



MONTANA
ADMINISTRATIVE
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DEPARTMENT OF ENVIRONMENTAL QUALITY

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2026-406.1

Summary

Nondegradation policy and feasibility allowances

Hearing Date and Time

Tuesday, April 21, 2026, at 11:00 a.m.

Hearing Information

Wilderness Room on the second floor at 2401 Colonial Drive, Helena, Montana.

Virtual Hearing Information

Interested parties may also attend the hearing electronically in the following ways:

Please click the link below to join the webinar:

Join from PC, Mac, iPad, or Android:

<https://mt-gov.zoom.us/j/84544846278?pwd=LNcb5UkVdN4CtH7xaZgNOmmkbvbaRQ.1>

Passcode:153454

Phone one-tap:

+12063379723,,84544846278#,,,,*153454# US (Seattle)

+12133388477,,84544846278#,,,,*153454# US (Los Angeles)

Join via audio:

+1 206 337 9723 US (Seattle)

+1 213 338 8477 US (Los Angeles)

+1 646 558 8656 US (New York)
Webinar ID: 845 4484 6278
Passcode: 153454
International numbers available: <https://mt-gov.zoom.us/j/kclaKeeaGm>

Join from an H.323/SIP room system:
H.323: 144.195.19.161 (US West) or 206.247.11.121 (US East)
Meeting ID: 845 4484 6278
Passcode: 153454
SIP: 84544846278@zoomcrc.com
Passcode: 153454

Comments

Comments may be submitted using the contact information below. Comments must be received by Tuesday, April 21, 2026, at 5:00 p.m.

Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Friday, April 10, 2026, at 5:00 p.m.

Contact

Legal Unit
(406) 444-1388
DEQMAR406@mt.gov

General Reasonable Necessity Statement

The 69th Montana Legislature enacted House Bill (HB) 685, 2025 Mont. Laws ch. 712 (codified at 75-5-103, 75-5-301, 75-5-303, 75-5-316, 75-5-516, and 75-5-605, MCA).

HB 685 changed the terminology used in several statutes including Montana’s nondegradation policy to describe authorizations issued by the department to lower the quality of high-quality waters from “authorizations to degrade” to “feasibility allowances” and directed the department to amend ARM 17.30.707 and 17.30.708 to add references to feasibility allowances.

HB 685 also removed the requirement at 75-5-303(3)(b), MCA, that feasibility allowance applicants affirmatively demonstrate to the department that the proposed activity's economic or social benefit exceeds the costs to society of allowing degradation.

Additionally, HB 685 added language at 75-5-303(3)(b), MCA, that a feasibility allowance applicant must affirmatively demonstrate that a proposed project will result in important economic or social development "in the area that the high-quality waters are located."

Rule amendments are necessary to align the rule language with the HB 685 amendments.

Rulemaking Actions

AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

17.30.201 PERMIT APPLICATION, ~~DEGRADATION AUTHORIZATION~~ FEASIBILITY ALLOWANCES, AND ANNUAL PERMIT FEES

- (1) through (3) remain the same.
- (4) A person whose activity requires an application ~~to degrade state waters for a~~ feasibility allowance under 75-5-303, MCA, and ARM Title 17, chapter 30, subchapter 7 shall submit a ~~degradation authorization~~ feasibility allowance fee with the application, as determined under (7).
- (5) through Schedule I.D remain the same.
- (7) The fee schedule for new or renewal ~~authorizations to degrade state waters~~ feasibility allowances under ARM Title 17, chapter 30, subchapter 7 is set forth in Schedule II. Payment of the ~~degradation authorization~~ feasibility allowance fee is due upon submittal of the applications. For the domestic sewage treatment and industrial activity categories, the department shall assess a fee for each outfall. If an application for ~~authorization to degrade state waters~~ a feasibility allowance is denied, the department shall return 15% of the fee submitted.

Schedule II Review of ~~Authorizations to Degrade~~ Feasibility Allowance Applications

- (8) through (11) remain the same.

Authorizing statute(s): 75-5-516, MCA

Implementing statute(s): 75-5-516, MCA

Reasonable Necessity Statement

The department is revising (4), (7), the rule title, and the title of the Schedule II table to add references to feasibility allowances to comply with HB 685. HB 685 changed the terminology used in several statutes including Montana’s nondegradation policy to describe authorizations issued by the department to lower the quality of high-quality state waters from “authorizations to degrade” to “feasibility allowances.”

17.30.706 INFORMATIONAL REQUIREMENTS FOR NONDEGRADATION SIGNIFICANCE/~~AUTHORIZATION~~ FEASIBILITY ALLOWANCE REVIEW

- (1) through (5) remain the same.
- (6) Whenever the department determines that a proposed activity will result in degradation, the applicant shall complete an application ~~to degrade state waters~~ for a feasibility allowance if the applicant decides to proceed with the proposed activity as planned. The department will not begin review of the application until the required fee has been paid to the department.
- (7) In order to provide the information that is required for the department to determine whether or not degradation is necessary because there are no economically, environmentally, and technologically feasible alternatives to the proposed activity that would result in no degradation, an application ~~to degrade state waters~~ for a feasibility allowance shall include, but not be limited to, the following, when applicable:
 - (a) through (d) remain the same.
 - (e) an analysis of the existing water quality of the receiving water and any other downstream or downgradient waters which may be impacted, including natural variations and fluctuations in the water quality parameter(s) for which ~~an authorization to degrade~~ a feasibility allowance is requested;
 - (f) through (k) remain the same.
- (8) An applicant must demonstrate that the proposed activity will result in important economic or social development ~~that exceeds the costs to society of allowing the proposed change in water quality in the area that the high-quality waters are located.~~
- (a) through (11) remain the same.
- (12) The department shall notify the applicant in writing within 60 days after receipt of an application ~~to degrade state waters~~ for a feasibility allowance that the application does or does not contain all the information necessary for the department's nondegradation review. If the information from the supplemental submittal and any subsequent supplemental submittal is inadequate, the

department shall notify the applicant in writing, within 30 days after receipt of the supplemental submittal, what additional information must be submitted. In any review subsequent to the first, the department may not make a determination of incompleteness on the basis of a deficiency which could have been noted in the first review.

(13) remains the same.

Authorizing statute(s): 75-5-301, 75-5-303, MCA

Implementing statute(s): 75-5-303, MCA

Reasonable Necessity Statement

The department is amending (6), (7), (7)(e), (12), and the rule title to add references to feasibility allowances to comply with HB 685. HB 685 changed the terminology used in several statutes including Montana's nondegradation policy to describe authorizations issued by the department to lower the quality of high-quality state waters from "authorizations to degrade" to "feasibility allowances."

Section (8) is amended to add "in the area that the high-quality waters are located" and to remove "that exceeds the costs to society of allowing the proposed change in water quality" to reflect changes made in HB 685 at 75-5-303(3)(b), MCA.

17.30.707 DEPARTMENT PROCEDURES FOR NONDEGRADATION REVIEW OF FEASIBILITY ALLOWANCE APPLICATIONS

- (1) Upon a determination by the department that an application ~~to degrade state waters~~ for a feasibility allowance required under this rule is complete, the department will prepare a preliminary decision either authorizing ~~degradation~~ a feasibility allowance or denying the application ~~to degrade~~ according to the procedures in ARM 17.30.708.
- (2) An application ~~to degrade state waters~~ for a feasibility allowance will be denied unless the applicant has affirmatively demonstrated and the department finds, based on a preponderance of evidence, the proposed activity to be in full compliance with 75-5-303, MCA, using the standards set out in (3) through (6). The department shall consider an analysis by the applicant and any substantive relevant information either submitted by the public or otherwise available.

- (3) To determine that ~~degradation~~ a feasibility allowance is necessary because there are no economically, environmentally, and technologically feasible alternatives to the proposed activity that would result in no degradation, the department shall consider the following:
- (a) through (c) remain the same.
- (4)
- (a) To determine that the proposed activity will result in important economic or social development ~~that exceeds the benefit to society of maintaining existing high-quality waters and exceeds the costs to society of allowing degradation of high-quality waters,~~ the department must find that the proposed activity will provide important economic or social development ~~which outweighs any cost to society of allowing the proposed change in water quality in the area that the high-quality waters are located.~~ In making its determination, the department may consider factors that include, but are not limited to, the following:
- (i) through (ix) remain the same.
- (b) In making the determination required in (a), the department ~~must~~ may weigh ~~any costs associated with the loss of high quality waters against any social or economic benefits~~ the social and economic importance to the public of allowing the proposed project demonstrated by the applicant against the cost to society associated with a lowering of water quality. The department may also consider as a cost to society any identified and/or quantifiable negative social or economic effects resulting from the proposed activity.
- (5) To determine that existing and anticipated uses of the receiving waters will be fully protected and that water quality standards will not be violated as a result of the proposed ~~degradation~~ feasibility allowance, the department shall consider all available information.
- (6) In order to authorize ~~degradation~~ a feasibility allowance under this rule, the department must determine that the least degrading water quality protection practices determined by the department to be economically, environmentally, and technologically feasible will be implemented prior to, during, and after the proposed activity until the degradation no longer occurs.
- (7) The department shall make its preliminary decision either authorizing ~~degradation~~ the feasibility allowance or denying the application ~~to degrade~~ within 180 days after receipt of a complete application from the applicant. This time period may be extended upon agreement of the applicant or whenever an environmental impact statement must be prepared pursuant to Title 75, chapter 1, parts 1 and 2, MCA.

- (8) To the maximum extent possible, the department will coordinate any application to ~~degrade state waters~~ for a feasibility allowance with the permitting and approval requirements of other laws or programs administered by the department or by any other local, state, or federal agency.

Authorizing statute(s): 75-5-301, 75-5-303, MCA

Implementing statute(s): 75-5-303, MCA

Reasonable Necessity Statement

The department is amending (1), (2), (3), (4), (5), (6), (7), (8), and the rule title to add references to feasibility allowances to comply with HB 685. HB 685 changed the terminology used in several statutes including Montana’s nondegradation policy to describe authorizations issued by the department to lower the quality of high-quality state waters from “authorizations to degrade” to “feasibility allowances.”

Subsection (4)(a) is amended to add “in the area that the high-quality waters are located” to reflect the addition of this language by HB 685 at 75-5-303(3)(b), MCA.

Subsection (4)(a) is amended to remove “that exceeds the benefit to society of maintaining existing high-quality state waters and exceeds the costs to society of allowing degradation of high-quality waters” and “which outweighs any cost to society of allowing the proposed change in water quality” to reflect the removal of similar language by HB 685 at 75-5-303(3)(b), MCA.

Subsection (4)(b) is amended to reflect changes made by HB 685 at 75-5-303, MCA, that is, the removal of the requirement that feasibility allowance applicants affirmatively demonstrate that the proposed activity’s economic or social benefit exceeds the costs to society of allowing degradation. Subsection (4)(b) is also amended to acknowledge that the department may weigh “the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality” pursuant to 75-5-301(5)(b)(ii), MCA.

17.30.708 DEPARTMENT PROCEDURES FOR ISSUING PRELIMINARY AND FINAL DECISIONS REGARDING AUTHORIZATIONS TO DEGRADE FEASIBILITY ALLOWANCES

- (1) A preliminary decision to deny or authorize ~~degradation~~ a feasibility allowance must be accompanied by a statement of basis for the decision and, if applicable, a detailed statement of conditions imposed upon any ~~authorization to degrade~~ feasibility allowance.

- (2) The preliminary decision must include the following information, if applicable:
 - (a) to (b) remain the same.
 - (c) a determination that ~~degradation~~ a feasibility allowance is or is not necessary based on the availability of economically, environmentally, and technologically feasible alternatives that will prevent degradation;
 - (d) a determination of economic or social importance in the area that the high-quality waters are located;
 - (e) through (i) remain the same.
- (3) A statement of basis for the decision must be prepared for every preliminary decision. In general, the statement of basis must briefly set forth the principal facts and significant factual, legal, methodological, or policy questions considered in preparing the ~~authorization~~ feasibility allowance. The statement of basis must include, when applicable:
 - (a) a description of the proposed activity which is the subject of the ~~authorization~~ feasibility allowance;
 - (b) through (d) remain the same.
 - (e) a description of the procedures for reaching a final decision on the draft ~~authorization~~ feasibility allowance including:
 - (i) through (8) remain the same.

Authorizing statute(s): 75-5-301, 75-5-303, MCA

Implementing statute(s): 75-5-303, MCA

Reasonable Necessity Statement

The department is amending (1), (2)(c), (3), (3)(a), (3)(e), and the rule title to add references to feasibility allowances to comply with HB 685. HB 685 changed the terminology used in several statutes including Montana’s nondegradation policy to describe authorizations issued by the department to lower the quality of high-quality state waters from “authorizations to degrade” to “feasibility allowances.”

Subsection (2)(d) is amended to add “in the area that the high-quality waters are located” to reflect the addition of this language by HB 685 at 75-5-303(3)(b), MCA.

Small Business Impact

With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses. Any small business that proposes an activity which may result in a new or increased source (as defined at ARM 17.30.702(17)) which may cause degradation (as defined at 75-5-103, MCA, i.e., a change in water quality that lowers the quality of high-quality waters for a parameter) would be subject to the rules proposed for amendment. The proposed amendments are required pursuant to House Bill 685, enacted in 2025 by the 69th Montana Legislature.

The department is not proposing to adopt, increase, or decrease a monetary amount that a person shall pay or will receive.

Additional documentation of the department's small business impact analysis is available upon request.

Bill Sponsor Notification

The department notified the bill sponsor on October 9, 2025.

Interested Persons

The department 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 for which program the person wishes to receive notices. 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 the contact above or may be made by completing a request form at any rules hearing held by the department.

Rule Reviewer

Nicholas Whitaker

Approval

Sonja Nowakowski, Director