;³ and
- objecting to a rule proposal, which can delay implementation to a date proximate to the “6-month expiration date” for further review by EQC, or to the day after *sine die* of the next regular session for further review by the full Legislature.⁴

Below is a summary of rules available for EQC review. It lists current rule proposals by department, providing the notice number, relevant dates, and a copy of the proposal’s statement of reasonable necessity. Please note that the “6-month expiration” date is an estimate.

FWP Rule Proposals

MAR Notice	MAPA timeline	Statement of reasonable necessity
12-617	Proposal date: November 3, 2023 Hearing date: December 1, 2023 Comment due date: December 4, 2023 6-month expiration: May 3, 2024	General Statement of Reasonable Necessity. FWP and the commission are proposing to initiate a comprehensive update to the block management program's administrative rules. Particularly, FWP and the commission intend on removing outdated and repetitive language, further clarifying outstanding language, and ensuring compliance with statutory requirements. The purpose of the proposed block management rules is to update them for the first time in more than 25 years.
12-618	Proposal date: November 3, 2023 Hearing date: December 1, 2023 Comment due date: December 4, 2023 6-month expiration: May 3, 2024	General Statement of Reasonable Necessity. FWP and the commission are proposing to initiate a comprehensive update to the contractual elk hunting access agreement's administrative rules. Particularly, FWP and the commission intend on removing outdated and repetitive language, clarifying outstanding language, and ensuring compliance with statutory requirements.

² 2-4-402(2)(a), MCA.

³ 2-4-402(2)(c), MCA.

⁴ 2-4-305(9), MCA; 2-4-406, MCA.



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DEQ Rule Proposals

MAR Notice	MAPA timeline	Statement of reasonable necessity
17-432A	Proposal date: September 22, 2023 Hearing date: no hearing scheduled Comment due date: November 23, 2023 Proposed action date: February 9, 2024 6-month expiration: March 22, 2024	General Reason Statement: During the 2021 legislative session, the legislature passed Senate Bill 233. Senate Bill 233 reassigned and transferred the rulemaking duties and powers of the Board of Environmental Review to the department. In addition, Senate Bill 233 repealed 75-6-103, 75-10-106, 82-4-111, and 82-4-204, MCA. Through this rulemaking the department will be implementing the 2021 changes to rulemaking authority by striking "board" and changing it to "department." The department will also update the citations to the MCA sections that have been repealed by Senate Bill 233. The department is making these changes to implement the 2021 statutes and to clarify the change of authority to make it easier for the general public and the regulated community to determine the appropriate process and entity for future rulemakings.
17-432B	Proposal date: October 6, 2023 Hearing date: no hearing scheduled Comment due date: December 1, 2023 Proposed action date: February 9, 2024 6-month expiration: April 6, 2024	General Reason Statement: During the 2021 legislative session, the legislature passed Senate Bill 233. Senate Bill 233 reassigned and transferred the rulemaking duties and powers of the Board of Environmental Review to the department. In addition, Senate Bill 233 repealed 75-6-103, 75-10-106, 82-4-111, and 82-4-204, MCA. Through this rulemaking, the department will be implementing the 2021 changes to rulemaking authority by striking "board" and changing it to "department." The

		<p>department will also update the citations to the MCA sections that have been repealed by Senate Bill 233. The department is making these changes to implement the 2021 statute and to clarify the change of authority to make it easier for the general public and the regulated community to determine the appropriate process and entity for future rulemakings.</p>
<p>17-432C</p>	<p>Proposal date: October 6, 2023 Hearing date: November 29, 2023 Comment due date: December 1, 2023 Proposed action date: February 9, 2024 6-month expiration: April 6, 2024</p>	<p>General Reason Statement: During the 2021 legislative session, the legislature passed Senate Bill 233. Senate Bill 233 reassigned and transferred the rulemaking duties and powers of the Board of Environmental Review to the department. In addition, Senate Bill 233 repealed 75-6-103, 75-10-106, 82-4-111, and 82-4-204, MCA. Through this rulemaking, the department will be implementing the 2021 changes to rulemaking authority by striking "board" and changing it to "department." The department will also update the citations to the MCA sections that have been repealed by Senate Bill 233. The department is making these changes to implement the 2021 statute and to clarify the change of authority to make it easier for the general public and the regulated community to determine the appropriate process and entity for future rulemakings.</p>
<p>17-432D</p>	<p>Proposal date: October 20, 2023 Hearing date: no hearing scheduled Comment due date: December 1, 2023 Proposed action date: February 9, 2024 6-month expiration: April 20, 2024</p>	<p>General Reason Statement: During the 2021 legislative session, the legislature passed Senate Bill 233. Senate Bill 233 reassigned and transferred the rulemaking duties and powers of the Board of Environmental Review to the department. In addition, Senate Bill 233 repealed 75-6-103, 75-10-106, 82-4-111, and 82-4-204, MCA. Through this rulemaking, the department will be implementing the 2021 changes to rulemaking authority by striking "board" and changing it to "department." The department will also update the citations to the MCA sections that have been repealed by Senate Bill 233. The department is making these changes to implement the</p>



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		2021 statute and clarify the change of authority to make it easier for the general public and the regulated community to determine the appropriate process and entity for future rulemakings.
17-432E	Proposal date: November 3, 2023 Hearing date: no hearing scheduled Comment due date: November 23, 2023 Proposed action date: February 9, 2024 6-month expiration: May 3, 2024	General Reason Statement: During the 2021 legislative session, the legislature passed Senate Bill 233. Senate Bill 233 reassigned and transferred the rulemaking duties and powers of the Board of Environmental Review to the department. In addition, Senate Bill 233 repealed 75-6-103, 75-10-106, 82-4-111, and 82-4-204, MCA. Through this rulemaking, the department will be implementing the 2021 changes to rulemaking authority by striking "board" and changing it to "department." The department will also update the citations to the MCA sections that have been repealed by Senate Bill 233. The department is making these changes to implement the 2021 statute and to clarify the change of authority to make it easier for the general public and the regulated community to determine the appropriate process and entity for future rulemakings.
17-435	Proposal date: November 3, 2023 Hearing date: no hearing scheduled Comment due date: December 8, 2023 Proposed action date: March 8, 2024 6-month expiration: May 3, 2024	REASON: The proposed repeal eliminates third party work plan requirements at Comprehensive Environmental Cleanup and Responsibility Act (CECRA) order sites following the removal of such requirements in the authorizing statute. The third party work plan requirement contained in 75-10-711(9), MCA, was removed

		during the 68th Legislative Session when House Bill 88 was signed into law by Governor Gianforte on April 18, 2023. Therefore, the third party work plan requirements in ARM 17.55.110 are no longer needed or permitted.
17-436	<p>Proposal date: December 8, 2023</p> <p>Hearing date: January 11, 2024</p> <p>Comment due date: January 12, 2024</p> <p>6-month expiration: June 8, 2023</p>	<p><i>Topic: asbestos</i></p> <p><i>DEQ divided its statement of reasonable necessity into individual statements for each proposed change. Please see the proposal notice</i></p>
17-437	<p>Proposal date: January 12, 2024</p> <p>Hearing date: February 7, 2024</p> <p>Comment due date: February 9, 2024</p> <p>6-month expiration: July 12, 2024</p>	<p><i>Topic: hard rock mining</i></p> <p><i>DEQ divided its statement of reasonable necessity into individual statements for each proposed change. Please see the proposal notice.</i></p>
17-438	<p>Proposal date: January 12, 2024</p> <p>Hearing date: no hearing scheduled</p> <p>Comment due date: February 9, 2024</p> <p>Proposed action date: May 20, 2024</p> <p>6-month expiration: July 12, 2024</p>	<p>General Reason Statement: Through this rulemaking, the department is proposing to adopt and incorporate by reference the most recent edition of the federal Drinking Water Maximum Contaminant Levels (MCLs), the U.S. Environmental Protection Agency Regional Screening Levels (RSLs), the Reportable Quantities for Hazardous Substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and the Montana Risk-Based Corrective Action Guidance for Petroleum Releases. The department conducts periodic reviews of the Montana Risk-Based Corrective Action Guidance for Petroleum Releases to determine if changes to methods and toxicity information warrant updating the guidance. In addition to minor editorial changes, the following substantive updates were made in the December 2023 edition:</p> <p><u>Readability and Usability of the Document:</u> New tables were added to the document to walk the user through the Tier 2 risk based screening level (RBSL) adjustment, and instructions were added to help the user</p>



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		<p>determine the appropriate Tier 2 RBSL for each release.</p> <p>A new Appendix D was added to provide an expanded discussion on the derivation of groundwater RBSLs and a discussion on actions needed based on exceedances of water quality standards or screening levels.</p> <p>The order of compounds in the screening tables were rearranged to be consistent with the most common laboratory reports.</p> <p><u>Revisions for Montana-specific Conditions:</u> Residential and commercial worker RBSLs were recalculated to incorporate the Montana State Exposure Frequencies. These include factors specific to Montana’s weather patterns, specifically frozen ground during the winter.</p> <p><u>Increased Protection for Construction Workers and Other Users:</u> Several construction worker RBSLs were recalculated using sub-chronic toxicity values rather than chronic toxicity values.</p> <p>Clarification was added for evaluating construction worker exposure using soil sample data collected throughout the entire 0 - 10 foot interval.</p> <p>All direct contact non-carcinogenic RBSLs were recalculated to incorporate a hazard quotient of 0.1 (instead of 0.125) to ensure protectiveness in the initial screening phase. This will allow up to 10 (instead of 8) non-carcinogenic compounds present in the initial screening.</p>
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17-440	<p>Proposal date: December 22, 2023 Hearing date: January 17, 2024 Comment due date: January 22, 2024 6-month expiration: June 22, 2023</p>	<p>The proposed amendments are necessary to align the rules with recent legislative changes passed to clarify implementation of the petroleum storage tank cleanup program.</p> <p>The rules proposed to be repealed are not statutorily supported. In accordance with Governor Gianforte's Red Tape Relief Initiative, the repeal of these rules is necessary to remove outdated and unnecessary regulations throughout Montana's state agencies.</p>

DNRC Rule Proposals

MAR Notice	Comment Date	Statement of reasonable necessity
36-22-221	<p>Proposal date: November 3, 2023 Hearing date: December 6, 2023 Comment due date: December 6, 2023</p>	<p><i>Topic: cabin sales</i></p> <p><i>The rule proposal divides its statement of reasonable necessity to address each specific rule amendment in the proposal.</i></p>



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	6-month expiration: May 3, 2024	<p><i>Please see the proposal notice. DNRC provided this statement by email:</i></p> <p>General Reason Statement: The DNRC's Real Estate Management Bureau has advanced amendments to the Cabin and Home Site Land Banking rules ARM 36.25.701 through ARM 36.25.708 to provide consistency with changes to MCA 77-2-363 associated with legislation enacted during the 2023 legislative session (SB 49). The authority to initiate this process was granted at the August 2023 Land Board meeting. The Department held a public hearing on December 6, 2023, and there were no public comments received. The Land Board will have taken action on the filing of the amendments with Secretary of State during the January 16, 2024 Land Board meeting</p>
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