



Water Policy Interim Committee

68th Montana Legislature

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July 10, 2024

TO: Water Policy Interim Committee
FROM: Alexis Sandru, Staff Attorney
RE: Administrative Rule Report – July 2024 Meeting (MAR Issues 10 through 13)

This report summarizes administrative rules concerning the quality or quantity of water that have been proposed or adopted by the Department of Environmental Quality (DEQ), the Department of Fish, Wildlife, and Parks (FWP), and the Department of Natural Resources and Conservation (DNRC) since WPIC's May 2024 meeting. Rule notices are available at <https://rules.mt.gov>.

PROPOSAL NOTICES

MAR Notice Number: 17-442 (proposed Issue 12, June 21, 2024)

Subject: Ultraviolet (UV) treatment of groundwater sources of public water systems

Summary: The DEQ is proposing to adopt a new rule that sets forth requirements for public water systems that use UV treatment for any groundwater sources. The rule requires that all UV treatment must be reviewed and approved by the DEQ and provides monitoring and reporting requirements for systems that are and are not required to meet 4-log virus inactivation. The DEQ notes that the proposed new rule is necessary to protect public health and to ensure that UV treatment units being utilized reach the disinfection levels that they are intended to reach. The DEQ intends the new rule to apply to public water systems with groundwater sources that have new UV treatment. If a public water system has voluntarily installed UV treatment that was not reviewed or approved by the DEQ, then that system may be subjected to the new rule if the system encounters problems. The DEQ is also proposing to adopt a 2024 version of Circular DEQ-1 and to amend an existing rule pertaining to testing and sampling records and reporting requirements to include UV treatment-monitored information.

Notes/Hearing: A public hearing is scheduled for July 15, 2024, at 10 a.m. (in-person and electronic participation options available – see proposal notice). Written public comment is due by 5 p.m. on July 19, 2024.

MAR Notice Number: 17-444 (proposed Issue 11, June 11, 2024)

Subject: Adoption of new version of Department Circular DEQ-8 Montana Standards for Subdivision Storm Water Drainage

Summary: The DEQ is proposing to adopt a new version of Circular DEQ-8, which provides design standards for subdivision storm water drainage facilities. The DEQ notes that the Circular was last updated in 2018 and that changes are necessary to make the regulations clearer.

Notes/Hearing: A public hearing was held on July 8, 2024. Written public comment was due on July 8, 2024.

MAR Notice Number: 17-447 (proposed Issue 12, June 21, 2024)

Subject: Application contents – removal of predetermination letter

Summary: The DEQ is proposing to amend ARM 17.36.103, which sets forth requirements for applications under the Sanitation in Subdivisions Act, to no longer require a predetermination letter from DNRC to proceed. The DEQ states the amendment is necessary because of the recent decision in Upper Missouri Waterkeeper v. Broadwater Co. (Horse Creeks Hills Subdivision), in which the Court concluded that the DEQ lacks authority to require such information prior to subdivision approval.

Notes/Hearing: A public hearing is scheduled for July 16, 2024, at 1 p.m. (in-person and electronic participation options available – see proposal notice). Written public comment is due by 5 p.m. on July 19, 2024.

MAR Notice Number: 36-222 (proposed Issue 12, June 21, 2024)

Subject: East Valley Controlled Groundwater Area

Summary: The DNRC is proposing to amend ARM 36.12.906 pertaining to the East Valley Controlled Groundwater Area to clarify that users in Zone 2 may apply for an exception to the permit requirements of 85-2-311, MCA, if the appropriation has approval from the technical advisory group and the appropriation is limited to 35 GPM and 10 AF.

Notes/Hearing: A public hearing is scheduled for July 24, 2024, at 10 a.m. (in-person and electronic participation options available – see proposal notice). Written public comment is due by 5 p.m. on July 24, 2024.

MAR Notice Number: 36-222 (proposed Issue 12, June 21, 2024)

Subject: Dam safety hazard determinations

Summary: Under existing rule, an owner proposing to construct any dam or reservoir that has or could impound to the maximum normal operating pool 50 acre-feet or more must submit an application for hazard determination. The DNRC is proposing to amend ARM 36.14.204, which sets forth requirements for an application for hazard determination, to allow an owner to elect to employ their own engineer to provide an evaluation or to request an evaluation performed by the DNRC. The DNRC is proposing to amend several other ARMs to reflect this proposed change. The DNRC is also proposing to amend a rule pertaining to change in classification to allow the DNRC to recoup costs incurred for analyzing and processing requests.

Notes/Hearing: A public hearing is scheduled for July 19, 2024, at 10 a.m. (in-person and electronic participation options available – see proposal notice). Written public comment is due by 5 p.m. on July 19, 2024.

ADOPTION NOTICES

MAR Notice Number: 17-439 (proposed Issue 5, March 8, 2024; adopted Issue 13, July 5, 2024)

Subject: Ground water mixing zones, nondegradation of water quality, criteria for nonsignificant changes in water quality, criteria for nutrient reduction from subsurface wastewater treatment systems, and amendments to Circular DEQ-20

Summary: The DEQ proposed the following amendments to rules pertaining to ground water mixing zones:

- (1) eliminate the discrepancy in setbacks between existing and proposed drinking water supply wells;
- (2) incorporate Montana's Septic Trading Method to account for reduction of nitrogen and revise inconsistent standard ground water mixing zone lengths for determining which discharges qualify for a standard ground water mixing zone;
- (3) delete outdated definitions of Level 1a and Level 1b treatment, insert new definitions of Level 3 and Level 4 treatment and ordinary high-water mark, and update the 2023 edition of Department Circular DEQ-4;
- (4) as required under SB 285 (2023), adopt new criteria for determining when septic system discharges that are not subject to permit requirements result in nonsignificant changes in water quality;
- (5) per SB 285 (2023), revise categories of subsurface wastewater treatment system activities that cause nonsignificant changes in water quality to include additional categories of 500 or more feet from surface water, taking into consideration soil texture, ground water depths, and other information;
- (6) revise criteria for what information must be included to obtain a DEQ classification of a wastewater treatment system as Level 2, 3, or 4; and
- (7) revise DEQ Circular-20 to provide that the DEQ may approve a source specific well isolation zone for certain existing shared wells as well as existing individual wells.

Notes/Hearing: A public hearing was held on April 23, 2024. Written public comment was due on April 23, 2024.

Adoption Notice Notes: In the adoption notice, the DEQ responded to over 100 comments, many of which expressed concern with the method for estimating attenuation of nutrients from septic systems (MEANSS), which the DEQ utilized, and with the inclusion of NSF/ANSI 245 testing standards. The DEQ adopted much of the rulemaking as proposed, except that the DEQ removed language regarding proposed Level 3 and Level 4 treatment and reinstated language regarding Level 1a and Level 1b treatment.