



To: Chairman Steve Gunderson and Chairman Ken Walsh
EQC Members, WPIC Members
From: DEQ Director Sonja Nowakowski
Date: September 5, 2024
RE: 2025 Proposed Legislation

The following is a list of the Department of Environmental Quality's (DEQ) proposed legislation that has been approved through the Executive Planning Process for introduction to the 2025 Legislature. DEQ appreciates your review of these proposals and consideration for pre-introduction. DEQ staff will be available at EQC on Sept. 24 and at WPIC on Sept. 12-13 to provide additional information and respond to questions.

1. 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 currently 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 third funding source 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, \$310K in General Fund, and \$200K in Fees.

2. Extend General Fund Backfill of NRO to 2031

Issue: While last session, the Legislature extended the statutory sunset date for Natural Resource Operations (NRO) backfill to 2027, additional time is needed so DEQ can continue to assess its revenue structure and advance the dialogue on hard rock mining fees. DEQ, and the Mining Bureau in particular, relies on the NRO account to implement the MMRA, the Montana Strip and Underground Mine Reclamation Act, and the Opencut Mining Act.

Proposal: DEQ remains committed to pursuing options for broadening its mining program funding sources. DEQ has established a fee program for its opencut mining operations and continues to work with hard rock mining stakeholders on the concept of a fee program for the hard rock mining operations. While DEQ's Hard Rock Mining Section currently has developed a new fee structure, as proposed above, it requests additional time, and backfill, to assess how much in fees is collected and its overall impact to the program.

3. Revise the distribution of existing funding for abandoned mine maintenance and reclamation:

Issue: The CR Kendall Mine entered bankruptcy in 1986. A consent decree and settlement agreement were established in 2016 and provided a trust to manage the property, complete reclamation, and conduct water treatment. The account, about \$2.4 million, was depleted in 2023 and DEQ must continue to cover maintenance and water treatment costs at the site. MCA 75-10-743 also currently states that DEQ shall transfer \$1.2 million each fiscal year from the orphan share fund to the environmental quality protection fund (EQPF). Each year that the funding has been available, DEQ has made the transfer. However, in 2021 and 2022, insufficient funds were available to make the full transfer and DEQ could not fulfill its statutory obligation. DEQ received an unfavorable audit review due to this inability to comply with the statute.

Proposal: DEQ would like to transfer \$500,000 per biennium from EQPF to cover costs at CR Kendall. This transfer will not result in an overall reduction in funding to the administration of cleanup at other abandoned mine sites because the federal government has fully funded Abandoned Mine Lands (AML) for the next 15 years. The proposal also clarifies the \$1.2 million shall be transferred to the EQPF from the orphan share fund only if sufficient funds are available for transfer from the orphan share.

4. Increase the cap for underground storage tank registration fees:

Issue: DEQ's Underground Storage Tank (UST) Section ensures that USTs in Montana are properly installed and maintained. Approximately 50% of the program's annual revenue of about \$800K is from tank registration fees. Over the past eight years, due to MEPA requirements and increased federal requirements designed to increase protection from petroleum releases, the program's cumulative expenditures have exceeded its revenues by about \$300K. This has depleted reserves, and the program is relying on the division's limited general funds to cover shortfalls. MCA 75-11-505 sets the registration fee cap and gives DEQ the authority to set fees in rule. The cap has not increased since 2003. Continuing to cover shortfalls with general fund is not sustainable.

Proposal: DEQ proposes to increase the registration fee cap to catch up to inflation since 2003. This would allow DEQ to work with Montana's gas station owners on rulemaking to set a fee increase schedule that will not place a burden on them and will ensure that DEQ is able to carry out our statutory duties.

5. Mercury-added thermostat collection act repeal:

Issue: MCA 75-10 part 15 was passed in 2009 to facilitate the proper collection and disposal of mercury-added thermostats. Education and outreach have been successful, and collection and disposal of mercury-added thermostats has been widely completed.

Proposal: DEQ proposes repealing this statute as part of regulatory reform to reduce confusion and increase government efficiency.

6. Public Water Supply and Plan and Spec Review Fee Split

Issue: The Plan and Specifications Review section used to be housed within the Public Water Supply Bureau, and therefore the fees collected for the review of the plans and specifications for public systems (water, sewer and storm water) went into the same account as fees collected for public water supply connections. Currently, the Plan and Spec. Section is in the Engineering Bureau. The functions of the Plan and Spec. Section and the Public Water Supply Bureau are independent of each other, and each generate their own fees.

Proposal: DEQ is asking to separate the funds for the Public Water Supply Bureau and the Plan and Spec. section into two separate State Special Revenue accounts. This will allow the Division to better analyze and manage fees for each account and service.

7. Allow for some subdivision fees to be used for training

Issue: Currently, the Sanitation in Subdivisions Act does not allow the Engineering Bureau to use fees generated under 76-4-105, MCA to fund DEQ staff to provide training. During the 2023 legislative session 76-4-104(5), MCA was updated to require the department to adopt standards and procedures for certification and maintaining certification to ensure that a local department, local board of health, or independent reviewer is competent to review the subdivisions and to develop a training curriculum to ensure compliance.

Proposal: The DEQ would like to update the MCA to allow funding to be used for Engineering Bureau staff to provide training on Administrative Rules and Circulars. This training would be specific to the Sanitation in Subdivision Act and would be provided to consultants, independent reviewers, contracted county reviewers, and DEQ staff reviewers. No change in fees would be made.

8. Revise the State Buildings Energy Conservation Program

Issue: The State Buildings Energy Conservation Program (SBCEP) was established in 1996. The statute includes several out-of-date definitions. It also includes the authority to allow for the issuance of state bonds for energy conservation measures. DEQ has not requested an energy conservation bond since 2006 and does not anticipate needing and/or using this tool. The fixed statutory interest rate for loans is also out-of-date, and a change should allow this rate to be determined with Agency discretion to remain competitive. The statute also constrains the terms of interagency loans unnecessarily, limiting the implementation of energy and cost savings measures on state facilities, and complicates program administration with inconsistent definitions.

Proposal: DEQ proposes updated definitions, providing flexibility in setting interest rates, and repealing DEQ's authority to using energy conservation bonds. Because some program funding was set in 2009 using federal American Recovery and Reinvestment Act funding, an additional fund transfer may also be required. DEQ anticipates that it

will be able to provide a lower interest rate to participating agencies, while covering a portion of administrative costs of the program with federal funding sources.

9. Repeal the Small Business Compliance Assistance Advisory Council

Issue: The Small Business Compliance Assistance Advisory Council is required in statute. Legislation in 1993 established the Small Business Compliance Assistance Advisory Council, which consists of seven members, including four small business owners, two members of the general public and one representative of DEQ. The Council is intended to advise and provide oversight of DEQ's Small Business Stationary Source Technical and Compliance Assistance Program. DEQ has struggled to receive legislative appointments for the council, and there has been limited interest in participating in the council – which is focused on dry cleaners, auto body shops, auto repair shops, electroplaters, contractors, gas stations, furniture makers, machine shops, metal finishers, printers, etc. For the last two biennia, there has not been a fully appointed council.

Proposal: DEQ proposes eliminating the council and instead ensuring the Air and Energy programs continue to work closely with stakeholders to be responsive to compliance assistance needs. DEQ can accomplish this through direct outreach and through local chambers of commerce. DEQ can also provide reports to the EQC, as needed.

10. Address inconsistencies in wind and solar facility bonding and decommissioning

Issue: The wind generation and solar facilities decommissioning statutes, enacted in 2017 and amended in 2019, currently create confusion around the allowable timeline for updating decommissioning bonds. There are inconsistencies between statute and rule in the wind and solar facility bonding and decommissioning statutes. Those inconsistencies, for example, don't address a clear timeline for bond reviews & updates or for probing new information to reduce a bond. Exemptions from bonding requirements are also unclear, such as in the case that a facility is bonded with a separate entity for a portion of the facility.

Proposal: DEQ proposes clarifying timelines for a bond review – set at 5-year intervals. DEQ also proposes clarifying when an exemption from bonding is allowed for and how that determination is made.