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ANNUAL REPORT ELEVENTH EDITION:

RESEARCH ISSUES

DECEMBER, 1988

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The Eleventh edition of the Montana Environmental Quality Council's annual report focuses on the natural resource topics studied by the EQC during the 1987-1988 interim. The topics include: forest practices; oil and gas; subdivisions; the Montana Environmental Policy Act; hazardous waste; and the Renewable Energy and Conservation Grant and Loan Program.

EQC's research activities add a great deal to the quality of the debate during the hectic Legislative session. Not only are Environmental Quality Council members kept up-to-date on natural resource issues through meetings between legislative sessions, but all legislators, lobbyists, and citizens can use reports such as this one to gain the background information needed to shape wise natural resource policies.

All EQC meetings are open to the public. If you are interested in natural resource policy, I encourage you to participate in many of EQC's interim activities.

Sincerely,

Senator Mike Halligan
EQC Chair

MONTANA ENVIRONMENTAL QUALITY COUNCIL

ANNUAL REPORT ELEVENTH EDITION: RESEARCH ISSUES

DECEMBER, 1988

INTRODUCTION

During the 1987-89 legislative interim, the Environmental Quality Council initiated new projects and followed through with several that it began in previous studies. Environmental and natural resource-related issues continued to be high priorities for Montana citizens and policy-makers, and the EQC responded with major study efforts in five substantive areas. These areas of focus included: the Montana Environmental Policy Act (MEPA), forest practices, environmental review of oil and gas development, hazardous waste management, and subdivision review. Initiated in the legislative branch by EQC members and other concerned legislators, several of these policy studies were conducted in tandem with the executive branch of Montana state government.

Implementation of the statutory foundation of Montana's environmental policy, MEPA, received intensive scrutiny by the EQC. Based on the background information gathered through the MEPA Implementation Project begun during the 1985-86 interim, the EQC initiated a joint effort with the executive branch in mid-1987 to revise and update the rules developed to implement MEPA. The primary purpose of this effort was to accurately and fully describe how the environmental review process is currently administered and to establish some consistency among the agencies in this regard. Following a series of extensive and detailed discussions with agency personnel and interested organizations and citizens during the latter part of 1987, the EQC forwarded its recommendations for revised rules to the executive branch. The process and rule changes reported here provide guidance as to how future state environmental decisions will be made as a result of EQC's initial efforts.

Another policy priority, forest practices, attracted considerable participation by EQC members, industry, citizen groups, and state and federal agencies this past interim. Following protracted controversy over the proposed enactment of a forest practices act during the 1987 session, the legislature adopted House Joint Resolution 49, which directed the EQC to study the relationships between forest practices and watershed effects. In response, the EQC gathered technical experts from diverse interests to form two working groups, one on watershed effects and the other on best management practices. These technical committees worked extensively throughout the interim to establish factual information upon which to build a policy framework for forest

management. After extensive field audits, data gathering and analysis, and discussions with study participants, the EQC developed findings and conclusions and reviewed a range of policy options. As reported in this document, EQC'S recommendations for implementation of an effective forest and watershed management program will be submitted to the 1989 legislature for consideration.

Environmental regulation of oil and gas development, the subject of a 1985-86 EQC interim study, again received the council's attention in 1987-88. With the passage of SB 184, the 1987 legislature directed the governor's office to prepare a programmatic environmental impact statement on oil and gas drilling and production. The bill also granted a temporary exemption for the period during which the document was prepared to the Board of Oil and Gas Conservation from the requirements of MEPA when issuing permits to drill for oil and gas in the state. The decision to prepare the programmatic review represented a consensus among the legislature, the administration, the oil industry, and other interested parties that an effort should be made to eliminate uncertainty about the way MEPA requirements should be integrated with regulation of the industry. Described in this report, the process and findings of the programmatic review provide a basis for decisions to be made on how to effectively and expeditiously review oil and gas drilling permit applications.

The EQC continued its ongoing oversight role in the rapidly changing arena of hazardous waste management. This report includes discussion of five programs expected to be the subject of considerable legislative interest during the 1989 session. These five areas represent a cross section of hazardous waste management issues and include: the management of hazardous wastes produced by small-quantity generators; the regulation of underground storage tanks; the state's mini-superfund hazardous waste cleanup program; the state's response to proposed federal regulation of solid waste landfills; and Montana's efforts to pursue claims for natural resource damages and other enforcement action at hazardous waste sites.

EQC's final major study area also evolved from a previous effort. The regulation of subdivision development was a major topic during the 1985-86 interim and was carried over to this biennium's workplan after the legislature failed to agree on comprehensive legislation in 1987. This follow-up study was curtailed by the EQC, however, when progress toward consensus resolution of outstanding issues stalled. This report's section on subdivisions describes the issues the council considered and the elements of comprehensive legislation that the EQC directed prepared should individual legislators decide to introduce such proposals.

One of EQC's statutory requirements is the evaluation of Montana's renewable energy grant and loan program. Because budget shortages have caused the transfer of funds from this program to other governmental functions, EQC's role in this area has been minimal. To fulfill its statutory obligations, however, this report contains a brief summary of the status of what remains of the renewable energy program.

This report does not include discussion of several other key natural resource issues that have played a prominent role in the deliberations of state policy makers. Of foremost concern is the issue of water management, particularly during this period of severe water shortages. Through staffing the legislative Water Policy Committee, EQC continues to play and active role in water policy issues. The final report of the Water Policy Committee provides a primary resource for analysis of current water management topics. Water quality received the EQC's attention during the interim through evaluation of the Clark Fork River project's efforts and those of the Flathead Basin Commission, as well as through a full day's informational meeting on groundwater management. And the EQC kept abreast of other important environmental issues as they developed over the past two years.

This eleventh edition of the EQC's Annual Report provides a broad view of a cross section of key natural resource issues faced by Montanans. The EQC will continue to actively supply the legislature, the executive branch, and the public with sound information upon which to make critical decisions on these and other important issues shaping the future of Montana's physical and economic environments.

MONTANA ENVIRONMENTAL QUALITY COUNCIL

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HAZARDOUS SUBSTANCES

Introduction

Over the past decade, the American public has grown increasingly concerned about the effects of hazardous substances on human health and the environment. Dozens of state and federal programs have been initiated to regulate the use, storage, transport, disposal and cleanup of hazardous substances, and these programs are grounded in a relatively new, rapidly evolving and extremely complex body of natural resource law.

Development of Montana programs has largely kept pace with national initiatives. However, the 1989 Legislature will be asked to consider legislation on a range of hazardous substance issues. Some proposals involve the fine-tuning of state programs to conform to new federal requirements, others relate to the allocation of resources to specific programs, while still others call for substantive policy decisions.

This report highlights the status and legislative outlook for five major programs dealing with the management of hazardous substances in Montana: small-quantity hazardous waste generators; regulation of underground storage tanks; mini-Superfund; regulation of landfills and infectious waste disposal; and natural resource damage claims/hazardous waste site enforcement actions.

These topics reflect subjects of intense past legislative interest and/or anticipated future lawmaking activity.

For additional background information, the reader is referred a report prepared by the Environmental Quality Council for the 50th Montana Legislature (EQC 1987).

Small-Quantity Hazardous Waste Generators

The Montana Hazardous Waste Act, administered by the Solid and Hazardous Waste Bureau of the Department of Health and Environmental Sciences, regulates the treatment, storage, transport, and disposal of hazardous wastes generated by state industries. The 1987 Legislature passed several minor amendments to the act, but the overall program direction remained unchanged and virtually identical to federal requirements.

An important issue during the 1987 legislative session was the question of whether the State should provide services for businesses generating small quantities of hazardous waste. The 1985 Legislature had authorized the expenditure of $800,000 of Resource Indemnity Trust Fund interest earnings to establish a hazardous waste collection and transfer system, pending the findings of a report commissioned by the Department of Health and Environmental Sciences.

In late 1986 the contractors retained by DHES released their report recommending the establishment of a state-owned, privately operated system to collect hazardous wastes and ship them to licensed out-of-state commercial disposal facilities. As proposed, Montana businesses would be charged for the service, but state financial support would help keep down costs and thus encourage small businesses to comply with the stringent new waste disposal laws.

With the concurrence of the Schwinden Administration, the 1987 Legislature did not endorse the contractors' recommendations to develop a state collection and transfer facility. Instead, $212,000 of the previously allocated RIT funds was appropriated for a three-pronged effort to gather more information about the quantities of hazardous wastes produced by Montana small businesses; to determine the availability of commercial waste disposal services for these businesses; and to provide technical assistance to institute "waste minimization" programs in specific industries.

Waste Minimization Project

A report on these efforts, titled the "Montana Waste Minimization Project for Small Quantity Generators", was completed in September 1988 by Science Applications International Corporation (SAIC). In compiling the report, SAIC conducted detailed on-site audits of 114 small Montana businesses that generate hazardous wastes. These businesses fell into eight categories: laundries and dry cleaners, laboratories, printers, photographic services, metal finishing and fabrication, vehicle maintenance, pesticide applicators, and wood treaters. SAIC also interviewed companies that provide hazardous waste disposal services in Montana.

Among the report findings are the following:

* Most hazardous waste generators in Montana do not indicate a need or desire for hazardous waste management services beyond those already available. This finding is attributed to the fact that the large majority of these businesses produce such limited quantities of waste (less than 220 pounds per month) that they are classified as "conditionally exempt" and are thus not subject to most regulations.

* Seventeen companies provide commercial hazardous waste disposal services to Montana businesses, although only one (Special Resource Management west of Butte) has in-state offices. Companies indicated they would provide hazardous waste services anywhere in the state if transportation costs could be covered.

* Hazardous wastes generated by small businesses are disposed of by the following methods: disposal in local landfills or through on-site burning and burial; discharge to community sewer or to on-site septic tank drainfields; transport off-site by regulated transporters; or recycling by on-site redistillation (used for many solvents). The legal disposal of small quantities of hazardous waste in local landfills is a potential problem, but its magnitude is not yet well defined.

* The most common method of solvent disposal is mixture with waste oils, with subsequent usage for heating fuel, oil recycling or, in some cases, road oiling. For spent solvents that are classified as hazardous wastes (as many are), these disposal methods may constitute violations of hazardous waste laws.

Based on these findings, SAIC cited a two-fold problem in Montana. First, the many conditionally exempt generators may not be aware of the need for or desirability of waste management services. Second, high transportation costs may make service to certain areas of the state unprofitable. In consideration of these factors and other report findings, SAIC recommended that:

* The Department of Health and Environmental Sciences (DHES) should not attempt to provide hazardous waste management services to Montana small businesses. Generator needs are too diverse and transportation considerations would make a single collection and transfer station ineffective.

* DHES should continue to educate small businesses on waste minimization techniques specific to their industries.

* DHES should provide all small-quantity generators with information on hazardous waste service companies active in Montana.

* Additional efforts are required to prevent the improper disposal of waste oil/solvent mixtures. Testing of waste oils should be required prior to pick-up by oil recyclers and solvent users should be informed about recycling options, including the opportunities for shared use of distillation equipment.

* The ongoing use of septic tank haulers for the disposal of "hot tank" wastes (metal-laden sludges from radiator repair shops) should be investigated, both in terms of volume handled and the environmental consequences of this virtually unregulated means of disposal.

Legislative Outlook

The Department of Health and Environmental Sciences intends to emphasize education and technical assistance to encourage Montana's small-quantity generators to further minimize their production of hazardous wastes and to dispose of wastes properly. These efforts will continue to be backed up by the regulatory structure in place under the Montana Hazardous Waste Act, and additional attention will be given to addressing the problems cited in the SAIC report.

The department has drafted legislation to amend the Montana Hazardous Waste Act to conform to 1984 amendments to the federal hazardous waste management law. The legislation would authorize DHES to order violators to cleanup off-site pollution and would allow the department to take legal action against persons who contributed to hazardous waste contamination through past illegal disposal practices.

Regulation of Underground Storage Tanks

Regulation of underground tanks that store petroleum products and hazardous chemicals began in 1984 on the federal level and in 1985 on the state level (with the passage of House Bill 676). These laws were enacted in response to a national environmental crisis, characterized by thousands of damaged and corroded tanks leaking petroleum products and other hazardous substances into groundwater aquifers.

In recent years, the Montana Department of Health and Environmental Sciences has received scores of reports of leaking underground storage tanks, including 44 reports in the past year alone. Incidents have occurred in every major city and many smaller communities. The leaks range in magnitude from a few hundred gallons to several hundred thousand gallons, with the largest volumes generally related to railroad refueling operations. The effects have been contaminated water wells (including some drinking water supplies), hazardous vapors in homes and businesses, contaminated soil, and polluted groundwater aquifers. In most cases the leaks have been discovered and reported by persons suffering adverse effects, not by tank owners.

UST Regulations

In September 1988, the U.S. Environmental Protection Agency adopted minimum nationwide UST regulations. To detect possible leaks, tank owners must monitor fuel supplies monthly and periodically test their tanks for leaks, or conduct monthly environmental monitoring. These leak detection requirements are phased in over the next five years. Tanks over 25 years old must have leak detection in place by December 1989. Any leaks or spills must be reported immediately. New tanks must be constructed of fiberglass, fiberglass-clad steel, or steel that is coated and "cathodically protected" against corrosion; existing bare steel tanks must be lined or provided with cathodic protection within 10 years. In addition, all tank owners must be insured for a minimum of $500,000 for spill cleanup and liability.

Montana program officials are now considering the appropriate direction for state UST rules which, under federal law, must be at least as stringent as EPA's. (If a state does not enact and enforce adequate UST regulations, EPA will administer and enforce a federal program within that state.) The Montana program will thus include requirements for leak detection, corrosion protection for new and existing tanks, and financial assurance.

Montana has the option to follow the lead of several other states and enact more stringent regulations than EPA on some specific points. Massachusetts and California, for example, require all new tank installations to include "secondary containment", which in most cases means double-walled tanks. Montana also has options for developing regulations for farm fuel and heating oil tanks with capacities under 1,100 gallons. These tanks are regulated under Montana law, but are currently exempt from the federal UST program; thus there are no applicable minimum federal requirements for this class of tanks.

Montana Situation

The initial focus of the underground storage tank (UST) program was mandatory tank registration, which began in 1986. Montanans have registered more than 18,000 tanks (out of an estimated 30,000 in the state), providing DHES with a detailed picture of the "tank population" in Montana. Most of the tanks are constructed of bare steel; tank capacity averages about 5,000 gallons; and more than 90 percent of the tanks are used to hold petroleum products. The average tank has been in the ground for 15 years, an age at which corrosion and leakage are considered likely to occur.

Recent incidents in Dillon and Cutbank illustrate the level of effort that can be required to address tank leaks and the difficulty of achieving cleanup. In Dillon, a leak was discovered in 1979 by residents whose wells were contaminated with gasoline; nine years later following extensive but inconclusive investigations, alternative water supplies have been provided but the groundwater remains unusable, the extent of the contamination is still unknown, and no cleanup efforts are contemplated (EQC 1987). In Cutbank, the basements of several homes have been contaminated by crude oil and petroleum vapors, resulting in temporary evacuations, the installation of special air ventilation systems, and one explosion. DHES has spent more than $100,000 over the past six months, drilled 23 test wells, and still has yet to pinpoint the source of the leak or leaks.

These incidents testify to both the complexity of groundwater pollution and the inadequacy of state and local resources for investigation, remedial action and followup work. The Department of Health and Environmental Sciences has only nine total positions (including support staff) in the UST program, divided between prevention (UST rules, including tank registration, testing, and installation) and response (leak detection and investigation). DHES officials expect that a large number of tank leaks will be discovered in the next few years, as tank owners comply with testing, monitoring and leak detection requirements of the new rules. In addition, the advanced age of Montana's underground tanks (including more than 2,800 registered tanks over 25 years old) is viewed as a source of hundreds or thousands of new tank leaks in the near future.

Legislative Outlook

In recognition of the magnitude of current and projected UST problems and the shortage of personnel to effectively regulate tanks or to respond to tank leaks, DHES officials considered increasing the

size of the state UST program. The increase would have been funded by annual registration fees on underground tanks, with half of the fees to be distributed to city and county governments to support local oversight of tank installations and removals, testing and compliance with UST rules. UST programs in 17 other states are funded by tank registration fees.

Budget officials in the Schwinden administration, however, rejected the proposed tank registration fee. As a result, DHES will not be requesting legislation to generate funds to increase the workforce in the UST program during the 1989 legislative session (unless the Stephens administration reverses the Schwinden decision).

DHES is expected to propose a bill to require the certification of persons installing underground storage tanks. This legislation is intended to ensure that new tank installations are properly conducted and that only tanks of authorized construction are used. Permits would be required for each tank installation and closure; again, however, the Administration rejected the concept of a fee so state program costs would have to be covered by existing revenue sources.

The department has also drafted legislation to clarify state enforcement authority for "regulated substances" -- i.e., the fuels and other chemicals stored in underground tanks. The Montana Hazardous Waste Act gives the department explicit authority to regulate underground storage tanks, but does not specifically include the term "regulated substances" in various sections of the law where it would be appropriate.

Montana's UST program is now funded through a 75 percent federal/25 percent state split, totalling about $200,000 annually. Additional funds available for leak response through the federal LUST (leaking underground storage tank) Trust are expected to total about half a million dollars for each year of the upcoming biennium. The federal government provides 90 percent of these funds, with the remainder coming from an earmarked portion of the state Resource Indemnity Trust Fund. To remain eligible for LUST Trust funds, the state must administer an effective UST program, including aggressive efforts to recover LUST Trust expenditures from the parties responsible for tank leaks and enforcement based on rules no less stringent than federal.

The issue of leak response -- and who is going to pay for it -- is expected to surface during the 1989 Legislature. Petroleum marketers are supporting an increase in the state gasoline tax to develop a fund for leak response. Legislation drafted by their trade association proposes an amnesty on liability for any leaks reported in the next two years and a state-financed cleanup program after that (with the first $25,000 in response costs to be paid by the tank owner). The program would be run by DHES. Although DHES officials have not adopted a formal position on the legislation, they have indicated that any new program responsibilities must be adequately funded, in light of the department's already strained UST program resources.

A related issue is the fate of small town service stations in Montana. Some representatives of these independent service stations favor the development of a state fund to subsidize the replacement of underground tanks. Otherwise, they contend, small service stations will be forced to close because of the high costs of tank replacement, tank retrofits, and insurance under the new UST regulations.

Ultimately Montana legislators will be asked to face a number of difficult policy decisions related to underground storage tanks during the 1989 session. These decisions center on the adequacy of the current state program to prevent or respond to leaks; the desirability of developing and funding local government UST programs; the appropriate dividing line between state and private responsibility for leak cleanup; the allocation of any new tax burden for an expanded UST program; and the effects of the new federal UST regulations and state program responses on the structure of the fuel marketing industry in Montana.

Mini-Superfund

The 1985 Montana Legislature enacted House Bill 766 (now 75-10-701 et seq., MCA), authorizing the Department of Health and Environmental Sciences to take action to prevent or cleanup any releases of hazardous substances. The bill established an Environmental Quality Protection Fund (EQPF), termed the "mini-Superfund" because of its similarities to the

federal Superfund. Like the federal Superfund, the EQPF:

* can be used for emergency response or to initiate long-term cleanup of a hazardous waste site;

* is intended to be used on a "cost-recovery" basis, meaning the State will seek to recover its fund expenditures from the parties responsible for the contamination; and

* invokes the possibility of damages to encourage responsible parties to undertake a cleanup. (The mini-Superfund law provides for double damages when a responsible party refuses to undertake a cleanup, while the federal Superfund has triple-damage cost recovery).

The law also states clearly that liability for cleaning up abandoned hazardous wastes sites rests with the parties responsible for releasing the hazardous wastes. There are approximately 140 uncontrolled hazardous waste sites in Montana that are not included on the federal Superfund list and that are thus subject to action under the mini-Superfund program. These sites include abandoned oil refineries, pesticide disposal sites, mine tailings, wood treatment plants, landfills, and a variety of other industrial operations.

The 1987 Legislature provided a funding source for the mini-Superfund through the passage of HB 718, which allocates four percent of the interest income from the Resource Indemnity Trust Fund to the EQPF (beginning in FY 1990). During the 1987-88 legislative interim, limited funding was provided to the department to conduct preliminary assessments of waste sites and to rank them based on the hazard posed to human health and the environment. The department is now developing a prioritized list of these sites for cleanup action under the mini-Superfund program. DHES is also conducting remedial planning to remove mine tailings at the Apex mill near Bannack; completing a site investigation and risk assessment at an oil refinery in Lewistown; and working to secure site cleanups by responsible parties at two other abandoned oil refineries in the Kevin-Sunburst area.

Legislative Outlook

Four issues related to the mini-Superfund program will probably come before the 1989 Legislature. First, DHES has developed legislation to amend the mini-Superfund law to more closely conform to the authorities provided in the federal Superfund program. The amendments would authorize DHES to issue administrative orders or to seek court orders for remedial action; would clarify that hazardous waste liability extends to past owners contributing to site contamination; and would ensure that the state has access to relevant information on hazardous waste sites.

A second mini-Superfund issue relates to program funding. Although HB 718 allocated four percent of the RIT interest to this program, the Schwinden administration's proposed budget reduces the projected biennial allocation from about $565,000 to $484,000, diverting the difference to other programs. Since the progress of the mini-Superfund program in cleaning up hazardous waste sites will depend largely on the funds available, a cutback as proposed would reduce the number of sites that the state can address.

The third legislative issue is a proposal to grant DHES a statutory appropriation to use the mini-Superfund. Although current language in the mini-Superfund law specifies that the fund is to be administered as a revolving fund by the department, there is no specific statutory appropriation. Therefore, the department must go through the budget amendment process for most fund uses. Officials contend that this approach is cumbersome and may delay needed remedial action. Given the number and often unexpected nature of remedial action, the lack of a statutory appropriation is likely to interfere with the state's ability to effectively pursue site cleanups or negotiate with responsible parties. Direct access to the mini-Superfund through statutory appropriation, they contend, would ensure that the state can carry out remedial action (and pursue cost-recovery plus damages) when responsible parties refuse to conduct site cleanups. This option for government action -- considered key to driving private parties to undertake site cleanups under the federal Superfund program -- is also seen as crucial to the success of Montana's program.

Finally, DHES has applied for two separate $300,000 grants under the Reclamation and Development Grants Program. One application seeks funds to research the history of hazardous waste sites, to contact the potentially responsible parties, and to negotiate site cleanups. This grant -- actually seed money for legal and research costs -- would allow the state to convince responsible parties to initiate cleanups on their own. Otherwise, cleanup efforts will be limited to those few sites that can be addressed by DHES with the allocated mini-Superfund program funds. As noted in the grant application, all state funds expended in this effort are recoverable from the responsible party.

The second grant application seeks funds to investigate and cleanup pesticide wastes at two county weed districts and three airports. These projects received strong endorsements from local government officials who do not have the resources to effectively address the pesticide contamination.

The Department of Natural Resources and Conservation ranked the pesticide cleanup project fourth and the responsible party search project eleventh on its recommended funding list under the Reclamation and Development Grants program. However, in early December the Governor's budget director determined that the projects should be dropped from funding consideration and the Governor concurred. In accordance with this direction, DNRC removed the projects from the recommended funding list prepared for the 1989 Legislature.

The administration's rationale for dropping the mini-Superfund projects was that DHES would have surplus funds available for its hazardous waste program through other earmarked RIT interest. These other funds (in a hazardous waste/CERCLA special revenue account), however, are intended to provide a state financial capability to participate in Superfund cleanups (see EQC 1987) and are not available for the proposed projects. Moreover, the Reclamation and Development Grants Program enacted by the 1987 Legislature specifically includes hazardous waste management projects within its eligibility requirements.

The 1989 Legislature will ultimately decide the fate of these projects through its appropriation process. The decision by the administration to remove them from its recommendations, however, appears to dim DHES' prospects for obtaining funds for these key mini-Superfund projects.

Regulation of Landfills and Infectious Waste Disposal

With the nationwide shift in emphasis to hazardous waste management, programs related to solid waste management have suffered from resource cutbacks. However, recent initiatives in landfill regulation and infectious waste disposal have brought Montana's solid waste management program to the forefront.

Landfills

In August 1988, the U.S. Environmental Protection Agency released proposed minimum federal regulations for solid waste landfills. These regulations were prompted by studies demonstrating significant nationwide groundwater pollution caused by substances leaching from landfills. The EPA rules would set strict requirements for groundwater monitoring (both ongoing and for 30 years after landfill closure), financial assurance, recordkeeping and inspection of landfill loads for hazardous waste, and leak prevention for new landfills. The proposed regulations are open for comment, with final regulations anticipated in late 1989, becoming effective in early 1991.

If adopted as drafted, the EPA proposals would have major effects on the management of solid waste in Montana. The state now has 140 landfills, the large majority of which were licensed prior to the concern over groundwater contamination. Most of the landfills are operated by rural communities which have neither the financial or technical resources to conduct monitoring, inspections or recordkeeping. Only about a dozen Montana landfills have any groundwater monitoring wells in place, and in some locations groundwater pollution has been detected.

Unfortunately, the proposed regulations come at a time when the state solid waste management program is minimally staffed.

DHES has only one and one-half persons working on landfills -- down from a staff of six when federal funds supported solid waste management planning efforts in the early 1980s. State officials are already unable to meet their program responsibilities of licensing, inspecting and assisting existing landfill operations to ensure that public health concerns are met.

As EPA moves toward adoption of the new landfill regulations, DHES officials anticipate that local governments will be in need of state assistance. Many landfills are likely to close rather than meet the costs associated with the new federal regulations; those that remain open -- even for one day after federal regulations become effective -- will be responsible for 30 years of water quality monitoring and for meeting various other program requirements. Communities will be looking for solid waste management alternatives, and ultimately Montana may need to develop a network of regional, environmentally sound landfills that are adequately funded and managed to meet EPA regulations.

Planning for this or any alternative system would logically be coordinated through the Department of Health and Environmental Sciences. DHES has already been contacted by dozens of communities aware of the pending EPA regulations and seeking direction for future action. Staff resources, however, are inadequate to meet the current needs for assistance, not to mention the drastically increased demands anticipated in the next year or two.

In recent months, DHES officials have also received a number of inquiries from out-of-state businesses interested in disposing of solid wastes in Montana. The situation is driven by economics, as waste disposal costs in other states commonly range from $50 to $150 per ton, compared to about $10 per ton in Montana. Even with the added shipping costs (about $35 per ton from the East Coast), Montana is a financially attractive place for solid waste disposal. Some Montana landfills are currently receiving small amounts of special wastes from out-of-state industries, including drilling muds and waste asbestos. There are no state regulations or state oversight of the importation of solid waste into Montana.

Infectious Wastes

In late 1988, the City of Livingston began preliminary discussions with an out-of-state waste disposal firm interested in burning large quantities of infectious medical waste at the Livingston incinerator. Montana is currently one of six states that has not adopted regulations governing the disposal of infectious wastes, and thus disposal here could be seen as a inexpensive alternative for out-of-state medical facilities or labs. Most medical wastes generated in Montana are burned in hospitals, but some are landfilled.

On the federal level, EPA has not adopted infectious waste regulations despite its authority to do so under hazardous waste laws. Congress recently established a demonstration project to track disposal of medical wastes in three eastern states. Any comprehensive federal regulations, however, appear to be several years in the future.

Montana officials believe they have the authority to adopt rules to regulate the disposal of infectious medical wastes, but the solid waste program has no resources to conduct such rulemaking or to administer a regulatory program. The primary concern of state officials is that infectious wastes disposed at landfills be strictly isolated so people and equipment will not come in direct contact. There have been incidents in Montana where such contact has occurred, raising serious public health concerns.

Legislative Outlook

With the recent emphasis on hazardous waste programs and the resulting shift of federal dollars, the outlook for state programs to manage non-hazardous solid wastes is not promising. New federal landfill regulations will provide increased protection for groundwater, but will also challenge state and local governments to meet sharply increased program responsibilities with no apparent source of additional funds. Public concern over the importation of solid and infectious wastes also may generate new regulatory responsibilities. Some legislators are proposing a comprehensive state program to address infectious waste disposal.

Despite this outlook (and in consideration of state budget constraints), no expansion of the DHES solid waste

management program is proposed. Potential problems -- specifically, Montana's inadequate program commitment to landfill regulation and the lack of import controls on solid and infectious wastes -- thus remain for the 1989 Legislature to consider.

Natural Resource Damage Claims/Hazardous Waste Site Enforcement Action

The 1989 Legislature will be asked to appropriate $200,000 annually to pursue Montana's claims for compensation for natural resources damaged by Superfund sites. The requested appropriation would come from earmarked hazardous waste accounts, and all legal and technical costs incurred by the state would be subject to reimbursement by the responsible party.

The focus of the claims is a $50 million lawsuit filed by the state in 1983 against the Atlantic Richfield Company (ARCO), the purchaser of the Anaconda Company for damage to land and water resources in the upper Clark Fork Basin (see EQC 1987 for more details). Currently, the health department and ARCO have begun discussing how to determine the extent of natural resource damage in the basin and how this damage should be valued. The state is preparing to retain the assistance of a natural resource economist to develop methodologies and timetables for assessing damages, including close review of the cleanup decisions reached at the various Superfund sites in the Clark Fork Basin. Natural resource damage claims are intended to reimburse the state for those resources that are not cleaned up or restored through the Superfund process.

As trustee of state resources, DHES also has the obligation under federal law to pursue natural resource damage claims at other hazardous waste sites. In both Libby and Somers, where final cleanup decisions are pending, departmental action to establish natural resource claims would be timely. It is not clear, however, whether the appropriation requested by DHES will be adequate to pursue damage claims at these sites.

Legislative Outlook

A separate hazardous waste enforcement issue that may face the Legislature is the effort to oversee the cleanup up of diesel fuel and hazardous wastes released by Burlington Northern at its railroad operations in Livingston. Preliminary tests have indicated extensive groundwater contamination under the site and city, including an estimated one-half million gallons of diesel fuel and various industrial solvents. The municipal water supply is considered to be in jeopardy of contamination and one or more private wells have been polluted.

On December 27, 1988, the health department filed a civil suit against Burlington Northern to require the railroad to clean up the fuel and hazardous wastes spilled at the Livingston yard. The suit also asks BN to clean up wastes disposed of in unlined pits four miles east of the railroad's Mission Wye property and to pay civil penalties for violating state safe drinking water, clean water and hazardous waste laws.

Burlington Northern is also believed to be responsible for diesel fuel contamination of groundwater at about 12 other railroad refueling operations across Montana. Preliminary site investigations are underway at these locations, but some state officials have expressed frustration at the slow pace at which information is being provided and the apparent absence of remedial actions.

If negotiations proceed smoothly for the Burlington Northern sites, additional legislation or requests for appropriations to pursue enforcement actions may not come before the Legislature. There is, however, the possibility that some aspect of these issues may be brought into the legislative arena if the parties fail reach substantive agreements that will bring about site cleanups or if the Stephens administration does not pursue the lawsuit filed against BN in the final days of the Schwinden administration.

OIL AND GAS PROGRAMMATIC EIS

With the passage of Senate Bill 184 the 1987 Legislature directed the Governor's office to prepare a programmatic environmental impact statement (PEIS) on oil and gas drilling and production and granted a temporary exemption to the Board of Oil and Gas Conservation from the requirements of the Montana Environmental Policy Act when issuing permits to drill for oil and gas in Montana. The exemption remains in effect until the Board adopts the PEIS, but no later than June 30, 1989. The Legislature provided $183,800 from Resource Indemnity Trust Fund interest monies to prepare the PEIS.

PEIS Topics

The decision to proceed with the PEIS represented a consensus view of the Legislature, the administration, the oil industry and other interested parties that an effort should be made to resolve uncertainty that has existed for a number of years concerning the question of how to integrate MEPA requirements with regulation of the industry. This topic was the subject of an interim EQC study during the 1986-87 biennium. Topics that SB 184 specifically identified for coverage in the PEIS include the following:

* such environmental impacts as may be found to be associated with the drilling for and production of oil and gas in the major producing basins and ecosystems in Montana;

* a record of information and analysis for the Board of Oil and Gas Conservation to rely upon in responding to public and private concerns about drilling and production;

* such methods of accomplishing drilling and production of oil and gas as may be found to be necessary to avoid permanent impairment of the environment or to mitigate long-term impacts so that the environmental and renewable resources of the ecosystem may either be returned to conditions similar to those existing before drilling or production occurs or conditions that reflect a natural progression of environmental change;

* the process that will be employed by the Board to evaluate such environmental impacts of individual drilling proposals as may be found to exist;

* an appropriate method for incorporating such environmental review as may be found to be necessary into the Board's rules and drill permitting process and for accomplishing the review in an expedient manner; and

* the maximum time periods that will be required to complete the drill permitting process, including any environmental review.

The Governor appointed a nine-member group known as the Oil and Gas Drilling Advisory Council to provide policy guidance to the study effort, assist in the identification of issues and environmental impacts to be analyzed, and review the draft PEIS. The group included representatives of the EQC, the Board of Oil and Gas Conservation, other state and federal agencies, the oil industry, and landowners. An interagency technical committee comprised of staff from the Oil and Gas Division, EQC, the Departments of State Lands, Fish, Wildlife and Parks, Health and Environmental Sciences, Natural Resources and Conservation, and federal agencies including the Bureau of Land Management, Forest Service and Environmental Protection Agency was assigned responsibility for the evaluation of environmental impacts and other aspects of PEIS preparation.

Scope of the Programmatic Statement

The Governor's office held three public scoping meetings in November, 1987 in Great Falls, Bozeman, and Sidney to gather public comments and suggestions concerning issues that should be covered in the PEIS. The majority of comments at all three meetings focused on questions about MEPA requirements, how regulatory responsibilities and other legal authority over oil and gas development are delegated among various state and federal agencies and surface and mineral owners, how the PEIS would ultimately be used by the Board, and how the results of the study would affect the cost and timing of industry operations.

Since SB 184 was solely directed toward drilling and production, a decision was made early in the study process to limit the impact analysis to those phases of oil and gas development. The size of development considered ranged from drilling an individual well through full field production of a large hydrocarbon reservoir. Both adverse and beneficial impacts were evaluated. Secondary and tertiary recovery and well and field abandonment were addressed to the extent that those activities either contribute to or reduce impacts associated with drilling or production. Impacts associated with leasing and seismic exploration were considered outside the scope of the study. Cumulative effects of full field development were assessed to the extent that such effects could be reasonably anticipated, but impacts associated with gas sweetening plants, oil refineries and major pipelines were not addressed except to acknowledge that such facilities could be proposed depending on the scale and type of production that might occur.

SB 184 directed that impacts from oil and gas activities in the major producing basins and ecosystems of the state should be evaluated. The document included an extensive discussion of the phases of oil and gas development activities, ranging from initial mineral leasing and exploration through abandonment of fields and individual wells at the end of their productive life. Because both the characteristics of oil and gas producing formations and environmental conditions in Montana are extremely diverse, it became evident relatively early in the preparation of the PEIS that it would not be possible to clearly define large geographic regions in the state where drilling and production could always be expected to have either major or minor impacts. Instead, the analysis focused on the relative seriousness of environmental impacts that could be caused by variations in drilling and production procedures that are necessitated by variations in depth and characteristics of target formations and differences in surface geology, topography, and soils. Similarly, natural and cultural resources such as air, water, wildlife, land use, recreation and aesthetics, and historic/prehistoric features were analyzed in terms of sensitive environmental features that would render certain locations particularly vulnerable to impacts. The analysis also included an

evaluation of mitigating measures that would be effective in reducing or eliminating adverse impacts.

Findings of the Draft PEIS

The draft PEIS concluded that in most cases the drilling of an individual oil or gas well will not result in major adverse impacts on the environment if proper care is taken in the siting and construction of the drilling location and access road, if drilling muds and fluids and any other wastes are disposed of in an appropriate manner, if safe drilling practices are observed, and if the site and road are properly reclaimed. Other than these considerations which are applicable to all drilling operations, the potential for adverse impact was found to be almost entirely dependent on the sensitivity of individual drilling locations. Major adverse environmental effects are most likely when a wildcat drilling operation leads to discovery of a commercially producible oil and/or gas reservoir and full field production commences in a previously undeveloped area. The seriousness of impacts would in many cases be due to the long-term nature of production activities. However, even in sensitive environments, special mitigation measures can be effective in reducing most adverse effects. For a majority of drilling proposals compliance with mitigation measures contained in Board rules, guidelines and permit conditions is the primary factor that would allow the Board to conclude that significant impacts on the quality of the human environment will not be likely to occur. The following text summarizes the major results of the impact analysis in the PEIS for individual categories of natural and cultural resources.

The **soils and geologic characteristics** most likely to present environmental constraints to oil and gas drilling and production include area of rugged topography and unstable or permeable soils and problematic characteristics of oil and gas formations, including hydrogen sulfide, salt zones and water with high concentrations of chlorides and total dissolved solids. These features, respectively, usually require special site construction and reclamation methods, special equipment and operating procedures, and/or careful waste disposal practices.

Public health and safety considerations are primarily of concern for operations in areas where hydrogen sulfide is known to occur or where it could occur, and especially when it occurs near urban centers, individual residences, roadways or other areas frequented by the public. When hydrogen sulfide is present, special equipment and operating procedures are necessary. Emergency contingency planning may also be necessary depending on the proximity of areas accessible to or occupied by the public.

The primary sources of pollutants produced by oil and gas operations that can cause adverse impacts on **water quality** are reserve pit fluids and muds and produced water with elevated concentrations of chloride and total dissolved solids. Adverse impacts are most likely when reserve pits and water evaporation pits are located close to potable sources of either surface or ground water, and when soils and subsurface materials are porus, unconsolidated or permeable. While the potential for water quality impacts can be greatly reduced by proper siting, construction, maintenance, and reclamation of surface pits, the analysis indicated that existing Board rules could be strengthened to provide more specific guidance concerning what is required to adequately perform these activities.

The air pollutants associated with oil and gas operations with the greatest likelihood of causing violations of air quality standards include hydrogen sulfide and sulfur dioxide. The situation most likely to cause impacts or trigger regulatory requirements would be the venting or flaring of hydrogen sulfide over an indefinite period of time, particularly in locations that are close to residences or other areas used by the public, that are constrained by terrain (e.g., mountain valleys subject to frequent inversions), or that are near Class I air quality areas. Information is not currently collected by the Board or any other state agency to determine which wells would be most likely to cause violations. A variety of options exist for reducing emissions to acceptable levels at most wells once a problem or the potential for a problem is identified.

The major adverse impacts on **wildlife** that may result from oil and gas development are those associated with increased road construction, and the displacement of animals from areas such

as winter range that are seasonally critical to the animal's life cycle, especially when these areas are located in mountainous terrain. Other wildlife impacts include stress during the winter, spring and young-rearing period, and increases in legal and illegal shooting. The regions of the state most susceptible to adverse wildlife impacts are, in decreasing order of importance: the Overthrust Belt, Big Horn, Central, Powder River, and Williston Basin. The most effective means of mitigating wildlife impacts is first by avoidance of critical habitat and second by restricting activities in seasonally important habitats to times of year when these areas are not critically important to the life cycles of sensitive species.

Areas of the state with the greatest potential for adverse **impacts on the aquatic environment** include Class I and II streams as designated by the Department of Fish, Wildlife and Parks. These streams tend to support the highest populations of recreationally-valued fish and fish species especially sensitive to water quality degradation. The most effective means of mitigating wildlife impacts is avoidance of critical habitat, or if avoidance is not possible, by restricting the timing of activities on both a seasonal and daily basis, as applicable, to avoid the use period most critical to the animals.

The adverse impacts of oil and gas activities on **recreation and aesthetics** primarily include changes in recreational opportunities or access, changes in the quality of recreational experiences, and changes in use volume of particular areas. The severity of impacts depends on the degree to which visibility of drilling and production equipment, noise and increased traffic disrupt recreation settings and whether the activities encroach upon visually sensitive areas. The most serious impacts are those that are long-term (associated with production). Examples of mitigation measures effective in reducing these impacts include avoidance of recreation areas or creation of buffer zones around established recreation sites, use of topography or vegetation to screen oil and gas facilities and reclamation of disturbed areas.

Impacts on **vegetation** tend to be most serious in areas with high erosion potential or areas where local conditions make reclamation difficult. Specialized techniques and additional costs, time and labor may be necessary to restore some areas to their previous productive capability. Disturbance of the surface can often encourage the spread of noxious weeds. Prompt reclamation of disturbed areas and the control of weeds during the time that sites and roads are in use are necessary to mitigate this potentially serious problem. Areas containing threatened or special status plants should be avoided if possible.

Land use impacts primarily consist of conflicts between oil and gas activities and other uses of property such as agriculture and residences. Residential impacts are often not strictly a land use problem and may involve residents' expectations for maintaining the character of their neighborhood or concerns about such issues as health and safety and waste disposal. Direct impacts, that is, those effects directly associated with disturbance of the land surface, may be more easily mitigated (e.g., through modifications of the oil and gas operations around irrigation equipment and through eventual reclamation) than indirect effects (e.g., visual effects, traffic impacts, etc.) on property near to or adjoining an oil and gas lease.

Impacts on **cultural, historic and archaeological properties** have many characteristics in common with recreation and visual impacts (e.g., changes in the quality of visitor experience and changes in integrity of the setting of an historic or cultural property). Also, some cultural sites or objects could be physically destroyed or impaired. Avoidance or creation of buffer zones around known cultural resources in the most effective way to reduce impacts.

Social and economic impacts: Oil and gas activity has had an overall significant positive effect on the Montana economy, contributing revenues to state and local governments and the educational systems and income to private mineral owners and businesses. The industry is also subject to boom/bust cycles that contribute to problems for local and regional economies and problems for local governments in providing public services. Employment levels and the effect of oil and gas activity on an area are influenced by the length of time required to drill a well, the number of wells drilled, and the characteristics of the economy in the area affected. Larger cities are better able to handle moderate-to-large temporary fluctuations in economic activity and population, with the attendant demands for services.

Alternatives Available to the Board to Use the PEIS

A major purpose of the PEIS was to identify ways for the Board of Oil and Gas Conservation to incorporate environmental review objectives into its rules and drill permitting process and to expediently evaluate the impacts of individual drilling operations. The administrative alternatives identified for the Board's consideration were as follows:

* collection of data describing individual proposed drilling operations and locations;
* development of procedures to accomplish technical review of applications for permits to drill;
* pre-drill site inspections where warranted by special conditions;
* attachment of general and/or site-specific conditions to drilling permits to mitigate adverse impacts;
* where conditions warrant, consultation among the Board and landowners, land-managing agencies, and other agencies with jurisdiction or expertise concerning environmental resources that might be affected by drilling and production;
* development of guidelines specifying minimum appropriate practices for various aspects of oil and gas drilling and production;
* revisions and additions to Board rules to ensure availability of sufficient information to conduct environmental review and to assist in implementing appropriate mitigation;
* development of Memorandums of Understanding defining how the Board and other agencies would coordinate their respective responsibilities for oil and gas drilling and production and for resources affected by these activities;
* field inspections and enforcement of Board-imposed requirements for drilling and production activities; and
* training and education for existing Board staff and potential addition of new staff.

The PEIS identified a number of topic areas where Board rules could be modified and/or guidelines developed to ensure that environmentally sound drilling and production practices are used, including the following: 1) appropriate methods of siting, constructing and reclaiming drilling locations and associated access roads; 2) reserve pit construction, liner specifications and reclamation; 3) safety equipment specifications and emergency contingency planning; 4) produced water evaporation pit design and reclamation; and 5) data collection concerning hydrogen sulfide production at completed wells and development of a screening process to identify wells that could potentially cause air quality problems.

If rules or guidelines to address these subjects are eventually adopted, the draft PEIS concluded that the need for detailed evaluation of individual drilling proposals would be minimized. For example, the PEIS estimated that environmental evaluation of 85 to 90 percent of all individual drilling proposals received by the Board could be completed in one or two days, and would include a routine desk review of information submitted in the permit application and completion of a brief environmental checklist. For most other drilling proposals the process could likely be completed in 10 to 30 days, with the time frame primarily dependent on availability of information, the environmental sensitivity of the proposed drilling location, the complexity of potential mitigation measures and the need for interagency consultation. For approximately one percent of drilling proposals, the draft PEIS found that the seriousness of potential problems at the most environmentally sensitive locations would dictate the need for the Board to prepare a detailed environmental assessment or environmental impact statement.

The draft PEIS included examples of a new drill permit application form and an environmental checklist to indicate the types of information the Board would need to collect and consider in order to evaluate individual drilling proposals.

Schedule for Completion of PEIS

The draft PEIS is scheduled for publication in late December, 1988 followed by a 60-day public comment period with public hearings to be held during January and February at several locations across the state. As stipulated in SB 184, the PEIS will be finalized by June 30, 1989. Of equal importance to completion of the PEIS will be the development and implementation of a strategy to integrate MEPA requirements into the Board's drill permitting process by the time the Board's exemption from MEPA requirements expires. The schedule published in the draft PEIS indicates that the Board will initiate this internal planning process in early February 1989, including consideration of budget and staffing implications.

EQC staff worked closely with the executive agencies to prepare the PEIS. When the final PEIS is adopted in mid-1989, the Board of Oil and Gas Conservation will have a consistent environmental review process to follow when reviewing permits to drill for oil and gas and a thorough record of information to draw upon in responding to questions and concerns about environmental impacts that may be associated with oil and gas development.

FOREST PRACTICES STUDY

In April 1987, the 50th Montana Legislature passed House Joint Resolution 49, directing the Environmental Quality Council to study:

* how current forest management practices are affecting watersheds in Montana;

* the range of management practices that conserve watersheds and maintain economically viable timber harvest operations; and

* the administrative framework promoting the use of best management practices in Montana and other states.

EQC was also directed to study actions that might be necessary to improve state programs, in consideration of both watershed and timber management goals. Findings and recommendations were to be reported to the 51st Legislature.

House Joint Resolution 49 was preceded by a number of efforts to enact forest practice legislation in Montana. Bills proposed during the 1973-75 legislative sessions would have authorized minimum state standards for timber harvesting, associated road construction, reforestation, chemical use, and disposal of logging slash. Opposition from non-industrial forest landowners led to the defeat of these bills, despite support from state agencies, environmental interests, and major segments of the timber industry. No forest practice legislation was introduced again until 1987, when House Bill 781 proposed a system of cooperative watershed agreements between the state and private forest owners. This bill was tabled by the House Natural Resources Committee, but the committee drafted a resolution to study forest watershed relationships. This resolution ultimately passed the full Legislature as HJR 49.

The HJR 49 study was organized around two technical committees appointed by EQC and composed of persons with expertise in timber harvest techniques and effects. The primary objective of the Watershed Effects Working Group was to assemble and review information pertinent to an assessment of the effects of forest practices on Montana watersheds. The Best Management Practices Technical Committee was charged with developing a consensus set of best management practices (BMPs) for forestry in Montana. Periodic EQC meetings, including presentations, discussions and field tours, also provided a forum for generating information and ideas on forest watershed issues.

Watershed Effects Working Group

To determine the rate of application and the effectiveness of forestry best management practices in Montana, the Watershed Effects Working Group audited a stratified random sample of 38 recent timber sales. These timber sales (which had to have been harvested in 1986 and located within 200 feet of a perennial or intermittent stream) were divided among the major forest landowner groups -- industrial private, non-industrial private, state, and federal. Up to thirty-six separate management practices were evaluated at each each sale location. The audits were conducted by three regional teams, each composed of five members and each having a range of technical expertise in forestry and watershed management.

The timber sale audits indicated that operators properly applied 82 percent of all management practices; 14 percent of the practices represented minor departures from best management practices; and five percent were rated as major departures. Failure to properly apply BMPs generally resulted in a failure of the practice to prevent the movement of sediment into streams. Minor departures generally led to minor effects, while major departures generally caused major impacts.

In 16 of the 38 sales, audit teams characterized at least one practice as having major detrimental impacts on soil and water resources. Impacts were projected to be extensive and long-term in 5 of these sales, while in the other 11 sales the major impacts were considered to be primarily short-term. Management practices in the remaining 22 timber sales were rated as having only minor detrimental impacts.

BMP Committee

Management of streamside zones received the lowest overall ratings for application and effectiveness of BMPs; practices for controlling erosion from roads also had a high frequency of misapplication. The degree to which BMPs were applied was similar among nonindustrial private, industrial private and federal lands. The limited sample of state-owned timber sales indicated a higher degree of compliance with BMPs.

The best management practices developed by the Best Management Practices Technical Committee generally represent a consensus approach among technical specialists representing various perspectives on forest watershed issues. However, debate remains over how much specificity is desirable in the language for some individual BMPs. This debate generally hinges on finding the appropriate balance between the need for flexibility for the operator conducting forest practices versus the need for "bottom-line" guidance to prevent watershed impacts. The BMPs developed for streamside management zones are considerably more general than requirements in neighboring states, and may not provide adequate protection for water quality or stream quality. The HJR 49 study also researched the legal and administrative structures used to promote the use of BMPs and to address forest practices and watershed effects in Montana and other states. This research indicates that achieving proper application of management practices to conserve watershed values involves a number of links, including appropriately written BMPs; knowledge of the BMPs by landowners and operators; a commitment to include BMPs in sale planning and layout; and proper application of BMPs on the ground. To address these links, an effective state program should combine information/education; pre-sale assistance; prioritization of efforts to protect sensitive areas; oversight of BMP application; and monitoring of BMP effectiveness.

Montana's program to address forest practices and watershed effects has major weaknesses, including the lack of formal oversight of private forestry operations; limited education and pre-sale assistance; no procedure to identify high-priority watersheds; and no monitoring to assess either BMP effectiveness or the impacts of forest practices on beneficial uses. These weaknesses, primarily based on shortages of staff and financial resources, preclude Montana from effectively implementing a preventative approach to minimize potential damage to forest watersheds.

The HJR 49 report presents a number of options for Montana to address the major study question: "What is the most appropriate means for Montana to promote the use of best management practices in

forestry operations?" These options include continuing current programs; adopting a forest practices act; requiring pre-notification for forest practices, coupled with increased education and pre-sale assistance by the Department of State Lands; licensing timber operators; adopting BMPs by rule under the Water Quality Act; and establishing a state-level interdisciplinary team to assist with private timber sale planning. Additional options are presented to improve the conduct of forest practices in streamside zones and to address other technical issues related to forest watershed management.

Preliminary Recommendations

The Environmental Quality Council developed preliminary recommendations for House Joint Resolution 49 at a meeting on December 9, 1988. The recommendations, organized to correspond to six potential elements of a forest practices water quality program, are as follows:

* **Best Management Practices**
  EQC endorsed the BMPs developed by the technical committee as the foundation for a consistent statewide set of forestry BMPs.
  EQC recognized the Department of State Lands as the lead agency to achieve consensus on a final BMP package; to publish the BMPs; and to establish a procedure for changing specific BMPs.

* **Information and Education**
  EQC endorsed DSL as the lead agency to coordinate educational programs on BMPs for timber operators, landowners, conservation district personnel and others. These educational programs should involve a variety of agencies and organizations to effectively reach target audiences.

* **Pre-sale Assistance**
  EQC endorsed a proposal to require landowners or operators to notify DSL prior to conducting forest practices so that DSL can provide information on best management practices before logging and road-building begin.

* **Oversight of BMP Application**
  EQC adopted a motion authorizing DSL (or an interagency group under DSL) to monitor private forestry operations and to work cooperatively with sale administrators to promote voluntary use of BMPs to conserve watershed values.

* **Technical Issues**
  EQC endorsed efforts to make progress on refining BMPs for streamside zones; defining measurable standards for impairment of beneficial uses; addressing cumulative watershed effects; and monitoring forest water quality.

* **Follow-up**
  EQC endorsed the formation of an interagency group to conduct a series of timber sale audits in 1990. EQC also directed participating agencies to report and make recommendations to EQC and to the 1991 Legislature on the various elements of Montana's forest watershed program.

The Environmental Quality Council will hold a final meeting during the initial weeks of the 1989 legislative session to complete work on the House Joint Resolution 49. The purpose of the meeting is to develop a final legislative package to implement the programmatic response to the HJR 49 study, as outlined above. Specific discussion topics will include the level of staff and financial resources to be allocated to state agencies, further direction on interagency coordination, and the development of any legislation necessary to achieve the recommended elements of a Montana forest practices/watershed program.

MONTANA ENVIRONMENTAL POLICY ACT

A major project begun by the EQC during the 1985-86 interim to review agency implementation of the Montana Environmental Policy Act (MEPA) continued during 1987-88 and culminated in the promulgation of new MEPA rules by the executive branch in December, 1988.

The initial goals of EQC's project were:

* to make environmental impact statements and preliminary environmental review documents more useful to decision-makers and the public;

* to identify ways agencies can fulfill MEPA-related responsibilities while minimizing paperwork;

* to examine the relationship between MEPA and other permitting authorities;

* to develop criteria, guidelines and administrative tools, as appropriate, to assist agencies in MEPA-related decisionmaking; and

* to examine the "expanded preliminary environmental review" process and the desirability of formalizing this process through executive agency rulemaking.

Based on comments received from representatives of environmental groups and business and industry and issues identified through meetings with agency staff, the EQC selected a series of topics for more specific examination, including the purposes of preliminary environmental reviews, agency determinations concerning the significance of environmental impacts, mitigation of impacts, and public scoping procedures. A characteristic shared in common by all of these topics is that they involve agency practices that are not adequately described in the administrative rules that have been used for the past several years to implement MEPA. Based on a detailed review of the MEPA rules, additional topics were identified such as the analysis of alternatives in an environmental impact statement and agency preparation of programmatic reviews where the EQC considered further clarification to be desirable.

The MEPA rules were last reviewed and revised by the executive branch in 1980. A considerable body of case law has subsequently been developed through federal judicial review of the National Environmental Policy Act and also through a limited number of MEPA cases in Montana district courts that has caused

agency administrative practices to be modified in many of the EQC's MEPA topic areas. Also, as agencies have gained more experience with conducting environmental reviews, certain new procedures have evolved that have tended to enhance both the quality of public participation and the efficiency of the process (e.g., public scoping to identify issues that will be addressed in environmental review documents).

Based on the background information gathered through the MEPA Implementation Project, the EQC initiated a joint effort with the executive branch in mid-1987 to revise and update the MEPA rules, primarily for the purpose of accurately and fully describing how the environmental review process is currently administered. Following a series of intensive discussion sessions with agency personnel and interested organizations and citizens during the latter half of 1987, the EQC forwarded its recommendations for revised rules to the executive branch in late January, 1988.

The executive branch accepted most of the EQC's recommendations with only a few refinements and held an informal public meeting to review the rules in May, 1988. Following further minor revisions, the agencies gathered comments on a formal draft of the rules at two public hearings in August. The administration promulgated a final set of MEPA rules in December, 1988. Agencies that adopted the new rules include the departments of state lands, natural resources and conservation, health and environmental sciences, fish, wildlife and parks, agriculture, commerce and highways.

The following discussion describes the major topic areas where new or revised rules have been proposed, the major types of public comments that were received, and the specific issues that received the most attention from both the EQC and the executive branch.

Determining the Significance of Impacts

MEPA requires state agencies to prepare a detailed statement (an environmental impact statement) on proposals for projects, programs, legislation, and other major actions of state government significantly affecting the quality of the human environment (75-1-201(1)(b)(iii), MCA). To the fullest extent possible, agencies are also required to integrate use of the natural and social sciences and environmental design principles in planning and decision-making that may have an impact on man's environment.

MEPA applies to all actions undertaken by state agencies except for routine administrative and clerical activities, rehabilitative and investigative actions, and ministerial actions where the agency has no discretion but to act in a prescribed manner. Actions covered by MEPA include programs and projects initiated by agencies such as timber sales, water projects, water reservations, game management, highway construction and funding assistance granted to projects undertaken by the private sector or other units of government. Also covered is the issuance of licenses, permits and other agency approvals of private sector projects such as mines, water allocations, groundwater discharges, and hazardous waste management facilities.

One primary question is considered at the beginning of the MEPA review process for any particular project or state action: Is the action a "major state action significantly affecting the quality of the human environment?" The new MEPA rules provide guidance concerning the criteria an agency must consider in determining the significance of environmental impacts associated with a proposed action. While these criteria have been used informally in agency decision-making over the years, they were not previously an explicit part of the rules.

The criteria include the following:

* the severity, duration, geographic extent, and frequency of occurrence of the impact;

* the probability that the impact will occur if the proposed action occurs or reasonably assurance that the impact will not occur;

* growth-inducing or growth-inhibiting aspects of the impact, including the relationship or contribution of the impact to cumulative impacts;

* the quantity and quality of each environmental resource or value that would be affected, including the uniqueness and fragility of those resources or values;

* the importance to the state and to society of each environmental resource or value that would be affected;

* any precedent that would be set as a result of an impact of the proposed action that would be commit the agency to future actions with significant impacts; and

* potential conflict with local, state, or federal laws, requirements, or formal plans.

The new rules also clarify that an impact may be adverse, beneficial, or both, but that an EIS is not required if none of the adverse effects are significant. An agency is required to consider all of the above-listed criteria both in determining the need to prepare an EIS and in evaluating individual and cumulative impacts in either EAs or EISs. Early in the rules revision process a number of persons commented that it would be desirable to formulate objective guidance or, ideally, to define standards that would eliminate the subjective, case by case judgement that agencies apply in making the significance determination. However, considering the diversity of types of state actions and characteristics of locations where the actions would occur, it was not possible to identify more specific criteria.

Environmental Assessments

In cases where the circumstances and characteristics of a proposed state action clearly indicate that significant impacts could be reasonably expected to occur, agencies often begin preparation of an EIS without further initial evaluation. Agencies typically prepare a document called an "environmental assessment" (EA) (formerly known as a "preliminary environmental review") in situations where the significance of impacts is unclear and also in order to serve a variety of other purposes that are identified for the first time in the new MEPA rules. These purposes include:

* providing a mechanism for agencies to apply the natural and social sciences and environmental design principles in planning and decision-making as required by 75-1-201, MCA;

* evaluating reasonable alternatives and developing conditions or stipulations that may be made a part of a proposed action;

* evaluating the significance of impacts and the need for an EIS;

* providing the fullest appropriate opportunity for public review and comment on a proposed action; and

* where other statutory requirements do not allow an agency sufficient time to prepare an EIS, providing a mechanism to examine and document the impacts associated with a proposed action and provide for public review.

Judicial decisions over the past few years have recognized that agency actions may be modified based on the analysis contained in an EA and that environmental effects that might otherwise be deemed significant may be mitigated below the level of significance through enforceable stipulations or conditions that the agency imposes. If there are no residual significant impacts associated with a proposed action following the imposition of mitigating measures, an EIS need not be prepared. Over the past few years some Montana state agencies have been successfully applying this case law by preparing EAs that contain a detailed analysis of potentially significant environmental impacts and mitigation that effectively reduces or eliminates the significant adverse effects of proposed projects. This process has been most notably applied to a variety of mining projects by the Department of State Lands.

Mitigated Environmental Assessments

The new MEPA rules acknowledge that EAs may be prepared in the manner described above. Depending on the complexity of the proposed action, the

environmental sensitivity of the affected location, and the need for and complexity of mitigation, the rules also acknowledge that EAs may range in size from brief checklists for routine actions to major documents containing substantial analysis. Also, for the first time, the new rules use and define the term "mitigation". Previously the MEPA rules only recognized EAs as "brief written statements" that were prepared solely to determine the need for an EIS.

The legitimacy and use of "mitigated EAs" by agencies to eliminate otherwise significant impacts and thereby avoid preparation of EISs was without doubt the most contentious issue raised by the new MEPA rules. Environmental groups were particularly concerned that recognition of mitigated EAs meant that agencies were establishing a preference for use of these documents in place of EISs and that both the thoroughness of environmental analysis and opportunities for public review of proposed actions would diminish as a result. Mitigated EAs were also criticized because MEPA only allows agencies to collect fees from private sector project sponsors to pay for the environmental review if an EIS is being prepared. Agencies must absorb the costs of preparing EAs from their budgets.

Business organizations tended to favor the use of mitigated EAs because agencies have more flexibility to focus the analysis on only the potentially significant issues associated with a project. Also, they felt that more creative solutions to environmental problems may be identified in cooperation between the project sponsor and the agencies. The process has also typically required less time to complete than an EIS.

In response to concerns that public review procedures should be specified for EAs prepared in situations where an EIS would otherwise be required, the new MEPA rules state that agencies must provide an opportunity for public comment, a public meeting or hearing, and adequate notice. Agencies also have the discretion to initiate a scoping process to identify the issues to be addressed in an EA. Some persons who reviewed draft versions of the MEPA rules felt that at a minimum, some type of public notice should be provided or comprehensive lists maintained of all EAs that are prepared. However, the agencies took the position that the cost and level of effort that would be required to comply would not be worthwhile for many of the hundreds of state actions undertaken each year that raise no public interest. The agencies were also concerned that inadvertent failure to provide notice of an EA or omission of an EA from a comprehensive list could result in litigation and delay. Therefore, for the more routine types of EAs, the rules allow agencies to determine the appropriate level of public review on a case by case basis, consistent with the seriousness and complexity of the environmental issues associated with a proposed action and the level of public interest.

Categorical Exclusions

Large numbers of EAs are currently prepared for categories of actions that seldom or never involve significant impacts (e.g., junkyards, gravel crushers), although in certain situations they could conceivably have such impacts (e.g., if located in an extremely sensitive location). The new MEPA rules recognize that this type of action could be excluded from site-specific environmental review and the need to prepare either an EA or an EIS. State agencies are provided with an option of defining through rulemaking or justifying by programmatic review the types of actions that will be excluded and the reasons or circumstances about the action that warrant the exclusion. Agencies are also required to identify the circumstances that could cause an otherwise excluded action to potentially have significant environmental impacts and to provide a procedure whereby these situations would be discovered and appropriately analyzed.

General EIS Requirements and Scoping

Two general EIS requirements were added to the rules for the purpose of directing agencies to appropriately tailor the level and content of the analysis to the characteristics of individual proposed actions and to thereby cut down on both unnecessary paperwork and potentially the

amount of time and effort invested in document preparation. Agencies are directed to prepare EISs that are analytic rather than encyclopedic and to discuss environmental impacts in a level of detail proportionate to their significance. For other than significant issues, future EISs need only include enough discussion to show why more study is not warranted. The intent of these requirements is to reinforce the idea that EISs are more useful and effective if clear emphasis is given to the major issues and if unaffected aspects of the environment are given only cursory treatment. This idea is repeated in a subsequent rule concerning the content of draft EISs that directs agencies to structure the description and analysis of current environmental conditions in the area affected by a proposed action in a level of detail commensurate with the importance of impacts and to summarize, consolidate, or simply reference less important material.

"Scoping" is a procedure that both state and federal agencies have developed over the past few years to identify the major issues that will be evaluated in an EIS based on discussions with the agencies, citizens and organizations that would be affected by a proposed action. Experience has shown that EISs initially scoped in this manner are far less likely to overlook important issues and that subsequent public review of the EIS tends to be better focused as a result of citizens' early involvement. The new rules require agencies to invite the applicant (if any) and all affected agencies, Indian tribes, and interested persons or groups to participate and to identify the issues that are and are not likely to involve significant impacts, possible alternatives to be considered, and issues adequately addressed by prior environmental review.

Analysis of Alternatives

Prior to the new revisions to the MEPA rules agencies were required to provide in EISs "a description of reasonable alternative actions that could be taken by the department". This language was not consistent with federal case law and regulations that require agencies to analyze and discuss reasonable alternatives that are not necessarily within their statutory authority as well as alternatives that may require legislation or changes in broad government policies that go beyond any individual agency's authority. Another problem with the previous rule was that it could be interpreted to exclude alternatives that could be implemented by an applicant or by agencies other than the agency preparing the EIS.

The term "alternative" is formally defined for the first time in the new rules and means an alternate approach or course of action that would appreciably accomplish the same objectives or results as the proposed action; design parameters, mitigation or controls incorporated into a proposed action as a result of the analysis in an EA or draft EIS; and no action or denial of an action. Also, for agency-initiated actions, different programs to accomplish different objectives and different uses of resources also are recognized as alternatives. Agencies are required to consider only alternatives that are realistic, technologically available, and bear a logical relationship to the proposed action. Reasonable alternatives that may or may not be within the jurisdiction of the agency to implement must be considered. Agencies are also required to explain the tradeoffs among the reasonable alternatives and indicate which alternative is preferred, if any, and the reasons for the preference.

Programmatic Reviews

Prior to the new MEPA rule revisions, programmatic reviews were a general type of environmental analysis that agencies were given discretion to choose whether or not to prepare when they were contemplating or initiating a program or a series of actions or policies that in part or in total might constitute a major state action having significant environmental impacts. One of the major changes included in the new rules is the removal of agency discretion to prepare a programmatic review if a proposed action would be reasonably likely to involve significant impacts. This change received wide support based on the reasoning that all types of state actions covered by MEPA, including state-initiated and private sector proposals, should receive equal treatment.

State agencies have historically prepared very few programmatic reviews. In part this has reflected lack of funding, a problem that continues to be of concern to agencies. A suggested MEPA rule revision that was not adopted would have made preparation of programmatic reviews subject to the availability of funds. In the future, agencies will find it necessary to plan ahead and request funds through the legislative budgeting process for any programmatic reviews that they believe will be needed for the next biennium.

The new rules clarify that programmatic reviews must either take the form of an EA or EIS. This change was adopted to clarify that programmatics are not a third type of environmental document and to clarify the types of information that must be included. During the 1988-89 interim two programmatic reviews were initiated: an EIS on oil and gas drilling and production and an EIS on use of state funds to partially support emergency grasshopper spraying.

Records of Decision

A new rule has been added that requires agencies to document their final decisions on proposed actions for which an EIS is prepared and to explain the reasons for their decisions. This rule, which parallels a similar requirement found in federal regulations implementing the National Environmental Policy Act, was added in order to provide an end point to the overall environmental review process and a concise record of both the action taken by the agency and a statement of how the major issues affecting a proposal were balanced by the agency in reaching its decision.

Virtually no critical comments were received on this rule. The final version specifically states that the rule does not define or affect the statutory decision-making authority of any agency. Agencies may include all of the information required for a record of decision in a final EIS and subsequently reference this information in a public notice if there are no differences between the final decision and what was published in the final EIS.

Funding Issues

As noted previously, MEPA limits the collection of fees from private sector applicants to those projects requiring an EIS. The fees are to be spent for acquisition of data and information to compile the EIS. Extensive public comment was received on the new MEPA rules supporting the view that agencies should also be allowed to collect fees from applicants when detailed EAs containing mitigation are prepared on projects that would otherwise warrant an EIS. This issue could not be resolved by the new rules, but it may be addressed by proposed legislation during the 1989 Legislature to amend the fee provisions contained in MEPA.

Through four years of meetings and a series of public hearings, the EQC and the Governor's Office have attempted to fashion the MEPA rules to reflect the input of all affected parties. The adoption of the rules by the various executive branch agencies is one measure of the success the implementation project. In the future, the success of the effort will be measured by the clarity that the new rules have added to the environmental review process.

SUBDIVISIONS

The Environmental Quality Council has examined Montana's principal subdivision laws over parts of two biennia. Though consensus on a comprehensive new subdivision law has not been achieved, the discussions over the study period helped highlight significant areas of agreement and disagreement.

This narrative summarizes council activity during the 1987-88 interim. In brief, the council's activity involved continued pursuit of a comprehensive bill based on the principles embodied in House Bill 809, the subdivision bill that was tabled by the 50th (1987) Legislature.

Background

Montana's existing subdivision regulation law consists of two major acts that, although amended on occasion, have each been in existence for over 15 years: the Montana Subdivision and Platting Act and the Montana Sanitation in Subdivisions Act. House Bill 809, the Environmental Quality Council bill introduced to the 1987 Legislature, offered a comprehensive alternative to the Subdivision and Platting Act.

The Subdivision and Platting Act

The Subdivision and Platting Act (76-3-101 to 76-3-614, MCA) has two principal purposes: to achieve accurate land records and proper surveys and to attain orderly land development through local review and approval of subdivisions. Subdivisions must receive local approval from the governing body of the county, city or town in which the subdivision will occur. Local governments evaluate proposals to determine if they are in the public interest using the following criteria:

* the basis of need for the subdivision;
* expressed public opinion;
* the effects of the proposed subdivision on agriculture;
* the effects of the proposed subdivision on local services;
* the effects of the proposed subdivision on taxation;
* the effects of the proposed subdivision on the natural environment;

* the effects of the proposed subdivision on wildlife and wildlife habitat; and

* the effects of the proposed subdivision on public health.

In making this decision, the governing body considers input from the local planning board, if one exists, and from testimony offered at public hearings by local citizens.

The most extensive review is given to divisions with more than five parcels. For these "major" subdivisions, an environmental assessment is generally required in addition to a preliminary plat. For divisions of land into five or fewer parcels, summary review is an alternative. These "minor" subdivisions may also avoid the public hearing and environmental assessment requirements, and they have a 35-day (as opposed to 60-day) processing time frame.

Considerable litigation and legislative debate has occurred on the coverage of the Subdivision and Platting Act. The act essentially does not apply to divisions of land that result in parcels 20 acres or larger, and either partial or total exemptions from local government review are provided for many land divisions, including divisions undertaken as family conveyances or occasional sales. While the latter exemptions may not be used to evade the purpose of the act, a recent Montana Supreme Court decision suggests that this constraint may be very limited (See State of Montana ex rel. Leach v. Gallatin County Board of Commissioners, No. 88-211 (November 1, 1988). This decision overturned the Gallatin County Commission's denial of a claimed occasional sale exemption, based on the county's evasion criteria and the repeated use of the exemption to divide the property at issue.

Sanitation in Subdivisions Act

The Montana Sanitation in Subdivisions Act (76-4-101 to 76-4-131, MCA) requires review of preliminary plats or certificates of survey to ensure that water supply, sewage disposal and solid waste disposal needs are adequately addressed. Most divisions of land into parcels smaller than 20 acres are examined under this act.

For major subdivisions, the Department of Health and Environmental Sciences (DHES) reviews the application and plans submitted by the developer. For minor subdivisions or for divisions that will be serviced by an adjacent municipal system, review may be undertaken by local government personnel certified by DHES.

The review authority must approve the subdivision for water supply, sewage disposal and solid waste disposal considerations before the county clerk and recorder can file the subdivision plat. An exception is provided for a proposed subdivision that is within a master planning area or a city of 5,000 or more and will tie into facilities for water supplies and sewage and solid waste disposal.

HB 809: The Subdivision Regulation and Development Act Proposal

House Bill 809 represented the EQC's effort to establish consensus on the subdivision issue. Except for an agricultural exemption, the bill provided some review for virtually all land divisions. The controversial 20-acre limit, occasional sale, family conveyance, and mortgage exemptions were removed.

The bill compensated for broader regulation by attempting to ensure tailored and more predictable review for all subdivision proposals. The bill undertook this effort by outlining the review process in detail, and by providing specific review criteria. The statement of purpose also reflected a council desire to ensure more objective review for subdividers by stating concern for the rights of property owners as well as the protection of public health, safety, and welfare.

House Bill 809 recognized major, minor, and special subdivision types. Major subdivisions received detailed review. Minor subdivisions, defined as divisions resulting in five or fewer parcels, received less extensive substantive review and an abbreviated review process (except in multiple minor subdivision situations). Special subdivisions -- those that comply with a qualified master plan, a capital improvements program, and zoning laws or local subdivision regulations -- also received abbreviated review.

House Bill 809 did not propose major amendments to the Sanitation in Subdivisions Act, though the study effort initially contemplated a major rewriting of all subdivision laws. Parties who participated in preparing HB 809 agreed that Sanitation in Subdivisions Act seemed to be working well.

This Interim's Effort

The 1987-88 interim efforts focused on issues relating to the Subdivision and Platting Act. Several meetings were held in an effort to resolve issues remaining after the 1987 legislative rejection of HB 809.

October, 1987 Meeting

The second EQC look at Montana's subdivision laws began in October 1987 at a meeting in Bozeman. Two panel discussions were conducted: one that discussed subdivision regulation and development in Gallatin County, and a second that addressed two strategic questions:

* Should the EQC continue with the subdivision study?

* If so, how should the study proceed?

Subdivision Development and Regulation in Gallatin County

The problems experienced with the Subdivision and Platting Act in Gallatin County are similar to those experienced throughout Montana. A Gallatin County planner, capsulized the various views by discussing local problems caused by exemptions in the law and also the difficulties with subjective subdivision review criteria.

Several persons discussed subdivision sprawl in Gallatin county. Some participants noted that existing law may encourage developers to build outside city limits. Moreover, the 20-acre exemption often provides an incentive for dispersed home construction. As a result, a worst-case scenario may be developing for wildlife and local government resources, which are often less impacted by clustered developments near urban areas.

How Can the Existing Subdivision Law be Improved?

The second panel agreed that existing subdivision laws need improvement. The four principal suggestions were:

* make the law more objective;

* maintain local government flexibility;

* remove the exemptions; and

* remove planning and zoning criteria from the subdivision process.

These suggestions are not completely consistent with each other. For example, some participants felt the current subdivision law could be improved with clearer, better-defined criteria that are standardized state-wide, thereby ensuring more certainty in subdivision review processes. Yet, local government officials argued for a review process with local options. The argument for local options focused on allowing each community to formulate limits of acceptable change, and on allowing a community to develop innovative regulatory frameworks tailored to the community itself.

The panel also discussed exemptions, with particular attention given to the existing 20-acre limit for subdivision status. Some participants suggested that the limit should be reduced to five or 10 acres. Others expressed concern about the problems caused by the 20-acre exemptions, particularly in regard to providing water, sewer, or fire services to sites with very limited access.

The panel also discussed the desirability of having "planning" criteria in the subdivision laws. Some participants stated that subdivision laws should divide land, not plan communities. Instead, local governments should have discretion to address planning concerns by creating their own master plans. Others agreed that planning and subdivision regulation should be separate but felt that state-wide planning should be mandatory. Finally, one participant stated that proper planning is essential if poor subdivisions are to be avoided and, therefore, that planning and subdivision regulation cannot be separated.

Should EQC continue with the subdivision study, and, if so, how?

The panel agreed that consensus on a comprehensive subdivision bill would be difficult, if not impossible, to achieve. One participant expressed concern that any bill developed by the EQC could be changed legislatively to such a degree that passage would be impossible. Another suggested that the council choose two or three important flaws in the Subdivision and Platting Act, and work on amending those.

And one participant questioned directly whether a continued study would produce anything worthwhile.

After listening to the panelists, council members indicated a strong desire to pursue the study. In doing so, the EQC felt parties had come close to consensus on House Bill 809 and that the remaining problems in the bill seemed solvable. These problems included the type of review, if any, that should occur for natural hazards, access, and effects on wildlife habitat; the adequacy of the subdivision review process; and the adequacy of the capital improvement program sections.

January 1988 Working Session

EQC then gathered key interested parties to discuss both the Subdivision and Platting Act and House Bill 809 in a working group format. The working session featured four separate sessions that addressed: the definition of subdivision and the exemptions; the subdivision review process; primary subdivision review criteria; and fiscal and planning considerations. Summaries of the sessions are provided below.

The Definition of "Subdivision" and the Exemptions

The participants agreed that some review should occur for all subdivisions except those exempted by court order and those where the subdivider has entered into an agricultural covenant. They also agreed that the 20-acre limitation is arbitrary, but acknowledged it can be eliminated only if more specific and objective review is guaranteed.

The Subdivision Review Process

The participants decided that, to a degree, local governments should have authority to determine the appropriate review process. They indicated that this authority should include the ability to delegate minor subdivision review to administrative staff. The governing body would still have the authority to review the decision through an appeals process. The number of public hearings on a subdivision proposal should be limited, but to a maximum of two rather than one hearing. Finally, the participants generally supported the informal contested case hearing alternative (upon petition and subject to assessment for costs) for review of a subdivision proposal.

Primary Subdivision Review Criteria

Everyone agreed that subdivisions should be reviewed for proper mapping, surveying and recordation. The participants also agreed that the Sanitation in Subdivisions Act provides adequate review for solid waste disposal and other considerations, and that some type of review for access to subdivided tracts is necessary, especially for easements. They disagreed, however, on whether the local governing body should be able to designate road requirements for subdivisions.

Fiscal and Planning Considerations

Participants agreed strongly that local master plans would be helpful in addressing subdivision growth. They differed, however, on how off-site costs of subdivision growth should be paid. Off-site costs are those associated with providing services to the subdivision, including road maintenance, sewer and water extensions, and fire and police service. Local government officials urged flexibility in collecting off-site costs from developers, while developers argued that these costs should only be assessed (if at all) in conformance with capital improvement plans.

The participants agreed with the first working group that comprehensive subdivision regulation is acceptable if the regulation is objective and certain. They added, however, that certainty should be obtained through local master planning. Based on the comments of the four working groups, the EQC decided to divide House Bill 809 into three discrete bills: a bill describing comprehensive subdivision review requirements, a bill stating surveying requirements, and a bill addressing amendments to the planning laws. By doing so, the EQC felt the proposed legislation would be more understandable and easier to work with. The EQC also authorized a subcommittee to pursue consensus efforts toward subdivision legislation.

March 31, 1988 Subcommittee Meeting

The Subdivision Regulation Subcommittee evaluated preliminary findings and recommendations from the working session and the three bills developed from HB 809. Members of the subcommittee included representatives of the State Legislature, local government, homebuilders, developers, land surveyors, realtors, and environmental groups.

The Purpose of Subdivision Regulation

The statement of purpose taken from HB 809 was generally accepted:

> It is the purpose of this chapter to require uniform monumentation of land subdivisions and transferring interests in real property by reference to plat or certificate of survey; provide simple and clear guidelines for review of subdivisions; promote environmentally sound subdivisions; and protect public health, safety and welfare in a manner that also protects the rights of property owners. (New language is underlined.)

The Definition of "Subdivision" and the Exemptions

With qualifications, the proposed definition of subdivision -- which removes the exemptions for occasional sales and family conveyances, and also removes the 20-acre limit -- was endorsed. For most members, this endorsement was contingent upon adoption of other specific provisions in the comprehensive legislative package. Others expressed concern that the agricultural community would be alienated by the clause within the definition that triggers subdivision status for any area that provides or will provide three or more dwelling units. Finally, some participants urged removal of the evasion language, noting the absence of the controversial occasional sale and family conveyance exemptions.

The Subdivision Review Process

The subcommittee agreed to limit the number of public hearings to no more than two (rather than one, as proposed in House Bill 809) because this approach provides some flexibility for local governments while eliminating the potential of several public hearings on a single subdivision application.

Considerable difference existed over the informal contested case hearing option. Proponents emphasized the need for objective hearings, while opponents expressed concern that a contested case format might intimidate citizens who would otherwise want to testify.

Some subcommittee members also expressed dissatisfaction with the change recommended in January that would allow local governments to decide whether or not to delegate review authority for minor or special subdivisions to a subdivision review officer. House Bill 809 made this decision a non discretionary delegation of authority.

Finally, some members expressed concern generally about limiting opportunity for public hearings and specifically about removing public hearings on special subdivisions. The concern centered on whether the restrictions on public participation could violate constitutional and statutory provisions. The absence of public notice requirements for minor subdivisions was also a concern.

Primary Subdivision Review Criteria

The members agreed on most primary subdivision review criteria (review for mapping, recordation, utility easements, sewage disposal and water supply). Though review for legal access (e.g., by easement) appeared acceptable, review for road access generated considerable disagreement. In addition, review for hazards received support from those stressing public health and safety, and opposition from those who felt that the review should occur "up-front" through master planning.

Fiscal and Planning Considerations

Subcommittee members agreed that some additional review could be applied to major subdivisions even if an effective master plan is not in place, but that any additional criteria should be tied to defined standards and impacts. The criteria mentioned include review for effects on the environment, effects on cultural and historic practices, and effects on agricultural and water-user practices.

The subcommittee members did not agree on the full range of additional review criteria. While some members desired to narrow the criteria, others supported adding "need" and "public opinion", which had been removed during House Bill 809

discussions. Disagreement also existed over the authority of governing bodies to deny or, alternatively, require mitigation based on the additional review criteria.

The members agreed that land-use concerns are best addressed through effective master planning and that subdivision proposals should conform to the plans. If this mechanism is in place, the need to apply the additional review criteria to individual subdivision proposals might be eliminated. Further, they agreed that a mini-planning approach (involving identification of critical resource and fiscal impact areas, as contemplated in House Bill 809) was not warranted because it would probably cost as much as full master plan development.

Some members indicated that a secure funding source for local planning must be a prerequisite to the deletion of any additional review criteria. However, they acknowledged that any bill based on a reliable funding source for planning would face a very difficult road given current budget realities.

In regard to fiscal considerations, the subcommittee members disagreed on whether to require capital improvement programs before fees can be assessed for off-site costs. The members also disagreed on whether the developer or the local government should be able to choose a cash or land park dedication.

Subsequent EQC Activities

The subcommittee was unable to make significant progress in resolving outstanding issues and coming closer to consensus. As a result of this stagnation, the EQC directed staff to survey interested parties on what steps, if any, the EQC might take in continuing the study.

June Subdivision Survey

Members of the EQC subdivision mailing list were surveyed by mail for advice concerning the study. The responses varied. Suggestions ranged from proceeding with a comprehensive bill, to amending only those parts of the Subdivision and Platting Act where consensus can be achieved, to not developing any bills. Some respondents suggested enhanced funding for local government planning as a way to facilitate passage of a comprehensive bill. Those advocating continued development of comprehensive legislation suggested amendment of the Subdivision and Platting Act instead of comprehensive new legislation.

Final Steps for 1988

As a final effort, the EQC directed that the subdivision bills be written as amendments to existing law so that reviewers could discern more easily the effect of the proposed legislation. The new bill drafts were distributed and public comment was received on August 3. Based on the public comment and discussion, the EQC elected to discontinue further study because consensus on the bills appeared unlikely. However, the EQC directed that the bills, and written comment concerning the bills, be made readily available for those considering possible subdivision legislation.

Subdivision Development and Regulation: What Are the Next Steps?

The 51st Legislature will probably face a variety of subdivision proposals. Interest in undertaking a comprehensive revision of the Subdivision and Platting Act continues to exist, as well as in more focused efforts to remove the exemptions or to eliminate public interest criteria. The Legislature may also be called upon to address bills dealing with evasion criteria, especially as the Leach decision leaves questions concerning the evasion language used by local governments to review and sometimes deny claimed exemptions. Finally, other issues such as access to subdivision tracts, the process for reviewing subdivisions, and funding for planning may be presented to the Legislature.

Since 1977, efforts to make significant amendments to the Subdivision and Platting Act have resulted in "head-bashing" and little success. Without a consensus bill before the 1989 Legislature, the scenario does not appear substantially different. Nonetheless, these efforts expose the Legislature and other constituencies to key subdivision issues, thereby reminding policy-makers of the problems with the existing laws. The legislative process may also be best-suited to the trade-offs that appear

necessary to achieve better subdivision legislation. At some point, critical interests are likely to come together sufficiently to deliver legislation, though at issue may be whether the outcome is truly the best public policy. If a comprehensive subdivision law is not adopted by the 51st Legislature, what should be the next steps? EQC's effort represents approximately three years of study that fell short of major consensus legislation. However, some building blocks remain that could be the basis for continued effort. Possible steps to help establish a cooperative relationship among interested parties, and to eventually establish a better subdivision regulatory framework include:

* Interest groups meeting periodically to discuss ways to minimize or resolve differences they have concerning subdivision regulation and development.

* Local governments, in cooperation with interested parties, carefully examining innovations that might make subdivision review more objective and certain. For example, the University of Montana Policy Research Institute suggests that local governments consider contested hearing formats on proposals in lands with access to existing infrastructure.

* Local governments, in cooperation with interested parties, investigating other tools that can guide land use. One tool is the development of high-quality master plans that address the concerns of local citizens. Another tool is to obtaining of development rights or conservation easements that compensate the property owner and preserve valued open space or habitat. Admittedly, funding for these tools remains a problem.

* Subdividers, in cooperation with interested parties, studying and developing cost-effective ways to reduce impacts --fiscal, environmental, etc. -- resulting from subdivision development.

* All parties working together to promote subdivisions that protect public health, safety and welfare and also protect the rights of property owners.

Perhaps because the EQC study did not result in a consensus bill, participants and observers have focused on the areas of disagreement. But the bottom line is that significant parts of House Bill 809 and the subsequent drafts had consensus support. With interest generated locally and through good faith discussions, these parts can be important components for a consensus legislative package that truly represents sound public policy.

RENEWABLE ENERGY AND CONSERVATION GRANT AND LOAN PROGRAM

The Environmental Quality Council has statutory responsibility for oversight of the renewable energy and conservation grant and loan program administered by the Department of Natural Resources and Conservation (DNRC). This program, established by the Legislature in 1975, was the nation's first state-funded financial incentive program to develop emerging energy technologies. It was funded by coal severance tax revenues, ranging from five percent in the early years of the program to two and one-half percent in fiscal years 1986 and 1987.

Beginning in 1985 the Legislature approved a series of transfers of funds from the program. The Science and Technology Development program was created in the Department of Commerce with two million dollars from the alternative energy research development and demonstration account and was funded again in 1987. Also, a transfer of $1,350,000 to the general fund was approved during the June 1986 special session. As a result the renewable energy and conservation grant and loan program was suspended in fiscal year 1988.

Over the years the renewable energy program provided funds to a wide variety of projects involving research, demonstration and commercialization of solar, wind, biomass, hydroelectric, and conservation technologies. In 1985 the Legislature added energy conservation in state buildings as a new component eligible for program funds. Although all funding for the program from the renewable energy account was eliminated in fiscal year 1988, the DNRC continued to collect repayments of loans and certain grants that had been awarded in previous years ($224,518 in fiscal year 1988 and an estimated $252,336 in fiscal year 1989). The 1987 Legislature appropriated these funds to the DNRC to continue administration and monitoring of uncompleted grant and loan projects, to administer energy conservation retrofits of state buildings, and to provide matching funds for four federal programs, including the State Energy Conservation Program, Energy Extension Service, Institutional Conservation Program and Biomass Energy Program.

Among the state buildings that have been retrofitted or that are being evaluated for retrofit are three buildings at Montana State University, the Highway Department complex in Billings, the Social and Rehabilitative Services building in Helena, the Plentywood Library, a dormitory at the state prison, two buildings at Warm Springs, and a building complex at the Boulder River School and Hospital. The DNRC anticipates continued repayment of loans from the renewables program during fiscal years 1990 and 1991 at approximately the same level as fiscal years 1988 and 1989 and will request legislative authorization to continue providing matching funds for the federal programs and administering the retrofit of state buildings.

DOCUMENTS SUBMITTED UNDER MEPA, 1987

State agencies submitted the following preliminary environmental reviews and final environmental impact statements in 1987

	PER	FEIS
Health and Environmental Sciences	167	
State Lands	22	1
Fish, Wildlife and Parks	5	
Natural Resources and Conservation	5	1
TOTAL	199	2

DOCUMENTS SUBMITTED UNDER MEPA, 1988

State agencies submitted the following preliminary environmental reviews and final environmental impact statements in 1988

	PER	FEIS
Health and Environmental Sciences	228	
State Lands	43	1
Fish, Wildlife and Parks	8	
Agriculture	1	
TOTAL	280	1

Part 1
General Provisions

75-1-101. Short title. This chapter may be cited as the "Montana Environmental Policy Act".

History: En. Sec. 1, Ch. 238, L. 1971; R.C.M. 1947, 69-6501.

Cross-References

State policy of consistency and continuity in the adoption and application of environmental rules, 90-1-101.

75-1-102. Purpose. The purpose of this chapter is to declare a state policy which will encourage productive and enjoyable harmony between man and his environment, to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man, to enrich the understanding of the ecological systems and natural resources important to the state, and to establish an environmental quality council.

History: En. Sec. 2, Ch. 238, L. 1971; R.C.M. 1947, 69-6502.

75-1-103. Policy. (1) The legislature, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances, and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the state of Montana, in cooperation with the federal government and local governments and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can coexist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Montanans.

(2) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the state of Montana to use all practicable means consistent with other essential considerations of state policy to improve and coordinate state plans, functions, programs, and resources to the end that the state may:

(a) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(b) assure for all Montanans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(c) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(d) preserve important historic, cultural, and natural aspects of our unique heritage and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(e) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(f) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(3) The legislature recognizes that each person shall be entitled to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

History: En. Sec. 3, Ch. 238, L. 1971; R.C.M. 1947, 69-6503.

Cross-References

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Duty to maintain a clean and healthful environment, Art. IX, sec. 1, Mont. Const.

Comments of historic preservation officer, 22-3-133.

Renewable resource development, Title 90, ch. 2.

75-1-104. Specific statutory obligations unimpaired. Nothing in 75-1-103 or 75-1-201 shall in any way affect the specific statutory obligations of any agency of the state to:

(1) comply with criteria or standards of environmental quality;

(2) coordinate or consult with any other state or federal agency; or

(3) act or refrain from acting contingent upon the recommendations or certification of any other state or federal agency.

History: En. Sec. 6, Ch. 238, L. 1971; R.C.M. 1947, 69-6506.

75-1-105. Policies and goals supplementary. The policies and goals set forth in this chapter are supplementary to those set forth in existing authorizations of all boards, commissions, and agencies of the state.

History: En. Sec. 7, Ch. 238, L. 1971; R.C.M. 1947, 69-6507.

Part 2

Environmental Impact Statements

75-1-201. General directions — environmental impact statements. (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state shall be interpreted and administered in accordance with the policies set forth in this chapter;

(b) all agencies of the state, except as provided in subsection (2), shall:

(i) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(ii) identify and develop methods and procedures which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(iii) include in every recommendation or report on proposals for projects, programs, legislation, and other major actions of state government significantly affecting the quality of the human environment, a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects which cannot be avoided should the proposal be implemented;

(C) alternatives to the proposed action;

(D) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and

(E) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;

(iv) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(v) recognize the national and long-range character of environmental problems and, where consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(vi) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(vii) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(viii) assist the environmental quality council established by 5-16-101; and

(c) prior to making any detailed statement as provided in subsection (1)(b)(iii), the responsible state official shall consult with and obtain the comments of any state agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate state, federal, and local agencies which are authorized to develop and enforce environmental standards shall be made available to the governor, the environmental quality council, and the public and shall accompany the proposal through the existing agency review processes.

(2) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of this chapter.

History: En. Sec. 4, Ch. 238, L. 1971; R.C.M. 1947, 69-6504; amd. Sec. 1, Ch. 391, L. 1979.

Cross-References

Citizens' right to participate satisfied if environmental impact statement filed, 2-3-104.

Statement to contain information regarding heritage properties and paleontological remains, 22-3-433.

Statement under lakeshore protection provisions required, 75-7-213.

Impact statement for facility siting, 75-20-211.

Energy emergency provisions -- exclusion, 90-4-310.

75-1-202. Agency rules to prescribe fees. Each agency of state government charged with the responsibility of issuing a lease, permit, contract, license, or certificate under any provision of state law may adopt rules prescribing fees which shall be paid by a person, corporation, partnership, firm, association, or other private entity when an application for a lease, permit,

contract, license, or certificate will require an agency to compile an environmental impact statement as prescribed by 75-1-201. An agency must determine within 30 days after a completed application is filed whether it will be necessary to compile an environmental impact statement and assess a fee as prescribed by this part. The fee assessed under this part shall be used only to gather data and information necessary to compile an environmental impact statement as defined in this chapter. No fee may be assessed if an agency intends only to file a negative declaration stating that the proposed project will not have a significant impact on the human environment.

History: En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(1).

Cross-References

Fees authorized for environmental review of subdivision plats, 76-4-105.

Fees in connection with environmental impact statement required before issuing permits to appropriate water, 85-2-124.

75-1-203. Fee schedule — maximums. (1) In prescribing fees to be assessed against applicants for a lease, permit, contract, license, or certificate as specified in 75-1-202, an agency may adopt a fee schedule which may be adjusted depending upon the size and complexity of the proposed project. No fee may be assessed unless the application for a lease, permit, contract, license, or certificate will result in the agency incurring expenses in excess of $2,500 to compile an environmental impact statement.

(2) The maximum fee that may be imposed by an agency shall not exceed 2% of any estimated cost up to $1 million, plus 1% of any estimated cost over $1 million and up to $20 million, plus ½ of 1% of any estimated cost over $20 million and up to $100 million, plus ¼ of 1% of any estimated cost over $100 million and up to $300 million, plus ⅛ of 1% of any estimated cost in excess of $300 million.

(3) If an application consists of two or more facilities, the filing fee shall be based on the total estimated cost of the combined facilities. The estimated cost shall be determined by the agency and the applicant at the time the application is filed.

(4) Each agency shall review and revise its rules imposing fees as authorized by this part at least every 2 years. Furthermore, each agency shall provide the legislature with a complete report on the fees collected prior to the time that a request for an appropriation is made to the legislature.

History: En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(2), (7).

75-1-204. Application of administrative procedure act. In adopting rules prescribing fees as authorized by this part, an agency shall comply with the provisions of the Montana Administrative Procedure Act.

History: En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(4).

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

75-1-205. Use of fees. All fees collected under this part shall be deposited in the state special revenue fund as provided in 17-2-102. All fees paid pursuant to this part shall be used as herein provided. Upon completion

of the necessary work, each agency will make an accounting to the applicant of the funds expended and refund all unexpended funds without interest.

History: En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(5); amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment Substituted reference to state special revenue fund for reference to earmarked revenue fund

75-1-206. Multiple applications or combined facility. In cases where a combined facility proposed by an applicant requires action by more than one agency or multiple applications for the same facility, the governor shall designate a lead agency to collect one fee pursuant to this part, to coordinate the preparation of information required for all environmental impact statements which may be required, and to allocate and disburse the necessary funds to the other agencies which require funds for the completion of the necessary work.

History: En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(6).

75-1-207. Major facility siting applications excepted. No fee as prescribed by this part may be assessed against any person, corporation, partnership, firm, association, or other private entity filing an application for a certificate under the provisions of the Montana Major Facility Siting Act, chapter 20 of this title.

History: En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(3).

Part 3

Environmental Quality Council

75-1-301. Definition of council. In this part "council" means the environmental quality council provided for in 5-16-101.

History: En. by Code Commissioner, 1979.

Cross-References

Qualifications, 5-16-102.
Term of membership, 5-16-103.
Officers, 5-16-105.

75-1-302. Meetings. The council may determine the time and place of its meetings but shall meet at least once each quarter. Each member of the council is entitled to receive compensation and expenses as provided in 5-2-302. Members who are full-time salaried officers or employees of this state may not be compensated for their service as members but shall be reimbursed for their expenses.

History: En. Sec. 10, Ch. 238, L. 1971; amd. Sec. 6, Ch. 103, L. 1977; R.C.M. 1947, 69-6510.

75-1-303 through 75-1-310 reserved.

75-1-311. Examination of records of government agencies. The council shall have the authority to investigate, examine, and inspect all records, books, and files of any department, agency, commission, board, or institution of the state of Montana.

History: En. Sec. 15, Ch. 238, L. 1971; R.C.M. 1947, 69-6515.

75-1-312. Hearings — council subpoena power — contempt proceedings. In the discharge of its duties the council shall have authority to hold hearings, administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony, and to cause depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in the district court. In case of disobedience on the part of any person to comply with any subpoena issued on behalf of the council or any committee thereof or of the refusal of any witness to testify on any matters regarding which he may be lawfully interrogated, it shall be the duty of the district court of any county or the judge thereof, on application of the council, to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court on a refusal to testify therein.

History: En. Sec. 16, Ch. 238, L. 1971; R.C.M. 1947, 69-6516.

Cross-References

Warrant of attachment or commitment for contempt, 3-1-513.

Depositions upon oral examinations, Rules 30(a) through 30(g), 31(a) through 31(c), M.R.Civ.P. (see Title 25, ch. 20).

Subpoena — disobedience, 26-2-104 through 26-2-107.

Criminal contempt, 45-7-309.

75-1-313. Consultation with other groups — utilization of services. In exercising its powers, functions, and duties under this chapter, the council shall:

(1) consult with such representatives of science, industry, agriculture, labor, conservation organizations, educational institutions, local governments, and other groups as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations and individuals in order that duplication of effort and expense may be avoided, thus assuring that the council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

History: En. Sec. 17, Ch. 238, L. 1971; R.C.M. 1947, 69-6517.

75-1-314 through 75-1-320 reserved.

75-1-321. Appointment and qualifications of executive director. The council shall appoint the executive director and set his salary. The executive director shall hold a degree from an accredited college or university with a major in one of the several environmental sciences and shall have at least 3 years of responsible experience in the field of environmental management. He shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the state government in the light of the policy set forth in 75-1-103; to be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the state; and to formulate and recommend state policies to promote the improvement of the quality of the environment.

History: En. Sec. 11, Ch. 238, L. 1971; R.C.M. 1947, 69-6511.

75-1-322. Term and removal of executive director. The executive director is solely responsible to the council. He shall hold office for a term of 2 years beginning with July 1 of each odd-numbered year. The council may remove him for misfeasance, malfeasance, or nonfeasance in office at any time after notice and hearing.

History: En. Sec. 13, Ch. 238, L. 1971; R.C.M. 1947, 69-6513.

Cross-References

Official misconduct, 45-7-401

Notice of removal to officer authorized to replace, 2-16-503.

75-1-323. Appointment of employees. The executive director, subject to the approval of the council, may appoint whatever employees are necessary to carry out the provisions of this chapter, within the limitations of legislative appropriations.

History: En. Sec. 12, Ch. 238, L. 1971; R.C.M. 1947, 69-6512.

75-1-324. Duties of executive director and staff. It shall be the duty and function of the executive director and his staff to:

(1) gather timely and authoritative information concerning the conditions and trends in the quality of the environment, both current and prospective, analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering or are likely to interfere with the achievement of the policy set forth in 75-1-103, and compile and submit to the governor and the legislature studies relating to such conditions and trends;

(2) review and appraise the various programs and activities of the state agencies, in the light of the policy set forth in 75-1-103, for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy and make recommendations to the governor and the legislature with respect thereto;

(3) develop and recommend to the governor and the legislature state policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the state;

(4) conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(5) document and define changes in the natural environment, including the plant and animal systems, and accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(6) make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the legislature requests;

(7) analyze legislative proposals in clearly environmental areas and in other fields where legislation might have environmental consequences and assist in preparation of reports for use by legislative committees, administrative agencies, and the public;

(8) consult with and assist legislators who are preparing environmental legislation to clarify any deficiencies or potential conflicts with an overall ecologic plan;

(9) review and evaluate operating programs in the environmental field in the several agencies to identify actual or potential conflicts, both among such

activities and with a general ecologic perspective, and suggest legislation to remedy such situations;

(10) annually, beginning July 1, 1972, transmit to the governor and the legislature and make available to the general public an environmental quality report concerning the state of the environment, which shall contain:

(a) the status and condition of the major natural, manmade, or altered environmental classes of the state, including but not limited to the air, the aquatic (including surface water and groundwater) and the terrestrial environments, including but not limited to the forest, dryland, wetland, range, urban, suburban, and rural environments;

(b) the adequacy of available natural resources for fulfilling human and economic requirements of the state in the light of expected population pressures;

(c) current and foreseeable trends in the quality, management, and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the state in the light of expected population pressures;

(d) a review of the programs and activities (including regulatory activities) of the state and local governments and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development, and utilization of natural resources; and

(e) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

History: En. Sec. 14, Ch. 238, L. 1971; R.C.M. 1947, 69-6514.

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