



# Water Policy Interim Committee

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## 68th Montana Legislature

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JACELYN STERLING, Secretary

September 9, 2024

TO: Water Policy Interim Committee  
FROM: Alexis Sandru, Staff Attorney  
RE: Administrative Rule Report – September 2024 Meeting (MAR Issues 14 through 17)

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 July 2024 meeting. Rule notices are available at <https://rules.mt.gov>. Also, because the September meeting is WPIC's last regularly scheduled meeting, this report contains information regarding the general prohibition on the adoption of rules between October 1 through the end of this year.

### PROPOSAL NOTICES

None

### ADOPTION NOTICES

**MAR Notice Number: 17-442** (proposed Issue 12, June 21, 2024; adopted September 6, 2024)

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

**Summary:** The DEQ proposed 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 noted 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 intended that 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 subject to the new rule if the system encounters problems. The DEQ also proposed 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 was held on July 15, 2024. Written public comment was due on July 19, 2024.

**Adoption Notice Notes:** The DEQ responded to three public comments concerning chlorine disinfectant, training, and financial assistance and adopted the rulemaking as proposed.

**MAR Notice Number: 17-447** (proposed Issue 12, June 21, 2024; adopted Issue 16, August 23, 2024)

Subject: Application contents – removal of predetermination letter

Summary: The DEQ proposed 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 stated the amendment was 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 was held on July 16, 2024. Written public comment was due on July 19, 2024.

*Adoption Notice Notes:* The DEQ responded to seven public comments and adopted the rulemaking as proposed.

**MAR Notice Number: 36-222** (proposed Issue 12, June 21, 2024; adopted Issue 16, August 23, 2024)

Subject: East Valley Controlled Groundwater Area

Summary: The DNRC proposed 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 was held on July 24, 2024. Written public comment was due on July 24, 2024.

*Adoption Notice Notes:* The DNRC received a comment in support of the rulemaking and adopted the rulemaking as proposed.

**MAR Notice Number: 36-223** (proposed Issue 12, June 21, 2024; adopted Issue 16, August 23, 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 proposed 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 proposed to amend several other ARMs to reflect the proposed change. The DNRC also proposed 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 was held on July 19, 2024. Written public comment was due on July 19, 2024.

*Adoption Notice Notes:* The DNRC received no public comment and adopted the rulemaking as proposed.

## **PROHIBITION ON ADOPTION OF RULES OCTOBER 1 THROUGH END OF YEAR**

In years preceding a legislative session, 2-4-305(11)(a), MCA, prohibits an agency from adopting a rule between October 1 through the end of the year unless the rule:

1. is an emergency rule;
2. implements a program or policy and the unavailability of information, guidance, or notice precluded adoption prior to October 1; or
3. is provided to the appropriate rule review committee and the committee does not object to the rule's adoption.

New this interim, the third exception cited above requires an agency to email each member of the rule review committee and staff the proposal notice and an explanation of why the rule must be adopted before the end of the year. If the committee does not object within 10 business days of the proposal being emailed, the agency may adopt the rule. If, during the 10-day review period a majority of the rule review committee members notify the chair via email that the members object, the chair is required to notify the agency of the objection via email, and the agency is prohibited from adopting the rule before the end of the year.

The text of 2-4-305(11)(a), MCA, is included below:

(11) (a) In the year preceding the year in which the legislature meets in regular session, an agency may not adopt a rule between October 1 through the end of the year.

(b) This subsection (11) does not apply to:

(i) an emergency rule adopted under 2-4-303;

(ii) subject to subsection (11)(c)(i), a rule adopted for implementation of a program or policy if the unavailability of information, guidance, or notice precluded adoption of the rule before October 1; or

(iii) subject to subsection (11)(c)(ii), a rule adopted by providing the proposal notice and statement of reasoning with an opportunity to object to the appropriate administrative rule review committee.

(c) (i) A rule may only be exempted under subsection (11)(b)(ii) if the notice required under 2-4-302(1)(a) provides a statement explaining why the unavailability of information, guidance, or notice precluded adoption of the rule before October 1.

(ii) A rule may be exempted under subsection (11)(b)(iii) only if the agency provides a copy of the proposal notice and an explanation of the reason why the rule must be adopted before the end of the year by electronic mail to each member of the committee and the committee staff. If the committee does not object to the proposal within 10 business days after the electronic mail of the proposal and explanation has been sent to the committee, the agency may proceed with adoption of the proposed rule. If, during the 10-day review period, a majority of the members notify the committee presiding officer that those members object to the proposed rulemaking, the presiding officer shall notify the agency by electronic mail that the committee objects. Following notice of the objection, a rule may not be adopted before the end of the year.