

**AGENDA**

FRIDAY, MARCH 22, 2013

METCALF BUILDING, ROOM 111

1520 EAST SIXTH AVENUE, HELENA, MONTANA

\*\*\*\*\*

**NOTE:** *Individual agenda items are not assigned specific times. For public notice purposes, the meeting will begin no earlier than the time specified; however, the Board might not address the specific agenda items in the order they are scheduled. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this meeting. Please contact the Board Secretary by telephone at (406) 444-6701 or by e-mail at [jwittenberg@mt.gov](mailto:jwittenberg@mt.gov) no later than 24 hours prior to the meeting to advise her of the nature of the accommodation you need.*

**9:00 A.M.**

**I. ADMINISTRATIVE ITEMS**

**A. REVIEW AND APPROVE MINUTES**

1. January 25, 2013, Board meeting minutes.

**II. BRIEFING ITEMS**

**A. CONTESTED CASE UPDATE**

1. Enforcement cases assigned to the Hearing Examiner
  - a. **In the matter of violations of the Montana Septage Disposal and Licensure Laws by James Vaughn, d/b/a Any Time Septic & Porta-Potty, Lake County, BER 2011-06 SDL.** On November 26, 2012, the hearing examiner, having determined that the pending motion for summary judgment be resolved in the department's favor, issued *Order Vacating Hearing and Prehearing Conference Dates*, and *Recommended Order for Partial Summary Judgment* in January 2013. A hearing on penalties is set for April 9.
  - b. **In the matter of violations of the Montana Solid Waste Management Act by Valley County Refuse District #1 at the Valley County Landfill, Glasgow, BER 2012-06 SW.** On November 1, 2012, the Board received *DEQ Motion for Summary Judgment and Brief in Support of Motion*, and on December 17, 2012, it received *Valley County Refuse District #1's Brief in Opposition to DEQ's Motion for Summary Judgment*. On January 11, 2013, the hearing examiner issued *Order Vacating and Resetting Hearing Date* [for March 27] and *Setting Date for Telephonic Oral Argument* [for January 23]. On January 23, 2013, oral argument on the pending motion for summary judgment was presented. On March 6, the hearing examiner issued *Order on Motion for Summary Judgment*. The case will move into the penalty phase.
  - c. **In the matter of violations of the Public Water Supply Laws by Trailer Terrace Mobile Park, LLC, Dennis Deschamps and Dennis Rasmussen at the Trailer Terrace, PWSID No. MT0000025, Great Falls, Cascade County, BER 2012-11 PWS.** On December 11, 2012, the hearing examiner issued *Order Granting Extension* giving the parties through March 8, 2013, to settle the matter or file a proposed schedule.

- d. **In the matter of violations of the Montana Solid Waste Management Act by Asphalt Plus, LLC, a corporation, and Michael C. and Melinda M. Oedekoven, as individuals, at 425 Johnson lane, Billings, Yellowstone County, BER 2012-13 SW.** On February 19, 2013, attorney for DEQ filed *Second Unopposed Motion for Extension of Time*. This motion was granted in a *Second Order Granting Extension of Time*, dated February 28, 2013.
- 2. Other Cases Assigned to a Hearing Examiner
  - a. **In the matter of the request for hearing by Hawthorne Springs Property Owners Association; H Lazy Heart, LLC; Patchy, Inc.; and other residents regarding Opencut Mining Permit No. 2258, issued to Farwest Rock Products, Missoula County, BER 2012-09 OC.** A contested case hearing is scheduled for May 20, 2013.
- 3. Contested Cases not assigned to a Hearing Examiner
  - a. **In the matter of the request for hearing by William E. Smith, on behalf of Mike Adkins, regarding Park County's denial to validate Adkins Class III Waste Tire Monofill License No. 517, BER 2012-05 SW.** At its July 27, 2012, meeting, the Board voted to hear all matters in this case. On September 11, 2012, the Board granted a motion to stay proceedings until disposition of the Petition for Judicial Review filed in the Sixth Judicial District. A written status report concerning the progress of the case in District Court is due March 27, 2013.
  - b. **In the matter of the notice of appeal and request for hearing by Western Energy Company (WECO) regarding its MPDES Permit No. MT0023965 issued for WECO's Rosebud Mine in Colstrip, BER 2012-12 WQ.** On December 19, the Board received *Motion to Intervene* from counsel for Montana Environmental Information Center and Sierra Club. On December 24, attorney for the Appellant filed *Agreed Motion for Extension to File Response Briefs and Reply Briefs Regarding Intervention and Agreed Motion to Vacate First Scheduling Order*. On January 2, 2013, the hearing examiner issued *Order Granting Extension to File Briefs on Motion to Intervene and Order Vacating First Scheduling Order*. On January 23, 2013, the Board received *Opposition Brief to Motion to Intervene* from the attorney for the Appellant, and on February 8 it received *Reply in Support of Motion to Intervene* from the proposed intervenor.
  - c. **In the matter of the request for hearing by Montana Environmental Information Center and Sierra Club regarding DEQ's issuance of Montana Air Quality Permit No. OP0513-08 for the Colstrip Steam Electric Station, Colstrip, BER 2013-01 AQ.** At its January 25 meeting, the Board chose to not appoint a hearings examiner for this matter. On February 7 the Board received *Joint Response to Hearing Examiner's Order Dated January 10, 2013*. A *First Scheduling Order* was issued on February 26, 2013.
  - d. **In the matter of the request for hearing by Montana Environmental Information Center and Sierra Club regarding DEQ's issuance of Montana Air Quality Permit No. OP2953-07 for the JE Corette Steam Electric Station, Billings, BER 2013-02 AQ.** At its January 25, 2013, meeting, the Board chose to not appoint a hearings examiner for this matter. On February 7 the Board received *Joint Response to Hearing Examiner's Order Dated January 10, 2013*. A *First Scheduling Order* was issued on February 26, 2013.

## B. OTHER BRIEFING ITEMS

### 1. Briefing on Eastern Montana Issues Related to Oil and Gas

DEQ will brief the Board on history of the current oil boom, drilling techniques, hydraulic fracturing, production numbers and rig counts, and rig locations, as well as the impacts to DEQ programs, mainly Permitting and Compliance, and Enforcement.

## III. ACTION ITEMS

### A. HEARINGS

#### 1. Butte-Silver Bow County Outdoor Air Quality Regulations

The Board will hold a public hearing on Butte-Silver Bow County's request for the Board to approve regulations primarily focused on the control of fine particulate emissions from residential woodstove burning as well as amendments to include the town of Walkerville in the county air program. On April 18, 2012, the Butte-Silver Bow Council of Commissioners approved the regulations following public notice and comment that fulfilled local processes and the requirements of Mont. Code Ann. 75-2-301. The Board will take action to approve or disapprove the proposed program revisions.

### B. REPEAL, AMENDMENT, OR ADOPTION OF FINAL RULES

1. In the matter of the amendment of rules pertaining to concentrated animal feeding operations (CAFOs) and adoption of a new rule governing the application of manure, litter, and process wastewater at these facilities. These rules pertain to facilities issued discharge permits under the Montana Pollutant Discharge Elimination System (MPDES) program. The Department is requesting these amendments in order to maintain compliance with federal regulation governing states with delegated authority to implement the federal Clean Water Act's permitting program.

### C. FINAL ACTION ON CONTESTED CASES

1. **In the matter of violations of the Opencut Mining Act by Brad Blakeman at the Camas Prairie Gravel Pit, Sanders County, BER 2012-01 OC.** The Board will make a final decision regarding penalty.
2. **In the matter of violations of the Public Water Supply laws by the city of Ronan Public Water Supply System, PWSID #MT0000318, Ronan, Lake County, BER 2012-04 PWS.** On January 10, 2013, the hearing examiner issued *Order Granting Motion to Stay Hearing*, pending decision on the department's summary judgment motion. On March 7, the hearing examiner issued *Recommended Order on Motion for Summary Judgment*. The parties may present oral argument before the Board prior to the Board acting on the recommended order.

## IV. GENERAL PUBLIC COMMENT

Under this item, members of the public may comment on any public matter within the jurisdiction of the Board that is not otherwise on the agenda of the meeting. Individual contested case proceedings are not public matters on which the public may comment.

## V. ADJOURNMENT



P. O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • Website: [www.mt.gov/ber](http://www.mt.gov/ber)

## **MEETING MINUTES JANUARY 25, 2013**

### Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 9:00 a.m., on Friday, January 25, 2013, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

### Attendance

Board Members Present: Larry Mires

Board Members Present via Telephone: Chairman Joseph Russell, Marvin Miller, Joe Whalen, Larry Anderson, Heidi Kaiser, and Robin Shropshire

Board Attorney Present: Katherine Orr, Agency Legal Services Bureau

Board Secretary Present: Joyce Wittenberg

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Tom Livers – Director's Office; John North and Norman Mullen – Legal; Judy Hanson – Permitting & Compliance Division; Charles Homer, Bob Habeck, Julie Merkel, and Vickie Walsh – Air Resources Management Bureau; Eugene Pizzini and Rachel Clark – Public Water Supply & Subdivisions Bureau; Eric Urban – Water Quality Planning Bureau; Paul Skubinna – Water Protection Bureau; John Arrigo – Enforcement Division

Interested Persons Present: Ken Morrison – PPL Montana; Michael Rieley and Gwen Vashro

- Roll call was taken to confirm attendance.
- I.A.1 Review and approve December 7, 2012, Board meeting minutes.
- Mr. Mires MOVED to approve the December 7, 2012, Board meeting minutes. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous vote.
- III.A.1 In the matter of final adoption of the proposed amendments to Title 17, Chapter 38, Subchapter 1, Public Water and Sewer Plans, Cross Connections, and Drilling Water Wells. *(taken out of order)*
- Mr. Pizzini said the Board had initiated rulemaking on September 27, that a public hearing was held on November 28, and that no comments were received. He said the department recommends adoption of the rulemaking as proposed.
- Chairman Russell asked if anyone wanted to comment on the matter. There was no response.
- Chairman Russell called for a motion to adopt the rule as proposed, and accept the Presiding Officer's report, and the House Bill 521 and 311 Analyses. Mr. Whalen so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous vote.
- (At this time, the Board returned to the scheduled order of the agenda.)*
- II.A.1.a In the matter of violations of the Montana Septage Disposal and Licensure Laws by James Vaughn, d/b/a Any Time Septic & Porta Potty, BER 2011-06 SDL.
- Ms. Orr said an order on a renewed motion for summary judgment was issued January 17. She said the next step in this case is a hearing on the penalty.
- II.A.1.b In the matter of violations of the Public Water Supply Laws by the city of Ronan Public Water Supply System, BER 2012-04 PWS. *(No discussion took place regarding this matter.)*
- Ms. Orr said this case has been deemed submitted concerning a pending motion for summary judgment filed by DEQ. She said she will rule on the pending motion soon.
- II.A.1.c In the matter of violation of the Montana Solid Waste Management Act by Valley County Refuse District #1 at the Valley County Landfill, BER 2012-06 SW. *(No discussion took place regarding this matter.)*
- Ms. Orr said an order was issued vacating the January 23 hearing and resetting it for March 27. She said oral argument was heard on the pending motion for summary judgment on January 23 and that a recommended order will be issued soon.
- II.A.1.d In the matter of violations of the Public Water Supply Laws by Trailer Terrace Mobile Park, LLC, Dennis Deschamps, and Dennis Rasmussen at the Trailer Terrace, PWSID No. MT0000025, Great Falls, Cascade County, BER 2012-11 PWS. *(No discussion took place regarding this matter.)*

- II.A.1.e In the matter of violations of the Montana Solid Waste Management Act by Asphalt Plus, LLC, a corporation, and Michael C. and Melinda M. Oedekoven, as individuals, at 425 Johnson Lane, Billings, Yellowstone County, BER 2012-13 SW. *(No discussion took place regarding this matter.)*
- II.A.2.a In the matter of the request for hearing by Hawthorne Springs Property Owners Association; H Lazy Heart, LLC; Patchy, Inc.; and other residents regarding Opencut Mining Permit No. 2258, issued to Farwest Rock Products, BER 2012-09 OC. *(No discussion took place regarding this matter.)*
- II.A.3.a In the matter of the request for hearing by William E. Smith, on behalf of Mike Adkins, regarding Park County's denial to validate Adkins Class III Waste Tire Monofill License No. 517, BER 2012-05 SW.
- Ms. Orr said there is a parallel proceeding of this case in Park county. She said a status report is due on March 27, but that the parties could report on it at the next Board meeting.
- II.A.3.b In the matter of the notice of appeal and request for heating by Western Energy Company (WECO) regarding its MPDES Permit No. MT0023965 issued for WECO's Rosebud Mine in Colstrip, BER 2012-12 WQ. *(No discussion took place regarding this matter.)*
- III.B.1 In the matter of the request for hearing by Montana Environmental Information Center and Sierra Club regarding DEQ's issuance of Montana Air Quality Permit No. OP0513-08 for the Colstrip Steam Electric Station, Colstrip, BER 2013-01 AQ.
- III.B.2 In the matter of the request for hearing by Montana Environmental Information Center and Sierra Club regarding DEQ's issuance of Montana Air Quality Permit No. OP2953-07 for the JE Corette Steam Electric Station, Colstrip, BER 2013-02 AQ.
- Ms. Orr said both III.B.1 and III.B.2 involve a challenge to the issuance of an air quality permit, one at the Colstrip steam electric station and the other at the JE Corette station.
- The Board discussed the likelihood of the JE Corette case becoming moot, since there is a possibility of the station closing or being mothballed. Discussion also took place regarding the Board's interest in hearing the matter. The Board took no action on these two items.
- Ms. Kaiser recused herself from any action regarding these cases.
- III.C.1 In the matter of violations of the Opencut Mining Act by Brad Blakeman at the Camas Prairie Gravel Pit, Sanders County, BER 2012-01 OC.
- Ms. Orr said this item will be moved to the March meeting because Mr. Blakeman was not notified that it was on the agenda. She confirmed that the penalty was still under the Board's consideration and indicated that she would summarize the record for the Board.

- III.C.2 | In the matter of violations of the Montana Septage Disposal and Licensure Laws by James Vaughn, d/b/a Any Time Septic & Porta Potty, Lake County, BER 2011-06 SDL.
- Ms. Orr said a recommended order on the renewed motion for summary judgment had been issued, but was not in the packet. She recommended placing this item on the March agenda also.
- III.C.3 | In the matter of the request for hearing by Earth Justice, Montana Environmental Information Center, Sierra Club, and National Wildlife Federation regarding the Administrative Order on Consent issued to PPL Montana, LLC, BER 2012-10 MFS.
- Ms. Orr said PPL removed the case to District Court and that the petitioners filed a petition for review. She said the matter has been properly removed to District Court and that the Board will have nothing further to do with the case.
- IV. | General Public Comment
- Chairman Russell asked if anyone in the audience would like to address the Board on any matters that pertain to the Board. There was no response.
- V. | Adjournment
- Chairman Russell called for a motion to adjourn. Mr. Miller so MOVED. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous vote.
- The meeting adjourned at 9:29 a.m.

Board of Environmental Review January 25, 2013, minutes approved:

\_\_\_\_\_  
JOSEPH W. RUSSELL, M.P.H.  
CHAIRMAN  
BOARD OF ENVIRONMENTAL REVIEW

\_\_\_\_\_  
DATE

Dana David, SBMT #11878  
Special Assistant Attorney General  
Department of Environmental Quality  
Legal Unit, Metcalf Building  
P.O. Box 200901  
Helena, Montana 59620-0901  
Telephone: (406) 444-2626  
email: ddavid@mt.gov

Filed with the  
MONTANA BOARD OF  
ENVIRONMENTAL REVIEW  
This 11<sup>th</sup> day of March 2013  
at 8:27 o'clock A.m.  
By: Misty Galt

**BEFORE THE BOARD OF ENVIRONMENTAL REVIEW**

IN THE MATTER OF: THE REQUEST FOR  
HEARING BY WILLIAM E. SMITH, ON  
BEHALF OF MIKE ADKINS, REGARDING  
PARK COUNTY'S DENIAL TO VALIDATE  
UNOPPOSED MOTION TO ENTER ADKINS  
CLASS III WASTE TIRE MONOFILL  
LICENSE NO. 517

CASE NO. BER-2012-05 SW

DEQ'S REPORT ON THE  
STATUS OF THE JUDICIAL  
REVIEW ACTION  
CHALLENGING THE  
SUFFICIENCY OF THE  
ENVIRONMENTAL  
ASSESSMENT FOR THE  
PROPOSED ADKINS CLASS III  
WASTE TIRE MONOFILL

In response to the Board's request for a report on the status of the judicial review action challenging the sufficiency of the environmental assessment prepared by the Department of Environmental Quality ("DEQ") for the proposed Adkins Class III Waste Tire Monofill that is the subject of this contested case, encaptioned as *Protecting Paradise, Inc. v. Montana Department of Environmental Quality, et al.*, Sixth Judicial District Court Case No. DV-12-123, DEQ reports as follows:

- 1) Briefing in the matter is complete as of March 4, 2013; and
- 2) On March 5, 2013, the Court entered its Order Setting Oral Argument which sets April 11, 2013, at 9:00 a.m. at the Park County Courthouse, 414 East Callender Street, Livingston, Montana, as the time and place for oral argument in this matter.



Respectfully submitted this 11th day of March, 2013.

State of Montana, Montana Department of Environmental  
Quality

By:   
Dana David, Special Assistant Attorney General

### CERTIFICATE OF SERVICE

The undersigned certifies that on March 11, 2013, he caused a copy of the foregoing DEQ Response Brief Opposing the Petition for Review to be mailed and emailed to the following:

Joyce Wittenberg  
Secretary, Board of Environmental Review  
Montana Department of Environmental  
Quality  
P.O. Box 200901  
Helena, MT 59620-0901

Ed Thamke, Bureau Chief  
Waste and Underground Tank Mgmt Bureau  
Montana Department of Environmental  
Quality  
P.O. Box 200901  
Helena, MT 59620-0901

James H. Goetz  
Goetz Baldwin & Geddes, P.C.  
35 North Grand  
P.O. Box 6580  
Bozeman, MT 59771-6580

Shannon Marie Piccolo  
Park County Attorney's Office  
414 East Callender Street  
Livingston, MT 59047

Alanah Griffith  
Pape & Griffith, PLLC  
1184 N. 15<sup>th</sup> Avenue, Suite 4  
Bozeman, MT 59715

Douglas P. Wadle, MD  
Park County Public Health Officer  
414 East Callender Street  
Livingston, MT 59047

By:   
\_\_\_\_\_

1 **BEFORE THE BOARD OF ENVIRONMENTAL REVIEW**  
2 **OF THE STATE OF MONTANA**

3 **IN THE MATTER OF:**  
4 **THE REQUEST FOR HEARING BY**  
5 **MONTANA ENVIRONMENTAL**  
6 **INFORMATION CENTER AND SIERRA**  
7 **CLUB REGARDING DEQ'S ISSUANCE**  
8 **OF MONTANA AIR QUALITY**  
9 **OPERATING PERMIT NO. OP0513-08**  
10 **FOR THE COLSTRIP STEAM**  
11 **ELECTRIC STATION IN COLSTRIP, MT**

**CASE NO. BER 2013-01 AQ**

12 **FIRST SCHEDULING ORDER**

13 On February 8, 2013, the parties filed a "Joint Response to Hearing  
14 Examiner's Order dated January 10, 2013." The Department of Environmental  
15 Quality (Department) and Appellants Montana Environmental Information Center  
16 and Sierra Club (Appellants) agreed that, as permittee for the Colstrip Steam  
17 Electric Station, Intervenor PPL Montana is entitled to participate in this matter as a  
18 party.

19 As further submitted in the in the above response, the Department,  
20 Appellants and proposed Intervenor all agreed to the below dates for the prehearing  
21 and hearing phases of this case. There being good cause:

22 IT IS HEREBY ORDERED that Intervenor PPL Montana, LLC be joined as  
23 an interested party in this contested case proceeding and is to be copied on all future  
24 filings in this matter.

25 IT IS FURTHER ORDERED that the following prehearing and hearing dates  
26 be adopted herein:

27 (1) Motions for Joinder/Intervention of additional parties must be filed by  
28 **February 28, 2013.**

(2) The names and addresses of each individual likely to have  
discoverable information that the disclosing party may use to support its claims or

1 defenses and a copy of, or a description by category and location of, all documents  
2 and tangible things that are in the possession, custody, or control of the party and  
3 that the disclosing party may use to support its claims or defenses must be provided  
4 to the opposing party defenses shall occur on or before **March 8, 2013**.

5 (3) Written discovery, if any, shall be served on the opposing parties on or  
6 before **March 8, 2013**.

7 (4) Discovery shall be completed and disclosure of subjects to be  
8 addressed by expert witnesses shall occur on or before **April 22, 2013**.

9 (5) The exchange among parties of lists of lay and expert witnesses,  
10 expert witness reports and curriculum vitae, and copies of documents that each party  
11 intends to offer at the hearing shall occur on or before **May 7, 2013**. At this time,  
12 the parties shall provide the Hearing Examiner a list of expert and lay witnesses and  
13 exhibits, but not the exhibits themselves.

14 (6) Expert witnesses shall be deposed on or before **June 6, 2013**.

15 (7) The filing and service of all prehearing motions, including motions *in*  
16 *limine* and motions for summary judgment, along with supporting briefs, shall occur  
17 on or before **July 3, 2013**. The filing and service of response briefs shall occur on  
18 or before **August 2, 2013**. The filing and service of reply briefs shall occur on or  
19 before **August 16, 2013**.

20 (8) There shall be a telephonic Prehearing Conference and arguments on  
21 motions on **October 3, 2013, at 1:30 p.m.** The Hearing Examiner will initiate the  
22 call. The parties are requested to have prepared an agreed statement of facts and  
23 conclusions of law by the prehearing conference to be provided to the Hearing  
24 Examiner.

25 Additionally, in their Joint Response to Hearing Examiner's Order dated  
26 January 10, 2013, the parties requested a that a telephonic conference be set to  
27 discuss setting the date and time of the contested case hearing, as well as other

1 deadlines set out in the Hearing Examiner's January 10, 2013 Order. There being  
2 good cause:

3 IT IS FURTHER ORDERED that a telephonic conference is now set in this  
4 matter for **March 4, 2013 at 1:30 p.m.** to discuss setting a date for the contested  
5 case hearing as well as any unaddressed deadlines identified in the January 10,  
6 2013, First Prehearing Order. The Hearing Examiner will initiate the call.

7 DATED this 26<sup>th</sup> day of February, 2013.

8 

9 KATHERINE J. ORR  
10 Hearing Examiner  
11 Agency Legal Services Bureau  
12 1712 Ninth Avenue  
13 P.O. Box 201440  
14 Helena, MT 59620-1440  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I caused a true and accurate copy of the foregoing First  
3 Scheduling Order to be mailed to:

4 Ms. Joyce Wittenberg  
5 Secretary, Board of Environmental Review  
6 Department of Environmental Quality  
7 1520 East Sixth Avenue  
8 P.O. Box 200901  
9 Helena, MT 59620-0901  
10 **(original)**

11 Mr. Norm Mullen  
12 Legal Counsel  
13 Department of Environmental Quality  
14 P.O. Box 200901  
15 Helena, MT 59620-0901

16 Mr. David Klemp, Bureau Chief  
17 Air Resources Management Bureau  
18 Department of Environmental Quality  
19 P.O. Box 200901  
20 Helena, MT 59620-0901

21 Ms. Jenny K. Harbine  
22 Ms. Laura D. Beaton  
23 Earthjustice  
24 313 East Main Street  
25 Bozeman, MT 59715

26 Mr. William W. Mercer  
27 Mr. Michael P. Manning  
Holland & Hart, LLP  
401 North 31st Street, Ste. 1500  
P.O. Box 639  
Billings, MT 59103-0639

21 DATED: February 26, 2013 [Signature]

1 **BEFORE THE BOARD OF ENVIRONMENTAL REVIEW**  
2 **OF THE STATE OF MONTANA**

3 **IN THE MATTER OF:**  
4 **THE REQUEST FOR HEARING BY**  
5 **MONTANA ENVIRONMENTAL**  
6 **INFORMATION CENTER AND SIERRA**  
7 **CLUB REGARDING DEQ'S ISSUANCE**  
8 **OF MONTANA AIR QUALITY**  
9 **OPERATING PERMIT NO. OP2953-07**  
10 **FOR THE JE CORETTE STEAM**  
11 **ELECTRIC STATION IN BILLINGS, MT**

**CASE NO. BER 2013-02 AQ**

12 **FIRST SCHEDULING ORDER**

13 On February 8, 2013, the parties filed a "Joint Response to Hearing  
14 Examiner's Order dated January 10, 2013." The Department of Environmental  
15 Quality (Department) and Appellants Montana Environmental Information Center  
16 and Sierra Club (Appellants) agreed that, as permittee for the Colstrip Steam  
17 Electric Station, Intervenor PPL Montana is entitled to participate in this matter as a  
18 party.

19 As further submitted in the in the above response, the Department,  
20 Appellants and proposed Intervenor all agreed to the below dates for the prehearing  
21 and hearing phases of this case. There being good cause:

22 IT IS HEREBY ORDERED that Intervenor PPL Montana, LLC be joined as  
23 an interested party in this contested case proceeding and is to be copied on all future  
24 filings in this matter.

25 IT IS FURTHER ORDERED that the following prehearing and hearing dates  
26 be adopted herein:

27 (1) Motions for Joinder/Intervention of additional parties must be filed by  
**February 28, 2013.**

(2) The names and addresses of each individual likely to have  
discoverable information that the disclosing party may use to support its claims or

1 defenses and a copy of, or a description by category and location of, all documents  
2 and tangible things that are in the possession, custody, or control of the party and  
3 that the disclosing party may use to support its claims or defenses must be provided  
4 to the opposing party defenses shall occur on or before **March 8, 2013**.

5 (3) Written discovery, if any, shall be served on the opposing parties on or  
6 before **March 8, 2013**.

7 (4) Discovery shall be completed and disclosure of subjects to be  
8 addressed by expert witnesses shall occur on or before **April 22, 2013**.

9 (5) The exchange among parties of lists of lay and expert witnesses,  
10 expert witness reports and curriculum vitae, and copies of documents that each party  
11 intends to offer at the hearing shall occur on or before **May 7, 2013**. At this time,  
12 the parties shall provide the Hearing Examiner a list of expert and lay witnesses and  
13 exhibits, but not the exhibits themselves.

14 (6) Expert witnesses shall be deposed on or before **June 6, 2013**.

15 (7) The filing and service of all prehearing motions, including motions *in*  
16 *limine* and motions for summary judgment, along with supporting briefs, shall occur  
17 on or before **July 3, 2013**. The filing and service of response briefs shall occur on  
18 or before **August 2, 2013**. The filing and service of reply briefs shall occur on or  
19 before **August 16, 2013**.

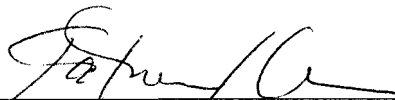
20 (8) There shall be a telephonic Prehearing Conference and arguments on  
21 motions on **October 3, 2013, at 2:30 p.m.** The Hearing Examiner will initiate the  
22 call. The parties are requested to have prepared an agreed statement of facts and  
23 conclusions of law by the prehearing conference to be provided to the Hearing  
24 Examiner.

25 Additionally, in their Joint Response to Hearing Examiner's Order dated  
26 January 10, 2013, the parties requested a that a telephonic conference be set to  
27 discuss setting the date and time of the contested case hearing, as well as other

1 deadlines set out in the Hearing Examiner's January 10, 2013 Order. There being  
2 good cause:

3 IT IS FURTHER ORDERED that a telephonic conference is now set in this  
4 matter for **March 4, 2013 at 2:30 p.m.** to discuss setting a date for the contested  
5 case hearing as well as any unaddressed deadlines identified in the January 10,  
6 2013, First Prehearing Order. The Hearing Examiner will initiate the call.

7 DATED this 26<sup>th</sup> day of February, 2013.

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9 KATHERINE J. ORR  
10 Hearing Examiner  
11 Agency Legal Services Bureau  
12 1712 Ninth Avenue  
13 P.O. Box 201440  
14 Helena, MT 59620-1440  
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**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and accurate copy of the foregoing First  
Scheduling Order to be mailed to:

Ms. Joyce Wittenberg  
Secretary, Board of Environmental Review  
Department of Environmental Quality  
1520 East Sixth Avenue  
P.O. Box 200901  
Helena, MT 59620-0901  
**(original)**

Mr. Norm Mullen  
Legal Counsel  
Department of Environmental Quality  
P.O. Box 200901  
Helena, MT 59620-0901

Mr. David Klemp, Bureau Chief  
Air Resources Management Bureau  
Department of Environmental Quality  
P.O. Box 200901  
Helena, MT 59620-0901

Ms. Jenny K. Harbine  
Ms. Laura D. Beaton  
Earthjustice  
313 East Main Street  
Bozeman, MT 59715

Mr. William W. Mercer  
Mr. Michael P. Manning  
Holland & Hart, LLP  
401 North 31st Street, Ste. 1500  
P.O. Box 639  
Billings, MT 59103-0639

DATED: February 26, 2013

**BOARD OF ENVIRONMENTAL REVIEW  
AGENDA ITEM  
EXECUTIVE SUMMARY REGARDING ACTION ON BUTTE-SILVER BOW COUNTY  
AIR POLLUTION CONTROL PROGRAM REVISION**

**Agenda # III.A.1.**

**Agenda Item Summary:** The Butte-Silver Bow County Council of Commissioners requests that the Board approve amendments to the Butte-Silver Bow County local air pollution control ordinance (County Program).

**List of Affected Rules:** The proposed amendments to the County Program are generally described as follows:

- Adopting the repealing of Chapter 16 Title 8 of the Butte-Silver Bow Municipal Code entitled “Air Pollutants” and replacing it with a new Chapter 16 to be entitled “Air Quality Control.”
- Establishing regulations for the control and management of air quality.
- Establishing an air pollution control district.
- Establishing a solid fuel burning device and control program.
- Regulating the use of outdoor wood furnaces and solid fuel burning devices.
- Establishing dust control regulations.
- Regulating open burning in Silver Bow County.
- Providing for severability.
- Providing for permitting.
- Providing penalties for violation.
- Providing for an effective date.

**Affected Parties Summary:** The proposed amendments to the County Program will affect the following:

- Unless otherwise indicated, persons, agencies, institutions, businesses, or government entities living or located within the air pollution control district, except owners/operators of sources exempt from local government regulation under Section 75-2-301(5), MCA:
  - who own or operate solid fuel burning devices;
  - who own or operate outdoor wood furnaces (outdoor wood boilers, outdoor wood-fired hydronic heaters and/or other outdoor hydronic heaters);
  - who place any sanding or chip seal material on any road, alley or commercial yard/lot and;
  - who use chemical de-icer on public streets and public or private parking lots.
- Unless otherwise indicated, persons, agencies, institutions, businesses, or government entities living or located within Butte-Silver Bow County, except sources exempt from local government regulation under Section 75-2-301(5), MCA, who conduct outdoor burning within Butte-Silver Bow County.

**Scope of Proposed Proceeding:** The Butte-Silver Bow County Council of Commissioners requests that the Board conduct a public hearing and approve the proposed amendments to the County Program.

**Background:** Section 75-2-301, MCA states that a municipality or county may establish and administer a local air pollution control program if the program is consistent with the Clean Air Act of Montana and is approved by the Board.

The current version of the County Program was approved by the Butte-Silver Bow County Council of Commissioners on April 26, 1994. The current air pollution control regulations control sources of emissions contributing to ambient air concentrations exceeding the level of the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of 10 microns or less (PM-10).

In September 2006, EPA revised the 24-hour NAAQS for particulate matter with a diameter of 2.5 microns or less (PM-2.5) from  $65 \mu\text{g}/\text{m}^3$  to  $35 \mu\text{g}/\text{m}^3$ . Additionally in December 2012, EPA revised the annual NAAQS for particulate matter with a diameter of 2.5 microns or less (PM-2.5) from  $15 \mu\text{g}/\text{m}^3$  to  $12 \mu\text{g}/\text{m}^3$ .

Based on monitoring and speciation studies to determine the sources of PM-2.5, the Butte-Silver Bow County Health Department determined residential wood stove operations contribute significant emissions. As a result, this activity is the focus of regulatory control measures under the County Program.

**Hearing Information:** The Department and Butte-Silver Bow County Council of Commissioners request that the Board conduct a public hearing at its March 22, 2013 meeting to take comment on the approval of the proposed amendments.

**Board Options:** The Board may:

1. Approve the proposed amendments;
2. Disapprove the proposed amendments; or
3. Request additional information from the Butte-Silver Bow County Council of Commissioners and consider the amendments at a future date.

**Enclosures:** The following information is attached to this executive summary:

- a. Draft Memorandum and Order
- b. BSB Amended Regulations
- c. BSB Air Pollution Control District Map
- d. BSB Public Notice of Intent to Amend Regulations
- e. BSB Stringency Analysis
- f. Cities' Concurrence

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

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In the matter of the Application of Butte- ) MEMORANDUM AND  
Silver Bow County Approval of ) ORDER  
Amendments to Its Local Air Pollution )  
Control Program. )

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**MEMORANDUM**

1. Butte-Silver Bow County (the County) has requested the Board of Environmental Review (Board) to approve amendments to the County's local air pollution control program.

The Board conducted a public hearing to consider the County's request at the Board's public meeting on March 22, 2013, in Helena, Montana.

2. The County operates a local air pollution control program (Program) first approved by the Board's predecessor in 1991; revisions to the Program were approved by the Board's predecessor on April 26, 1994.

3. The Program's regulations are contained in Title 8, chapter 16 of the Butte-Silver Bow County Municipal Code.

4. The Program encompasses Silver Bow County, including the municipalities of Butte and Walkerville. The solid fuel burning device control regulations apply only in the air pollution control district defined in the Ordinance, which is shown on a map attached to this Order as "BSB Air Pollution Control District Map."

1           5.     The County seeks Board approval, under § 75-2-301, MCA, of amendments to the  
2 Program's regulations, a copy of which is attached to this Order as "BSB Amended  
3 Regulations."

4           6.     The amendments include:

5               a)     Repealing Title 8, chapter 16 of the Butte-Silver Bow Municipal Code  
6 entitled "Air Pollutants" and replacing it with a new Chapter 16 entitled "Air Quality  
7 Control."

8               b)     Establishing regulations for the control and management of air quality.

9               c)     Establishing an air pollution control district.

10              d)     Establishing a solid fuel burning device control program.

11              e)     Regulating the use of outdoor wood furnaces and solid fuel burning  
12 devices.

13              f)     Establishing dust control regulations.

14              g)     Regulating open burning in Silver Bow County.

15              h)     Providing for severability.

16              i)     Providing for permitting.

17              j)     Providing penalties for violation.

18              k)     Providing for an effective date.

19           7.     Under Section 75-2-301(1) and (2), MCA, if a local air pollution control program  
20 proposed by a county would encompass all or part of a municipality, the county and each  
21 municipality must approve the program. After publishing notice and following public hearing,  
22 the Butte-Silver Bow County Council of Commissioners approved amendments to the  
23 Program's regulations on April 18, 2012.

1           8.     Under Section 75-2-301(3)(a), the Board, by order, may approve a local air  
2 pollution control program that:

3               a)     Provides by ordinance or local law for requirements compatible with,  
4 more stringent than, or more extensive than those imposed by Sections 75-2-203, 75-2-  
5 204, 75-2-211, 75-2-212, 75-2-215, 75-2-217 through 75-2-219, and 75-2-402, MCA,  
6 and rules adopted under those sections;

7               b)     Provides for enforcement of requirements by appropriate administrative  
8 and judicial processes; and

9               c)     Provides for administrative organization, staff, financial resources, and  
10 other resources necessary to effectively and efficiently carry out the program.

11           9.     The Program's amended regulations provide for requirements compatible with or  
12 more stringent than those imposed by the applicable sections of the Clean Air Act of Montana  
13 and implementing rules.

14           10.    The Program's amended regulations would provide for enforcement of their  
15 requirements by appropriate administrative and judicial processes.

16           11.    The Program's amended regulations would provide for administrative  
17 organization, staff, financial resources, and other resources necessary to effectively and  
18 efficiently carry out the Program.

19           12.    The Program's amended regulations satisfy the requirements for Board approval  
20 set forth in Section 75-2-301(3)(a), MCA.

21           13.    Implementation of the Program's amended regulations is not intended in any way  
22 to interfere with the jurisdiction of the Montana Department of Environmental Quality over  
23 those emission sources and activities not expressly subject to County jurisdiction.

1           14. Under Section 75-2-301(1), MCA, a municipality or county may establish and  
2 administer a local air pollution control program if the program is consistent with the Clean Air  
3 Act of Montana and is approved by the Board.

4           15. The amended regulations would make the Program more stringent than  
5 comparable state or federal air quality regulations or guidelines, by allowing the burning of only  
6 three types of fuel and prohibiting the burning of certain materials and coal in solid fuel burning  
7 devices . The County prepared a stringency analysis, and the Board is adopting that analysis,  
8 attached as “BSB Stringency Analysis” in these written findings, as required by Section 75-2-  
9 301(4), MCA. The analysis states that the amendments found to be more stringent:

- 10           a) protect public health and the environment;
- 11           b) can mitigate harm to the public health or the environment; and
- 12           c) are achievable with current technology.

13           16. The written finding in Section 75-2-301(4), MCA, must include information from  
14 the hearing record on costs to the regulated community that are directly attributable to the  
15 amendments. The evidence at the hearing indicated that no costs to the regulated community  
16 are directly attributable to the Program’s amended regulations.

17           17. Adequate notice to the public and the opportunity for public participation has  
18 been provided in accordance with Title 2, chapter 3, part 1, MCA.

19           18. Pursuant to Section 75-2-301(13)(b), MCA, at least 30 days prior to adoption of  
20 the Program’s amended regulations, the County gave written public notice of its intended  
21 action, and the notices met the requirements of Section 75-2-301(13)(c), MCA.

22           19. Pursuant to Section 75-2-301(13)(e), MCA, at least 30 days prior to adoption of  
23 the Program’s amended regulations, copies were made available by electronic mail to all

1 persons on the interested persons list maintained by the County pursuant to Section 75-2-  
2 301(13)(a), MCA.

3 20. The County prepared a written response to all comments submitted in writing or  
4 presented at the local public hearings on the proposed amended regulations.

5 21. The County will inform all persons who submitted written comments or attended  
6 the local public hearings of the final action by the board on the Program's amended regulations.

7  
8 **ORDER**

9 1. The Board hereby approves the amended Title 8, chapter 16 of the Butte-Silver  
10 Bow County Municipal Code, as set forth in "BSB Amended Regulations" which is attached to  
11 this Order.

12 2. The County shall inform all persons who submitted written comments or attended  
13 the local public hearings of the Board's approval of the Program's amended regulations.

14 3. The Department shall retain control over any air pollutant sources regulated under  
15 the Clean Air Act of Montana that are not covered by the Butte-Silver Bow County Air  
16 Pollution Control Program.

17 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

18 BOARD OF ENVIRONMENTAL REVIEW

19 By: \_\_\_\_\_  
20 JOSEPH W. RUSSELL, M.P.H.,  
21 Chairperson  
22  
23



Butte-Silver Bow County, Montana, Code of Ordinances >> Title 8 - HEALTH AND SAFETY >> 8.16 - AIR QUALITY CONTROL >>

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## 8.16 - AIR QUALITY CONTROL <sup>[4]</sup>

### Section:

8.16.010 - Intent.

8.16.020 - Scope.

8.16.030 - Definitions.

8.16.040 - Compatibility with other regulations.

8.16.100 - Solid fuel burning device control program.

8.16.110 - Liability.

8.16.200 - Outdoor wood furnaces (outdoor wood boilers, outdoor wood-fired hydronic heaters and/or other outdoor hydronic heaters).

8.16.210 - Implementation.

8.16.220 - Requirements.

8.16.300 - Solid fuel burning device.

8.16.400 - Permits.

8.16.500 - Dust control regulations.

8.16.510 - Standards for chemical de-icer used on public streets and public or private parking lots.

8.16.600 - Open burning.

8.16.700 - Enforcement.

8.16.800 - Penalties.

### 8.16.010 - Intent.

The purpose of this chapter is to achieve and maintain levels of air quality that will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote economic and social development, and facilitate the enjoyment of the natural attractions within Butte-Silver Bow as provided in Section 75-2-102(2) MCA.

*(Ord. No. 12-1, § 1, 5-18-2012 )*

### 8.16.020 - Scope.

Unless otherwise indicated, this chapter applies to all persons, agencies, institutions, businesses, or government entities living or located within the air pollution control district except for sources exempt from local government regulation under Section 75-2-301(5), MCA.

*(Ord. No. 12-1, § 1, 5-18-2012 )*

### 8.16.030 - Definitions.

As used in this chapter, unless indicated otherwise, the following definitions apply:

- (1) "Air contaminant" means dust, fumes, mist, smoke, or any particulate matter vapor, gas, odorous substances, or any combination thereof

- (2) "Air pollution control district" means the real property described as follows:  
Beginning at the northwest corner of Section 2, Township 3 North, Range 8 West; thence easterly to the northeast corner of Section 5, T3N R7W; thence southerly to the northwest corner of Section 9, T3N, R7W; thence easterly to the northeast corner of Section 10, T3N, R7W; thence southerly to the southeast corner of Section 22, T2N, R7W; thence westerly to the southwest corner of Section 19, T2N, R7W; thence northerly to the northwest corner of Section 19, T2N, R7W; thence westerly to the southwest corner of Section 14, T2N, R8W; thence northerly to the southwest corner of Section 35, T3N, R8W; thence westerly to the southwest corner of Section 34, T3N, R8W; thence northerly to the northwest corner of Section 27, T3N, R8W; thence westerly to the southwest corner of Section 20, T3N, R8W; thence northerly to the northwest corner of Section 17, T3N, R8W; thence easterly to the northwest corner of Section 14, T3N, R8W; thence northerly to the point of beginning.  
A map of the above-described geographical area is available and on file in the city-county's clerk and recorder's office.
- (3) "Air quality categories" means: "Good", "Poor", and "Alert" categories correlating with measured PM-2.5 concentrations.
- a. "Good air quality" means ambient particulate matter (PM) concentrations averaged over an eight-hour period that are equal to or less than forty percent of the most current NAAQS/MAAQS (twenty-four-hour standard).
  - b. "Poor air quality" means ambient particulate matter (PM) concentrations averaged over an eight-hour period that are between forty and seventy-five percent of the most current NAAQS/MAAQS (twenty-four-hour standard).
  - c. "Alert air quality" means ambient particulate matter (PM) concentrations averaged over an eight-hour period that are equal to or greater than seventy-five percent of the most current NAAQS/MAAQS (twenty-four-hour standard).
- (4) "Best available control technology" (BACT) means those techniques and methods of controlling emissions of pollutants from an existing or proposed open burning source which limit those emissions to the maximum degree which the department determines, on a case-by-case basis, is achievable for that source, taking into account impacts on energy use, the environment, and the economy, and any other costs, including cost to the source.
- (5) "Burn barrel" means any metal, ceramic, or other non-combustible devices, including, but not limited to, fifty-five-gallon drums used for burning.
- (6) "Department" means the Butte-Silver Bow county health department.
- (7) "DEQ" means the Montana Department of Environmental Quality.
- (8) "Emission" means a release into the outdoor atmosphere of an air contaminant.
- (9) "EPA" means the U.S. Environmental Protection Agency.
- (10) "EPA Federal Reference Method 9" means Title 40 CFR 60. Appendix A to Part 60.
- (11) "Government" means the local government of Butte-Silver Bow.
- (12) "MAAQS" means the Montana Ambient Air Quality Standards.
- (13) "NAAQS" means the National Ambient Air Quality Standards.
- (14) "Opacity" means a measurement of visible emissions defined as the degree expressed in percent to which emissions reduce the transmission of light and obscures the view of an object in the background.
- (15) "Outdoor wood furnace" means a device, appliance or apparatus, or any part thereof, which is installed, affixed, or situated outdoors and is primarily hand loaded for the

purpose of heat or energy used as a component of a heating system providing heat for any interior space or water source, including, but not limited, to an outdoor wood-fired hydronic heater.

- (a) "EPA HH Phase 2 Program" means EPA HH (Hydronic Heater) Phase 2 Program administered by the U.S. Environmental Protection Agency
- (b) "EPA HH Phase 2 Program Qualified Model" means a Hydronic Heater that has been EPA HH Phase 2 Program Qualified. The model must meet the EPA HH Phase 2 particulate emission level of .32 pounds per million BTU's output and is labeled accordingly.
- (c) "New outdoor wood furnace" means an outdoor wood furnace that is first installed, established, or constructed after June 2012, the effective date of the ordinance from which this chapter derives.
- (16) "Pellet fuel burning device" means a solid fuel burning device that burns only automatically fed biomass or pelletized fuels.
- (17) "Person" means an individual, partnership, firm, association, municipality, public or private corporation, the state or a subdivision or agency of the state, trust, estate, interstate body, federal government or an agency of the federal government, or any other legal entity.
- (18) "PM-10" means particulate matter with an aerodynamic diameter of less than or equal to a nominal ten micrometers.
- (19) "PM-2.5" means particulate matter with an aerodynamic diameter of less than or equal to a nominal 2.5 micrometers.
- (20) "Remodel" means an addition or upgrade to an existing structure which utilizes a solid fuel burning device for heating purposes.
- (21) "Solid fuel burning device" means any fireplace, fireplace insert, woodstove, pellet stove, pellet furnace, wood burning heater, wood-fired boiler, wood or coal fired furnace, coal stove, or similar device burning any solid fuel used for aesthetic, cooking, or heating purposes which has a rated capacity of less than one million BTU's per hour.

(Ord. No. 12-1, § 1, 5-18-2012)

#### **8.16.040 - Compatibility with other regulations.**

In any case where a provision of these regulations is found to be in conflict with a provision of any zoning, building, fire, safety, or code of Butte-Silver Bow, the provision which establishes the higher standard for the promotion and protection of the health and safety of the people shall prevail.

(Ord. No. 12-1, § 1, 5-18-2012)

#### **8.16.100 - Solid fuel burning device control program.**

- (1) Operating and Emission Requirements: No person may burn any material in a solid fuel burning device except uncolored newspaper, untreated wood and lumber, and products manufactured for the sole purpose of use as a solid fuel. Products manufactured or processed for use as solid fuels must conform to any other applicable provisions of this subchapter.
- (2) The burning of the following materials in any solid fuel burning device is prohibited at all times:
  - a. Any waste moved from the premises from where it was generated;

- b. Food wastes;
  - c. Styrofoam and other plastics;
  - d. Wastes generating noxious odor;
  - e. Wood or wood by-products that have been treated, coated, painted, stained, or contaminated by a foreign material such as papers, cardboard, or painted or stained wood;
  - f. Poultry litter;
  - g. Animal droppings;
  - h. Dead animals or dead animal parts;
  - i. Tires;
  - j. Rubber materials;
  - k. Asphalt shingles;
  - l. Tar paper;
  - m. Automobile or aircraft bodies or interiors and bodies or interiors of recreational vehicles and atv's;
  - n. Insulated wire;
  - o. Oil or petroleum products;
  - p. Treated lumber or timbers;
  - q. Pathogenic wastes;
  - r. Hazardous wastes as defined by 40 CFR, Part 261;
  - s. Trade wastes;
  - t. Any materials resulting from a salvage operation;
  - u. Chemicals;
  - v. Christmas tree waste;
  - w. Asbestos or asbestos containing materials;
  - x. Standing or demolished structures; and
  - y. Paint
  - z. Colored news print or magazine print;
- (3) The use of coal as a fuel in a solid fuel burning device is prohibited within the air pollution control district.

(Ord. No. 12-1, § 1, 5-18-2012 )

### **8.16.110 - Liability.**

Neither the provisions of this chapter nor the compliance with the provisions of this chapter shall relieve any person from the responsibility for damage to any person or property otherwise imposed by law, nor shall it impose any liability upon Butte-Silver Bow for damage to any person or property.

(Ord. No. 12-1, § 1, 5-18-2012 )

### **8.16.200 - Outdoor wood furnaces (outdoor wood boilers, outdoor wood-fired hydronic heaters and/or other outdoor hydronic heaters).**

- (1) This program is aimed at reducing levels of particulate matter to, or below, the current NAAQS/MAAQS.

- (2) This program is necessary to preserve, protect, improve, achieve, and maintain such levels of air quality as will protect the health and welfare of the citizens of Butte-Silver Bow.
- (3) This program requires that outdoor wood furnaces installed after May 18, 2012, meet the current EPA Phase 2 requirements.

(Ord. No. 12-1, § 1, 5-18-2012)

#### **8.16.210 - Implementation.**

Only EPA HH Phase 2 Program Qualified Model or newer outdoor wood furnaces may be installed and operated in the air pollution control district after May 18, 2012.

(Ord. No. 12-1, § 1, 5-18-2012)

#### **8.16.220 - Requirements.**

Outdoor wood furnaces must be constructed, established, installed, operated, and maintained in conformance with the following conditions:

1. Only the following fuels may be burned in any new or existing outdoor wood furnace: natural, untreated wood, wood pellets, corn products, biomass pellets, or other listed fuels specifically permitted in the manufacturer's instructions such as fuel oil, natural gas, or propane backup.
2. After May 18, 2012, any outdoor wood furnace must be located on the property in compliance with the manufacturer's setback recommendations and/or testing and listing requirements for clearance of combustible materials.
3. Required chimney heights for outdoor wood furnaces installed after May 12, 2012:
  - a. If located within three hundred feet of any residence not served by the furnace, the chimney must be at least two feet higher than the peak of the residence served.
  - b. If located within one hundred feet of any residence not served by the furnace, the chimney must be at least two feet higher than the peak of the residence served or not served, whichever is higher.

(Ord. No. 12-1, § 1, 5-18-2012)

#### **8.16.300 - Solid fuel burning device.**

1. The following regulations apply to solid fuel burning device.
  - (a) Within the air pollution control district, no person owning or operating a solid fuel burning device may caused, allow, or discharge emissions from such device which are of any opacity greater than twenty-five percent.
  - (b) The provisions of this subsection do not apply to emissions during the building of a new fire, for a period or periods aggregating no more than thirty minutes in any four-hour period.
  - (c) Within the air pollution control district, no person owning or operating a solid fuel burning device may cause, allow, or discharge any visible emission from such device during an air pollution alert declared by the government unless a Class I permit or a special needs permit has been issued for such device.
  - (d) Within the air pollution control district, the only wood burning devices that may be installed in any home constructed or remodeled after May 18, 2012, are

EPA approved, Phase I or Phase II wood burning devices.

- (e) Within the air pollution control district, no person owning or operating a solid fuel burning device for which a Class 1 or special needs permit has been issued may cause, allow or discharge any emissions from such device which are of an opacity greater than ten percent during an air pollution alert declared by the government. The provisions of this paragraph do not apply to emissions during the building of a new fire or for refueling for a period or periods aggregating no more than thirty minutes in any four-hour period.
- (f) For the purpose of this section, the government may declare an air pollution alert to be in effect whenever the ambient concentration of PM-2.5 within the air pollution control district equals or exceeds seventy-five percent of the "NAAQS/MAAQS" averaged over any eight-hour period and when scientific and meteorological data indicate the average PM-2.5 concentrations will remain at or above the NAAQS/MAAQS if an air pollution alert is not called.
- (g) Every person operating or in control of a solid fuel burning device within the air pollution control district has a duty to know when an air pollution alert has been declared by the government.

(Ord. No. 12-1, § 1, 5-18-2012)

#### **8.16.400 - Permits.**

The following permits are required for solid fuel burning devices:

- (1) Class One Permit: The government may issue a Class I Permit for a solid fuel burning devices if the emissions do not exceed the federal EPA standard of four grams per hour weighted average.
- (2) Special Needs Permit: A person who demonstrates an economic need to burn solid fuel for residential space heating purposes by qualifying for energy assistance according to economic guidelines established by the U.S. Office of Management and Budget under the Low Income Energy Assistance Program (L.I.E.A.P.) as administered in the city and county of Butte-Silver Bow by the District 12 Human Resource Development Council, is eligible for a special needs permit issued by the department. This includes a person who has been determined to be eligible for Families Achieving Independence (FAIM) or Supplemental Security Income (SSI) benefits.
  - (a) Application for a special needs permit may be made to the department at any time, and a special needs permit is valid for a period of not more than one year from the date it is issued. A special needs permit may be renewed if the applicant meets the applicable need and economic guidelines at the time of application for renewal. A special needs permit is not transferable to another residence or person.

(Ord. No. 12-1, § 1, 5-18-2012)

#### **8.16.500 - Dust control regulations.**

No person may place any sanding or chip seal material on any road, alley or commercial yard/lot which has durability as defined by the Montana Modified LA Abrasion Test, of greater than seven, and a fines content of material smaller than two hundred mesh, as determined by standard wet sieving methods, that exceeds three percent oven dry weight.

(Ord. No. 12-1, § 1, 5-18-2012 )

### **8.16.510 - Standards for chemical de-icer used on public streets and public or private parking lots.**

- (1) Any governmental entity, person, or private entity, including Butte-Silver Bow, shall use exclusively, on all public streets and public or private parking lots, an approved chemical de-icer plus a corrosion inhibitor for use on snow packed or icy streets during winter in lieu of sanding and chip seal materials. Use of sanding and chip seal materials will be prohibited except in emergency situations or as set forth in subsection 2.
- (2) Conventional sanding and chip seal materials may be used when the ambient temperature falls below 10°F.

(Ord. No. 12-1, § 1, 5-18-2012 )

### **8.16.600 - Open burning.**

The following regulations shall apply to any open burning conducted in the city-county of Butte-Silver Bow, Montana.

- (1) Prior to open burning, a person must obtain an open burning permit from the Butte-Silver Bow Fire Department. Open burning must comply with sections 17.8.601 and 17.8.606 ARM.
- (2) Open burning must comply with "best available control technology" (BACT).
- (3) Open burning is not allowed from December 1st through the last day of February.
- (4) Open burning may be allowed from March 1st through August 31st, if the department determines there is proper dispersion in the air pollution control district.
- (5) Open burning is also allowed from September 1st through November 30th when the department reports good ventilation.
- (6) The burning of the following materials is prohibited at all times:
  - a. Any waste moved from the premises from where it was generated;
  - b. Food wastes;
  - c. Styrofoam and other plastics;
  - d. Wastes generating noxious odor;
  - e. Wood or wood by-products that have been treated, coated, painted, stained, or contaminated by a foreign material such as papers, cardboard, or painted or stained wood;
  - f. Poultry litter;
  - g. Animal droppings;
  - h. Dead animals or dead animal parts;
  - i. Tires;
  - j. Rubber materials;
  - k. Asphalt shingles;
  - l. Tar paper;
  - m. Automobile or aircraft bodies or interiors, and bodies or interiors of recreational vehicles and ATV's;
  - n. Insulated wire;
  - o. Oil or petroleum products;

- p. Treated lumber or timbers;
  - q. Pathogenic wastes;
  - r. Hazardous wastes as defined by 40 CFR, Part 261;
  - s. Trade wastes;
  - t. Any materials resulting from a salvage operation;
  - u. Chemicals;
  - v. Christmas tree waste;
  - w. Asbestos or asbestos containing materials;
  - x. Standing or demolished structures;
  - y. Paint; and
  - z. Colored news print or magazine print.
- (7) Allowing burning stumps, grass clippings, leaves, or other similar materials that may be burned under this chapter, to smolder overnight is prohibited.
- (8) The use of burn barrels, or other such devices, is prohibited.

(Ord. No. 12-1, § 1, 5-18-2012 )

### **8.16.700 - Enforcement.**

The provisions of this chapter shall be enforced as follows:

- (1) The department, Butte-Silver Bow fire department, and the appropriate law enforcement officials shall be responsible for enforcement of this chapter.
- (2) Class I permits and special needs permits for residential solid fuel burning devices may be issued, denied, suspended or revoked.

(Ord. No. 12-1, § 1, 5-18-2012 )

### **8.16.800 - Penalties.**

The penalties for violations of this chapter are as follows:

- (1) First Violation — Written educational warning by the department.
- (2) Second Violation — Twenty-five dollars.
- (3) Third Violation — Fifty dollars.
- (4) A fourth or subsequent violation of this chapter constitutes a misdemeanor punishable by a fine not to exceed five hundred dollars or imprisonment in the county jail for a term not to exceed six months, or by both a fine and imprisonment.
  - (a) No person or entity may be cited for a violation of this chapter more than once in any calendar day. However, each calendar day of violation may be considered a separate offense.
  - (b) Only those violations of this chapter by a person or entity which have occurred within one year of a present offense may be considered as prior violations.
  - (c) Jurisdiction shall be in the city court of the city-county of Butte-Silver Bow, Montana.

(Ord. No. 12-1, § 1, 5-18-2012 )



## FOOTNOTE(S):

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<sup>(4)</sup> **Editor's note**— Ord. No. 12-1, §§ 1—9, adopted May 18, 2012, repealed the former Ch. 8.16, §§ 8.16.010—8.16.080, and enacted a new Ch. 8.16 as set out herein. The former Ch. 8.16 pertained to air pollutants and derived from Ord. 330, §§ 1—8, adopted 1988. ([Back](#))

# SILVER BOW COUNTY

## Butte PM-10 Nonattainment Area

BUTTE PM-10 Nonattainment Area\*  
 The NW corner of Section 2, T3N, R7W;  
 thence easterly to NE corner section 9, T3N, R7W;  
 thence southerly to NW corner section 10, T3N, R7W;  
 thence southerly to SE corner section 22, T3N, R7W;  
 thence westerly to NW corner section 19, T3N, R7W;  
 thence westerly to SW corner section 14, T3N, R8W;  
 thence northerly to SW corner section 35, T3N, R8W;  
 thence westerly to NW corner section 34, T3N, R8W;  
 thence westerly to NW corner section 22, T3N, R8W;  
 thence northerly to NW corner section 20, T3N, R8W;  
 thence easterly to NW corner section 14, T3N, R8W;  
 thence northerly to the point of beginning.

\* Boundary as described by 66 FR 59794,  
 November 9, 1991.

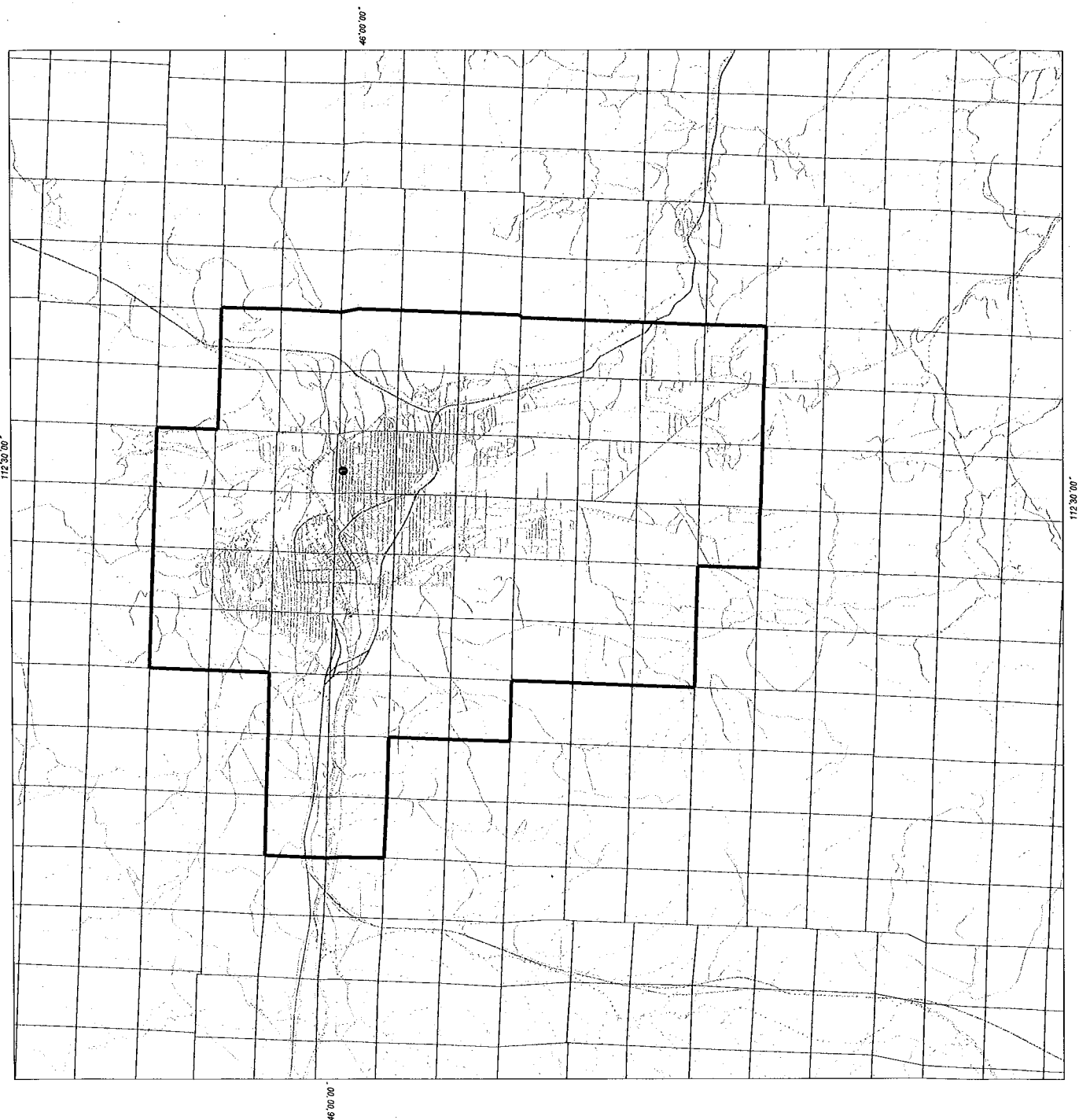
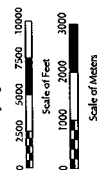
Greely School PM-10 SLAMS monitoring site. Began  
 operation 10/1/93 with TEOM continuous monitor.  
 Years of Record 1985 to present.  
 AIRS number 36-093-0005, UTM location Zone 12,  
 983859mE, 506520mN.

### LEGEND

- Designated PM-10 Nonattainment Area
- Boundary
- Improved Road
- Interstate Highway
- Trail
- Railroad
- River
- Stream
- Public Land Survey
- Municipal Area
- Water Body

NRS does not guarantee the data for functionality.  
 The user assumes responsibility to verify  
 usability for their purpose.

Background data from TIGER files and BLM  
 FLS or UTM grid generated in ArcInfo.



Page : 1 of 2 02/10/2012 09:32:44

Order Number : 20300434  
PO Number : 99999  
Customer : 60000993 BSB/HEALTH DEPT  
Contact : Elaine Holm  
Address1 : 25 w front  
Address2 :  
City St Zip : Butte MT 59701  
Phone : (406) 497-6200  
Fax :  
Printed By : butthort  
Entered By : butthort  
Keywords : NOTICE OF PUBLIC HEARING□□  
Notes :  
Zones :

Ad Number : 10773541  
Ad Key :  
Salesperson : KG02 - Nonie Swan  
Publication : Montana Standard  
Section : Class Sections  
Sub Section : Legals  
Category : 2100 LEGALS  
Dates Run : 02/12/2012-02/19/2012  
Days : 2  
Size : 1 x 6.98, 72 lines  
Words : 319  
Ad Rate : Legal Folio  
Ad Price : 80.00  
Amount Paid : 0.00  
Amount Due : 80.00

**NOTICE OF PUBLIC HEARING**  
Wednesday, February 22, 2012

The Butte-Silver Bow Council of Commissioners will hold a public hearing on Wednesday, February 22, 2012 at 7:30 p.m. in the Council of Commissioners' Chambers, Room 312, Butte-Silver Bow County Courthouse, 155 West Granite, Butte, Montana for the purpose of soliciting public comment concerning the passage of Ordinance No. 12-1 entitled "Air Quality Control", which will establish regulations for the control and management of air quality within the City-County of Butte-Silver Bow Air Pollution Control District.

At the public hearing all interested persons will be given the opportunity to express their opinions regarding this ordinance verbally at the hearing or submitted in writing to the Clerk and Recorder's Office prior to 5:00 p.m. on Tuesday, February 21, 2012 (the day before the scheduled hearing). Further information concerning this matter may be obtained by contacting Dan Powers, Butte-Silver Health Department, at (406) 497-5025.

Persons with disabilities who need an alternative format of this document in order to participate in this Rule Making process should contact Lindsey Moe, Personnel Director, 2nd Floor, Room 209, Butte-Silver Bow County Courthouse, 155 West Granite Street, Butte, Montana 59701; telephone number (406) 497-6430; fax number (406) 497-6328.

If a hearing assisted device is required, please contact Gary Keeler at (406) 497-6516, fax number (406) 497-6524 prior to 1:00 p.m. on Tuesday, February 21, 2012 and an appropriate device will be provided before the meeting. Appropriate parking spaces, which are van accessible, have been reserved at the

**STATE OF  
MONTANA  
COUNTY OF SILVER BOW**

**Proof of Publication**

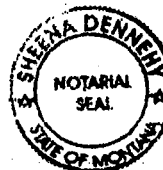
I, Tracy Thornton being first duly sworn, on oath deposes and says: That ~~She~~ is the principal clerk of The Montana Standard, Division of Lee Enterprises, Inc. printer and publisher of "The Montana Standard" a daily newspaper of general circulation, printed and published in Butte, in the County of Silver Bow, State of Montana; that the notice of which a copy is hereto attached was first published in said newspaper in its issue dated the 12th day of Feb, 2012 and was published in said newspaper in its issues of \_\_\_\_\_ the last publication being in the issue of said newspaper dated the 19th day of Feb., 2012.

Tracy Thornton  
Subscribed and sworn to before me this 20 day of Feb, 2012.

Sheena Denney  
Notary Public for the State of Montana

Residing at Butte, Montana

My Commission expires Dec 13, 2014



**SHEENA DENNEY**

**NOTARY PUBLIC for the  
State of Montana**

**Residing at Butte, Montana**

**My Comm. Expires December 13, 2014**

Order Number : 20300434  
PO Number : 99999  
Customer : 60000993 BSB/HEALTH DEPT  
Contact : Elaine Holm  
Address1 : 25 w front  
Address2 :  
City St Zip : Butte MT 59701  
Phone : (406) 497-6200  
Fax :  
Printed By : butthort  
Entered By : butthort  
Keywords : NOTICE OF PUBLIC HEARING□□  
Notes :  
Zones :

Ad Number : 10773541  
Ad Key :  
Salesperson : KG02 - Nonie Swan  
Publication : Montana Standard  
Section : Class Sections  
Sub Section : Legals  
Category : 2100 LEGALS  
Dates Run : 02/12/2012-02/19/2012  
Days : 2  
Size : 1 x 6.98, 72 lines  
Words : 319  
Ad Rate : Legal Folio  
Ad Price : 80.00  
Amount Paid : 0.00  
Amount Due : 80.00

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north entrance. For the hearing impaired the TDY number is (406) 497-6517.

Butte-Silver Bow County will make every effort to accommodate individual impairments and/or requests for alternative formatted documents as long as the requests are received within 24 hours of the hearing/meeting for the accommodation and within five (5) working days of the noticed closing time of the document availability for requests for documents.

Feb. 12 & 19, 2012



## BUTTE-SILVER BOW HEALTH DEPARTMENT

**Dan Powers, R.S.**  
**Acting Health Director**

---

25 West Front Street  
Butte, Montana 59701  
Office Number: (406)497-5020  
Fax Number: (406)723-7245

### **Review and Findings under § 75-2-301(4), MCA, Concerning Stringency for Approval by the Montana Board of Environmental Review of Amendments to the Butte-Silver Bow County Air Quality Control Regulations.**

Section 75-2-301(3)(b), MCA, requires that the Montana Board of Environmental Review (Board) fulfill the provisions of Section 75-2-301(4), MCA, when approving a rule, ordinance, or local law that is more stringent than a comparable state rule or federal regulation or guideline.

Section 75-2-301(4), MCA, allows the Board to adopt a rule more stringent than comparable state law if it makes a written finding after a public hearing and public comment and based on evidence that the proposed local standard or requirement:

- (A) Protects public health or the environment of the area;
- (B) Can mitigate harm to the public health or the environment; and
- (C) Is achievable with current technology.

The written finding must reference information and peer-reviewed scientific studies contained in the record that form the basis for the Board's conclusion. The written finding must also include information from the hearing record regarding the cost to the regulated community that is directly attributable to the proposed local standard or requirement.

If there is no comparable state law or rule, Section 75-2-301(4), MCA, does not apply.

This document reviews amended regulations of the Butte-Silver Bow County Air Quality Program that are more stringent than comparable state rules or federal regulations or guidelines and provides the evidence and findings required by Section 75-2-301(4), MCA.

#### **8.16.100 - Solid fuel burning device control program.**

Section 8.16.100(2) is more stringent in some respects than the comparable Montana rule, ARM 17.8.326, for solid fuel burning devices.

Section 8.16.100(2) prohibits the burning of 26 types of material in a solid fuel burning device. These materials include, by subsection of Section 8.16.100: (2)(b), food wastes; (2)(c), plastics and Styrofoam; (2)(d), wastes generating noxious odors; (2)(e), wood or wood by-products that have been treated, coated, painted, stained, or contaminated by paper, or cardboard; (2)(f), poultry litter; (2)(g), animal droppings; (2)(h) dead animals or parts; (2)(i), tires; (2)(k), asphalt shingles; (2)(l), tar paper; (2)(m), bodies or interiors of an automobile, aircraft, recreational vehicle, or ATV; (2)(p), treated lumber or timbers; (2)(q), pathogenic wastes; (2)(r), hazardous wastes; (2)(u), chemicals; (2)(v), Christmas

tree waste; (2)(x), standing or demolished structures; (2)(y), paint; and (2)(z), colored news print or magazine print.

These same materials are prohibited by ARM 17.8.326 from being burned in a residential solid-fuel combustion device such as a wood, coal, or pellet stove or fireplace. This is a comparable state rule. Therefore, the subsections of Section 8.16.100(2) listed in the previous paragraph are consistent with, and not more stringent than a state rule, and 75-2-301(4), MCA, does not apply.

Concerning other materials prohibited by Section 8.16.100(2) from being burned in a solid fuel burning device, EPA guidelines contained in its Burn Wise web site state that certain materials should never be burned in a wood-burning appliance. Those materials include: household garbage or cardboard, including plastics, foam, and colored ink on magazines, boxes, wrappers; coated, painted, or pressure-treated wood; and plywood, particle board, or any wood with glue on or in it. Section 8.16.100(2) prohibits burning many types of household garbage in a solid fuel burning device. It is therefore consistent with and not more stringent than comparable federal guidelines in Burn Wise, and § 75-2-301(4), MCA does not apply.

There are some materials listed in Section 8.16.100(2) that might not be household garbage, including: (2)(m), automobile and aircraft bodies or interiors; (2)(t), materials from a salvage operation, and (2)(x), standing or demolished structures. Appendix A includes information and peer-reviewed scientific studies indicating that the burning in a solid fuel burning device of materials other than those allowed in Section 8.16.100(1), and the burning is such a device of materials prohibited by Section 8.16.100(2), may contribute to higher concentrations of fine particulate matter and criteria pollutants and hazardous air pollutants than the burning of wood. Fine particulate matter is directly linked to causing health problems. If inhaled, fine particulate matter can affect the heart and lungs and cause serious health effects. The information and studies in Appendix A further indicate that limiting the residential burning of solid fuel to allowed materials and prohibiting the burning of the materials listed in Section 8.16.100(2) will reduce the concentrations of fine particulate matter inhaled by the residents of the Butte-Silver Bow Air Control District (District), and therefore reduce adverse health effects for those residents. This would protect public health. They further indicate that, by reducing the concentrations of fine particulate matter inhaled by the residents of the District, the more stringent subsections of Section 8.16.100(2) can mitigate harm to public health.

Section 8.16.100(3) prohibits the burning of coal in a solid fuel burning device. The findings in the previous paragraph are also applicable to the burning of coal in a solid fuel burning device, and are supported by the information and peer-reviewed scientific studies in Appendix A. There is currently very little coal used in solid fuel burning devices in the air pollution control district.

The requirements of Section 8.16.100(2), and (3) are achievable with current technology, because wood or manufactured solid fuel is readily available as a substitute for coal and other prohibited materials in solid fuel burning devices.

# APPENDIX A

## Information and Peer-reviewed Scientific Studies

Browning, K.G., et al. (1990). "A Questionnaire Study of Respiratory Health in Areas of High and Low Ambient Wood Smoke Pollution." *Pediatr Asthma All Immunol.* 4:183-91, 1990.

Houck, J.E., Tiegs, P.E., McCrillis, R.C., Keithley, C., Crouch, J. "Air Emissions from Residential Heating: The Wood Heating Option Put Into Environmental Perspective." *Proceedings of a U.S. EPA and Air Waste Management Association Conference: Emission Inventory: Living in a Global Environment*, v. 1, pp 373-384, 1998.

Ganesan, K. "2012 Wood Emission Survey for Butte." *Energy and Environmental Research & Technology LLC.* 2013.

Johnson, K.G., Gideon, R.A., Loftsgaarden, D.O. "Montana Air Pollution Study: Children's Health Effects." *J. Official Stat.* 5:391-407, 1990.

Kunzli, N. & Tager, I.B. "Long-Term Health Effects of Particulate and Other Ambient Pollution." *Environmental Health Perspectives.* Vol. 108, No. 10, October 2000.

Maynard, R.L. & Howard, C.V. "Particulate Matter: Properties and Effects upon Health." *BIOS Scientific Publishers Ltd, Oxford (ISBN 1 85996 172 X)* 1999.

Pope, C.A. "Epidemiology of Fine Particulate Air Pollution and Human Health: Biologic Mechanisms and Who's at Risk?" *Environmental Health Perspectives Supplements Volume 108, Supplement 4: 713-723*, August 2000

US EPA "AP 42 Compilation of Air Pollutant Emission Factors." Vol. I, 5th ed.1995. The full text may be viewed at <http://www.epa.gov/ttnchie1/ap42/>.

US EPA Burn Wise. The full text may be viewed at <http://www.epa.gov/burnwise/index.html>. For best practices, see <http://www.epa.gov/burnwise/index.html>

Ward, T.J. "The Butte, Montana PM<sub>2.5</sub> Source Apportionment Research Study." *University of Montana-Missoula Center for Environmental Health Sciences.* November 17, 2008.

Wichmann, H.E. & Peters, A. "Epidemiological Evidence of the Effect of Ultrafine Particle Exposure." *Phil. Trans Roy. Soc. Lond.* 358: 27512769, 2000.

Zelikoff, J.T. et. al. "The Toxicology of Inhaled Woodsmoke." *J.Toxicol.EnvIRON Health, Part B.* 5:269-282, 2002.

## JUDICIARY COMMITTEE MEETING

**FEBRUARY 22, 2012**

**7:00 PM COURTHOUSE COUNCIL CHAMBERS**

**COMMUNICATION NO. 12-83**

Mark Driscoll, Undersheriff, Butte-Silver Bow Law Enforcement Department, requesting Council's approval to revise provision 2.20.191, Badges, in the Municipal Code.

**COUNCIL BILL NO. 12-1**  
**ORDINANCE NO. 12-1**

**COUNCIL BILL NO. 12-1**

**ORDINANCE NO. 12-1**

AN ORDINANCE ADOPTING REPEALING CHAPTER 16 OF TITLE 8 OF THE BUTTE-SILVER BOW MUNICIPAL CODE ENTITLED "AIR POLLUTANTS" AND REPLACING IT WITH A NEW CHAPTER 16 TO BE ENTITLED "AIR QUALITY CONTROL," ESTABLISHING REGULATIONS FOR THE CONTROL AND MANAGEMENT OF AIR QUALITY; ESTABLISHING AN AIR POLLUTION CONTROL DISTRICT; ESTABLISHING A SOLID FUEL BURNING DEVICE AND CONTROL PROGRAM; REGULATING THE USE OF OUTDOOR WOOD FURNACES AND SOLID FUEL BURNING DEVICES; ESTABLISHING DUST CONTROL REGULATIONS; REGULATING OPEN BURNING IN SILVER BOW COUNTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR PERMITS; PROVIDING PENALTIES FOR VIOLATION AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

**COUNCIL BILL NO. 12-2**  
**ORDINANCE NO. 2**

**COUNCIL BILL NO. 12-2**

## ORDINANCE NO. 2

AN ORDINANCE AMENDING BUTTE-SILVER BOW ORDINANCE NO. 345 AND CHAPTER 20 OF TITLE 2 OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC) ENTITLED BADGES; AMENDING CHAPTER 2.20, SECTIONS 2.20.191 REPEALING ALL ORDINANCES AND RESOLUTIONS IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.



**SECTION XV****COMMUNICATION NO. 12-166**

Patsy Coates, Property Specialist, Butte-Silver Bow Land Office, requesting time on the March 7, 2012 agenda to award the bid for Request for Proposals/Title & Lien Search to the lowest bidder.

**SECTION XVI****COMMUNICATION NO. 12-172**

Dan Powers, Assistant Health Director; Environmental Services Division, requesting Council schedule a public hearing on February 22, 2012 concerning Ordinance 12-1; "Air Quality Control."

**SECTION XVII****COMMUNICATION NO. 12-176**

Barb Jeniker, Butte Celebrations, requesting Council's authorization of street closures to assist in planning the 2012 St. Patrick's Festivities.

**SECTION XVIII****COMMUNICATION NO. 12-178**

Nick Kujawa, Manager, Hirbour Tower LLC, requesting Council authorization to close a portion of the north sidewalk on Broadway Street.

**ADJOURN**\_\_\_\_\_

**BUTTE-SILVER BOW COUNCIL OF COMMISSIONERS  
COMMITTEE OF THE WHOLE  
FEBRUARY 22, 2012  
7:30 PM COURTHOUSE COUNCIL CHAMBERS**

**ROLL CALL**\_\_\_\_\_

**PLEDGE OF ALLEGIANCE**\_\_\_\_\_

**PUBLIC COMMENT ON ANY PUBLIC MATTER  
NOT ON THE AGENDA**\_\_\_\_\_

**REPORT OF THE CHAIR**\_\_\_\_\_

**PUBLIC HEARING**

- ♥ TO HEAR PUBLIC COMMENT REGARDING THE PASSAGE OF ORDINANCE 12-1, "AIR
- ♥ QUALITY CONTROL" FOR THE CITY AND COUNTY OF BUTTE-SILVER BOW.
- ♥ (Communication No. 12-172 being held in Committee of the Whole.) **Proof of Publication.**

**SECTION II**

**COMMUNICATION NO. 09-387**

Dan Dennehy, Director, Butte-Silver Bow Public Works Department, requesting preliminary discussion regarding Road Maintenance Districts and fees begin in the Public Works Committee.

**SECTION III**

**COMMUNICATION NO. 10-510**

Jeffrey L. Miller, Director, Butte-Silver Bow Fire Services, requesting Council authorize the County Attorney to investigate legal issues of the Rocker Water and Sewer District fire hydrant maintenance charges.

**SECTION IV**

**COMMUNICATION NO. 11-134**

Albert Molognoni, Chairman, County Water and Sewer District of Rocker, requesting a meeting with Council to discuss the possibility of connecting the District of Rocker to Metro Sewer.

**SECTION V**

**COMMUNICATION NO. 11-475**

Dave Palmer, Chairman, Butte-Silver Bow Council of Commissioners, requesting rural roads be maintained until it has been determined if roads are County, Private or Forest Service roads.

**SECTION VI**

**COMMUNICATION NO. 11-545**

Ristene Hall, Butte-Silver Bow Commissioner, District No. 8, requesting Council's consideration of televising Council meetings and requesting KXL TV speak to Council regarding the possibility of this matter.

**SECTION VII****COMMUNICATION NO. 11-656**

Michelle Davis, Property Manager, Public Housing Authority, requesting Council's consideration of the placement of a crosswalk on Ohio Street near Silver Bow Homes.

**SECTION VIII****COMMUNICATION NO. 11-769**

Cim LeProwse, Corresponding Secretary and Liaison to the BHS-Butte Heritage Drive Project, requesting Council's support of the BHS-Butte Heritage Drive Project and selection of a representative from each district.

**SECTION IX****COMMUNICATION NO. 12-98**

Commissioner Bill Andersen, District No. 10, requesting Council establish a procedure for filling any future vacancies of Elected Officials.

**SECTION X****COMMUNICATION NO. 12-119**

Theresa Hocking, Director of Public Health, Butte-Silver Health Department, requesting Council schedule a public hearing on February 15, 2012.

**SECTION XI****COMMUNICATION NO. 12-121**

Greg Hergott, CEO, Butte Family YMCA, requesting time on the "To Be Read and Acted Upon" portion of the February 15, 2012 Council Agenda to move forward with renewing the agreement between the YMCA and the City and County of Butte-Silver Bow.

**SECTION XII****COMMUNICATION NO. 12-148**

Jeff Amerman, Director, Butte-Silver Bow Finance and Budget Department, requesting Council schedule a public hearing for March 7, 2012 concerning amending the Fire Services and Emergency Services Budgets to allow for increased expenditures of unanticipated revenue resulting from settlement of the Firefighters collective bargaining agreement.

**SECTION XIII****COMMUNICATION NO. 12-164**

Robert Macioroski, Director, Butte-Silver Bow Land Office, requesting Council schedule a public hearing to solicit public comment on redevelopment proposals received for 1314 Farrell Street, Butte, Montana.

**SECTION XIV****COMMUNICATION NO. 12-165**

Robert Macioroski, Director, Butte-Silver Bow Land Office, requesting Council schedule a public hearing to solicit public comment on redevelopment proposals received for 88 E. Park Street, Butte, Montana.



## SECTION VI CONSENT AGENDA

- A.
  - 1. COMMITTEE OF THE WHOLE MEETING REPORT
  - 2. FINANCE AND BUDGET COMMITTEE MEETING REPORT
  - 3. JUDICIARY COMMITTEE MEETING REPORT
  - 4. PUBLIC WORKS COMMITTEE MEETING REPORT

### B. COMMUNICATIONS

- 1. 12-324 Debbie Fitz, Accounting Specialist, Butte-Silver Bow Public Works Department, requesting Council's approval to dispose of obsolete equipment. ***Recommendation: Concur and place on file.***
- 2. 12-325 Matthew J. Boyle, S.H.G.F. LLC, requesting Council's permission to use the Original stage for Electronic Dance Music (EDM) on July 21, 2012. ***Recommendation: Refer to the Committee of the Whole.***
- 3. 12-326 Daniel R. Sweeney, City Court Judge, requesting Council's authorization of a budget transfer. ***Recommendation: Refer to the Finance and Budget Committee.***
- 4. 12-327 Daniel R. Sweeney, City Court Judge, requesting Council's authorization of a budget transfer. ***Recommendation: Refer to the Finance and Budget Committee.***
- 5. 12-328 Karen Hassler, Butte-Silver Bow Public Works Water Utility Division, notifying Council of the Butte-Silver Bow Department of Public Works Water Utility Division Annual Financial Report for year ending June 30, 2011. ***Recommendation: Refer to the Finance and Budget Committee.***
- 6. 12-329 Sheriff John Walsh, Butte-Silver Bow Law Enforcement Department, requesting Council's authorization for the Chief Executive to sign an agreement with the Southwest Montana Drug Task Force for the FY 2013. ***Recommendation: Concur and place on file.***
- 7. 12-330 Robert Macioroski, Director, Butte-Silver Bow Land Office, requesting Council's authorization of a budget transfer. ***Recommendation: Refer to the Finance and Budget Committee.***
- 8. 12-331 John Moodry, Supervisor, Butte-Silver Bow Weed Department, requesting Council's authorization of a budget transfer. ***Recommendation: Refer to the Finance and Budget Committee.***
- 9. 12-332 Theresa R. Hocking, Director, Butte-Silver Bow Health Department, requesting Council's authorization of a budget transfer. ***Recommendation: Refer to the Finance and Budget Committee.***
- 10. 12-333 Theresa R. Hocking, Director, Butte-Silver Bow Health Department, requesting Council's authorization of a budget transfer. ***Recommendation: Refer to the Finance and Budget Committee.***

11. 12-334 John Moodry, Supervisor, Butte-Silver Bow Weed Department, requesting Council's authorization of a budget transfer. ***Recommendation: Refer to the Finance and Budget Committee.***
12. 12-335 John Moodry, Supervisor, Butte-Silver Bow Weed Department, requesting Council's authorization of a budget transfer. ***Recommendation: Refer to the Finance and Budget Committee.***
13. 12-336 Roger Ebner, Director, Butte-Silver Bow Homeland Security and Emergency Management Agency, requesting Council's approval to apply for Department of Homeland Security grants. ***Recommendation: Concur and place on file.***
14. 12-337 Stella Capoccia, Visiting Assistant Professor, Department of Biology, Montana Tech, requesting Council's permission to conduct an amphibian survey study on the parcel of land assessor code 1700400. ***Recommendation: Concur and place on file.***
15. 12-338 Robert Macioroski, Director, Butte-Silver Bow Land Office, requesting Council schedule a public hearing to solicit public comment on redevelopment proposals received for 88 E. Park Street, Butte, Montana. ***Recommendation: Schedule Public Hearing for May 23, 2012 and hold in the Committee of the Whole.***
16. 12-339 Robert Macioroski, Director, Butte-Silver Bow Land Office, requesting Council schedule a public hearing to solicit public comment on redevelopment proposals received for 1028 Gaylord Street, Butte, Montana. ***Recommendation: Schedule Public Hearing for May 23, 2012 and hold in the Committee of the Whole.***
17. 12-340 Terry Schultz, Butte-Silver Bow Council of Commissioners, District No. 4, requesting Council change the Council Agenda format. ***Recommendation: Concur and place on file.***
18. 12-341 Jim Jarvis, Butte-Silver Bow Historic Preservation Officer, requesting Council schedule a bid opening on April 18, 2012 for construction of the Original Mineyard Event Center Restroom Project. ***Recommendation: Concur and schedule bid opening for April 18, 2012.***
19. 12-342 Karen Byrnes, Director, Butte-Silver Bow Community Development Department, requesting Council schedule a Public Hearing for April 18, 2012 regarding a requested Property Tax Exemption for Silver Bow Village. ***Recommendation: Concur and schedule Public Hearing for April 18, 2012.***
20. 12-343 Sheriff John P. Walsh, Butte-Silver Bow Law Enforcement Department, requesting Council's authorization of a budget transfer. ***Recommendation: Refer to the Finance and Budget Committee.***

21. 12-344 Theresa R. Hocking, Health Officer, Butte-Silver Bow Health Department, requesting Council's authorization for the Chief Executive to sign two contracts with Lee's Office City and one contract with the Montana Department of Environmental Quality. **Recommendation: Concur and place on file.**
22. 12-345 Dan Dennehy, Director, Butte-Silver Bow Public Works Department, requesting Council's authorization for the Chief Executive to sign three agreements with the Montana Department of Transportation for the Amherst-Harrison Avenue to Continental Drive Project. **Recommendation: Concur and place on file.**
23. 12-346 Dan Dennehy, Director, Butte-Silver Bow Public Works Department, requesting Council schedule a bid opening on April 25, 2012 for leasing a new loader for the Metro Sewer Division. **Recommendation: Concur and schedule bid opening for April 26, 2012.**
24. 12-347 Linda Sajor, Manager, Butte-Silver Bow Information Technology and Services, requesting Council's authorization to declare excess property. **Recommendation: Concur and place on file.**
25. 12-348 Sheriff John P. Walsh, Butte-Silver Bow Law Enforcement Department, requesting Council's authorization of a budget transfer. **Recommendation: Refer to the Finance and Budget Committee.**
26. 12-349 Geneta Bishop, Butte-Silver Bow Law Enforcement Department, requesting Council's authorization of a budget transfer. **Recommendation: Refer to the Finance and Budget Committee.**
27. 12-350 Dan Dennehy, Director, Butte-Silver Bow Public Works Department, requesting Council's authorization of a budget transfer. **Recommendation: Refer to the Finance and Budget Committee.**
28. 12-351 Dan Dennehy, Director, Butte-Silver Bow Public Works Department, requesting Council's authorization of a budget transfer. **Recommendation: Refer to the Finance and Budget Committee.**
29. 12-352 Dan Dennehy, Director, Butte-Silver Bow Public Works Department, requesting Council's authorization of a budget transfer. **Recommendation: Refer to the Finance and Budget Committee.**
30. 12-353 Dan Dennehy, Director, Butte-Silver Bow Public Works Department, requesting Council's authorization of a budget transfer. **Recommendation: Refer to the Finance and Budget Committee.**
31. 12-354 Lee Miller, Director, Butte-Silver Bow Public Library, requesting Council's authorization of a budget transfer. **Recommendation: Refer to the Finance and Budget Committee.**

32. 12-355 Jeremy Weber, Extension Agent, Butte-Silver Bow County Extension Office, requesting Council's authorization of a budget transfer. ***Recommendation: Refer to the Finance and Budget Committee.***
33. 12-356 Hon. Kurt Krueger, District Court No. 1, requesting Council's authorization of a budget transfer. ***Recommendation: Refer to the Finance and Budget Committee.***
34. 12-357 Hon. Kurt Krueger, District Court No. 1, requesting Council's authorization of a budget transfer. ***Recommendation: Refer to the Finance and Budget Committee.***
35. 12-358 Hon. Kurt Krueger, District Court No. 1, requesting Council's authorization of a budget transfer. ***Recommendation: Refer to the Finance and Budget Committee.***
36. 12-359 Hon. Kurt Krueger, District Court No. 1, requesting Council's authorization of a budget transfer. ***Recommendation: Refer to the Finance and Budget Committee.***
37. 12-360 Hon. Kurt Krueger, District Court No. 1, requesting Council's authorization of a budget transfer. ***Recommendation: Refer to the Finance and Budget Committee.***
38. 12-361 Hon. Kurt Krueger, District Court No. 1, requesting Council's authorization of a budget transfer. ***Recommendation: Refer to the Finance and Budget Committee.***
39. 12-362 Hon. Kurt Krueger, District Court No. 1, requesting Council's authorization of a budget transfer. ***Recommendation: Refer to the Finance and Budget Committee.***
40. 12-363 Jon Sesso, Director, Butte-Silver Bow Planning Department, requesting Council's authorization of a budget transfer. ***Recommendation: Refer to the Finance and Budget Committee.***
41. 12-364 Elaine Holm, Butte-Silver Bow Health Department, requesting Council's authorization of a budget transfer. ***Recommendation: Refer to the Finance and Budget Committee.***
42. 12-365 Elaine Holm, Butte-Silver Bow Health Department, requesting Council's authorization of a budget transfer. ***Recommendation: Refer to the Finance and Budget Committee.***
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47. 12-370 Elaine Holm, Butte-Silver Bow Health Department, requesting Council's authorization of a budget transfer. **Recommendation: Refer to the Finance and Budget Committee.**
48. 12-371 Rick Larson, Operations Manager-Utilities Division, Butte-Silver Bow Public Works Department, requesting Council's authorization of a budget transfer. **Recommendation: Refer to the Finance and Budget Committee.**
49. 12-372 Karen Byrnes, Central Administration Services, requesting Council's authorization of a budget transfer. **Recommendation: Refer to the Finance and Budget Committee.**
50. 12-373 John Ries, Mayor, Town of Walkerville, requesting Council's authorization to change the name of the road from Main Street to the Granite Mountain Memorial to "Bernie's Way." **Recommendation: Concur and place on file.**
51. 12-374 Jeff Amerman, Director, Butte-Silver Bow Finance and Budget Department, requesting time on the April 25, 2012 Agenda to make a brief mid-year financial/budget update. **Recommendation: Concur and schedule presentation for April 26, 2012.**
52. 12-375 Suzan Maloney, Manager, Sunset Cemetery, requesting Council's authorization for the Chief Executive to sign a Maintenance Agreement with Empire Office Machines. **Recommendation: Concur and place on file.**
53. 12-376 Sally J. Hollis, Butte-Silver Bow Clerk and Recorder ~ Election Administrator, requesting Council's authorization for the Chief Executive to sign a contract with Election Systems & Software (ES&S). **Recommendation: Concur and place on file.**
54. 12-377 Cathy Maloney, Butte-Silver Bow County Superintendent of Schools, requesting Council's approval to dispose of obsolete equipment. **Recommendation: Concur and place on file.**

55. 12-378 Jim Jarvis, Butte-Silver Bow Historic Preservation Officer, requesting Council's authorization for the Chief Executive to sign a General Construction Contract with Walsh Construction Company for the Original Mineyard Stage Project. **Recommendation: Concur and place on file.**
56. 12-379 Gary Keeler, Butte-Silver Bow Transit Manager, requesting Council's authorization for the Chief Executive to sign Memorandums of Understanding with the Belmont Senior Center and the Butte-Silver Bow Developmental Disabilities Council. **Recommendation: Concur and place on file.**
57. 12-380 Sally J. Hollis, Butte-Silver Bow Clerk and Recorder ~ Election Administrator, requesting Council's authorization of a budget transfer. **Recommendation: Refer to the Finance and Budget Committee.**
58. 12-381 Duane Kuchty, NorthWestern Energy, requesting Council's authorization to close the intersection of W. Platinum Street and S. Excelsior Avenue for up to three weeks starting in May 2012. **Recommendation: Concur and place on file.**
59. 12-382 Kristen Rosa, Administrator, Tax Increment Financing Industrial District (TIFID), requesting Council's authorization of a budget transfer. **Recommendation: Refer to the Finance and Budget Committee.**
60. 12-383 Steve Descharme, Butte-Silver Bow Finance and Budget Department, requesting Council's authorization of a budget transfer. **Recommendation: Refer to the Finance and Budget Committee.**
61. 12-384 Sheriff John P. Walsh, Butte-Silver Bow Law Enforcement Department, requesting Council's authorization for the Chief Executive to sign an agreement between the Montana Highway Patrol and the Silver Bow County DUI Task Force. **Recommendation: Concur and place on file.**
62. 12-385 Jeffrey L. Miller, Director, Butte-Silver Bow Fire Services, requesting Council's approval of extension of sick leave for Captain William T. Fisher. **Recommendation: Concur and place on file.**
63. 12-386 Jeffrey L. Miller, Director, Butte-Silver Bow Fire Services, requesting Council's authorization to use budget authority from the Fire Department's budget line item 940 to purchase an emergency generator for Fire Station 1. **Recommendation: Refer to the Finance and Budget Committee.**
64. 12-387 Dan Dennehy, Director, Butte-Silver Bow Public Works Department, requesting Council schedule a bid opening on May 2, 2012 for leasing a new hydraulic excavator for the Metro Sewer Division. **Recommendation: Concur and schedule bid opening for May 2, 2012.**
65. 12-388 Roxie Larson, Butte-Silver Bow Planning Department, requesting Council's authorization of a budget transfer. **Recommendation: Refer to the Finance and Budget Committee.**

66. 12-389 Roxie Larson, Butte-Silver Bow Planning Department, requesting Council's authorization of a budget transfer. **Recommendation: Refer to the Finance and Budget Committee.**
67. 12-390 Roxie Larson, Butte-Silver Bow Planning Department, requesting Council's authorization of a budget transfer. **Recommendation: Refer to the Finance and Budget Committee.**
68. 12-391 Ellen Crain, Director, Butte-Silver Bow Public Archives, requesting Council's authorization of a budget transfer. **Recommendation: Refer to the Finance and Budget Committee.**
69. 12-392 Kristi O'Leary, Trustee, Daughters of Norway Solheim Lodge #20 of Butte, requesting Council's authorization of a fee waiver and permission to hold a raffle. **Recommendation: Concur and place on file.**
70. 12-393 Chief Executive Paul Babb, requesting Council's concurrence in reappointments to the Butte-Silver Bow Public Archives Board. **Recommendation: Concur and place on file.**
71. 12-394 Lori Casey, Assistant Planning Director, Butte-Silver Bow Planning Board, requesting Council conduct a public hearing April 26, 2012 regarding Zone Change Application No. 169. **Recommendation: Concur and schedule Public Hearing for April 26, 2012.**
72. 12-395 Krystal and Cheryl Ackerman, Butte Stuff, requesting Council's authorization to have a flea market in the vacant lot at 88 E. Park Street July 13-15, 2012. **Recommendation: Refer to the Committee of the Whole.**
73. 12-396 Rick Larson, Operations Manager-Utilities Division, Butte-Silver Bow Public Works Department, requesting Council's authorization for the Chief Executive to sign an amendment to agreement with Ueland Western Reclamation, Inc. **Recommendation: Concur and place on file.**
74. 12-397 Ristene Hall, Butte-Silver Bow Commissioner, District No. 8, requesting Council authorize "Resident Only Parking" signs on Placer Street near Second Street. **Recommendation: Refer to the Public Works Committee.**
75. 12-398 Brandt Thomas, 1823 Wall Street, requesting Council's consideration of three suggestions regarding Clark Park. **Recommendation: Hold in the Committee of the Whole and refer to Parks and Recreation Board for a report back to Council.**
76. 12-400 Daniel R. Sweeney, City Court Judge, requesting Council's authorization of a budget transfer. **Recommendation: Refer to the Finance and Budget Committee.**
77. 12-401 Daniel R. Sweeney, City Court Judge, requesting Council's authorization of a budget transfer. **Recommendation: Refer to the Finance and Budget Committee.**

78. 12-402 Jim Jarvis, Butte-Silver Bow Historic Preservation Officer, requesting Council's authorization for the Chief Executive to sign a Professional Services Agreement with Tash Communications for the Thompson Park Interpretative Signage Project. *Recommendation: Concur and place on file.*
79. 12-403 Hon. Kurt Krueger, District Court No. 1, requesting Council authorize the Chief Executive to execute the grant application to the United States Department of Justice. *Recommendation: Concur and place on file.*

## **SECTION VII**

### **COMMUNICATIONS TO BE READ AND ACTED UPON**

12-399

R. Edward Banderob, 2601 Grand Avenue, requesting Council create a Technical Citizen Review - Advisory Sub-Council and a Common Citizen Review - Advisory Council and that each Commissioner, with the consensus of citizens, attend a Butte-Silver Bow District Selection Meeting in each Butte-Silver Bow Commissioner District.

## **SECTION VIII**

### **ORDINANCES AND RESOLUTIONS – REFERRED TO JUDICIARY**

#### **1. COUNCIL RESOLUTION NO. 12-22**

A RESOLUTION AMENDING THE BUDGET DURING THE FISCAL YEAR AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING OF THE COUNCIL OF COMMISSIONERS IN ACCORDANCE WITH SECTION 7-6-4006, MCA; APPROPRIATING UNANTICIPATED REVENUE TO THE BUTTE-SILVER BOW HEALTH DEPARTMENT FROM THE STATE OF MONTANA, DEPARTMENT OF ENVIRONMENTAL QUALITY FOR THE PURCHASE OF AN L.E.D. MESSAGE CENTER SIGN TO BE USED FOR THE AIR QUALITY PROGRAM AT THE BUTTE-SILVER BOW HEALTH DEPARTMENT.

#### **2. COUNCIL RESOLUTION NO. 12-23**

A RESOLUTION AMENDING THE BUDGET DURING THE FISCAL YEAR AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING OF THE COUNCIL OF COMMISSIONERS IN ACCORDANCE WITH SECTION 7-6-4006, MCA; APPROPRIATING UNANTICIPATED REVENUE TO THE BUTTE-SILVER BOW HEALTH DEPARTMENT FROM THE STATE OF MONTANA, DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO BE USED IN THE MATERNAL CHILD HEALTH PROGRAM.

**SECTION IX**

**ORDINANCES AND RESOLUTIONS  
FINAL READING**

**COUNCIL BILL NO. 12-1  
ORDINANCE NO. 12-1**

AN ORDINANCE ADOPTING REPEALING CHAPTER 16 OF TITLE 8 OF THE BUTTE-SILVER BOW MUNICIPAL CODE ENTITLED "AIR POLLUTANTS" AND REPLACING IT WITH A NEW CHAPTER 16 TO BE ENTITLED "AIR QUALITY CONTROL," ESTABLISHING REGULATIONS FOR THE CONTROL AND MANAGEMENT OF AIR QUALITY; ESTABLISHING AN AIR POLLUTION CONTROL DISTRICT; ESTABLISHING A SOLID FUEL BURNING DEVICE AND CONTROL PROGRAM; REGULATING THE USE OF OUTDOOR WOOD FURNACES AND SOLID FUEL BURNING DEVICES; ESTABLISHING DUST CONTROL REGULATIONS; REGULATING OPEN BURNING IN SILVER BOW COUNTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR PERMITS; PROVIDING PENALTIES FOR VIOLATION AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

**2. COUNCIL RESOLUTION NO. 12-14**

A RESOLUTION AMENDING THE BUDGET DURING THE FISCAL YEAR AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING OF THE COUNCIL OF COMMISSIONERS IN ACCORDANCE WITH SECTION 7-6-4006, MCA; APPROPRIATING UNANTICIPATED REVENUE TO THE BUTTE-SILVER BOW COMMUNITY DEVELOPMENT DEPARTMENT TO BE EXPENDED IN THE COMMUNITY DEVELOPMENT FUND AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

**3. COUNCIL RESOLUTION NO. 12-16**

A RESOLUTION AUTHORIZING AND APPROVING THE SALE OF A CERTAIN PARCEL OF LOCAL GOVERNMENT OWNED REAL PROPERTY LOCATED AT 1314 FARRELL STREET, LEGALLY DESCRIBED AS LOT 3, BLOCK 8 OF THE FARRELL ADDITION, SECTION 18, T3N, R7W, BUTTE-SILVER BOW, MONTANA (PARCEL NO. 0000073200) FOR THE PURPOSE OF COMMUNITY DEVELOPMENT IN ACCORDANCE WITH THE PROCEDURES OF BUTTE-SILVER BOW MUNICIPAL CODE AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

**4. COUNCIL RESOLUTION NO. 12-17**

A RESOLUTION DIRECTING THE BUTTE-SILVER BOW LAND RECORDS DEPARTMENT TO MAIL NOTICE OF PENDING TAX DEED ISSUANCE TO ALL PERSONS CONSIDERED INTERESTED PARTIES FOR EACH PROPERTY FOR WHICH THERE HAS BEEN ISSUED A TAX CERTIFICATE IN ACCORDANCE WITH THE PROVISIONS OF SECTION 15-18-212, MCA; FURTHER DIRECTING THE TREASURER TO ISSUE A TAX DEED FOR THOSE PARCELS OF PROPERTY WHERE THERE HAS BEEN ISSUED A TAX CERTIFICATE AND THE EXPIRATION DATE OF THE REDEMPTION PERIOD HAS EXPIRED AND THE REQUIRED PAYMENTS HAVE NOT BEEN MADE AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

5.

**COUNCIL RESOLUTION NO. 12-18**

A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE AMENDED PLAT OF LOT 3 OF THE B.N.S.F MINOR SUBDIVISION OF THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PROVIDING FOR THE REPEAL OF ALL PARTS OF RESOLUTIONS IN CONFLICT WITH AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

6.

**COUNCIL RESOLUTION NO. 12-19**

A RESOLUTION APPROVING GROWTH POLICY AMENDMENT NO. 28 TO APPROVE CHANGES TO THE BUTTE-SILVER BOW COUNTY GROWTH POLICY LAND USE MAP OF THE 1987 BUTTE-SILVER BOW MASTER PLAN; INCORPORATING, BY REFERENCE, THE CHANGES TO THE MAP AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

**SECTION X**

**CALENDAR OF OTHER MEETINGS AND EVENTS**

April 19	Community Enrichment	2:00 p.m.	1 <sup>st</sup> Floor Conference Room
April 19	Zoning Board of Adjustment	5:30 p.m.	Council Chambers
April 25	Parking Commission	9:00 a.m.	Chief Executive's Conference Room
April 25	Local Emergency Planning	Noon	1 <sup>st</sup> Floor Conference Room
April 25	Port of Montana	Noon	Hub Center, Silver Bow Montana
May 1	Weed Board	7:00 p.m.	Weed Department
May 2	Board of Health	7:00 a.m.	Health Department
May 2	Butte AIDS Support Services	7:00 p.m.	Community Center

**ADJOURN** \_\_\_\_\_

# **COMMITTEE OF THE WHOLE MEETING REPORT**

## **APRIL 11, 2012**

TO THE HONORABLE CHIEF EXECUTIVE AND MEMBERS OF THE BUTTE SILVER BOW COUNCIL OF COMMISSIONERS

Ladies and Gentlemen:

We, your Committee of the Whole Committee, respectfully recommend as follows:

### **SECTION I PUBLIC HEARING**

TO HEAR PUBLIC COMMENT CONCERNING AMENDING THE HEALTH DEPARTMENT BUDGET TO ALLOW FOR INCREASED EXPENDITURES OF UNANTICIPATED REVENUE RESULTING FROM REVENUE FROM THE MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY FOR AN L.E.D. MESSAGE CENTER SIGN TO BE USED FOR THE AIR QUALITY PROGRAM. (Communication No. 12-304 being held in the Committee of the Whole.) **Public Hearing held.**

### **SECTION II PUBLIC HEARING**

TO HEAR PUBLIC COMMENT CONCERNING AMENDING THE HEALTH DEPARTMENT BUDGET TO ALLOW FOR INCREASED EXPENDITURES OF UNANTICIPATED REVENUE RESULTING FROM REVENUE FROM THE STATE OF MONTANA, DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO BE USED IN THE MATERNAL CHILD HEALTH PROGRAM. (Communication No. 12-305 being held in the Committee of the Whole.) **Public Hearing held.**

### **SECTION III COMMUNICATION NO. 09-387**

Dan Dennehy, Director, Butte-Silver Bow Public Works Department, requesting preliminary discussion regarding Road Maintenance Districts and fees begin in the Public Works Committee. ***Committee recommends that Communication No. 09-387 be held in abeyance.***

### **SECTION IV COMMUNICATION NO. 10-510**

Jeffrey L. Miller, Director, Butte-Silver Bow Fire Services, requesting Council authorize the County Attorney to investigate legal issues of the Rocker Water and Sewer District fire hydrant maintenance charges. ***Committee recommends that Communication No. 10-510 be held in abeyance.***

### **SECTION V COMMUNICATION NO. 11-134**

Albert Mognoni, Chairman, County Water and Sewer District of Rocker, requesting a meeting with Council to discuss the possibility of connecting the District of Rocker to Metro Sewer. ***Committee recommends that Communication No. 11-134 be held in abeyance.***

**SECTION VI****COMMUNICATION NO. 11-545**

Ristene Hall, Butte-Silver Bow Commissioner, District No. 8, requesting Council's consideration of televising Council meetings and requesting KXL TV speak to Council regarding the possibility of this matter. *Committee recommends that Communication No. 11-545 be held in abeyance.*

**SECTION VII****COMMUNICATION NO. 11-656**

Michelle Davis, Property Manager, Public Housing Authority, requesting Council's consideration of the placement of a crosswalk on Ohio Street near Silver Bow Homes. *Committee recommends that Communication No. 11-656 be held in abeyance.*

**SECTION VIII****COMMUNICATION NO. 12-180**

Robert Macioroski, Director, Butte-Silver Bow Land Office, requesting Council's authorization of a request to purchase County-owned property by John Willard and Ms. Elizabeth Jane Ostoj. *Committee recommends that Communication No. 12-180 be held in abeyance.*

**SECTION IX****COMMUNICATION NO. 12-244**

Larry Hunter, Operations Manager, Butte-Silver Bow Public Works Services Division, requesting Council's authorization to purchase 1 acre of land at the intersection of Little Basin Creek Road and Beef Trail Road. *Committee recommends Communication No. 12-244 be concurred with and placed on file.*

**SECTION X****COMMUNICATION NO. 12-250**

Robert Macioroski, Director, Butte-Silver Bow Land Office, requesting Council's approval of the sale of property at 1314 Farrell Street to Josh Hoar and authorization for the County Attorney to prepare the Resolution. *Committee recommends that Communication No. 12-250 be held in abeyance. Resolution No. 12-16 being held in the Judiciary Committee.*

**SECTION XI****COMMUNICATION NO. 12-252**

Cindi Shaw, Butte-Silver Bow Council of Commissioners, District No. 11, requesting Council's support of Madison County's selection as a finalist for the Montana Cowboy Hall of Fame, that a presentation be scheduled for March 28, 2012, and authorization for the County Attorney to draft a Resolution. *Committee recommends that Communication No. 12-252 be placed on file.*

**SECTION XII****COMMUNICATION NO. 12-256**

Donna White, Whitehead's Cutlery, requesting Council's attention to the aesthetic and health problem related to pigeons in Butte. *Committee recommends that Communication No. 12-256 be held in abeyance.*

**SECTION XIII****COMMUNICATION NO. 12-270**

Dorothy A. Warner, President, Butte Tennis Association (BTA), requesting time on the April 18, 2012 Agenda to present concerns and request support for City tennis court maintenance/restoration. *Committee recommends that Communication No. 12-270 be held in abeyance.*



**SECTION XIV****COMMUNICATION NO. 12-272**

Ashley Holmes, 412 2<sup>nd</sup> Avenue East, Dickinson, ND, requesting Council's permission to use the Mountain Consolidated Mine Yard for her wedding September 1, 2012. *Committee recommends that Communication No. 12-272 be held in abeyance.*

**SECTION XV****COMMUNICATION NO. 12-282**

Jim Jarvis, Butte-Silver Bow Historic Preservation Officer, requesting Council schedule a bid opening on April 4, 2012 for the construction of a permanent stage under the Original mineyard headframe. *Committee recommends that Communication No. 12-282 be placed on file.*

**SECTION XVI****COMMUNICATION NO. 12-287**

Dan Dennehy, Director, Butte-Silver Bow Public Works Department, requesting Council schedule a bid opening on April 18, 2012 for purchasing one new compactor for the Butte-Silver Bow Landfill. *Committee recommends that Communication No. 12-287 be held in abeyance.*

**SECTION XVII****COMMUNICATION NO. 12-304**

Theresa R. Hocking, Health Officer, Butte-Silver Bow Health Department, requesting Council schedule a Public Hearing for April 11, 2012 concerning unanticipated revenue from the Montana Department of Environmental Quality for an L.E.D. Message Center Sign for the Air Quality Program. *Committee recommends that Communication No. 12-304 be placed on file.*

**SECTION XVIII****COMMUNICATION NO. 12-305**

Theresa R. Hocking, Health Officer, Butte-Silver Bow Health Department, requesting Council schedule a Public Hearing for April 11, 2012 concerning unanticipated revenue from the State of Montana, Department of Public Health and Human Services to be used in the Maternal Child Health Program. *Committee recommends that Communication No. 12-305 be placed on file.*

**SECTION XIX****COMMUNICATION NO. 12-314**

George Everett, Executive Director, Mainstreet Uptown Butte, requesting Council's permission to temporarily close one block of West Park Street between Park and Main and Dakota Street to hold the Butte Farmers' Market each Saturday from 9:00 a.m. to 1:00 p.m. from May 26 through October 6, 2012. *Committee recommends Communication No. 12-314 be concurred with and placed on file.*

**SECTION XX****COMMUNICATION NO. 12-323**

Sheriff John Walsh, Butte-Silver Bow Law Enforcement, requesting Council approve the Justice Assistance Grant (JAG) Application and schedule a Public Hearing for April 18, 2012. *Committee recommends that Communication No. 12-323 be held in abeyance.*

# **FINANCE AND BUDGET COMMITTEE MEETING REPORT**

## **APRIL 11, 2012**

TO THE HONORABLE CHIEF EXECUTIVE AND MEMBERS OF THE BUTTE SILVER BOW COUNCIL OF COMMISSIONERS

Ladies and Gentlemen:

We, your Finance and Budget Committee, respectfully recommend as follows:

### **SECTION I                      COMMUNICATION NO. 12-276**

Sheriff John P. Walsh, Butte-Silver Bow Law Enforcement Department, requesting Council's authorization of a budget transfer. *Committee recommends that Communication No. 12-276 be approved and placed on file.*

### **SECTION II                      COMMUNICATION NO. 12-277**

Sheriff John P. Walsh, Butte-Silver Bow Law Enforcement Department, requesting Council's authorization of a budget transfer. *Committee recommends that Communication No. 12-277 be approved and placed on file.*

### **SECTION III                      COMMUNICATION NO. 12-278**

Sheriff John P. Walsh, Butte-Silver Bow Law Enforcement Department, requesting Council's authorization of a budget transfer. *Committee recommends that Communication No. 12-278 be approved and placed on file.*

### **SECTION IV                      COMMUNICATION NO. 12-289**

Sally Perino, Supervisor, Butte-Silver Bow Parking Commission, requesting Council's authorization of a budget transfer. *Committee recommends that Communication No. 12-289 be approved and placed on file.*

### **SECTION V                      COMMUNICATION NO. 12-290**

Rick Larson, Operations Manager-Utilities Division, Butte-Silver Bow Public Works Department, requesting Council's authorization of a budget transfer. *Committee recommends that Communication No. 12-290 be approved and placed on file.*

### **SECTION VI                      COMMUNICATION NO. 12-291**

Rick Larson, Operations Manager-Utilities Division, Butte-Silver Bow Public Works Department, requesting Council's authorization of a budget transfer. *Committee recommends that Communication No. 12-291 be approved and placed on file.*

### **SECTION VII                      COMMUNICATION NO. 12-292**

Mike Rallis, Butte-Silver Bow Treasurer's Office, requesting Council's authorization of a budget transfer. *Committee recommends that Communication No. 12-292 be approved and placed on file.*

**SECTION VIII****COMMUNICATION NO. 12-295**

Jeffrey L. Miller, Director, Butte-Silver Bow Fire Services, requesting Council's authorization of a budget transfer. *Committee recommends that Communication No. 12-295 be approved and placed on file.*

**SECTION IX****COMMUNICATION NO. 12-296**

Sheriff John P. Walsh, Butte-Silver Bow Law Enforcement Department, requesting Council's authorization of a budget transfer. *Committee recommends that Communication No. 12-296 be approved and placed on file.*

**SECTION X****COMMUNICATION NO. 12-297**

Ed Randall, Community Enrichment/Animal Services Department, requesting Council's authorization of a budget transfer. *Committee recommends that Communication No. 12-297 be approved and placed on file.*

**SECTION XI****COMMUNICATION NO. 12-298**

Bill Melvin, Manager, Butte-Silver Bow Civic Center, requesting Council's authorization of a budget transfer. *Committee recommends that Communication No. 12-298 be approved and placed on file.*

**SECTION XII****COMMUNICATION NO. 12-299**

Pat Holland, Manager, Butte-Silver Bow Government Buildings, requesting Council's authorization of a budget transfer. *Committee recommends that Communication No. 12-299 be approved and placed on file.*

**SECTION XIII****COMMUNICATION NO. 12-300**

Pat Holland, Manager, Butte-Silver Bow Government Buildings, requesting Council's authorization of a budget transfer. *Committee recommends that Communication No. 12-300 be approved and placed on file.*

**SECTION XIV****COMMUNICATION NO. 12-301**

Pat Holland, Manager, Butte-Silver Bow Government Buildings, requesting Council's authorization of a budget transfer. *Committee recommends that Communication No. 12-301 be approved and placed on file.*

**SECTION XV****COMMUNICATION NO. 12-309**

Mary Pahut, Butte-Silver Bow Crime Control, requesting Council's authorization of a budget transfer. *Committee recommends that Communication No. 12-309 be approved and placed on file.*

**SECTION XVI****COMMUNICATION NO. 12-310**

Sheriff John P. Walsh, Butte-Silver Bow Law Enforcement Department, requesting Council's authorization of a budget transfer. *Committee recommends that Communication No. 12-310 be approved and placed on file.*

**SECTION XVII****COMMUNICATION NO. 12-311**

Dan Fisher, Butte-Silver Bow Assessor, requesting Council's authorization of a budget transfer. *Committee recommends that Communication No. 12-311 be approved and placed on file.*

**SECTION XVIII****COMMUNICATION NO. 12-312**

Chief Executive Paul Babb, requesting Council's authorization of a budget transfer. *Committee recommends that Communication No. 12-312 be approved and placed on file.*

**SECTION XIX****COMMUNICATION NO. 12-313**

Jeff Amerman, Director, Butte-Silver Bow Finance and Budget Department, requesting Council's authorization of a budget transfer. *Committee recommends that Communication No. 12-313 be approved and placed on file.*

**Expenditure report for the week of April 11, 2012 was approved for the amount of \$710,642.59 by a vote of 5 to 1. Commissioner Hall opposed.**

**SECTION IV****COUNCIL RESOLUTION NO. 12-17**

A RESOLUTION DIRECTING THE BUTTE-SILVER BOW LAND RECORDS DEPARTMENT TO MAIL NOTICE OF PENDING TAX DEED ISSUANCE TO ALL PERSONS CONSIDERED INTERESTED PARTIES FOR EACH PROPERTY FOR WHICH THERE HAS BEEN ISSUED A TAX CERTIFICATE IN ACCORDANCE WITH THE PROVISIONS OF SECTION 15-18-212, MCA; FURTHER DIRECTING THE TREASURER TO ISSUE A TAX DEED FOR THOSE PARCELS OF PROPERTY WHERE THERE HAS BEEN ISSUED A TAX CERTIFICATE AND THE EXPIRATION DATE OF THE REDEMPTION PERIOD HAS EXPIRED AND THE REQUIRED PAYMENTS HAVE NOT BEEN MADE AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. *Committee recommends that Resolution No. 12-17 be moved to final reading by a vote of 4 to 0.*

**SECTION V****COUNCIL RESOLUTION NO. 12-18**

A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE AMENDED PLAT OF LOT 3 OF THE B.N.S.F MINOR SUBDIVISION OF THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PROVIDING FOR THE REPEAL OF ALL PARTS OF RESOLUTIONS IN CONFLICT WITH AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. *Committee recommends that Resolution No. 12-18 be moved to final reading by a vote of 4 to 0.*

**SECTION VI****COUNCIL RESOLUTION NO. 12-19**

A RESOLUTION APPROVING GROWTH POLICY AMENDMENT NO. 28 TO APPROVE CHANGES TO THE BUTTE-SILVER BOW COUNTY GROWTH POLICY LAND USE MAP OF THE 1987 BUTTE-SILVER BOW MASTER PLAN; INCORPORATING, BY REFERENCE, THE CHANGES TO THE MAP AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. *Committee recommends that Resolution No. 12-19 be moved to final reading by a vote of 3 to 1. Commissioner Andersen opposed.*

**SECTION VII****CLAIM APPROVAL**

*Committee recommends all claims be approved as presented by a vote of 4 to 0.*

# **PUBLIC WORKS COMMITTEE MEETING REPORT**

## **APRIL 11, 2012**

TO THE HONORABLE CHIEF EXECUTIVE AND MEMBERS OF THE BUTTE SILVER BOW  
COUNCIL OF COMMISSIONERS

Ladies and Gentlemen:

We, your Public Works Committee, respectfully recommend as follows:

### **SECTION I**

### **COMMUNICATION NO. 12-240**

Wally Frasz, Commissioner District No. 6, requesting the Public Works Department do a traffic study regarding installing stop signs at the corners of Motor View Road and Warren Avenue and Motor View Road and Utah Avenue. *Committee recommends approval of the request to have stop signs placed as requested. Forward to County Attorney to prepare an ordinance, and send to full Council for approval. Hold in abeyance.*

**MINUTES OF THE REGULAR MEETING OF THE  
BUTTE-SILVER BOW COUNCIL OF COMMISSIONERS  
FOR APRIL 18, 2012**

**The Regular Meeting of the Council of Commissioners was called to order Wednesday, April 18, 2012,** in the Council Chambers, Third Floor, Room 312, Courthouse Building, 155 West Granite Street, Butte, Montana by the Acting Chief Executive Dave Palmer.

**ROLL CALL**

1 presiding, 9 present, 2 absent. Commissioners Henderson and Andersen were excused.

Commissioner Schultz reminded everyone of Governor Schweitzer's request that all flags be flown at half-mast today in honor of Spc. Antonio Burnside, who was recently killed in Afghanistan, and asked for a moment of silence in Spc. Burnside's honor.

**PRAYER**

Commissioner Hall led the Commissioners in prayer.

Acting Chief Executive Palmer introduced Kareniesa Boyer as the new Council Secretary and thanked Julie Brandon for acting as Council Secretary until the position was filled.

**APPROVAL OF THE MINUTES OF THE REGULAR MEETING OF APRIL 4, 2012.**

**It was moved by Commissioner Shaw and seconded by Commissioner Morgan to approve the minutes of the Regular Meeting of April 4, 2012. The motion passed by a unanimous verbal vote.**

**ITEMS NOT ADDRESSED ON THE AGENDA**

None

**PUBLIC COMMENT ON ANY PUBLIC MATTER NOT ON THE AGENDA**

None

**CHIEF EXECUTIVE'S REPORT**

Acting Chief Executive Palmer reminded Council of the Community Enrichment meeting scheduled for Thursday, April 19<sup>th</sup> at 2 p.m. and asked that people assigned to attend these meetings notify staff if they are unable to attend.

**SECTION I**

**BID OPENING**

**TO ACCEPT SEALED BIDS FOR PURCHASING ONE NEW COMPACTOR FOR THE BUTTE-SILVER BOW LANDFILL. (Communication No. 12-287 being held in the Committee of the Whole.) Proof of Publication was noted.**

Dan Dennehy, Director of Public Works, opened bids from the following:

Western States Equipment	Missoula, MT	\$592,748	
Trade-In Values Total		\$ 66,000	
Titan Machinery	Missoula, MT	\$291,618	after Trade-In Values
Trade-In Values Total		\$142,000	

**It was moved by Commissioner Shaw, seconded by Commissioner Morgan and passed by a unanimous verbal vote to refer the bids to the Public Works Department for a report back to Council.**

## **SECTION II BID OPENING**

**TO ACCEPT SEALED BIDS FOR CONSTRUCTION OF THE ORIGINAL MINEYARD EVENT CENTER RESTROOM PROJECT. (Communication No. 12-341) Proof of Publication was noted.**

Jim Jarvis, Butte-Silver Bow Historic Preservation Officer, and Mark Reavis opened bids from the following:

Sullway Construction	Butte, MT	\$190,463	Base Bid
Alternate Bid – Interior Painting		\$ 15,396	
Markovich Construction	Butte, MT	\$180,000	Base Bid
Alternate Bid – Interior Painting		\$ 45,000	

**It was moved by Commissioner Shaw, seconded by Commissioner Morgan and passed by a unanimous verbal vote to refer the bids to the Historic Preservation Office for a report back to Council.**

## **SECTION III PUBLIC HEARING**

**TO HEAR PUBLIC COMMENT REGARDING THE JUSTICE ASSISTANCE GRANT (JAG) APPLICATION AND THE ALLOCATION OF THE FY 2012-2013 GRANT. (Communication No. 12-323 being held in the Committee of the Whole.)**

Acting Chief Executive Palmer stated the Public Hearing has been rescheduled for Thursday, April 26, 2012 due to lack of publication.

## **SECTION IV PUBLIC HEARING**

**TO HEAR PUBLIC COMMENT REGARDING A REQUESTED PROPERTY TAX EXEMPTION FOR SILVER BOW VILLAGE. (Communication No. 12-342) Proof of Publication was noted.**

Heather McMilin, Director of Housing Development, Homeword, reported as follows:

- Requesting a property tax exemption for Silver Bow Village, a non-profit housing complex for low-income families located at 910 Evans Street.
- Similar to Butte Housing Authority Projects.



- Intent is to become tax exempt under MCA 156-221.

Commissioner Foley clarified the exemption would be a decision made by the State of Montana, not Council.

Ms. McMillin gave a description of the property and how a tax-exempt status would help the property.

Acting Chief Executive Palmer opened the Public Hearing at 7:48 p.m. and called for proponents.

On the third and final call, there being no proponents, Acting Chief Executive Palmer called for opponents.

On the third and final call, there being no opponents, Acting Chief Executive Palmer closed the Public Hearing at 7:49 p.m.

## **SECTION V**

### **PRESENTATION COMMUNICATION NO. 12-270**

Dorothy A. Warner, President, Butte Tennis Association (BTA), requesting time on the April 18, 2012 Agenda to present concerns and request support for City tennis court maintenance/restoration.

Dorothy Warner gave a PowerPoint presentation and highlighted the following:

- BTA is asking Council for funding to repair and maintain tennis courts at Stodden Park, Father Sheehan Park, Whittier Elementary School and on Excelsior Street.
- BTA is willing to seek grant funding from the United States Tennis Association but asked that Butte-Silver Bow commit to match funds.

Commissioner Schultz asked if estimates for new tennis courts were sought.

Ms. Warner stated she did receive an estimate from an out-of-state business for tiled courts of approximately \$21,000 each. She estimates the cost for the type of court currently in use to be \$12,000 to \$15,000 each.

Commissioner Shaw asked if repairs were done to the courts, when would repairs be needed again, and Ms. Warner replied that minor repairs are needed every two years and total resurfacing is needed every eight to ten years.

Commissioner Frasz inquired as to the number of participants in tennis in Butte.

Ms. Warner stated BTA has a membership of 100 to 150 paying members, Butte High School players number 50 students, Butte Central players number 20 to 25, and the BTA tournament hosted approximately 96 youths last year.

Commissioner Hall asked if new courts would have a guarantee, and Ms. Warner replied that they would not. Crack repairs would have a guarantee for two years.

Commissioner Foley commented as follows:

- Maintenance is needed and should be done by the Parks & Rec Department.
- Feels Ms. Warner has done her research.
- Would like Council to move forward with the request.

Acting Chief Executive Palmer stated he listened carefully to the CD from the April 4 Regular Meeting and no motion was made to reconsider the vote on Communication No. 12-302.

Acting Chief Executive Palmer reminded everyone that the Committee of the Whole meeting scheduled for Wednesday, April 25 has been moved to Thursday, April 26.

## SECTION VI CONSENT AGENDA

- A.
  1. COMMITTEE OF THE WHOLE MEETING REPORT
  2. FINANCE AND BUDGET COMMITTEE MEETING REPORT
  3. JUDICIARY COMMITTEE MEETING REPORT
  4. PUBLIC WORKS COMMITTEE MEETING REPORT

### B. COMMUNICATIONS

**Before entertaining a motion for approval of the Consent Agenda, Acting Chief Executive Palmer called for any friendly amendments or segregations.**

Commissioner Shaw segregated Section VI, Item No. 17, Communication No. 12-340.

Commissioner Morgan segregated Section VI, Item No. 62, Communication No. 12-385.

Commissioner Hall segregated Section VI, Item Nos. 73 and 74, Communication Nos. 12-396 and 12-397.

**It was then moved by Commissioner Shaw, seconded by Commissioner Morgan and passed by a unanimous verbal vote to approve the Consent Agenda, Section A, Items 1 through 4, and Section B, Items 1 through 79, exclusive of Item Nos. 17, 62, 73 and 74.**

### Segregation – Communication No. 12-340

Terry Schultz, Butte-Silver Bow Council of Commissioners, District No. 4, requesting Council change the Council Agenda format.

Commissioner Shaw commented as follows:

- Items that are on the agenda and items that are not on the agenda are distinctly different and comment should be kept separate.
- Any public comment should be at the beginning of the agenda.

**It was moved by Commissioner Shaw and seconded by Commissioner Morgan to approve Communication No. 12-340, with the exception of putting the comment at the beginning of the meeting.**

County Attorney Eileen Joyce stated she had spoken to the City Attorney in Helena, and they have public comment before voting on the Consent Agenda and also before other items that are voted on. They

also put the public comment on any public matter not on the agenda at the end of the agenda to ensure Council rules are complied with.

Acting Chief Executive Palmer clarified that if an item is not on the agenda, no action can be taken on it anyway.

Commissioner Frasz suggested that anyone wishing to speak before Council should be limited to the three-minute time limit.

Acting Chief Executive Palmer commented the three-minute time limit has been tried in court and didn't hold up and that it's up to the person presiding over the meeting to enforce the time limit.

**A substitute motion was made by Commissioner Schultz and seconded by Commissioner Hall to try the changes as submitted and to change it as necessary.**

Acting Chief Executive Palmer clarified a substitute motion was made and seconded to concur with the request and place the communication on file; so the Public Comment On Any Matter Not On The Agenda will be at the end of the agenda and the public comment on the consent items will be prior to the Consent Agenda being passed.

**The motion passed by a unanimous verbal vote.**

#### **Segregation – Communication No. 12-385**

Jeffrey L. Miller, Director, Butte-Silver Bow Fire Services, requesting Council's approval of extension of sick leave for Captain William T. Fisher.

Commissioner Morgan stated he segregated this communication because of the recommendation to concur and place on file. The Personnel Committee previously discussed the necessity to meet each month as an extension of sick leave gets approved.

**It was moved by Commissioner Morgan, seconded by Commissioner Walker and passed by a unanimous verbal vote to refer Communication No. 12-385 to the Personnel Committee.**

#### **Segregation – Communication No. 12-396**

Rick Larson, Operations Manager-Utilities Division, Butte-Silver Bow Public Works Department, requesting Council's authorization for the Chief Executive to sign an amendment to agreement with Ueland Western Reclamation, Inc.

Commissioner Hall explained she segregated this communication because she was not a Commissioner when the contract was put in place, and she would like Ueland Western Reclamation to come before Council before the contract is renewed and explain what they do.

Rick Larson explained as follows:

- Sludge has been composted at the landfill for many years.
- The existing contract expires this month.

- The new contract includes Ueland Western Reclamation shredding tree branches, Christmas trees, etc., for use in the composting operation, which they will bill B-SB for.

Commissioner Hall asked about the past process of adding lime to the waste product and burying it in the landfill, and Mr. Larson explained that lime is expensive and there were complaints about the smell.

Commissioner Schultz asked if B-SB could make the compost commercially viable and sell it to offset the County's costs by taking Ueland Western Reclamation out of the equation.

Mr. Larson pointed out that Ueland Western Reclamation employees are paid less than County employees but offered to have a feasibility study done, if requested.

Commissioner Schultz asked if B-SB will pay Ueland Western Reclamation for chipping also, and Mr. Larson stated the chipping has never been done by B-SB.

Commissioner Ralph asked about the reference in the contract to BBC and how many employees Ueland Western Reclamation has.

Rick Larson stated the number of Ueland Western Reclamation employees varies, and BBC should be BSB.

Commissioner Hall asked if a bid process had been tried to lower the price.

Rick Larson said no, because that is not common practice. He offered to put it out for RFQ if asked to do so.

Commissioner Foley commented as follows:

- Recycling for B-SB is done by a private business and saves the County money.
- Agrees a feasibility study would be necessary to determine if the County should undertake this project.

Dan Dennehy, Director, Butte-Silver Bow Public Works Department, stated as follows:

- Urged Council to pass the agreement.
- B-SB had the equipment at one time and sold it for scrap because the County didn't have the necessary manpower.

Acting Chief Executive Palmer stated he feels this is a good contract.

Commissioner Hall stated she would like to see the County saving money to keep from raising taxes.

Commissioner Shaw asked if the compost is shipped elsewhere, and Mr. Dennehy stated, "That's correct."

Commissioner Shaw stated this is a good way to recycle this product and the contract should be renewed.

Commissioner Schultz asked about the length of the contract, and Mr. Dennehy stated it is for five years.

Commissioner Schultz stated he is in favor of approving the contract but would like recycling explored to help offset the cost.

**It was moved by Commissioner Walker, seconded by Commissioner Granger and passed by a verbal vote of 8 yea and 1 nay to concur with the request of Communication No. 12-396 and place it on file, with Commissioner Hall voting nay.**

**Segregation – Communication No. 12-397**

Ristene Hall, Butte-Silver Bow Commissioner, District No. 8, requesting Council authorize “Residents Only Parking” signs on Placer Street near Second Street.

Commissioner Hall explained there is a bar in the neighborhood that is not required to have off-street parking and the patrons are parking in the neighborhood, and the bar also does not have a dumpster and the bar owner is using the neighborhood garbage cans to dispose of refuse.

Commissioner Morgan stated he does not feel placement of “Residents Only Parking” signs is the proper way to address the problem.

Commissioner Shaw agreed with Commissioner Morgan on the issue.

Acting Chief Executive Palmer clarified the recommendation should have been to refer the communication to the Judiciary Committee, not the Public Works Committee.

Commissioner Foley stated the Parking Commission can only enforce the signs during work hours, with no enforcement evenings or weekends.

**It was moved by Commissioner Schultz, seconded by Commissioner Foley and passed by a verbal vote of 7 yea and 2 nay to refer Communication No. 12-396 to the Judiciary Committee, with Commissioners Hall and Morgan voting nay.**

**SECTION VII**

**COMMUNICATIONS TO READ AND ACTED UPON**

- |        |  |
|--------|--|
| 12-399 | R. Edward Banderob, 2601 Grand Avenue, requesting Council create a Technical Citizen Review - Advisory Sub-Council and a Common Citizen Review - Advisory Council and that each Commissioner, with the consensus of citizens, attend a Butte-Silver Bow District Selection Meeting in each Butte-Silver Bow Commissioner District. |
|--------|--|

Acting Chief Executive Palmer explained Communication No. 12-399 was placed on the To Be Read And Acted Upon section of the Agenda because Mr. Banderob’s letter requested the Advisory Council, the BNRC, change their rules and ways of doing business, and also explained that the Butte-Silver Bow Council of Commissioners could not help him with the way the Advisory Council does their business.

R. Edward Banderob, 2601 Grand Avenue, stated the following:

- The BNRC should put large and important projects to the citizens of Butte-Silver Bow out for a public comment period.
- The public is only given one month to submit proposals.

- There is a need for further public comment and listening sessions on the public's priorities.

Acting Chief Executive Palmer stated he has a completely different perspective and feels they are going out of their way to work with the public and answer any questions.

Commissioner Foley commented as follows:

- Respects Mr. Banderob's efforts and the hard work that he does.
- Agrees with Acting Chief Executive Palmer's statements.
- The BNRC has had over 20 meetings on this particular project.
- The public will have another opportunity to voice their concerns.

Mr. Banderob stated what he is asking for is prioritization.

**It was moved by Commissioner Schultz, seconded by Commissioner Foley and passed by a unanimous verbal vote to note Communication No. 12-399 and place it on file.**

## **SECTION VIII**

### **ORDINANCES AND RESOLUTIONS – REFERRED TO JUDICIARY**

#### **1. COUNCIL RESOLUTION NO. 12-22**

A RESOLUTION AMENDING THE BUDGET DURING THE FISCAL YEAR AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING OF THE COUNCIL OF COMMISSIONERS IN ACCORDANCE WITH SECTION 7-6-4006, MCA; APPROPRIATING UNANTICIPATED REVENUE TO THE BUTTE-SILVER BOW HEALTH DEPARTMENT FROM THE STATE OF MONTANA, DEPARTMENT OF ENVIRONMENTAL QUALITY FOR THE PURCHASE OF AN L.E.D. MESSAGE CENTER SIGN TO BE USED FOR THE AIR QUALITY PROGRAM AT THE BUTTE-SILVER BOW HEALTH DEPARTMENT.

#### **2. COUNCIL RESOLUTION NO. 12-23**

A RESOLUTION AMENDING THE BUDGET DURING THE FISCAL YEAR AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING OF THE COUNCIL OF COMMISSIONERS IN ACCORDANCE WITH SECTION 7-6-4006, MCA; APPROPRIATING UNANTICIPATED REVENUE TO THE BUTTE-SILVER BOW HEALTH DEPARTMENT FROM THE STATE OF MONTANA, DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO BE USED IN THE MATERNAL CHILD HEALTH PROGRAM.

## **SECTION IX**

### **ORDINANCES AND RESOLUTIONS FINAL READING**

#### **1. COUNCIL BILL NO. 12-1 ORDINANCE NO. 12-1**

AN ORDINANCE ADOPTING REPEALING CHAPTER 16 OF TITLE 8 OF THE BUTTE-SILVER BOW MUNICIPAL CODE ENTITLED "AIR POLLUTANTS" AND REPLACING IT

WITH A NEW CHAPTER 16 TO BE ENTITLED "AIR QUALITY CONTROL," ESTABLISHING REGULATIONS FOR THE CONTROL AND MANAGEMENT OF AIR QUALITY; ESTABLISHING AN AIR POLLUTION CONTROL DISTRICT; ESTABLISHING A SOLID FUEL BURNING DEVICE AND CONTROL PROGRAM; REGULATING THE USE OF OUTDOOR WOOD FURNACES AND SOLID FUEL BURNING DEVICES; ESTABLISHING DUST CONTROL REGULATIONS; REGULATING OPEN BURNING IN SILVER BOW COUNTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR PERMITS; PROVIDING PENALTIES FOR VIOLATION AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

*It was moved by Commissioner Shaw and seconded by Commissioner Morgan that Council Bill No. 12-1, Ordinance No. 12-1 be placed on final reading and be passed, having been deemed read at length. The motion passed by a roll call vote of 8 yea and 1 nay, with Commissioner Hall voting nay.*

2. **COUNCIL RESOLUTION NO. 12-14**

A RESOLUTION AMENDING THE BUDGET DURING THE FISCAL YEAR AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING OF THE COUNCIL OF COMMISSIONERS IN ACCORDANCE WITH SECTION 7-6-4006, MCA; APPROPRIATING UNANTICIPATED REVENUE TO THE BUTTE-SILVER BOW COMMUNITY DEVELOPMENT DEPARTMENT TO BE EXPENDED IN THE COMMUNITY DEVELOPMENT FUND AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

*It was moved by Commissioner Shaw and seconded by Commissioner Morgan that Council Resolution No. 12-14 be placed on final reading and be passed, having been deemed read at length. The motion passed by a roll call vote of 9 yea and 0 nay.*

3. **COUNCIL RESOLUTION NO. 12-16**

A RESOLUTION AUTHORIZING AND APPROVING THE SALE OF A CERTAIN PARCEL OF LOCAL GOVERNMENT OWNED REAL PROPERTY LOCATED AT 1314 FARRELL STREET, LEGALLY DESCRIBED AS LOT 3, BLOCK 8 OF THE FARRELL ADDITION, SECTION 18, T3N, R7W, BUTTE-SILVER BOW, MONTANA (PARCEL NO. 0000073200) FOR THE PURPOSE OF COMMUNITY DEVELOPMENT IN ACCORDANCE WITH THE PROCEDURES OF BUTTE-SILVER BOW MUNICIPAL CODE AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

*It was moved by Commissioner Shaw and seconded by Commissioner Morgan that Council Resolution No. 12-16 be placed on final reading and be passed, having been deemed read at length. The motion passed by a roll call vote of 9 yea and 0 nay.*

4. **COUNCIL RESOLUTION NO. 12-17**

A RESOLUTION DIRECTING THE BUTTE-SILVER BOW LAND RECORDS DEPARTMENT TO MAIL NOTICE OF PENDING TAX DEED ISSUANCE TO ALL PERSONS CONSIDERED INTERESTED PARTIES FOR EACH PROPERTY FOR WHICH THERE HAS BEEN ISSUED A TAX CERTIFICATE IN ACCORDANCE WITH THE PROVISIONS OF SECTION 15-18-212, MCA; FURTHER DIRECTING THE TREASURER TO ISSUE A TAX

DEED FOR THOSE PARCELS OF PROPERTY WHERE THERE HAS BEEN ISSUED A TAX CERTIFICATE AND THE EXPIRATION DATE OF THE REDEMPTION PERIOD HAS EXPIRED AND THE REQUIRED PAYMENTS HAVE NOT BEEN MADE AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

*It was moved by Commissioner Shaw and seconded by Commissioner Morgan that Council Resolution No. 12-17 be placed on final reading and be passed, having been deemed read at length. The motion passed by a roll call vote of 9 yea and 0 nay.*

5. **COUNCIL RESOLUTION NO. 12-18**

A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE AMENDED PLAT OF LOT 3 OF THE B.N.S.F MINOR SUBDIVISION OF THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PROVIDING FOR THE REPEAL OF ALL PARTS OF RESOLUTIONS IN CONFLICT WITH AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

*It was moved by Commissioner Shaw and seconded by Commissioner Morgan that Council Resolution No. 12-18 be placed on final reading and be passed, having been deemed read at length. The motion passed by a roll call vote of 9 yea and 0 nay.*

6. **COUNCIL RESOLUTION NO. 12-19**

A RESOLUTION APPROVING GROWTH POLICY AMENDMENT NO. 28 TO APPROVE CHANGES TO THE BUTTE-SILVER BOW COUNTY GROWTH POLICY LAND USE MAP OF THE 1987 BUTTE-SILVER BOW MASTER PLAN; INCORPORATING, BY REFERENCE, THE CHANGES TO THE MAP AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

*It was moved by Commissioner Shaw and seconded by Commissioner Morgan that Council Resolution No. 12-19 be placed on final reading and be passed, having been deemed read at length. The motion passed by a roll call vote of 9 yea and 0 nay.*

**ADJOURN**

**It was moved by Commissioner Shaw, seconded by Commissioner Granger and passed by a unanimous verbal vote to Rise to the Call of the Chair.**

The meeting adjourned at 9:22 p.m.

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**CHIEF EXECUTIVE**

**ATTEST:**

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**CLERK AND RECORDER**

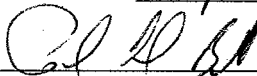


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4 PASSED this 18<sup>th</sup> day of April, 2012.

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10 DAVID PALMER  
11 CHAIRMAN OF THE COUNCIL OF COMMISSIONERS  
12


13  
14 APPROVED this 18<sup>th</sup> day of April, 2012.

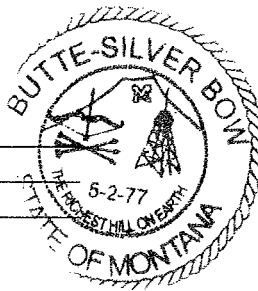
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17 PAUL DAVID BABB  
18 CHIEF EXECUTIVE  
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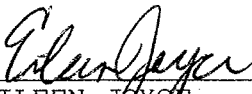
20 ATTEST:

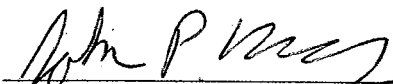
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31 APPROVED AS TO FORM:  
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36 EILEEN JOYCE  
37 COUNTY ATTORNEY  
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2 JOHN P. MORGAN  
3 CHAIRMAN, JUDICIARY COMMITTEE  
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December 29, 2012

Mr. Paul Riley  
Health Department  
25 West Front St.  
Butte, Montana 59701

Town Of Walkerville  
PO Box 7707  
Walkerville, Montana 59701

Dear Mr. Riley,

On September 12, 2012, the Walkerville Town Council moved to adopt the BSB Air Quality Ordinance. It was a unanimous vote and the council members felt that this was the best solution for all involved. I am inclosing a copy of the minutes of that meeting and have highlighted the portion of the minutes where the motion was made. I am sorry that it took me so long to get this to you but I seemed to have gotten caught up in the holiday spirit. Hope you had a great Christmas and that you have a joyous and happy new year.

Sincerely yours,

John W. Ries  
Mayor of Walkerville

**TOWN OF WALKERVILLE MINUTES— —TOWN HALL—7 PM- SEPTEMBER 12, 2012**

**SUE ATKINSON— ABSENT      TOM CARROLL—PRESENT      JOHN RIES—MAYOR—PRESENT**

**ANNETTE BOLTON- PRESENT      CAROLYN FOGERTY- PRESENT      BIRDIE MULLANEY—PRESENT**

**CHRIS CAMPBELL — ABSENT      KATHY JANGULA—PRESENT      TONY JANGULA—PRESENT**

Minutes of the August meeting was approved as read by a motion by Annette Bolton, a 2nd by Tom Carroll. Motion carried.

The Treasurers report for July was approved with as read a motion from Annette Bolton, with a 2nd from Carolyn Fogarty, Motion carried.

The Treasurers report for August was approved as read with a motion from Tom Carroll and a 2nd from Kathy Jangula.

The owner of the property at 1520 North Main ( Brian McGregor) told Council he is working on removal around the property with junk. The Mayor gave him his phone number to be able to contact him if needed.

When the owner purchased the property he said he was going to restore the premises with the idea by improving and restoring the property. Mr. McGregor stated he is going to do more when he is able to get more help in continue doing it. The Kathy Jangula (Councilperson) stated she hoped he can remove the junk around the property as soon as possible, and the Mayor agreed.

Tom Carroll made a motion with a 2nd from Kathy Jangula to approve the budget for FY 12/13 with one correction. Motion carried.

The Mayor stated the budget included a raise for the Clerk and Street Commissioner by 2% and one more week added for vacation.

Matt Vincent (candidate for Chief Executive for BSB) gave a presentation to what is going to do if elected as to include the Town in more programs such as weed control, police protection etc. as he stated he does not believe Walkerville is getting their fair share of the programs now.

He stated the Town residents should get more involved in reaching results. Matt stated he worked closely with the Bernie Harrington with the Superfund Trust Fund, such as walking trails.

Paul Riley with BSB Health Dept. made a presentation about Air Quality and asked if the Council decided to adopt the ordinance with BSB.

Annette Bolton made a motion, with a 2nd from Tom Carroll to adopt the BSB Air Quality Ordinance. Motion carried.

Kathy Jangula stated she talked with Julie Molloy about where to get grants available for the Town and that the County is thinking about hiring a full time person to write grants.

Road Dept. Tony stated he got the tires and rims for the dump truck and also the mower for the weeds. he stated he has done some patching on the streets, but he was told the County is going to start making the Town pay for the asphalt so he going to wait until he hears if they are going to do so. Tom Carroll stated he believes the Town should purchase a used four-wheeler for the Town. As of now Tony is using his own machine to spray for weeds and other jobs he has to do. Council told Tony to see if he can find a used 4-wheeler for the Town. The cost would come out of the Parks and Playgrounds budget.

Fire Dept. No one present to give a report.

There was a discussion about the property that was Manza Market and the Friendly Tavern and what is being done. So far the owner has done nothing. There was suggestion to place a stop sign behind the old Mt Bethel Church.

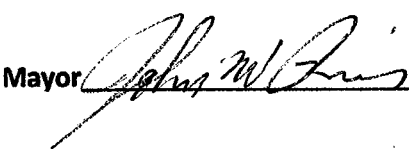
Tom Carroll made a motion with a 2nd from Kathy Jangula that the temporary help for the Town wages should start with minimum wage for 6 months and then a recommendation from Tony to increase the amount. Motion carried.

Kathy Jangula stated she believes the Town should be more professional and go by the Roberts Rules in future meetings. Council agreed.

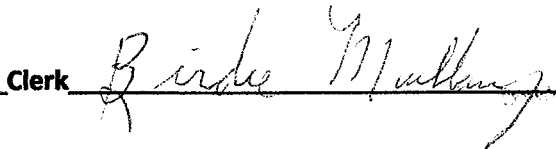
Tom Carroll made a motion, with a 2nd from Kathy Jangula to pay the bills. Motion carried.

Kathy Jangula made a motion to adjourn. Meeting adjourned.

Mayor



Clerk



**BOARD OF ENVIRONMENTAL REVIEW  
AGENDA ITEM  
EXECUTIVE SUMMARY FOR RULEMAKING**

**AGENDA ITEM # III.B.1.**

**AGENDA ITEM SUMMARY** - The Department is requesting approval of amendments to rules pertaining to concentrated animal feeding operation (CAFOs) and adoption of new rule I pertaining to the application of manure, litter and process wastewater at these facilities. The Department is requesting these amendments in order to maintain compliance with federal regulations governing CAFOs under the National Pollutant Discharge Elimination System (NPDES) program.

**LIST OF AFFECTED RULES** - ARM 17.30.1330, 17.30.1341, 17.30.1343, 17.30.1361 and 17.30.1362, and New Rule I.

**AFFECTED PARTIES SUMMARY** - Owner or operators of CAFO that have discharge permits issued pursuant to the Montana Pollutant Discharge Elimination System Permit (MPDES) program and persons or facilities who wish to obtain a discharge permit.

**SCOPE OF PROPOSED PROCEEDING** - The Board is considering final action on adoption of amendments to the above-referenced rules and adoption of New Rule I as proposed in the Montana Administrative Register.

**BACKGROUND** – The rulemaking is necessary to maintain compliance with federal regulations governing states that are delegated to implement the federal Clean Water Act's (CWA) permitting program in accordance 40 CFR 123.25. Under the CWA, concentrated animal feeding operations (CAFO) that meet the requirements of 40 CFR 122.23 or are designated by the department are point sources and subject to the requirements of the federal NPDES program. Requirements for delegated state and tribal NPDES programs are promulgated at 40 CFR Part 123, specifically 40 CFR 123.25 and 40 CFR 123.36 which requires delegated states to adopt technical standards for CAFOs.

The proposed amendments to ARM 17.30.1330, 17.30.1341, 17.30.1343, 17.30.1361 and 17.30.1362 are necessary to incorporate changes in the federal NPDES rules governing CAFOs that were promulgated by EPA on November 20, 2008. The proposed amendments rely heavily on incorporation of the federal rules by reference in order to be consistent with the requirements of 75-5-802, MCA. That statute instructs the board to adopt by reference the CAFO permitting requirements and definitions contained in 40 CFR 122.23 and 40 CFR Part 412.

The proposed adoption of New Rule 1 is necessary to comply with the requirement of 40 CFR 123.36. This rule requires each state to establish technical standards for nutrient management that is consistent with 40 CFR 412.4(c)(2). The technical standard adopted by the state specifies the application rate for manure, litter, and other process wastewater applied to land under the ownership of the CAFO. The proposed rules eliminate language in ARM 17.30.1330 requiring CAFO's to comply with Department Circular DEQ-9. Circular DEQ-9 was adopted by the board in 2006 prior to the promulgation of the 2008 federal CAFO rule which placed into regulation in 40 CFR 122.23, 122.42(e) and 412 requirements for nutrient management plans,

best management plans, record keeping and annual reporting.

In addition to the CAFO requirements the proposed amendments are necessary to: (1) repealing existing incorporations by reference that are duplicative, obsolete or inapplicable to state permit programs; and (2) clarifying existing language.

**Hearing Information:** Kathryn Orr conducted a public hearing on January 11, 2013, on the proposed amendments and New Rule I. The Presiding Officer's Report and the draft Notice of Amendment and Adoption, with public comments and proposed responses, are attached to this executive summary.

**Board Options:** The Board may:

1. Adopt the proposed amendments and New Rule I as set forth in the attached Notice of Public Hearing on Proposed Amendment and Adoption;
2. Adopt the proposed amendments and New Rule I with revisions that the Board finds are appropriate and that are consistent with the scope of the Notice of Public Hearing on Proposed Amendment and Adoption and the record in this proceeding; or
3. Decide not to adopt the amendments and New Rule I.

**DEQ Recommendation:** The Department recommends that the Board adopt the amendments with revisions and New Rule I.

**Enclosures:**

1. Notice of Public Hearing on Proposed Amendment and Adoption
2. Presiding Officer's Report
3. HB 521 and HB 311 Analysis
4. Public Comments
5. Draft Notice of Amendment and Adoption

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )	NOTICE OF PUBLIC HEARING ON
17.30.1330, 17.30.1341, 17.30.1343, )	PROPOSED AMENDMENT AND
17.30.1361, 17.30.1362 pertaining to )	ADOPTION
concentrated animal feeding operations, )	
general permits, additional conditions )	(WATER QUALITY)
applicable to specific categories of )	
MPDES permits, modification or )	
revocation and reissuance of permits, )	
minor modification of permits and )	
adoption of New Rule I pertaining to )	
technical standards for concentrated )	
animal feeding operation )	

TO: All Concerned Persons

1. On January 11, 2013, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 35, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., December 31, 2012, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail [ejohnson@mt.gov](mailto:ejohnson@mt.gov).

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.30.1330 CONCENTRATED ANIMAL FEEDING OPERATIONS

(1) ~~"Concentrated animal feeding operation (CAFO)" means an animal feeding operation which meets the criteria in 40 CFR Part 122.23, or which the department designates under (3). CAFOs that are required to obtain a permit shall either apply for an individual MPDES permit or submit an application for coverage under an MPDES CAFO general permit. A permit application for an individual permit or application for coverage under a general permit must include the information specified in ARM 17.30.1322(6)(a) through (f) and 40 CFR 122.21(i)(I), including a topographic map. If the department has not made a general permit available to the CAFO, the CAFO owner or operator shall submit an application for an individual permit to the department.~~ Concentrated animal feeding operations (CAFOs), as defined in 75-5-801, MCA, or designated in accordance with (5) through (7), are point sources subject to the MPDES requirements as provided in this rule. Once an



animal feeding operation is defined as a CAFO for at least one type of animal, the MPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter, and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

(2) Concentrated animal feeding operations are point sources subject to the MPDES permit program. A CAFO must not discharge a pollutant to state surface waters unless the discharge is authorized under an MPDES permit. In order to obtain authorization under an MPDES permit, the CAFO owner or operator must either apply for an individual permit or submit a notice of intent for coverage under a general permit.

(3) An application for an individual permit must include the information specified in ARM 17.30.1322(9). A notice of intent to be covered under a general permit must include the information specified in ARM 17.30.1322(9) and 40 CFR 122.28(b).

(4) CAFOs that meet the requirements of 40 CFR Part 412 must be authorized by the department under a general permit, unless the department discovers site-specific information that indicates a general permit is not sufficiently protective of water quality during its review under (8). If the department determines that a general permit is not sufficient to protect water quality, the department shall require an individual permit for the CAFO.

(3) through (5) remain the same, but are renumbered (5) through (7).

(8) The department shall review notices of intent submitted by CAFO owners for coverage under a general permit according to the procedures in 40 CFR 122.23(h)(1).

(9) The discharge of manure, litter, or process wastewater from a CAFO's land application area to state surface waters is subject to MPDES requirements, except where the discharge is an agricultural storm water discharge, as defined in 40 CFR 122.23(e).

(10) The board adopts and incorporates by reference the following federal regulations, which may be obtained from the Department of Environmental Quality, Water Protection Bureau, P.O. Box 200901, Helena, MT 59620:

(a) 40 CFR 122.23 (except 40 CFR 122.23(d), (f), (g), (i), and (j)) (July 1, 2012), which specifies permit application requirements, definitions, and procedures for issuing individual or general permits to CAFOs.

(b) 40 CFR 122.28(b)(2)(vii) (July 1, 2012), which sets forth informational requirements for notices of intent submitted by CAFOs.

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: The board is proposing to amend ARM 17.30.1330 in order to incorporate by reference EPA's revisions to the application and permit requirements for concentrated animal feeding operations (CAFOs) that were promulgated by the agency in 2008. The board is proposing to incorporate the regulations, rather than adopt the entire text of the regulations, in order to be consistent with the requirements of 75-5-802, MCA. That statute instructs the board to adopt by reference the CAFO permitting requirements and definitions contained in 40 CFR

122.23 and 40 CFR Part 412. In accordance with this directive, the board is amending ARM 17.30.1330 to incorporate EPA's most recent revisions to the CAFO application requirements in 40 CFR 122.23 and 40 CFR Part 412. The board's specific reasons for the proposed amendments to various sections of the rule are given below.

The board is amending ARM 17.30.1330(1) to eliminate language that may be inconsistent with the requirements in 40 CFR 122.23 and add new language clarifying the scope of the CAFO permitting requirements. The proposed language is taken from the text of 40 CFR 122.23(a) and explains the circumstances under which the application requirements in ARM 17.30.1330 will apply. The board is proposing to revise the text of the federal regulation by replacing the federal definition of CAFO cited in 40 CFR 122.23(a) with a citation to the definition of CAFO contained in state statute.

The board is proposing to amend (2) to eliminate language explaining that CAFOs are point sources, since that explanation is included in the proposed amendment to (1). The board is proposing to replace the existing language in (2) with the text of 40 CFR 122.23(d) explaining that a CAFO operator must seek coverage under an MPDES permit if the CAFO discharges pollutants to state surface waters. This amendment is necessary to clarify who must apply for an MPDES permit. The remaining text of 40 CFR 122.23, defining circumstances that would establish when a CAFO proposes to discharge, is not proposed for adoption because that portion has been vacated by the Fifth Circuit. On July 30, 2012, EPA published a final rule revising 40 CFR 122.23(d) and (f) and removing 40 CFR 122.23(g), (i) and (j) in response to *National Pork Producers Council v. EPA*, 635 F.3d 738, 5th Circuit, 2011.

The board is proposing a new (3) to establish CAFO application requirements for coverage under an individual permit or a general permit. The proposed language is based on the requirements of 40 CFR 122.23(d). This amendment is necessary to specify the informational requirements that apply to notices of intent contained in federal rules and to further specify the informational requirements that apply to both notices of intent and individual permits set forth in ARM 17.30.1322(9).

The board is proposing a new (4) to clarify that, when a CAFO meets the requirements of 40 CFR Part 412, the department must authorize the discharge under a general permit. This amendment is necessary to conform to the legislative directive in 75-5-802, MCA, which requires coverage under a general permit whenever a CAFO meets the requirements of 40 CFR Part 412.

The board is proposing new (8) in conformance with the directive in 75-5-802, MCA, requiring the board to adopt by reference the CAFO permitting requirements in 40 CFR 122.23. The proposed amendment explains that the department shall review notices of intent for coverage under a general permit using the procedures in 40 CFR 122.23(h)(1).

The board is proposing new (9) to explain that discharges to surface waters from a CAFO's land application site are subject to the MPDES requirements, except where the discharge meets the definition of "agricultural storm water discharge," as defined in 40 CFR 122.23(e). This amendment is necessary to notify CAFO owners that land application areas that discharge to surface waters require a permit and also to incorporate the exception to that requirement.

The board is proposing new (10) to specify that a CAFO must apply for a permit whenever the CAFO is required to do so under (2). The proposed amendment is necessary to be consistent with the time frames for submitting an application specified in 40 CFR 122.23(f).

The board is proposing to add new (10) in order to incorporate by reference the federal rules proposed for inclusion in ARM 17.30.1330 that are applicable to permit application requirements for CAFOs. The incorporation by reference of these federal rules is necessary to make them enforceable under state law and to comply with the legislative directive in 75-5-802, MCA.

17.30.1341 GENERAL PERMITS (1) through (11) remain the same.

~~(12) For purposes of this rule, the board hereby adopts and incorporates by reference (see ARM 17.30.1303 for complete information about all materials incorporated by reference):~~ A concentrated animal feeding operation (CAFO) owner or operator may be authorized to discharge under a general permit only in accordance with the process described in 40 CFR 122.23(h).

~~(a) 40 CFR 122.28 (July 1, 1991) which sets forth criteria for selecting categories of point sources appropriate for general permitting;~~

~~(b) 40 CFR 124.10(d)(1) (July 1, 1991) which sets forth minimum contents of public notices;~~

~~(c) 40 CFR 122.26(c)(2) (July 1, 1991) which sets forth criteria for determining when a point source is considered a "significant contributor of pollution";~~

~~(d) 16 USC 1132 (wilderness area designations); and~~

~~(e) 16 USC 1274 (wild and scenic river designations).~~

(13) The board adopts and incorporates by reference the following federal regulations, which may be obtained from the Department of Environmental Quality, Water Protection Bureau, P.O. Box 200901, Helena, MT 59620-0901:

(a) 40 CFR 122.28 (July 1, 2012), which sets forth criteria for selecting categories of point sources appropriate for general permitting;

(b) 40 CFR 124.10(d)(1) (July 1, 2012), which sets forth minimum contents of public notices; and

(c) 40 CFR 122.23(h) (July 1, 2012), which sets forth procedures for CAFOs seeking coverage under a general permit.

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: The board is proposing to amend the general permit requirements in ARM 17.30.1341 in order to make them consistent with the equivalent federal requirements set forth in 40 CFR 122.28. 40 CFR 122.23(h) requires that CAFOs seeking coverage under a general permit must submit a notice of intent (NOI) providing the information required in 40 CFR 122.21 (ARM 17.30.1322) and including a nutrient management plan (NMP) that meets the requirements in 40 CFR 122.42(e) and Part 412. 40 CFR 122.23(h) also requires that the department make the NOI and NMP available for public comment in accordance with 40 CFR 124.11 (ARM 17.30.1373) through 124.13 (ARM 17.30.1375), respond to any significant public comments, and, if necessary, require the CAFO to make changes in the NMP.

40 CFR 123.23(h) also requires that, when the department authorizes a CAFO under a general permit, the terms of the NMP shall be incorporated into the general permit and become enforceable under the permit for the CAFO.

The board is proposing to delete the current text of (12)(c), which incorporates by reference 40 CFR 122.26(c)(2) (the process for submitting group application requirements for discharges associated with industrial activity). The federal rule was repealed by EPA. The board is also proposing to delete the current text of (12)(d) and (e), which incorporates by reference 16 USC 1132 (wilderness designations) and 16 USC 1274 (wild and scenic river designations). These federal statutes are not implemented by the department under the MPDES program and they are not a required element of a delegated state's permit program.

The board is proposing to move the remaining incorporations by reference of federal rules currently in (12) and place them in new (13) and update the reference to the current federal regulation. The amendments are necessary to be consistent with EPA's requirements for delegated state permit programs pursuant to 40 CFR 123.25 and to eliminate incorporations by references that are not necessary.

17.30.1343 ADDITIONAL CONDITIONS APPLICABLE TO SPECIFIC CATEGORIES OF MPDES PERMITS (1) The following conditions, in addition to those set forth in ARM 17.30.1342, apply to all MPDES permits within the categories specified below:

(a) through (b)(iii)(B) remain the same.

(c) ~~All permits issued to concentrated animal feeding operations (CAFOs), in addition to meeting those requirements set forth in ARM 17.30.1322, 17.30.1330, 17.30.1341, and 17.30.1342 must include the requirements set out in 40 CFR 122.42(e). The design, monitoring, recordkeeping, reporting, and specifications for CAFOs must be prepared in accordance with and comply with the criteria set forth in the technical standards for nutrient management and effluent limit guidelines established in 40 CFR Part 412 and department Circular DEQ-9, "Montana Technical Standards for Concentrated Animal Feeding Operations."~~ Any permit issued to a concentrated animal feeding operation (CAFO) must include the requirements specified in 40 CFR 122.42(e). In general, the requirements in that federal regulation include:

(i) a requirement to implement a nutrient management plan that contains best management practices necessary to meet the requirements of 40 CFR 122.42(e)(1) and any applicable effluent limitations in 40 CFR Part 412;

(ii) recordkeeping and reporting requirements;

(iii) requirements relating to the transfer of manure or process wastewater to other persons;

(iv) a requirement to include specific terms in the nutrient management plan and a duty to comply with those terms; and

(v) requirements relating to changes in a nutrient management plan.

~~(3)~~ (2) The board adopts and incorporates by reference the following federal regulations, which may be obtained from the Department of Environmental Quality, Water Protection Bureau, P.O. Box 200901, Helena, MT 59620-0901:

(a) 40 CFR 122.44(f) (July 1, 2012), which is a federal agency rule setting sets forth "notification levels" for dischargers of pollutants that may be inserted in a

permit upon a petition from the permittee or upon the initiative of the department;

(b) 40 CFR Part 412 (July 1, 2012), which establishes the effluent limitation guidelines and best management practices for CAFOs; and

(c) ~~department Circular DEQ-9, "Montana Technical Standards for Concentrated Animal Feeding Operations," 2005 edition~~ 40 CFR 122.42(e) (July 1, 2012), which establishes additional permit conditions for CAFOs.

~~(4) See ARM 17.30.1303 for additional information about all materials incorporated by reference. All material that is incorporated by reference may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.~~

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: The board is proposing to amend (1)(c) of ARM 17.30.1343 by eliminating references to rules that generally apply to all MPDES permits. Since the purpose of (1)(c) is to establish additional permit conditions that apply only to CAFOs, the inclusion of references to generally applicable MPDES requirements is not necessary.

The board is proposing to replace the existing language in (1)(c) with a requirement that all CAFO permits include the additional permit requirements specified in 40 CFR 122.42(e). Rather than adopt the text of the federal regulation, the board is proposing to incorporate by reference the requirements of 40 CFR 122.42(e) to be consistent with the legislative directive in 75-5-802, MCA. That statute directs the board to incorporate by reference the federal regulations for permitting CAFOs. In general, the additional permit conditions that are proposed for adoption by reference include the following: (1) a requirement to implement a nutrient management plan (NMP) that contains best management practices necessary to meet the requirements of 40 CFR 122.43(e)(1) and any applicable effluent limitations in 40 CFR Part 412; (2) a requirement to create, maintain, and make available to the department certain records; (3) a requirement to maintain a copy of the NMP on-site; (4) a requirement to provide an analysis of manure, litter, or process wastewater prior to transfer to other persons; (5) a requirement to comply with the terms of the NMP; and (6) requirements relating to changes in the NMP.

The board is also proposing to eliminate language requiring CAFOs to comply with department Circular DEQ-9 due to EPA's revisions to the CAFO regulations in 2008, specifically 40 CFR 123.36. This federal rule requires each delegated state to establish technical standards for nutrient management that is consistent with 40 CFR 412.4(c)(2). This technical standard is an effluent limitation which specifies the application rate for manure, litter, and other process wastewater applied to land under the ownership or operational control of the CAFO. The technical standards adopted by the state must include: (1) the requirement to develop a nutrient management plan that is based on a field-specific assessment of the potential for nitrogen and phosphorus transport from the field to surface water, and that addresses the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals; and (2) appropriate flexibilities for any CAFO to implement nutrient management practices to comply with the technical

standards, including consideration of multiyear phosphorus application, phased implementation of phosphorus-based nutrient management, and other components as determined appropriate by the state. The proposed technical standards are in New Rule I.

The board is also proposing to replace the requirement to comply with Circular DEQ-9 with a requirement to comply with the technical standards given in New Rule I. New Rule I fulfills the requirements of 40 CFR 123.36. Department Circular DEQ-9 was adopted by the board in 2006 prior to promulgation of the 2008 federal CAFO rule, which placed into regulation, in 40 CFR 122.23, 122.42(e), and Part 412, the requirements for nutrient management, best management practices, record keeping, and annual reporting for CAFOs. These provisions of DEQ-9 are no longer necessary. Other requirements of Circular DEQ-9 are neither consistent with, nor required by, 40 CFR 123.36 or 40 CFR 122.42(e).

17.30.1361 MODIFICATION OR REVOCATION AND REISSUANCE OF PERMITS (1) remains the same.

(2) The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees:

(a) when ~~if~~ there are material and substantial alterations or additions to the permitted facility or activity which ~~that~~ occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit. ~~(certain reconstruction activities may cause the new source provisions of ARM 17.30.1340 to be applicable);~~

(b) when ~~if~~ the department ~~has received~~ receives new information that was not available at the time of permit issuance. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For MPDES general permits (ARM 17.30.1341) this subsection includes any information indicating that cumulative effects on the environment are unacceptable. For new source or new discharger MPDES permits (ARM 17.30.1340), this subsection includes any significant information derived from effluent testing after issuance of the permit;

(c) when ~~if~~ the standards or requirements on which the permit was based have been changed by amendment or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:

(i) ~~For~~ promulgation of amended standards or requirements, when:

(A) through (C) remain the same.

(ii) ~~For~~ judicial decisions, a court of competent jurisdiction has remanded and stayed board rules or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with ARM 17.30.1365 within 90 days of judicial remand;

(d) when ~~if~~ the department determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case may an MPDES compliance

schedule be modified to extend beyond an applicable reasonably available remedy. However, in no case may an MPDES compliance schedule be modified to extend beyond an applicable statutory deadline. (See also ARM 17.30.1362(1)(c) minor modifications);

(e) ~~W~~hen the permittee has filed a request for a variance under the federal Clean Water Act, sections 301(c), (g), (h), (i), (k), or 316(a), or for "fundamentally different factors" within the time specified in ARM 17.30.1322 or 40 CFR 125.27(a);

(f) ~~W~~hen required to incorporate an applicable federal Clean Water Act section 307(a) toxic effluent standard or prohibition (see ARM 17.30.1344(2));

(g) ~~W~~hen required by the "reopener" conditions in a permit, which are established in the permit under ARM 17.30.1344(2) (toxic effluent limitations) or under any pretreatment requirements in the permit;

(h)(i) ~~U~~pon request of a permittee who qualifies for effluent limitations on a net basis under ARM 17.30.1345(10); or

(ii) when a discharger is no longer eligible for net limitations, as provided in ARM 17.30.1345(12);

(i) ~~A~~s necessary under ARM 17.30.1412 (compliance schedule for development of pretreatment program);

(j) ~~U~~pon failure of the department to notify, as required by section 402(b)(3) of the federal Clean Water Act, another state whose waters may be affected by a discharge from Montana;

(k) ~~W~~hen the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR 125.3(c);

(l) ~~T~~o establish a "notification level" as provided in ARM 17.30.1344;

(m) ~~T~~o modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a grant under section 202(a)(3) of the federal Clean Water Act for 100% of the costs to modify or replace facilities constructed with a grant for innovative and alternative wastewater technology under section 202(a)(2) of the federal Clean Water Act. In no case may the compliance schedule be modified to extend beyond an applicable statutory deadline for compliance;

(n) ~~F~~or small municipal separate storm sewer systems, to include effluent limitations requiring implementation of minimum control measures as specified in ARM 17.30.1111(6) if:

(i) and (ii) remain the same.

(o) ~~T~~o correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions; and

(p) ~~W~~hen the discharger has installed the treatment technology considered by the department in setting effluent limitations and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but may not be less stringent than required by a subsequently promulgated effluent limitations guideline).

(q) To incorporate the terms of a concentrated animal feeding operation's (CAFO) nutrient management plan into the terms and conditions of a general permit, when a CAFO obtains coverage under a general permit in accordance with 40 CFR

122.23(h) and 122.28, is not a cause for modification pursuant to the requirements of this rule.

(3) The following are causes to modify or, alternatively, revoke and reissue a permit:

(a) cause exists for termination under ARM 17.30.1363, and the department determines that modification or revocation and reissuance is appropriate; and

(b) the department has received notification (as required in the permit, see ARM 17.30.1362(12)(c)) of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer (ARM 17.30.1360(2)) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

(4) The board hereby adopts and incorporates herein by reference ~~(see ARM 17.30.1303 for complete information about all materials incorporated by reference)~~ the following federal regulations, which may be obtained from the Department of Environmental Quality, Water Protection Bureau, P.O. Box 200901, Helena, MT 59620-0901:

(a) ~~40 CFR Part 133 (July 1, 2012), which is a series of federal agency rules setting~~ sets forth requirements for the level of effluent quality available through the application of secondary (or equivalent) treatment;

(b) ~~sections 301(c), (g), (i), and (k) of the federal Clean Water Act, codified at 33 USC section 1311(c), (g), (i), and (k), which are federal statutory provisions allowing~~ allow for modifying or extending dates for achieving effluent limitations;

(c) ~~section 316(a) of the federal Clean Water Act, codified at 33 USC section 1326, which is a federal statutory provision allowing~~ allows a variance from an applicable effluent limitation based on fundamentally different factors (FDF);

(d) ~~section 402(b)(3) of the federal Clean Water Act, codified at 33 USC section 1342(b)(3), which is a federal statutory provision requiring~~ requires that states administering the NPDES program notify other states whose waters may be affected by a proposed discharge; and

(e) ~~40 CFR 125.3(c) (July 1, 2012), which is a federal agency rule setting~~ sets forth methods of imposing technology-based treatment requirements in permits;

(f) 40 CFR 122.23(h) (July 1, 2012), which sets forth procedures for CAFOs seeking coverage under a general permit; and

(g) 40 CFR 122.28 (July 1, 2012), which sets forth conditions applicable to the issuance of general permits.

~~(f) Copies of the above listed materials are available from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.~~

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: The board is proposing to amend the conditions for modification of a general permit issued to a CAFO in ARM 17.30.1361 in order to make them consistent with the federal regulation at 40 CFR 122.62 and update the date for other incorporations by reference in this rule. 40 CFR 122.62 states that modifications to a CAFO's nutrient management plan (NMP) are not a basis for modification of the general permit if those modifications are made in accordance



with 40 CFR 122.23(h) and 122.28. 40 CFR 122.23(h), incorporated by reference at ARM 17.30.1330, establishes procedures for authorizing a CAFO seeking coverage under a general permit. 40 CFR 122.28, incorporated by reference at ARM 17.30.1341, establishes procedures and conditions for all categories of general permits. In general, these federal regulations specify that, if the changes in a CAFO's NMP are made in accordance with 40 CFR 122.42(e)(6), including public notification, the incorporation of these changes into the CAFO's permit are not a basis for public notice of the general permit.

These amendments are necessary to be consistent with EPA's requirements for delegated state permit programs pursuant to 40 CFR 123.25. The incorporation by reference of these federal rules is necessary to make them enforceable under state law and to comply with the legislative directive in 75-5-802, MCA.

17.30.1362 MINOR MODIFICATIONS OF PERMITS (1) Upon the consent of the permittee, the department may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this rule, without following the procedures of ARM 17.30.1364, 17.30.1365, 17.30.1370 through 17.30.1379, 17.30.1383, and 17.30.1384. Any permit modification not processed as a minor modification under this rule must be made for cause and with a draft permit (ARM 17.30.1370) and public notice as required in ARM 17.30.1364, 17.30.1365, 17.30.1370 through 17.30.1379, 17.30.1383, and 17.30.1384. Minor modifications may only:

(a) through (d) remain the same.

(e)(i) change the construction schedule for a discharger ~~which~~ that is a new source. No such change may affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge under ARM 17.30.1340;

(ii) remains the same, but is renumbered (f).

(f) remains the same, but is renumbered (g).

~~(g)~~ (h) incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in ARM 17.30.1413 (or a modification thereto that has been approved in accordance with the procedures in ARM 17.30.1426) as enforceable conditions of the POTW's permits; or

(i) incorporate changes to the terms of a CAFO's nutrient management plan that have been reviewed and approved in accordance with the requirements of 40 CFR 122.42(e)(6).

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: The board is proposing to amend the conditions for minor amendments of MPDES permits in ARM 17.30.1362 to make them consistent with 40 CFR 122.63. This new condition states that the terms of a CAFO's NMP may be incorporated into the permit as a minor amendment if the plan has been revised in accordance with the requirements of 40 CFR 122.42(e)(6). This federal rule requires that a CAFO must provide the department with the most current version of the NMP and identify any changes in the NMP. The department must determine if

any changes in the terms of the NMP are substantial according to the criteria of 40 CFR 122.42(e)(6)(iii). If the changes are not substantial, they must be incorporated into the permit and the department must notify the owner or operator of the CAFO to implement the changes and make the changes available to the public. If the changes are substantial according to the criteria of 40 CFR 122.42(e)(6)(iii), the department must notify the public and make the NMP available for public comment in accordance with 40 CFR 124.11 (ARM 17.30.1373) through 124.13 (ARM 17.30.1375), respond to any significant public comments, and require the CAFO to implement the changes. For large CAFOs, changes in the annual calculations of manure, litter, and process wastewater that are made in accordance with 40 CFR 122.42(e)(5)(i)(B) and (5)(ii)(D) are not subject to this process.

These amendments are necessary to be consistent with EPA's requirements for delegated state permit programs pursuant to 40 CFR 123.25. The incorporation by reference of these federal rules is necessary to make them enforceable under state law and to comply with the legislative directive in 75-5-802, MCA.

4. The proposed new rule provides as follows:

**NEW RULE I TECHNICAL STANDARDS FOR CONCENTRATED ANIMAL FEEDING OPERATION** (1) The owner or operator of a CAFO as defined in ARM 17.30.1330 that is subject to the requirements of 40 CFR 412 Subparts C or D shall develop and implement a nutrient management plan (NMP) in accordance with the requirements of this rule and 40 CFR 122.42(e). The NMP must address the form, source and amount of nutrients, and the timing and method of application for all manure, litter, and other process wastewater that is applied to land under the ownership or operational control of the CAFO.

(2) For purposes of this rule, the following terms have the meaning and interpretations as indicated below and are supplemental to the definitions contained in ARM 17.30.1304:

(a) "expected crop yield" means the estimated crop yield, expressed as bushels per acre or tons per acre, in a future year based on one of the following:

(i) if historic crop yield data are available, the expected crop yield must be based on the average of at least three years of previous crop yield data (past average yield) using the formula: estimated crop yield = 1.05 X past average yield; or

(ii) if historic crop data are unavailable, expected crop yield must be based on realistic yield goals determined from other sources and described in the facility's NMP;

(b) "field" means an area of land that is capable of supporting vegetation and is homogeneous with respect to crop or cover type where manure is to be applied and is under the control of a CAFO owner or operator;

(c) "manure" means manure, litter, or process wastewater, including bedding, compost, and raw materials or other materials comingled with manure or set aside for disposal;

(d) "multiyear phosphorus application" means phosphorus applied to a field in excess of the crop needs for that year;

(e) "Olsen soil test" means the concentration of phosphorus in the soil as

determined by the Olsen sodium-bicarbonate extraction in accordance with method code 4D5 in United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), Soil Survey Laboratory Methods Manual, Soil Survey Investigations Report No. 42, Version 4.0, November 2004;

(f) "process wastewater" means water directly or indirectly used in the operation of a CAFO for any or all of the following:

(i) spillage or overflow from animal or poultry watering systems;

(ii) washing, cleaning, or flushing pens, barns, manure pits, or other CAFO facilities;

(iii) direct contact swimming, washing, or spray cooling of animals;

(iv) dust control; or

(v) any water that comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding;

(g) "site vulnerability rating" means the narrative description of a field for phosphorus loss as determined by Table 4 (Site/Field Vulnerability to Phosphorus Loss) in United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), No. 80.1 Nutrient Management, Agronomy Technical Note MT-77 (revision 3), January 2006; and

(h) "total phosphorus index value" means the sum of the weighted risk factors for a field as determined by Table 3 (Phosphorus Index Assessment) in United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), No. 80.1 Nutrient Management, Agronomy Technical Note MT-77 (revision 3), January 2006.

(3) Except as provided in (10), application rates for manure applied to each field must be determined based on the criteria given in (a) through (c).

(a) The CAFO shall complete a field-specific assessment to determine the appropriate basis (nitrogen- or phosphorus-based) for application of plant nutrients. The field-specific assessment must be based on the phosphorus index assessment method described in United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), No. 80.1 Nutrient Management, Agronomy Technical Note MT-77 (revision 3), January 2006. The nutrient application basis is determined as follows:

(i) nitrogen-based application if the site vulnerability rating is low or medium (total phosphorus index value is less than 22);

(ii) phosphorus-based application up to crop removal if the site vulnerability rating is high (total phosphorus index value is between 22 and 43); or

(iii) no application of phosphorus if:

(A) the site vulnerability rating is rated as very high (total phosphorus index value is greater than 43); or

(B) the results of a representative soil phosphorus test for the field results in a value of 150 mg/L phosphorous or more using the Olsen soil test.

(b) The CAFO shall complete a nutrient need analysis for each crop to determine the acceptable amounts of nitrogen and phosphorus to be applied to the field based on the appropriate basis (nitrogen- or phosphorus-based application) as determined in (a). The nutrient needs must be determined based on Montana State University Extension Service Publication 161, Fertilizer Guidelines for Montana Crops. For crops not listed in Bulletin 161, the department may approve a fertilizer

application rate provided by the local county extension service.

(c) The CAFO shall complete a nutrient budget based on the nutrients needs of the crop as determined in (b) that accounts for all sources of nutrients available to the crop. Other sources that must be addressed where applicable include those in (i) through (vi) below.

(i) The nitrogen needs determined in (b) must be reduced based on nitrogen fixation credits if a legume crop was grown in the field in the previous year based on the nitrogen fixation rates given in Schedule I.

Schedule I. Nitrogen Fixation Estimates for Dryland Conditions

<u>Crop</u>	<u>Nitrogen Fixation (pounds per acre)</u>
Alfalfa (after harvest)	40-80
Alfalfa (green manure)	80-90
Spring Pea	40-100
Winter Pea	70-100
Lentil	30-100
Chickpea	30-90
Fababean	50-125
Lupin	50-55
Hairy Vetch	90-100
Sweetclover (annual)	15-20
Sweetclover (biennial)	80-150
Red Clover	50-125
Black Medic	15-25

(ii) The nitrogen needs determined in (b) must be reduced based on nitrogen residuals from past manure applications based on nitrogen mineralization rates given in Schedule II.

Schedule II. Nitrogen Mineralization Rates

<u>Type of Wastes</u>	<u>First Year<sup>(1)</sup></u>	<u>Second Year</u>
Fresh poultry manure	0.90	0.02
Fresh swine manure	0.75	0.04
Fresh cattle manure	0.70	0.04
Fresh sheep and horse manure	0.60	0.06
Liquid manure, covered tank	0.65	0.05
Liquid manure, storage pond	0.65	0.05
Solid manure, stack	0.60	0.06
Solid manure, open pit	0.55	0.05
Manure pack, roofed	0.50	0.05
Manure pack, open feedlot	0.45	0.05
Storage pond effluent	0.40	0.06
Oxidation ditch effluent	0.40	0.06

Aerobic lagoon effluent	0.40	0.06
Anaerobic lagoon effluent	0.30	0.06

(1) If irrigated, reduce first year mineralization by 0.05.

(iii) The nitrogen needs determined in (b) must be reduced based on any nutrients provided by commercial fertilizer, irrigation water, or other sources. The CAFO shall provide the basis for the nutrients adjustments on the NMP.

(iv) Nitrogen availability may be adjusted to reflect the method of application given in Schedule III. For phosphorus-based application, the nitrogen availability is 1.0.

#### Schedule III. Nitrogen Availability and Loss by Method of Application

<u>Application Method</u>	<u>Loss Factor</u>
Injection (sweep)	0.90
Injection (knife)	0.95
Broadcast (incorporated within 12 hours)	0.7
Broadcast (incorporated after 12 hours but before four days)	0.6
Broadcast (incorporated after four days)	0.5
Sprinkling	0.75

(v) The nutrient budget must be completed on forms provided by the department.

(vi) If after the first three years of implementing the NMP the yield does not average at least 80% of the planned expected crop yield, the NMP must be amended to be consistent with the documented yield levels unless sufficient justification for the use of the higher yield is approved by the department. The amendment must be submitted as an amendment in accordance with ARM 17.30.1365.

(4) Manure that is land applied must be sampled at least once per year and analyzed for total nitrogen (as N), ammonium nitrogen (as  $\text{NH}_4\text{-N}$ ), total phosphorus (as  $\text{P}_2\text{O}_5$ ), total potassium (as  $\text{K}_2\text{O}$ ), and percent dry matter (solids). Except for percent dry matter, the results of this analysis must be expressed as pounds per 1,000 gal for liquid wastes and pounds per ton for solid manure. The sample must be representative of the manure that is to be applied to a field and must be collected and analyzed in accordance with (a) and (b).

(a) Solid manure must be sampled from at least ten different locations (subsamples) within the material to be applied from a depth of at least 18 inches below the surface. Subsamples must be thoroughly mixed in a clean receptacle and a sample of the mixed material must be collected and placed in a sealable plastic bag or other sample container approved by the analytical laboratory. The sample must be identified with the name, source, and date. The sample must be cooled to four degrees centigrade and analyzed within seven days or frozen at minus 18 degrees centigrade for up to six months or as directed by the analytical laboratory

specified in (6).

(b) Liquid manure must be agitated for a minimum of four hours prior to sample collection or until thoroughly mixed. A minimum of five one-quart subsamples must be collected from different locations in the storage facility. The subsamples must be collected from the liquid manure at a depth of least 12 inches below the surface. The subsamples must be combined into a single container and thoroughly mixed. A sample for laboratory analysis must be collected from the composited subsamples and placed into a clean one-quart plastic bottle or other sample container approved by the analytical laboratory. The sample must be identified with the name, source, and date. The sample container must not be completely filled. The sample must be cooled to four degrees centigrade and analyzed within seven days, or frozen at minus 18 degrees centigrade for up to six months or as directed by the analytical laboratory specified in (6).

(5) Each field where manure is to be land applied must be sampled at least once every five years in accordance with the procedure given in (a) through (d).

(a) A minimum of ten individual core samples must be composited to formulate a composite sample for the field. Core sampling in fields with significant landscape variation, including soil type, slope, degree of erosion, drainage, historic usage, or other factors, must be collected from each unit in proportion to the relative abundance in terms of total area. Uniform fields may be sampled in a simple random, stratified random, or systematic pattern following the guidance sources listed below. Individual core samples must be composited and thoroughly mixed in a clean plastic container except that core samples collected at different depths must be kept separate. Alternative soil sampling procedures are given in the following:

(i) United States Department of Agriculture (USDA), Natural Resource Conservation Service (NRCS), Sampling Soils for Nutrient Management – Manure Resource Series, MT, April 2007; and

(ii) Montana State University Extension, MontGuide, Interpretation of Soil Test Reports for Agriculture, MT200702AG, July 2007.

(b) The composite soil sample for phosphorus analysis must be collected from a depth of zero to six inches below the surface and analyzed for phosphorus using the Olsen soil test method. Results must be reported as mg/kg phosphorus and pounds per acre.

(c) Composite soil samples for nitrogen analysis must be collected from a depth of zero to six inches below the surface and analyzed for total nitrogen (as N) and nitrate (as N). A second composite sample must be collected at a depth of six to 24 inches and analyzed for nitrate (as N) only. Samples must be analyzed in accordance with method code 4H2a1-3 in United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), Soil Survey Laboratory Methods Manual, Soil Survey Investigations Report No. 42, Version 4.0, November 2004. Results must be reported as mg/kg total nitrogen and pounds per acre.

(6) Analytical laboratories approved for manure and soil testing are given in Montana State University Extension Service Publication 4449-1, Soil Sampling and Laboratory Selection, June 2005.

(7) Manure must be applied to fields at times and under conditions that will hold the nutrients in place for crop growth and protect surface and ground water using best management practices described in the nutrient management plan. The

intended target spreading dates must be included in the NMP. Manure must not be land applied under the following conditions:

- (a) on land that is flooded or saturated with water;
- (b) during or within 36 hours of a rainfall event that exceeds four hours in duration or 0.25 inches or more of precipitation; or
- (c) to frozen or snow-covered ground.

(8) Manure application rates and procedures must be consistent with the capabilities, including capacity and calibration range, of application equipment.

(a) For an existing CAFO, the NMP must include a statement indicating that the existing equipment has been calibrated to ensure delivery of the application rates described in the plan and has the capacity to meet those rates. The CAFO shall maintain the supporting documentation on site and shall make this information available to the department upon request.

(b) For proposed operations, or when it is not feasible to calibrate the equipment or verify its capacity at planning time, the operator shall perform this application equipment verification prior to the first application of manure. The information required in (a) must be maintained on site and incorporated into any subsequent amendment of the NMP. The CAFO shall maintain the supporting documentation on site and shall make this information available to the department upon request.

(c) If a commercial hauler is used, the hauler shall be responsible for ensuring that the equipment is capable of complying with the application rate in the NMP. The CAFO shall maintain the supporting documentation on site and shall make this information available to the department upon request.

(9) A multiyear phosphorus application is allowed for fields that require a nitrogen-based application based on a site-specific assessment (site vulnerability rating less than 22) as described in (3). When such application is made, the following conditions apply:

(a) the application may not exceed the recommended nitrogen application rate during the years of application which may include a calculation for fertilizer inefficiencies or the estimated nitrogen removal in harvested plant biomass during the year of application when there is no recommended nitrogen application;

(b) conservation practices must be included in the NMP and implemented to minimize the risk of phosphorus loss from the field; and

(c) no additional manure may be applied to the field until the phosphorus applied in the single application has been removed through plant harvest.

(10) As an alternative to the manure application rates based on the criteria given in (3), the CAFO may develop application rates for manure based on United States Department of Agriculture (USDA), Natural Resource Conservation Service (NRCS), Conservation Practice Standard, Code 590 (November 2006), provided that the following conditions are met:

(a) a field-specific assessment of the potential for nitrogen and phosphorus transport from the field to surface waters must be conducted;

(b) the form, source, amount, timing, and method of application of manure and any other nutrients to each field must be based on realistic production goals, and minimizing nitrogen and phosphorus movement to surface water must be addressed;

(c) the appropriate flexibilities for the CAFO must be maintained to implement a multiyear phosphorus application as described in (9);

(d) manure must be sampled a minimum of once annually for nitrogen and phosphorus and must be analyzed based on procedures and methods given in (4) and (5);

(e) soil must be analyzed a minimum of once every three years for phosphorus content;

(f) the results of the manure and soil sampling analysis must be used in determining manure application rates; and

(g) the nutrient budget must be completed on forms provided by the department.

(11) The board adopts and incorporates by reference the following, which may be obtained from the Department of Environmental Quality, Water Protection Bureau, P.O. Box 200901, Helena 59620-0901, or on the department's web site at <http://deq.mt.gov/default.mcp>.

(a) United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), No. 80.1 Nutrient Management Agronomy Technical Note MT-77 (revision 3), (January 2006);

(b) United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), Method 4D5 (Olsen Sodium-Bicarbonate Extraction), Soil Survey Laboratory Methods Manual, Soil Survey Investigations Report No. 42, Version 4.0, (November 2004);

(c) United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), Sampling Soils for Nutrient Management – Manure Resource Series, MT (April 2007);

(d) Montana State University Extension, MontGuide, Interpretation of Soil Test Reports for Agriculture, MT200702AG, (July 2007);

(e) Montana State University Extension Service Publication 4449-1, Soil Sampling and Laboratory Selection, (June 2005); and

(f) United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), Conservation Practice Standard, Nutrient Management, Code 590, (November 2006).

AUTH: 75-5-401, 75-5-802, MCA

IMP: 75-5-401, 75-5-802, MCA

**REASON:** The board is proposing to adopt New Rule I to comply with the requirements of 40 CFR 123.36. This federal rule requires each delegated state to establish technical standards for nutrient management that are consistent with 40 CFR 412.4(c)(2). This technical standard is an effluent limitation that specifies the application rate for manure, litter, and other process wastewater applied to land under the ownership or operational control of the CAFO.

The technical standards adopted by the state must include: (1) a field-specific assessment of the potential for nitrogen and phosphorus transport from the field to surface water and a nutrient management plan (NMP) that addresses the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals; and (2) appropriate flexibilities for any CAFO to



implement nutrient management practices to comply with the technical standards, including consideration of multiyear phosphorus application, phased implementation of phosphorus-based nutrient management, and other components as determined appropriate by the state.

The technical standards in New Rule I are based on and derived from Section 6 of Department Circular DEQ-9 that the board adopted in 2006, which describes procedures for conducting a field-specific assessment and determination of application rates for manure, litter, and process water. New Rule I also contains sampling procedures that are described in Section 5 of Department Circular DEQ-9. In addition to these procedures, New Rule I includes a section of definitions explaining technical terms used in the rule, identifies analytical procedures for analysis of soils and manure and analytical laboratories that may perform these analyses, and sets out conditions under which multiyear phosphorus application rates are acceptable.

The board is also proposing to eliminate language in ARM 17.30.1343 requiring CAFOs to comply with Department Circular DEQ-9 due to EPA's revisions to the CAFO regulations in 2008, specifically 40 CFR 123.36. Department Circular DEQ-9 was adopted by the board in 2006 prior to promulgation of the 2008 federal CAFO rule, which placed into regulation, in 40 CFR 122.23, 122.42(e), and Part 412, the requirements for nutrient management, best management practices, record keeping, and annual reporting for CAFOs. These provisions of Department Circular DEQ-9 are no longer necessary. Other requirements of Department Circular DEQ-9 are neither consistent with, nor required by, 40 CFR 123.36 or 40 CFR 122.42(e).

These amendments are necessary to be consistent with EPA's requirements for delegated state permit programs pursuant to 40 CFR 123.25 and 40 CFR 123.36.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to [ejohnson@mt.gov](mailto:ejohnson@mt.gov), no later than 5:00 p.m., January 17, 2013. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. Katherine Orr, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans;

wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at [ejohnson@mt.gov](mailto:ejohnson@mt.gov), or may be made by completing a request form at any rules hearing held by the board.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ James M. Madden

JAMES M. MADDEN

Rule Reviewer

BY: /s/ Joseph W. Russell

JOSEPH W. RUSSELL, M.P.H.,

Chairman

Certified to the Secretary of State, December 10, 2012.

**IN THE MATTER OF THE  
AMENDMENT OF ARM  
17.30.1330, 17.30.1341, 17.30.1343,  
17.30.1361 AND 17.30.1362  
PERTAINING TO  
CONCENTRATED ANIMAL  
FEEDING OPERATIONS,  
GENERAL PERMITS,  
ADDITIONAL CONDITIONS  
APPLICABLE TO SPECIFIC  
CATEGORIES OF MPDES  
PERMITS, MODIFICATION  
OR REVOCATION AND  
REISSUANCE OF PERMITS,  
MINOR MODIFICATION OF  
PERMITS AND ADOPTION OF  
NEW RULE I PERTAINING TO  
TECHNICAL STANDARDS FOR  
CONCENTRATED ANIMAL  
FEEDING OPERATION**

## INTRODUCTION

**PRESIDING OFFICER REPORT**  
**PAGE 1**

1 federal requirements of 40 CFR 123.36 that require each delegated state to establish  
2 technical standards for nutrient management that are consistent with 40 CFR 412.4  
3 (c) (2).

4 2. Notice of the hearing was contained in the Montana Administrative  
5 Register (MAR), Notice No. 17-342, published on December 20, 2012, in Issue No.  
6 24. A copy of the notice is attached to this report. (Attachments are provided in the  
7 same order as they are referenced in this report.)

8 3. The hearing was transcribed by Ms. Cheryl Romsa of Cheryl Romsa  
9 Court Reporting, Helena, Montana.

10 4. There was one member of the public who testified at the hearing, Mr.  
11 Joe Carleton who works for Dry Fork Ag out of Ledger, Montana.

12 5. At the hearing, the Presiding Officer identified and summarized the  
13 MAR notice and read the Notice of Function of Administrative Rule Review  
14 Committee as required by Mont. Code Ann. § 2-4-302(7)(a).

15 **SUMMARY OF HEARING**

16 6. Mr. Tom Reid who works within the Water Quality Protection Bureau  
17 of the Montana Department of Environmental Quality (Department) submitted a  
18 written statement and gave a brief oral summary of the amendments and New Rule 1  
19 at the hearing. (The written statement is attached.)

20 7. Mr. Carleton stated in testimony that presently Under DEQ-9, a CAFO  
21 could substitute a soil test P to determine the nutrient budget and the nutrient  
22 management plans. He stated that under New Rule I, CAFO's would be required to  
23 use the Phosphorous Index and there is a question of whether the nutrient  
24 management plans must be reevaluated under the New Rule 1. There were written  
25 comments submitted after the hearing by Mr. Patrick Hensleigh of the Natural  
26 Resources Conservation Service of the Department of Agriculture and by Mr.  
27 Thomas M. Bass, a Livestock Environment Associate Specialist with Montana State

1 University Extension. Mr. Hensleigh presented two comments: (1) NCRS believes  
2 that winter applications should be allowed until there is some assurance that  
3 economically disadvantaged producers can afford or acquire six months of waste  
4 storage capacity. To prevent offsite delivery of nutrients and further protect water  
5 quality, these winter applications would need to be applied at agronomic rates as is  
6 currently required and exclude the special protection areas. (2) NCRS proposes to  
7 delete Schedule I-Nitrogen Fixation Rates for Dryland Conditions in (3)(c)(i) of  
8 New Rule I. Mr. Bass commented that reliance on the Montana State University  
9 Extension Service Publication 161 may be an unnecessary and detrimental  
10 restriction on access to the most current and best science available for developing  
11 nutrient management practices.

12 8. A written memorandum was submitted from Department Counsel, Mr.  
13 David Dennis, containing HB 521 and HB 311 reviews of the proposed adoption of  
14 the amendments and New Rule 1, together with a Private Property Assessment Act  
15 Checklist. (Mr. Dennis' memorandum is attached to this report.)

16 9. Mr. Dennis stated that the amendments and new rule do not render any  
17 department rule or regulation more stringent than corresponding federal draft or  
18 final regulations, guidelines or criteria and therefore no written findings are required  
19 pursuant to Mont. Code Ann. §§ 75-5-203 and 75-5-309.

20 10. With respect to HB 311 (the Private Property Assessment Act, Mont.  
21 Code Ann. §§ 2-10-101 through 105), the Board is required to assess the taking or  
22 damaging implications of a proposed rule or amendments affecting the use of  
23 private real property. Mr. Dennis concluded that this rulemaking affects the use of  
24 private real property. A Private Property Assessment Act Checklist was prepared  
25 which shows that the proposed amendments do not have taking or damaging  
26 implications. Therefore, no further assessment is required.

27

11. The period to submit comments ended at 5 p.m. on January 17, 2013.

**PRESIDING OFFICER COMMENTS**

12. The Board has jurisdiction to make the proposed amendments. See  
Mont. Code Ann. §§ 75-5-201 and 75-5-401.

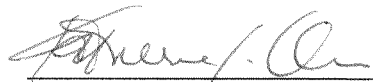
13. The conclusions in the memorandum of Mr. Dennis concerning House  
Bill 521 (1995) and House Bill 311 (1995) are correct.

14. The procedures required by the Montana Administrative Procedure  
Act, including public notice, hearing, and comment, have been followed.

15. The Board may adopt the proposed amendments and New Rule 1,  
reject them, or adopt them with revisions not exceeding the scope of the public  
notice.


16. Under Mont. Code Ann. § 2-4-305(7), for the rulemaking process to  
be valid, the Board must publish a notice of adoption within six months of the date  
the Board published the notice of proposed rulemaking in the Montana  
Administrative Register, or by June 20, 2013.

DATED this 12 day of March, 2013.



KATHERINE J. ORR  
Hearing Examiner  
Agency Legal Services Bureau  
1712 Ninth Avenue  
P.O. Box 201440  
Helena, MT 59620-1440

## MEMORANDUM

To: Board of Environmental Review  
From: David Dennis, DEQ Staff Attorney   
Re: Stringency Analysis and Takings Checklist for Proposed Amendments to ARM 17.30.1330, 17.30.1341, 17.30.1343, 17.30.1361, 17.30.1362, and New Rule I ; MAR Notice No. 17-342

Date: January 10, 2012

### STRINGENCY REVIEW

Section 75-5-203, MCA, requires the Board of Environmental Review to make certain written findings after a public hearing and public comment prior to adopting a rule that is more stringent than a comparable federal standard or guideline. No written findings are required if the more stringent standard is "required by state law." In addition, § 75-5-309, MCA, requires the Board of Environmental Review to make certain written findings that are accompanied by a Board opinion evaluating the environmental and public health information in the record prior to adopting a rule that is more stringent than corresponding federal draft or final regulations, guidelines, or criteria.

The board proposes to amend ARM §§17.30.1330, 17.30.1341, 17.30.1343, 17.30.1361, 17.30.1362 and adopt New Rule I in order to comply with § 75-5-802 MCA. Section 75-5-802 MCA requires the board to adopt the federal regulations and definitions contained in 40 C.F.R., parts 122.23 and 412 for purposes of permitting concentrated animal feeding operations.

#### Amendments to ARM 17.30.1330

The board is amending ARM 17.30.1330(1) to eliminate language that may be inconsistent with the requirements in 40 CFR 122.23 and add new language clarifying the scope of the CAFO permitting requirements. The board is proposing to amend (2) to eliminate language explaining that CAFOs are point sources, since that explanation is included in the proposed amendment to (1). The board is proposing to replace the existing language in (2) with the text of 40 CFR 122.23(d) explaining that a CAFO operator must seek coverage under an MPDES permit if the CAFO discharges pollutants to state surface waters.

The board is proposing a new (3) to establish CAFO application requirements for coverage under an individual permit or a general permit. The proposed language is based on the requirements of 40 CFR 122.23(d). The board is proposing a new (4) to clarify that, when a CAFO meets the requirements of 40 CFR Part 412, the department must authorize the discharge under a general permit. The board is proposing new (8) which explains that the department shall review notices of intent for coverage under a general permit using the procedures in 40 CFR 122.23(h)(1).

The board is proposing new (9) to explain that discharges to surface waters from a CAFO's land application site are subject to the MPDES requirements, except where the discharge meets the definition of "agricultural storm water discharge," as defined in 40 CFR 122.23(e). The board is proposing new (10) to specify that a CAFO must apply for a permit whenever the CAFO is required to do so under (2), and to incorporate by reference the federal rules proposed for inclusion in ARM 17.30.1330 that are applicable to permit application requirements for CAFOs. The incorporation by reference of these federal rules is

necessary to make them enforceable under state law and to comply with the legislative directive in 75-5-802, MCA.

None of the amendments set forth above render any department rule or regulation more stringent than corresponding federal draft or final regulations, guidelines, or criteria. Therefore no written findings are required under §§ 75-5-203 or 75-5-309 MCA.

#### Amendments to 17.30.1341

The board is proposing to amend the general permit requirements in ARM 17.30.1341 in order to make them consistent with the equivalent federal requirements set forth in 40 CFR 122.28. The board is proposing to delete the current text of (12)(c), which incorporates by reference 40 CFR 122.26(c)(2) (the process for submitting group application requirements for discharges associated with industrial activity). The federal rule was repealed by EPA. The board is also proposing to delete the current text of (12)(d) and (e), which incorporates by reference 16 USC 1132 (wilderness designations) and 16 USC 1274 (wild and scenic river designations). These federal statutes are not implemented by the department under the MPDES program and they are not a required element of a delegated state's permit program. The board is proposing to move the remaining incorporations by reference of federal rules currently in (12) and place them in new (13) and update the reference to the current federal regulation.

None of the amendments set forth above render any department rule or regulation more stringent than corresponding federal draft or final regulations, guidelines, or criteria. Therefore no written findings are required under §§ 75-5-203 or 75-5-309 MCA.

#### Amendments to 17.30.1343

The board is proposing to amend (1)(c) of ARM 17.30.1343 by eliminating references to rules that generally apply to all MPDES permits. The board is proposing to replace the existing language in (1)(c) with a requirement that all CAFO permits include the additional permit requirements specified in 40 CFR 122.42(e). Rather than adopt the text of the federal regulation, the amendment incorporates by reference the requirements of 40 CFR 122.42(e) to be consistent with the legislative directive in 75-5-802, MCA.

The board is also proposing to replace the requirement to comply with Circular DEQ-9 with a requirement to comply with the technical standards given in New Rule I. New Rule I fulfills the requirements of 40 CFR 123.36. Department Circular DEQ-9 was adopted by the board in 2006 prior to promulgation of the 2008 federal CAFO rule (40 CFR 122.23, 122.42(e), and Part 412) which sets forth requirements for nutrient management, best management practices, record keeping, and annual reporting for CAFOs. These provisions of DEQ-9 are no longer necessary. Other requirements of Circular DEQ-9 are neither consistent with, nor required by, 40 CFR 123.36 or 40 CFR 122.42(e).

None of the amendments set forth above render any department rule or regulation more stringent than corresponding federal draft or final regulations, guidelines, or criteria. Therefore no written findings are required under §§ 75-5-203 or 75-5-309 MCA.

//



#### Amendments to 17.30.1361

The board is proposing to amend the conditions for modification of a general permit issued to a CAFO in ARM 17.30.1361 in order to make them consistent with 40 CFR 122.62. The amendments are necessary to render Montana rules consistent with EPA's requirements for delegated state permit programs pursuant to 40 CFR 123.25.

None of the amendments set forth above render any department rule or regulation more stringent than corresponding federal draft or final regulations, guidelines, or criteria. Therefore no written findings are required under §§ 75-5-203 or 75-5-309 MCA.

#### Amendments to 17.30.1362

The board is proposing to amend the conditions for minor amendments of MPDES permits in ARM 17.30.1362 to render them consistent with 40 CFR 122.63. These amendments set forth do not render any department rule or regulation more stringent than corresponding federal draft or final regulations, guidelines, or criteria. Therefore no written findings are required under §§ 75-5-203 or 75-5-309 MCA.

#### Adoption of New Rule I

The board is proposing to adopt New Rule I to comply with the requirements of 40 CFR 123.36. This federal rule requires each delegated state to establish technical standards for nutrient management that are consistent with 40 CFR 412.4(c)(2). This technical standard is an effluent limitation that specifies the application rate for manure, litter, and other process wastewater applied to land under the ownership or operational control of the CAFO.

The technical standards in New Rule I are based on and derived from Section 6 of Department Circular DEQ-9 that the board adopted in 2006, which describes procedures for conducting a field-specific assessment and determination of application rates for manure, litter, and process water. New Rule I also contains sampling procedures that are described in Section 5 of Department Circular DEQ-9. In addition to these procedures, New Rule I includes a section of definitions explaining technical terms used in the rule, identifies analytical procedures for analysis of soils and manure and analytical laboratories that may perform these analyses, and sets out conditions under which multiyear phosphorus application rates are acceptable.

New Rule I does not contain any department rule or regulation that is more stringent than corresponding federal draft or final regulations, guidelines, or criteria. Therefore no written findings are required under §§ 75-5-203 or 75-5-309 MCA.

#### TAKINGS REVIEW

The Private Property Assessment Act, codified as § 2-10-101, MCA, requires that, prior to adopting a proposed rule that has taking or damaging implications for private real property, an agency must prepare a taking or damaging impact statement. "Action with taking or damaging implications" means:

[A] proposed state agency administrative rule, policy, or permit condition or denial pertaining to land or water management or to some other environmental matter that if adopted and enforced would constitute a deprivation of private property in violation of the United States or Montana Constitution.

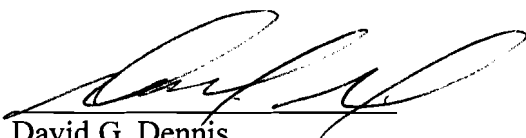
§ 2-10-103, MCA.

Section 2-10-104, MCA, requires the Montana Attorney General to develop guidelines, including a checklist, to assist agencies in determining whether an agency action has taking or damaging implications. I have completed an Attorney General's "Private Property Assessment Act Checklist" pertaining to the Board's adoption of proposed revisions in MAR Notice No. 17-342, which is attached to this memo. Based upon completion of the checklist, the proposed revisions do not have taking or damaging implications. Therefore, no further HB 311 assessment is required.

PRIVATE PROPERTY ASSESSMENT ACT CHECKLIST FOR AMENDMENTS PROPOSED IN  
MAR NOTICE 17-342

YES    NO

X		1. Does the action pertain to land or water management or environmental regulation affecting private real property or water rights or some other environmental matter?
	X	2. Does the action result in either a permanent or indefinite physical occupation of private property?
	X	3. Does the action deny a fundamental attribute of ownership? (ex.: right to exclude others, disposal of property)
	X	4. Does the action deprive the owner of all economically viable uses of the property?
	X	5. Does the action require a property owner to dedicate a portion of property or to grant an easement? [If no, go to (6)].
		5a. Is there a reasonable, specific connection between the government requirement and legitimate state interests?
		5b. Is the government requirement roughly proportional to the impact of the proposed use of the property?
	X	6. Does the action have a severe impact on the value of the property? (consider economic impact, investment-backed expectations, character of government action)
	X	7. Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public generally?
	X	7a. Is the impact of government action direct, peculiar, and significant?
	X	7b. Has government action resulted in the property becoming practically inaccessible, waterlogged or flooded?
	X	7c. Has government action lowered property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question?
	X	Takings or damaging implications? (Taking or damaging implications exist if YES is checked in response to question 1 and also to any one or more of the following questions: 2, 3, 4, 6, 7a, 7b, 7c; or if NO is checked in response to questions 5a or 5b; the shaded areas)

  
David G. Dennis  
DEQ Legal Unit

1/10/12  
Date

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

---

In the matter of the amendment of ARM  
17.30.1330, 17.30.1341, 17.30.1343,  
17.30.1361, 17.30.1362 pertaining to  
concentrated animal feeding operations;  
general permits, additional conditions  
applicable to specific categories of  
MPDES permits, modification or  
revocation and reissuance of permits,  
minor modification of permits and  
adoption of New Rule I pertaining to  
technical standards for concentrated  
animal feeding operation.

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TRANSCRIPT OF THE PUBLIC HEARING

Heard before Katherine Orr, Hearing Officer

Montana Department of Environmental Quality  
1520 East Sixth Avenue, Room 35  
Helena, Montana

January 11, 2013  
1:30 p.m.

REPORTED BY:

CHERYL ROMSA  
CHERYL ROMSA COURT REPORTING  
ONE NORTH LAST CHANCE GULCH #3  
P. O. BOX 1278  
HELENA, MONTANA 59624  
(406) 449-6380

## I N D E X

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Hearing closed by Katherine Orr.....	12

<p>1 WHEREUPON, the following proceedings were had:</p> <p>2 HEARING OFFICER ORR: This hearing is called to</p> <p>3 order.</p> <p>4 My name is Katherine Orr; I am an attorney with the</p> <p>5 Attorney General's Office, and I'm also the attorney for</p> <p>6 the Board of Environmental Review designated to preside</p> <p>7 over this hearing.</p> <p>8 Let the record show it is 1:30 p.m. on January 11,</p> <p>9 2013. This hearing is taking place in Room 35 --</p> <p>10 (Conference call: Now joining, Tom Kallenbach.)</p> <p>11 HEARING OFFICER ORR: Oh, we have someone else</p> <p>12 who has just called in. And your name is?</p> <p>13 MR. KALLENBACH: Tom Kallenbach.</p> <p>14 HEARING OFFICER ORR: Good afternoon. Where are</p> <p>15 you in calling from?</p> <p>16 MR. KALLENBACH: I'm calling in from sunny, warm</p> <p>17 Bozeman.</p> <p>18 (A brief discussion was held off the record.)</p> <p>19 HEARING OFFICER ORR: My name is Katherine Orr,</p> <p>20 and I just started the rule hearing. I am the attorney</p> <p>21 appointed to preside over this hearing. And to everyone,</p> <p>22 both on the phone and in person, I'm going to apologize in</p> <p>23 advance, because I have quite a long statement to read</p> <p>24 that I have to read by law.</p> <p>25 This is the time and place set for the rulemaking</p> <p>3</p>	<p>1 of interim committees and the Environmental Quality</p> <p>2 Council, EQC. These interim committees and the EQC have</p> <p>3 administrative rule review, program evaluation, and</p> <p>4 monitoring functions for the following executive branch</p> <p>5 agencies and the entities attached to agencies for</p> <p>6 administrative purposes.</p> <p>7 The Economic Affairs Interim Committee: The</p> <p>8 Department of Agriculture, Department of Commerce,</p> <p>9 Department of Labor and Industry, Department of Livestock,</p> <p>10 Office of the State Auditor and Insurance Commissioner,</p> <p>11 and Office of Economic Development.</p> <p>12 Education and Local Government Interim Committee:</p> <p>13 State Board of Education, Board of Public Education, Board</p> <p>14 of Regents of Higher Education, and Office of Public</p> <p>15 Instruction.</p> <p>16 Children, Families, Health, and Human Services Interim</p> <p>17 Committee: Department of Public Health and Human</p> <p>18 Services.</p> <p>19 Law and Justice Interim Committee: Department of</p> <p>20 Corrections and Department of Justice.</p> <p>21 Energy and Telecommunications Interim Committee:</p> <p>22 Department of Public Service Regulation.</p> <p>23 Revenue and Transportation Interim Committee:</p> <p>24 Department of Revenue and Department of Transportation.</p> <p>25 State Administration and Veterans' Affairs Interim</p> <p>5</p>
<p>1 hearing in the matter of the Amendment of ARM 17.30.1330,</p> <p>2 17.30.1341, 17.30.1343, 17.30.1361, 17.30.1362 pertaining</p> <p>3 to concentrated animal feeding operations, general</p> <p>4 permits, additional conditions applicable to specific</p> <p>5 categories of MPDES permits, modification or revocation</p> <p>6 and reissuance of permits, minor modification of permits,</p> <p>7 and adoption of New Rule I pertaining to technical</p> <p>8 standards for concentrated animal feeding operation.</p> <p>9 Notice of this hearing was published in the Montana</p> <p>10 Administrative Register under MAR Notice No. 17-342 on</p> <p>11 December 20th, 2012. I am required to summarize the major</p> <p>12 provisions of the hearing notice, which are quite lengthy,</p> <p>13 and I'm just going to defer to what I read in the title.</p> <p>14 By law, I'm required to read the Notice of Function of</p> <p>15 Administrative Rule Review Committee. This is under</p> <p>16 Montana Code Annotated, Section 2-4-302(7). It consists</p> <p>17 of a listing of legislative committees and State of</p> <p>18 Montana departments over which the committees have</p> <p>19 oversight. And for everyone's edification, the Board of</p> <p>20 Environmental Review is administratively attached to the</p> <p>21 Department of Environmental Quality, which is referenced</p> <p>22 in this notice. The notice is as follows:</p> <p>23 Notice of Function of Administrative Rule Review</p> <p>24 Committee. Interim Committees and the Environmental</p> <p>25 Quality Council. Administrative rule review is a function</p> <p>4</p>	<p>1 Committee: Department of Administration, Department of</p> <p>2 Military Affairs, and the Office of Secretary of State.</p> <p>3 Environmental Quality Council: The Department of</p> <p>4 Environmental Quality and the Board of Environmental</p> <p>5 Review, Department of Fish, Wildlife, and Parks, and</p> <p>6 Department of Natural Resources and Conservation.</p> <p>7 These interim committees and the EQC have the</p> <p>8 authority to make recommendations to an agency regarding</p> <p>9 the adoption, amendment, or repeal of a rule or to request</p> <p>10 that the agency prepare a statement of the estimated</p> <p>11 economic impact of a proposal. They also may poll the</p> <p>12 members of the Legislature to determine if a proposed rule</p> <p>13 is consistent with the intent of the Legislature or,</p> <p>14 during a legislative session, introduce a bill repealing a</p> <p>15 rule, or directing an agency to adopt or amend a rule, or</p> <p>16 a Joint Resolution recommending that an agency adopt,</p> <p>17 amend, or repeal a rule.</p> <p>18 The interim committees and the EQC welcome comments</p> <p>19 and invite members of the public to appear before them or</p> <p>20 to send written comments in order to bring to their</p> <p>21 attention any difficulties with the existing or proposed</p> <p>22 rules. The mailing address is P. O. Box 201706, Helena,</p> <p>23 MT 59620-1706.</p> <p>24 Paragraph 4 of the hearing notice --</p> <p>25 (Conference call: Now joining, Justin Buchanan.)</p> <p>6</p>

<p>1 HEARING OFFICER ORR: Hi, Justin, this is</p> <p>2 Katherine Orr. How are you?</p> <p>3 MR. BUCHANAN: Good, Katherine. How are you?</p> <p>4 HEARING OFFICER ORR: Where are you calling from?</p> <p>5 MR. BUCHANAN: Bozeman, Montana.</p> <p>6 HEARING OFFICER ORR: Okay. We're just getting</p> <p>7 through the notice that I have to read for this rule</p> <p>8 hearing, and then we'll get to testimony.</p> <p>9 MR. BUCHANAN: Okay. Thank you.</p> <p>10 HEARING OFFICER ORR: Paragraph 5 the hearing</p> <p>11 notice indicates that interested persons may submit their</p> <p>12 data, views, or arguments, either orally or in writing, at</p> <p>13 this hearing. The notice also indicates that individuals</p> <p>14 may submit written data, views, or arguments to the Board</p> <p>15 no later than 5:00 p.m. on January 17, 2013. To be</p> <p>16 guaranteed consideration, mailed comments must be</p> <p>17 postmarked on or before that date. Written data, views,</p> <p>18 or arguments may, on or prior to this deadline, be</p> <p>19 submitted to Elois Johnson. She's a paralegal with the</p> <p>20 Department of Environmental Quality, and her telephone is</p> <p>21 (406) 444-4386.</p> <p>22 I will first ask the department representative to</p> <p>23 begin with a statement concerning the proposed amendments</p> <p>24 and new rule, then we'll hear statements of proponents,</p> <p>25 then statements of opponents. If you do testify, please</p> <p style="text-align: right;">7</p>	<p>1 guidelines in response to the Waterkeeper decision. These</p> <p>2 rules were subsequently challenged in Federal Court, and</p> <p>3 on March 15th, 2011, the U.S. Court of Appeals for the</p> <p>4 Fifth Circuit issued an opinion which vacated a portion of</p> <p>5 the 2008 rule. In response, EPA published a direct final</p> <p>6 rule on July 30th, 2012, implementing the Fifth Circuit's</p> <p>7 requirements. The proposed amendments to ARM 17.30.1330,</p> <p>8 1341, 1343, 1361, and 1362 are necessary to update and</p> <p>9 incorporate by reference the 2008 and 2012 federal</p> <p>10 regulations regarding CAFOs, or concentrated animal</p> <p>11 feeding operations.</p> <p>12 The 2008 federal regulation also required states to</p> <p>13 adopt technical standards regarding the application of</p> <p>14 manure, litter, and process wastewater at concentrated</p> <p>15 animal feeding operations. Federal regulation at 40 CFR</p> <p>16 123.35 requires that delegated states adopt technical</p> <p>17 standards by 2010. In 2006, the Board adopted DEQ-9 as a</p> <p>18 state technical standard. In 2011, EPA reviewed these</p> <p>19 technical standards and noted some deficiencies. Also, in</p> <p>20 2005, the Legislature adopted Part 8 of the Montana Water</p> <p>21 Quality Act, directing the Board to adopt federal</p> <p>22 regulations by reference and that these rules may be no</p> <p>23 more stringent than the federal rules. The adoption of</p> <p>24 New Rule I as a state technical standard addresses these</p> <p>25 deficiencies and removes requirements from DEQ-9 that were</p> <p style="text-align: right;">9</p>
<p>1 state clearly your name and who you represent.</p> <p>2 Are there any questions before we get started?</p> <p>3 (No audible response.)</p> <p>4 HEARING OFFICER ORR: I don't see any, so we'll</p> <p>5 hear from the department representative.</p> <p>6 Tom.</p> <p>7 MR. REID: Thank you.</p> <p>8 Good afternoon. My name is Tom Reid, and I work for</p> <p>9 the Department of Environmental Quality in the Water</p> <p>10 Protection Bureau. The Department is requesting that the</p> <p>11 Board adopt the proposed amendments to the existing rules</p> <p>12 governing concentrated animal feeding operations, or</p> <p>13 CAFOs, and adopt New Rule I.</p> <p>14 These rules are found in Title 17, Chapter 30,</p> <p>15 Subchapter 13, of the Administrative Rules of Montana,</p> <p>16 ARM. These rules, along with Subchapters 11 and 12,</p> <p>17 establish the Montana Pollutant Discharge Elimination</p> <p>18 System which regulates the discharge of pollutants to</p> <p>19 state waters from various point sources. The Department</p> <p>20 is requesting these revisions in order to maintain</p> <p>21 compliance with the federal regulations promulgated under</p> <p>22 the Federal Clean Water Act that established the National</p> <p>23 Pollutant Discharge Elimination System, or NPDES, program.</p> <p>24 On November 20, 2008, EPA published a final rule</p> <p>25 revising the federal CAFO regulations and effluent limit</p> <p style="text-align: right;">8</p>	<p>1 not in the federal regulations.</p> <p>2 A draft of these proposed amendments and New Rule I</p> <p>3 were presented to Water Pollution Control Advisory Council</p> <p>4 at the November 2nd, 2012 meeting. The Council</p> <p>5 recommended the Board proceed with rulemaking. The</p> <p>6 Department has also worked with various stakeholders and</p> <p>7 groups during this period, including federal agencies,</p> <p>8 NRCS, and Montana State Extension Service.</p> <p>9 Finally, the Department has completed the required</p> <p>10 HB 521 stringency analysis and HB 311 private property</p> <p>11 assessment review. This material will now be submitted to</p> <p>12 the Hearing Officer for the record, along with a copy of</p> <p>13 my testimony.</p> <p>14 HEARING OFFICER ORR: Great. Thanks, Tom.</p> <p>15 MR. REID: With that, I'm done. Thank you.</p> <p>16 HEARING OFFICER ORR: All right. Appreciate it.</p> <p>17 Is there anyone else who wishes to speak as a</p> <p>18 proponent of these rules? And I use the term just because</p> <p>19 it's handy, but you don't to have consider yourself a</p> <p>20 proponent or an opponent. But let's start with that,</p> <p>21 proponents. Any proponents?</p> <p>22 (No audible response.)</p> <p>23 HEARING OFFICER ORR: Any opponents?</p> <p>24 We have one here in Helena, and we'll start with this</p> <p>25 commenter.</p> <p style="text-align: right;">10</p>

1 MR. CARLETON: I would not consider myself an  
2 opponent, but I would consider myself neutral. My name is  
3 Joe Carleton. I am an agronomist who works for Dry Fork  
4 Ag out of Ledger, Montana.  
5 And my concern is in the Rule I replacement versus  
6 DEQ-9. Under DEQ-9, we were able to substitute a Soil  
7 Test P to determine the nutrient budget and the nutrient  
8 management plans. And then from what I understand in  
9 Attachment I or Rule I, we now are required to use the  
10 Phosphorous Index.  
11 I currently operate with 13 entities that have  
12 nutrient management plans that are actively being  
13 implemented, and I question whether or not it's the intent  
14 of the State to make those all be reevaluated, and if they  
15 are, I believe that is unruly and not something that I  
16 want to see accomplished.  
17 HEARING OFFICER ORR: Okay. Let me ask, will you  
18 be submitting written comments, or not?  
19 MR. CARLETON: I believe this will be my only  
20 comment.  
21 HEARING OFFICER ORR: Is there anyone on the  
22 phone who wishes to comment?  
23 (No audible response.)  
24 HEARING OFFICER ORR: No one on the phone wishes  
25 to comment?

11

1 (No audible response.)  
2 HEARING OFFICER ORR: Okay. It looks like, then,  
3 this hearing can be closed, because we've gotten all the  
4 input that we need. And if you wish to submit written  
5 comments, you can, and you have to do that by  
6 January 17th.  
7 Thank you, everybody. This hearing is closed.  
8 (The hearing was closed at 1:44 p.m.)  
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COURT REPORTER'S CERTIFICATE

STATE OF MONTANA                    )  
  ss.  
COUNTY OF LEWIS AND CLARK    )

I, CHERYL ROMSA, Court Reporter in the County of  
Lewis and Clark, State of Montana, do hereby certify:

That the foregoing proceedings were reported by  
me in shorthand and later transcribed into typewriting;  
and that the -12- pages contain a true record of the  
proceedings to the best of my ability.

DATED this 18th day of January, 2013.

s/Cheryl A. Romsa  
CHERYL A. ROMSA

## Montanore wetland mitigation progresses

Alan Lewis Gerstenecker | Posted: Monday, February 11, 2013 4:00 pm

Few know the frustration of the lengthy mine permitting process better than Montanore Minerals CEO and President Glenn Dobbs and Environmental Consultant Eric Klepfer, but the two were smiling Tuesday.

The reason for their upbeat mood is Klepfer just days before received a letter stating the U.S. Army Corps of Engineers had approved a plan for wetlands mitigation.

Klepfer said the plan calls for Montanore Minerals to create an area of between 20 to 25 acres of wetlands to mitigate the approximate nine-acre footprint the mine anticipates.

"Typically, the (mitigation) ratio is 2½ or 3-to-1," Klepfer said of the amount of land compensation for the nine acres at the mine site. Montanore already has secured the land for mitigation at the Schneider Farm about 11 miles south of Libby.

"This is a significant milestone," Dobbs said. "We are in sight of the goal line. We are in sight of the goal line. We figure we are about 95 or 98 percent (in the permitting process)," Dobbs said.

However, Dobbs tempered his optimism with an air of caution.

"Still, we must not lose pace. We must keep everyone energized," the CEO said.

Klepfer recently spoke to members of the Montanore Positive Action Committee (MPAC) stressing the group — and the public — to write letters of support for the project. Klepfer urged a letter-writing campaign to newly elected and positioned governmental leaders, including Gov. Steve Bullock, U.S. Rep. Steve Daines and Department of Environmental Quality Tracy Stone-Manning.

"It's something we all believe in, and it's good for our community," Benitz said this week when asked about the letters, one of which ran in *The Western News*.

The wetlands mitigation plan is a crucial part of the plan, according to a Kootenai National Forest spokesperson.

"The wetlands mitigation plan is an important component of the Section 404 permit application to the Army Corps of Engineers, and as such, its completion is a step forward in the process," said Forest Geologist, Bobbie Lacklen.

As Forest Supervisor Paul Bradford recently stated, "We will continue to work with the EPA, and other agencies including USFWS, the Montana Department of Environmental Quality and the U.S. Army of Corps of Engineers, as we move toward the completion of the final EIS and Record of Decision," Bradford said.

“It is essential that we complete all the steps in this process with the highest level of precision in order to be successful in defending the decision if we are litigated.”

Still, Dobbs is hopeful if a Record of Decision comes by fall, the mine could begin initial hiring by the end of the year.

“If we get a Record of Decision by the end of the second or even the third quarter, we could see the hiring of between 20 and 35 people by the end of the year,” Dobbs said.

## Johnson, Elois

---

**From:** Hensleigh, Patrick - NRCS, Bozeman, MT <patrick.hensleigh@mt.usda.gov>  
**Sent:** Thursday, January 17, 2013 4:18 PM  
**To:** Johnson, Elois  
**Cc:** Schaefer, Gerald - NRCS, Bozeman, MT; Becker, Steve - NRCS, Bozeman, MT; Swartzendruber, Joyce - NRCS, Bozeman, MT; Huber, Bart - NRCS, Bozeman, MT  
**Subject:** Comments to DEQ CAFO New Rule Adoption  
**Attachments:** NRCSCommentsDEQCAFONewRule.pdf

Lois Johnson

I am attaching the NRCS State Engineer and my comments regarding the DEQ CAFO New Rule 1 adoption.

This should meet the 5:00 p.m. January 17<sup>th</sup> deadline for comments . Thank you for your consideration of our comments.

If you have any questions or comments please contact us.

Patrick Hensleigh-Agronomist  
USDA-NRCS Ecological Services  
10 E. Babcock, Room 469  
Bozeman, MT 59715-4704  
Phone: 406-587-6837  
FAX: 406-587-6761  
email = [patrick.hensleigh@mt.usda.gov](mailto:patrick.hensleigh@mt.usda.gov)

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United States Department of Agriculture



Natural Resources Conservation Service  
Federal Building  
10 East Babcock  
Bozeman, MT 59715-4704

Office: (406) 587-8811  
Fax: (406) 587-6761

January 17, 2013

Elois Johnson, Paralegal  
Department of Environmental Quality,  
1520 E. Sixth Avenue  
P.O. Box 200901  
Helena, Montana 59620-0901  
e-mail to [ejohnson@mt.gov](mailto:ejohnson@mt.gov)

Dear Ms. Johnson:

We are writing this letter with our comments on Montana adopting the new Administrative Rule 1 with reference to the MPDES, CAFO's and general permits. Please see our agency's comments (in red) below:

**New Rule 1 Technical Standards for Concentrated Animal Feeding Operations. 7 (c) pg 2525**

- (1) ...
- (2) ...
- (3) ...
- (4) ...
- (5) ...
- (6) ...

(7) Manure must be applied to fields at times and under conditions that will hold the nutrients in place for crop growth and protect surface and groundwater using best management practices described in the nutrient management plan. The intended target spreading dates must be included in the NMP. Manure must not be land applied under the following conditions.

- (a) ...
- (b) ...
- (c) to frozen or snow-covered ground in special protection areas. Special protection areas include the following:
  - i.) Land within 300 feet of lakes, streams, intermittent streams, irrigation canals and ditches, open intakes, property lines, and road right-of-ways.
  - ii.) Land slopes > 6% for solid manure.
  - iii.) Land slopes > 3% for semi-liquid (slurry) or liquid manure.
  - iv.) Land that is not in permanent vegetation or standing stubble and has crop residue < 50%.

NRCS believes that winter applications should be allowed until we have some assurance that economically disadvantaged producers can afford or acquire 6 months of waste storage capacity. To prevent the offsite delivery of nutrients and further protect water quality these winter applications would need to be applied at agronomic rates as is currently required and exclude the above special protection areas.

**HELPING PEOPLE HELP THE LAND**

An Equal Opportunity Provider and Employer

**New Rule I Technical Standards for Concentrated Animal Feeding Operations. – 3 (c) i**

(i) The nitrogen needs determined in (b) must be reduced based on nitrogen fixation

- more -

credits if a legume crop was grown in the field in the previous year based on the following nitrogen fixation rates: The nitrogen needs determined in (b) must be reduced for legume nitrogen fixation estimates and nitrogen benefits depending upon the crop grown in the previous year. For annual legume crops such as chickpea, lentil and peas the N benefits averages about 10 pounds per acre and varies from 0-20 pounds per acre. For perennial legumes such as alfalfa or sweet clover nitrogen needs can be reduced by 35-50 pounds per acre.

given in Schedule I.

(ii)

**TABLE 6. DELETE TABLE 6. NITROGEN FIXATION ESTIMATES FOR DRYLAND CONDITIONS<sup>1</sup>**

N FIXATION	
Legume	(Lb./acre)
Alfalfa (after harvest)	40-80
Alfalfa (green manure)	80-90
Spring Pea	40-90
Winter Pea	70-100
Lentil	30-100
Chickpea	30-90
Fababean	50-125
Lupin	50-55
Hairy Vetch	90-100
Sweetclover (annual)	15-20
Sweetclover (biennial)	80-150
Red Clover	50-125
Black Medic	15-25

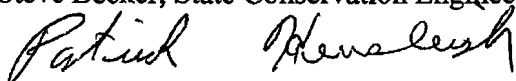
<sup>1</sup> The large variation in estimates is attributed to different years, climate, management, etc.

Please contact Jerry Schaefer, State Resource Conservationist at (406) 587-6998 if you have any questions or concerns.

Sincerely,



Steve Becker, State Conservation Engineer, NRCS, Bozeman, Montana



Patrick Hensleigh, State Agronomist, NRCS, Bozeman, Montana

cc:

Jerry Schaefer, State Resource Conservationist, NRCS, Bozeman, Montana

Joyce Swartzendruber State Conservationist, Bozeman, Montana

## Johnson, Elois

---

**From:** Reid, Tom  
**Sent:** Wednesday, February 06, 2013 1:39 PM  
**To:** Johnson, Elois  
**Subject:** FW: MPDES CAFO

**From:** Bass, Thomas [<mailto:tmbass@exchange.montana.edu>]  
**Sent:** Wednesday, January 30, 2013 3:51 PM  
**To:** Skubinna, Paul  
**Subject:** MPDES CAFO

Paul,

I apologize for my tardiness. I have a couple small concerns with the proposed amendments to ARM 17.30.13XX regarding CAFO permits.

1) I agree with and support comments submitted by the NRCS state office (Becker and Hensleigh).

2) page 12, ver:26.nov.12. Tech Standards for CAFO... (3) (b) CAFO Shall complete a nutrient need analysis... "The nutrient needs MUST be determined based on Montana State University Extension Service Publication 161, Fertilizer Guidelines for Montana Crops. For crops not listed in Bulletin 161, the department may approve a fertilizer application rate provided by the local extension service."

Problem #1: this bulletin is not necessarily up to date and it is not comprehensive.

Problem #2: there are other justifiable sources (more recent research or advisories, neighboring ag universities, private sector research)

Problem #3: the local Extension agent, may not be the best source for alternate information, though they are a conduit back to the university.

Solutions: "The nutrient needs must be determined based on Montana State University Extension Service Publication 161, Fertilizer Guidelines for Montana Crops, or **another relevant research based publication (reference must be provided with NMP)**. For crops not listed in Bulletin 161, the department may approve a fertilizer application rate provided by the local extension service or **other qualified consultant such as a Certified Crop Advisor or Certified Professional Agronomist.**"

References: <https://www.agronomy.org/certifications/cpag>, <https://www.certifiedcropadviser.org>

I believe these two simple changes (additions) prevent unnecessary and detrimental restrictions on the use of the most current and best science available for developing NMPs. These simple changes should NOT open up the flood gates for invalid methods of NMP development. The reality is there are more consultants working in this area than local extension agents; most of them are CCAs, as are many agents.

With regards,  
Tommy

Thomas M. Bass  
Livestock Environment Associate Specialist  
Montana State University Extension  
223 Animal Bioscience Building  
Bozeman, MT 59717-2900  
phone: 406.994.5733  
fax: 406.994.5589





BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )	NOTICE OF AMENDMENT AND
17.30.1330, 17.30.1341, 17.30.1343, )	ADOPTION
17.30.1361, and 17.30.1362 pertaining )	
to concentrated animal feeding )	(WATER QUALITY)
operations, general permits, additional )	
conditions applicable to specific )	
categories of MPDES permits, )	
modification or revocation and )	
reissuance of permits, minor modification) )	
of permits and adoption of New Rule I )	
pertaining to technical standards for )	
concentrated animal feeding operation )	

TO: All Concerned Persons

1. On December 20, 2012, the Board of Environmental Review published MAR Notice No. 17-342 regarding a notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 2510, 2012 Montana Administrative Register, issue number 24.

2. The board has amended ARM 17.30.1330, 17.30.1341, 17.30.1343, 17.30.1361, and 17.30.1362 exactly as proposed and has adopted New Rule I (17.30.1334) as proposed, but with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (17.30.1334) TECHNICAL STANDARDS FOR  
CONCENTRATED ANIMAL FEEDING OPERATIONS (1) through (2)(h) remain as proposed.

(3) Except as provided in (10), application rates for manure applied to each field must be determined based on the criteria given in (a) through (c).

(a) The CAFO shall complete a field-specific assessment to determine the appropriate basis (nitrogen- or phosphorus-based) for application of plant nutrients. ~~The field-specific assessment must be based on the phosphorus index assessment method described in United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), No. 80.1 Nutrient Management, Agronomy Technical Note MT-77 (revision 3), January 2006. The nutrient application basis is determined as follows:~~ The field-specific assessment for CAFOs applying manure on fields that are located in a watershed that is listed as impaired for nutrients (total phosphorus or total nitrogen) must follow the method listed in (i). The field-specific assessment for CAFOs applying manure on fields that are not located in a watershed that is listed as impaired for nutrients (total phosphorus or total nitrogen) may follow the procedures in either (i) or (ii).

~~(i) nitrogen-based application if the site vulnerability rating is low or medium (total phosphorus index value is less than 22);~~ The field-specific assessment must

be based on the phosphorus index assessment method described in United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), No. 80.1 Nutrient Management, Agronomy Technical Note MT-77 (revision 3), January 2006. The nutrient application basis is determined as follows:

(A) nitrogen-based application, if the site vulnerability rating is low (total phosphorus index value is less than 11);

(B) phosphorus-based, if the site vulnerability rating is medium (total phosphorus index value is between 11 and 21);

(C) phosphorus-based application up to crop removal, if the site vulnerability rating is high (total phosphorus index value is between 22 and 43); or

(D) no application, if the site vulnerability rating is rated as very high (total phosphorus index value is greater than 43).

(ii) phosphorus-based application up to crop removal if the site vulnerability rating is high (total phosphorus index value is between 22 and 43); or The field-specific assessment must be based on a representative soil sample, as described in (5), using the Olsen soil test method. The nutrient application basis is determined as follows:

(A) nitrogen-based application, if the Olsen phosphorus soil test is less than 25 mg/L;

(B) phosphorus-based application, if the Olsen phosphorus soil test is greater than 25.1 mg/L and less than 100 mg/L;

(C) phosphorus-based up to crop removal, if the Olsen phosphorus soil test is greater than 100.1 mg/L and less than 150.0 mg/L;

(D) no application, if the Olsen phosphorus soil test is greater than 150 mg/L.

(iii) no application of phosphorus if:

(A) the site vulnerability rating is rated as very high (total phosphorus index value is greater than 43); or

(B) the results of a representative soil phosphorus test for the field results in a value of 150 mg/L phosphorous or more using the Olsen soil test.

(b) The CAFO shall complete a nutrient need analysis for each crop to determine the acceptable amounts of nitrogen and phosphorus to be applied to the field based on the appropriate basis (nitrogen- or phosphorus-based application) as determined in (a). The nutrient needs must be determined based on Montana State University Extension Service Publication 161, Fertilizer Guidelines for Montana Crops or other relevant sources. For crops not listed in Bulletin 161, the department may approve a fertilizer application rate provided by the local county extension service or other qualified source. The CAFO must identify the source of the nutrient needs analysis in the nutrient management plan.

(c) The CAFO shall complete a nutrient budget based on the nutrients needs of the crop as determined in (b) that accounts for all sources of nutrients available to the crop. Other sources that must be addressed where applicable include those in (i) through (vi) below.

(i) The nitrogen needs determined in (b) must be reduced based on nitrogen fixation credits if a legume crop was grown in the field in the previous year based on the nitrogen fixation rates given in Schedule I. Nitrogen reduction for annual legume crops is ten pounds per acre and for perennial legumes is 50 pounds per acre, unless appropriate justification is given showing a lower rate is appropriate, but not

less than 35 pounds per acre for all perennial lagoons except black medic and annual sweet clover, for which the rate is not less than 15 pounds per acre, and lentils and chick peas, for which the rate is not less than 30 pounds per acre.

~~Schedule I. Nitrogen Fixation Estimates for Dryland Conditions~~

<u>Crop</u>	<u>Nitrogen Fixation (pounds per acre)</u>
<del>Alfalfa (after harvest)</del>	<del>40-80</del>
<del>Alfalfa (green manure)</del>	<del>80-90</del>
<del>Spring Pea</del>	<del>40-100</del>
<del>Winter Pea</del>	<del>70-100</del>
<del>Lentil</del>	<del>30-100</del>
<del>Chickpea</del>	<del>30-90</del>
<del>Fababean</del>	<del>50-125</del>
<del>Lupin</del>	<del>50-55</del>
<del>Hairy Vetch</del>	<del>90-100</del>
<del>Sweetclover (annual)</del>	<del>15-20</del>
<del>Sweetclover (biennial)</del>	<del>80-150</del>
<del>Red Clover</del>	<del>50-125</del>
<del>Black Medic</del>	<del>15-25</del>

(ii) The nitrogen needs determined in (b) must be reduced based on nitrogen residuals from past manure applications based on nitrogen mineralization rates given in Schedule ~~II~~ I.

Schedule ~~II~~ remains as proposed, but is renumbered Schedule I.

(iii) remains as proposed.

(iv) Nitrogen availability may be adjusted to reflect the method of application given in Schedule ~~III~~ II. For phosphorus-based application, the nitrogen availability is 1.0.

Schedule ~~III~~ remains as proposed, but is renumbered Schedule II.

(v) through (6) remain as proposed.

(7) Manure must be applied to fields at times and under conditions that will hold the nutrients in place for crop growth and protect surface and ground water using best management practices described in the nutrient management plan. The intended target spreading dates must be included in the NMP. Manure must not be land applied under the following conditions:

(a) and (b) remain as proposed.

(c) to frozen or snow-covered ground (winter application), except for fields meeting the following criteria:

(i) the application area must be at least 300 feet from lakes, streams, intermittent streams, irrigation canals and ditches, open intake structures, property lines, and road right-of-ways;

(ii) permanent vegetative cover or standing stubble with crop residue greater than 50 percent; and

(iii) land slope of the field must not exceed the following criteria:

(A) six percent for application of solid manure (total solids content greater than 15 percent); or

(B) three percent for application of slurry or liquid waste (total solids content of 15 percent or less).

(8) If winter application is proposed, the CAFO must identify fields suitable for winter application in the nutrient management plan and application rates for manure must not exceed those identified in the nutrient budget as determined in (3)(c).

(8) through (11)(f) remain as proposed, but are renumbered (9) through (12)(f).

3. The following comments were received and appear with the board's responses:

COMMENT NO. 1: Under Department Circular DEQ-9, a CAFO was able to substitute a soil test for phosphorus to determine the nutrient budget in the nutrient management plan (NMP). New Rule I does not allow for a soil test and instead requires that all CAFOs complete a phosphorus risk assessment.

RESPONSE: Department Circular DEQ-9 provided two options for determination of the field-specific application rate. The soil test method based the application rate on the results of a single soil analysis for phosphorus. The Phosphorus Index (PI) is based on a combination of factors, including: soil erosion potential, application method, runoff potential, commercial fertilizers, soil test, and distance to surface water. The PI provides a better estimate for assessing the potential for phosphorus and nitrogen to enter surface water and was therefore selected as the preferred method in New Rule I. The basis for eliminating the simple soil test was to provide a greater level of protection to surface water. The Montana 2012 Final Integrated Water Quality Report (Montana Department of Environmental Quality, March 2012) identifies 228 waterbodies as impaired for phosphorus (total) and 202 waterbodies as impaired for nitrogen (total). Phosphorus and nitrogen, along with sedimentation/siltation are major sources of impairment of Montana surface waters.

In order to provide greater flexibility to CAFOs while protecting impaired waterbodies, the board will amend New Rule I to allow the soil test analysis for CAFOs with fields which are not located in a watershed that is listed on the most recent 303(d) list as impaired for nitrogen or phosphorus (nutrients).

COMMENT 2: I currently prepare NMPs for 13 different CAFOs that are actively being implemented and I question whether or not it is the intent of the State to require that they be reevaluated.

RESPONSE: Nutrient Management Plans must be updated every five years in accordance with MPDES permit application requirements and 40 CFR 122.23 and 122.42(e).

COMMENT 3: NRCS believes that winter application should be allowed until we have some assurance that economically disadvantaged producers can afford or acquire six months of waste storage capacity. To prevent the offsite delivery of nutrients and further protect water quality, these winter applications would need to be applied at agronomic rates as currently required and exclude the following special protection areas:

(1) land within in 300 feet of lakes, streams, intermittent streams, irrigation canals and ditches, open intake structures, and road right-of-ways;

(2) land slopes greater than six percent for solid manure;

(3) land slopes greater than three percent for semi-liquid (slurry) or liquid manure;

(4) land that is not in permanent vegetation or standing stubble and has crop residual of less than 50 percent.

RESPONSE: New Rule I has been amended to allow for winter application of manure on land that meets certain criteria. The CAFO must identify any fields that may be used for winter application in the nutrient management plan. However, winter application is not allowed as a substitute for adequate storage.

COMMENT 4: The NRCS requests that the board delete Schedule I - Nitrogen Fixation Rates for Dryland Conditions, in (3)(c)(i) of New Rule I, and that Schedule I be replaced with the following language: (1) for annual crops such as chickpea, lentil, and peas, the nitrogen benefits average about ten pounds per year; and (2) for perennial legumes such as alfalfa or sweet clover, nitrogen needs must be reduced by 35 to 50 pounds per acre. The basis for this request is that nitrogen fixation rates vary widely and are influenced by climate, annual variation, management practices, and other factors.

RESPONSE: The board agrees that nitrogen fixation rates can vary depending on the factors identified in the comment. Schedule I has been replaced with a nitrogen reduction credit of ten pounds per acre for annual legumes and 35 to 50 pounds for perennial legumes, except for black medic, annual sweet clover, chick peas, and lentils. The board has retained the minimum rates contained in Schedule I because raising those minimum rates would be beyond the scope of this rulemaking.

COMMENT 5: New Rule I(3)(b) requires that the CAFO complete a nutrient needs analysis for each crop based on Montana State University (MSU) Extension Service Publication 161. The problem with using this document is: (1) this bulletin is not up to date; (2) there are other justifiable sources (more recent research information, neighboring agricultural universities, and private sector research); and (3) the local Extension agent may not be the best source for alternative information though they are a conduit back to the university. MSU Extension recommends that the board allow other relevant research-based publications in addition to Publication 161 and that, for crops not listed in Publication 161, the rule allow other qualified consultants such as Certified Crop Advisors (CCAs) or certified professional agronomists.

These two simple changes would prevent unnecessary and detrimental restrictions on the most current and best science available for developing NMPS.

These simple changes should not open up the flood gates for invalid methods of NMP development. The reality is that there are more consultants working in this area than local extension agents. Most of them are CCAs as are many agents.

RESPONSE: The board has amended New Rule I(3)(b) to allow other relevant sources of information to be used in determining the nutrient needs of the crop and, for crops not listed in Publication 161, the rule is amended to allow the nutrient needs to be based on qualified sources of information. The rule is also amended to require the CAFO to submit the source of this information in the nutrient management plan. In accordance with 40 CFR 122.23, the department is required to review this information and, after providing for public comment, determine that this information meets the intent of 40 CFR 122.42(e) and 40 CFR 412.

The board is not limiting the qualifications of the individuals providing this information to CCAs or certified professional agronomists as suggested by the comment. Professional licensing and certification in Montana is within the jurisdiction of the Department of Labor and Industry, Business Standards Division and is outside of the scope of this rulemaking.

4. No other comments or testimony were received.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

\_\_\_\_\_  
JOHN F. NORTH  
Rule Reviewer

By: \_\_\_\_\_  
JOSEPH W. RUSSELL, M.P.H.  
Chairman

Certified to the Secretary of State, \_\_\_\_\_, 2013.

1 **BEFORE THE BOARD OF ENVIRONMENTAL REVIEW**  
2 **OF THE STATE OF MONTANA**

---

3 **IN THE MATTER OF:**  
4 **VIOLATIONS OF THE PUBLIC WATER**  
5 **SUPPLY LAWS BY THE CITY OF**  
6 **RONAN AT THE CITY OF RONAN**  
7 **PUBLIC WATER SUPPLY SYSTEM,**  
8 **PWSID #MT0000318, RONAN, LAKE**  
9 **COUNTY, MONTANA. [FID #2139,**  
10 **DOCKET NO. PWS-12-06]**

**CASE NO. BER 2012-04 PWS**

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11 **RECOMMENDED ORDER ON MOTION FOR SUMMARY JUDGMENT**

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12 On December 14, 2012, the Department of Environmental Quality  
13 (Department) filed a Motion for Summary Judgment (Motion) on the ground that  
14 there is no genuine issue as to any material fact and the Department is entitled to  
15 judgment as a matter of law. The Motion was fully briefed and included Exhibits A  
16 through D attached to the Motion. The Petitioner, City of Ronan, did not file a  
17 response brief or any response of any kind to the Motion. For the reasons stated  
18 below, it is recommended that the Motion for Summary Judgment be granted and  
19 the relief requested in the Notice of Violation and Administrative Compliance Order  
20 (Order) dated May 2, 2012, as specified below be ordered.

21 **BACKGROUND**

22 The Department issued the Order stating that Respondent, City of Ronan  
23 (Petitioner here) is a “supplier of water” and subject to the requirements of Admin.  
24 R. Mont. 17.38.202, is supplied by ground water under the direct influence of  
25 surface water and is a “community water system” within the meaning of Mont. Code  
26 Ann. § 75-6-102(3). As stated in the Order, a public water supply system that does  
27 not meet all of the criteria to avoid filtration, the Petitioner is obligated to provide  
filtration treatment in accordance with Admin. R. Mont. 17.38.208. The Order  
states that the Respondent (Petitioner here) violated and continues to violate Admin.

1 R. Mont. 17.38.208 by failing to provide filtration treatment for a public water  
2 system supplied by a ground water source under the direct influence of surface  
3 water. Additionally, the Order states that Respondent (Petitioner here) violated  
4 Admin. R. Mont. 17.38.239(1) by failing to provide public notice of the failure to  
5 provide a filtration system for the system. The Order directs Respondent  
6 (Petitioner) to provide public notice of the failure to provide a filtration treatment  
7 for the system and repeat notices until the Respondent is no longer in violation of  
8 the Surface Water Treatment Rule. In addition, the Order states that Respondent  
9 (Petitioner) must submit to the Department a compliance plan and schedule that  
10 identifies a corrective action plan that will return to compliance with the surface  
11 water treatment rule, Admin. R. Mont. 17.38.208, or indicates an intent to find an  
12 approved new source.

13 The Petitioner was served with discovery including Requests for Admissions,  
14 Interrogatories and Request for Production of Documents on October 22, 2012.  
15 Department Exhibit B. The Petitioner did not submit responses to any of the  
16 discovery requests at any time.

#### 17 **STANDARD OF REVIEW**

18 Summary Judgment is appropriate when there is no genuine issue of material  
19 fact and the moving party is entitled to judgment as a matter of law. Mont. R. Civ.  
20 P. 56 (c). A party seeking summary judgment has the burden of showing an absence  
21 of genuine issue as to all facts considered material in light of the substantive  
22 principles that entitle the moving party to judgment as a matter of law. Once the  
23 moving party has met its burden, the opposing party must present material and  
24 substantial evidence, rather than mere conclusory or speculative statements to raise  
25 a genuine issue of material fact. Sherrod v. Prewett, 2001 MT 228, 36 P.3d 378.  
26 Summary judgment motions may be entertained in the administrative context. See  
27 In the Matter of Peila, 249 Mont. 272, 815 P.2d 139 (1991). The rationale for



1 motions for summary judgment is that the parties are afforded the opportunity to  
2 present evidence and arguments in the summary judgment stage without the  
3 necessity for a full hearing through briefing and presentation of sworn evidence. If  
4 there are no genuine issues of material fact, there is no need for an evidentiary  
5 hearing and the case may be resolved as a matter of law.

6 In determining whether there are any material factual issues, the party  
7 moving for summary judgment bears the initial burden of informing the decision-  
8 maker of the basis of its motion and identifying those portions of the record,  
9 depositions, answers to interrogatories, and admissions on file, together with sworn  
10 affidavits, if any, that it believes demonstrate the absence of any genuine issue of  
11 material fact. Where the moving party has met its initial burden with a properly  
12 supported motion, the burden shifts to the opposing party to prove, by more than  
13 mere denial and speculation, that a genuine issue does exist. State v. Stewart, 2003  
14 MT 003 ¶ 7, 315 Mont. 335, ¶ 7, 68 32d 712, ¶ 7 (2003); Mont. R. Civ. P. 56(e).  
15 The non-moving party may do this by use of affidavits (including her own),  
16 depositions, answers to interrogatories, and admissions.

### 17 **DISCUSSION**

18 As a basis for arguing that there is no genuine issue of fact in this case, the  
19 Department has attached Requests for Admissions served on the Petitioner which  
20 were not answered and which, according to the Department, are deemed admitted  
21 pursuant to Mont. R. Civ. Proc. 36. Mont. R. Civ. Proc. 36(a) (3) does provide that  
22 “[a] matter is admitted unless, within 30 days after being served, the party to whom  
23 the request is directed serves on the requesting party a written answer or objection  
24 addressed to the matter...” The Petitioner failed to provide answers or objections to  
25 the requests for admission, Department Exhibit C, and the statements in the requests  
26 for admissions are therefore admitted.

1 The admissions are sufficient to establish as a matter of law that the City of  
2 Ronan has not installed filtration that meets the requirements of the Surface Water  
3 Treatment Rule, Admin. R. Mont. 17.38.208, that the City of Ronan has not found  
4 another source of water to supply its system with water and it did not submit to the  
5 Department for its review and approval a compliance plan and schedule (plan) that  
6 identifies a corrective action that will return the City of Ronan to compliance with  
7 the Surface Water Treatment Rule. No request for admission was served that  
8 addresses the failure of the City of Ronan to provide notice non-filtration to the  
9 public.

10 In this case there is no genuine issue of material fact and the Department has  
11 presented evidence and admitted requests for admissions, that establish that it is  
12 entitled to judgment as a matter of law. The Petitioner has not presented any  
13 evidence to raise a genuine issue of fact. The Department is awarded judgment on  
14 the violation of the failure to install filtration and is entitled to the relief it seeks in  
15 paragraphs numbered 15 through 24.

#### 16 **PROCEDURE FOR FILING EXCEPTIONS**

17 Because the Board of Environmental Review (Board) will be issuing a final  
18 decision on this recommended disposition, the parties, pursuant to Mont. Code Ann.  
19 § 2-4-621, may file written exceptions and present briefs and oral argument to the  
20 Board on their exceptions prior to the time the Board makes its final decision. The  
21 Petitioner is given until March 13, 2013, to file exceptions. The Department may  
22 file a written response to the exceptions by March 15, 2013. Any party seeking to  
23  
24  
25  
26  
27

1 file exceptions and present oral argument before the Board on March 22, 2013, must  
2 by March 11, 2013, file a notice that they will be filing exceptions.

3 DATED this 7 day of March, 2013.

4 

5 KATHERINE J. ORR  
6 Hearing Examiner  
7 Agency Legal Services Bureau  
8 1712 Ninth Avenue  
9 P.O. Box 201440  
10 Helena, MT 59620-1440

11 **CERTIFICATE OF SERVICE**

12 I hereby certify that I caused a true and accurate copy of the foregoing  
13 Recommended Order on Motion for Summary Judgment to be mailed to:

14 Ms. Joyce Wittenberg  
15 Secretary, Board of Environmental Review  
16 Department of Environmental Quality  
17 1520 East Sixth Avenue  
18 P.O. Box 200901  
19 Helena, MT 59620-0901  
20 (original)

21 Ms. Carol Schmidt  
22 Legal Counsel  
23 Department of Environmental Quality  
24 P.O. Box 200901  
25 Helena, MT 59620-0901

26 Mr. John Arrigo  
27 Administrator, Enforcement Division  
Department of Environmental Quality  
P.O. Box 200901  
Helena, MT 59620-0901

Mr. James Raymond  
Ronan City Attorney  
Raymond Law Office, P.L.L.C.  
407 First Street West,  
Polson, MT 59860

28 DATED: March 7, 2013 