

**Environmental Quality Council  
Agency Oversight Subcommittee**

**2003-2004**

**FINAL Workplan**

**October 9, 2003**

## **1. Introduction**

The Environmental Quality Council (EQC) has appointed a seven-member Agency Oversight Subcommittee to assist the Council in its responsibilities for conducting oversight of natural resource agencies within the jurisdiction of the EQC and in addressing the specific statutory responsibilities of the Council. The subcommittee has adopted a workplan for the interim that has been approved by the EQC. The subcommittee will prepare findings and make recommendations to the EQC regarding these topics.

### **Subcommittee members:**

Rep. Christopher Harris, chair	Bozeman
Rep. Debby Barrett, vice chair	Dillon
Rep. Paul Clark	Trout Creek
Rep. Don Hedges	Antelope
Rep. Jim Peterson	Buffalo
Ms. Ellen Porter	Missoula
Mr. Howard Strause	Great Falls
Sen. Mike Wheat	Bozeman

### **Staff:**

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### **Workplan Summary and Purpose:**

This work plan addresses the following topics:

- Statutory Duties
- General Agency Oversight
  - Elk Management Plan
  - MEPA
  - Wildland fire interface
  - Agency rules

The EQC allocated a total of .32 FTE or approximately 870 interim staff hours to the Agency Oversight Subcommittee. The EQC asked that the subcommittee devote its time to providing general agency oversight and performing and reviewing the statutory duties of the EQC with the exception of specific topics that the EQC prefers to be heard before the full Council. The subcommittee was requested to place twice as much effort on agency oversight as it does on EQC statutory duties.

The EQC also assigned to the subcommittee a review of member generated issues involving wildland fire insurance for private property in the rural/urban interface and the development of a elk management plan by the DFWP and it requested that the subcommittee respond to a letter asking the Council to address the issue of cleanup guidance or standards for property contaminated by illicit methamphetamine labs.

Assignment of additional issues to the subcommittee or significant departures from the approved work plan that require a reallocation of staff resources must be reviewed and approved by the EQC.

Background information, goals, and tasks are outlined for each topic. The workplan includes a projected subcommittee timeline. The purpose of the workplan is to provide a basic framework that will assist the subcommittee and staff in conducting its work and producing tangible results given the time and resources available to the subcommittee. The workplan is a flexible document, particularly in the case of this subcommittee's assigned topic of agency oversight. The subcommittee will need to refine its goals and tasks as information is gathered and evaluated and, especially, if additional topics are assigned. Key decision-making points are highlighted in the timeline and under each topic.

## **2. Work Plan Process Steps**

The EQC and its subcommittees generally follow these steps to assure a meaningful interim:

1. Subcommittee development and EQC approval of a realistic workplan that becomes the framework for the subcommittee's interim work within the resources allocated by the Council.
2. Selection of topics for review and analysis.
3. Information gathering and identification of issues.
4. Subcommittee findings, analysis of options, and recommendations for policy changes (if any).
5. Full EQC adoption or modification of any subcommittee recommendations.
6. Drafting of legislation (if any) and assignment of sponsors.

Key to any successful EQC interim activity is the active solicitation and participation of the public, the affected or regulated community, and agency comment and involvement.

## **3. EQC Statutory Duties**

**Background:** Following the establishment of the EQC in 1971, the legislature has occasionally authorized the Council to play a role in some specific programs or activities of state government. These directives are in addition to the more general oversight authorities for environmental programs and policies found in section 75-1-324, MCA. This general authority is arguably sufficient to address the specific programs and policies. However, and particularly for new environmental programs or policies, the legislature has called upon the EQC to act as its liaison with the executive branch and has provided specific statutory direction. The EQC has prioritized these activities as the need for specific oversight changes with interest, time, and circumstance. The EQC's statutory duties are listed as follows:

- 2-4-402 The EQC shall review all proposed rules filed with the secretary of state by the DEQ, DNRC, and DFWP. Also included in the Montana Administrative Procedure Act, Title 2, chapter 4, part 4, are discretionary authorities to obtain agency rules formulation records, prepare and submit written recommendations on proposed rules, institute or intervene in legal actions regarding rules, poll legislators regarding the intent of rules relative to authorizing statutes, and vote to request the preparation of an economic impact statement for a rule.
- 2-15-1514 A Legislative Services Division employee shall serve on the natural resource data system advisory committee for NRIS. This has typically been assigned to the EQC staff on an as needed basis.
- 2-15-1523 A Legislative Services Division employee may serve on the groundwater assessment steering committee. This has typically been assigned to the EQC staff on an as needed basis.
- 5-5-215 The EQC shall perform the duties of an interim committee including rule review, agency oversight, and review of proposed legislation. See also 75-1-324.
- 50-60-801 (preamble), Title 90, chapter 4, part 10 include EQC duties related to the oversight and review of state energy policies.
- 75-1-201 and Model Rule VI and 75-1-208 - Executive agencies are required to submit copies of environmental review documents prepared in accordance with the Montana Environmental Policy Act (MEPA) to the EQC. The EQC staff has created and maintains a database of MEPA documents.
- 75-1-208(2) The EQC shall, upon request, provide a forum for any project sponsor regarding an agency's environmental review of the project.
- 75-1-313 The EQC shall meet at least once each quarter and shall consult with other individuals, groups, and organizations in performing its duties.
- 75-1-314 - The EQC shall receive the biennial compliance and enforcement reports from the DEQ, DNRC, and the Dept. of Agriculture.
- 75-1-324 - This section of law contains the general policy and agency oversight and policy creation responsibilities of the EQC. The EQC is directed to gather information concerning conditions and trends in the quality of the environment; to review state programs and activities to enhance or maintain environmental quality; to conduct studies, analyze proposals, and make recommendations concerning environmental issues; and to generally act as the legislature's source of information

and advisor on environmental policy issues and direction. See Agency Oversight section.

- 75-10-111, 75-10-913, 918, and 927 all require EQC involvement and review of the state solid waste management plan and participation in the Megalandfill Siting Act review process. The DEQ has developed a state solid waste management that is under revision this year. There have been no megalandfill siting applications since the law was enacted in 1991.
- 77-2-301 *et. seq.* requires that the DNRC submit a report to the EQC by July 1, 2008 regarding the status of the state land banking program.
- 77-5-301 *et. seq.* is the law on Streamside Management Zones. The statement of intent for the enabling legislation requires the DNRC to periodically evaluate the implementation of the act, develop recommendations to address any problems, and to report findings and recommendations to the EQC.
- 85-1-203, 85-1-621, 85-2-105, and 85-2-436 refer to EQC water policy duties. They include responsibilities to receive, analyze, and comment on the DNRC state water plan, the DNRC renewable resources grant and loan program, water-related research by any state agency, institution, college, or university, the water information system at NRIS, and the DFWP water leasing study or program.
- 90-4-1003 Energy policy duties - see 50-60-801 above.

### **Goals**

To help the Council fulfill its statutory duties as needed and to identify redundant or obsolete requirement.

### **Tasks**

Schedule time at each subcommittee meeting for a discussion of or presentation on some specific statutory duty or duties of the EQC. Provide reports and recommendations to the full Council.

- (1) Staff will review rules proposed by DEQ, DNRC, and DFWP and identify significant or controversial rules which may be of interest to the subcommittee and provide summaries at meetings. Subcommittee members may request through the chair and vice chair that the subcommittee address specific rules of interest. Staff will provide agency rules notice website addresses to the subcommittee. The subcommittee recommends that the review of proposed agency legislation be conducted by the full Council.

- (2) Review specific statutory duties and make recommendations to EQC regarding modification or retention.
- (3) Continue to maintain MEPA document database.  
The subcommittee recommends that the full Council address a project proponent's request for a hearing before the EQC regarding an agency's application of MEPA. Track MEPA litigation during the interim.
- (4) Receive, review, and analyze the agencies' compliance and enforcement reports and make recommendations to the EQC.
- (5) The subcommittee recommends that the full EQC hear a presentation from state and federal agencies on current efforts to develop indicators that tie environmental quality to human health impacts.
- (6) Review the EQC responsibilities for solid waste management.
- (7) Review DNRC efforts to implement the land banking program and rules.
- (8) Review EQC stream side management zone and forestry best management practices oversight.
- (9) The subcommittee recommends that all water policy issues and topics be addressed by the EQC unless assigned to the subcommittee by the EQC or leadership.
- (10) The subcommittee recommends that all energy policy issues and topics be addressed by the EQC alternative energy subcommittee.

#### **4. Agency Oversight**

##### **Background**

The EQC has broad statutory oversight authority for environmental policies and programs of the state and specific authority to review draft legislation, administrative rules and program monitoring and evaluation for the departments of Environmental Quality, Natural Resources and Conservation, and Fish, Wildlife, and Parks.

The EQC has requested that the Agency Oversight Subcommittee assist the Council in its agency and program oversight role. It is anticipated that the full Council will provide oversight for certain topics and that it may delegate oversight for other topics to the subcommittee. To avoid duplication, subcommittee agendas should be reviewed by the Council or by EQC leadership if they depart significantly from the subcommittee work plan, appear to repeat subjects in the EQC workplan or require a reallocation of staff resources.

Subcommittee members may suggest additional oversight topics for review through the subcommittee chair and vice chair who will work with staff to allocate or reallocate limited time and resources to additional topics. The workplan must be flexible enough to make adjustments for additional assignments yet be protective of the subcommittee's issues, time, and staff.

The general oversight authority and responsibilities of the EQC are described as follows:

**75-1-324. Duties of environmental quality council.** The environmental quality council shall:

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

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

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

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

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

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

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

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

(9) review and evaluate operating programs in the environmental field in the several agencies to identify actual or potential conflicts, both among the activities and with a general ecologic perspective, and suggest legislation to remedy the situations; and

(10) perform the administrative rule review, draft legislation review, program evaluation, and monitoring functions of an interim committee for the:

- (a) department of environmental quality;
- (b) department of fish, wildlife, and parks; and
- (c) department of natural resources and conservation.

**5-5-215. Duties of interim committees.** (1) Each interim committee shall:

- (a) review administrative rules within its jurisdiction;
- (b) subject to 5-5-217(3), conduct interim studies as assigned;
- (c) monitor the operation of assigned executive branch agencies with specific attention to the

following:

- (i) identification of issues likely to require future legislative attention;
- (ii) opportunities to improve existing law through the analysis of problems experienced with the

application of the law by an agency; and

(iii) experiences of the state's citizens with the operation of an agency that may be amenable to improvement through legislative action;

(d) review proposed legislation of assigned agencies or entities as provided in the joint legislative rules; and

(e) accumulate, compile, analyze, and furnish information bearing upon its assignment and relevant to existing or prospective legislation as it determines, on its own initiative, to be pertinent to the adequate completion of its work.

(2) Each interim committee shall prepare bills and resolutions that, in its opinion, the welfare of the state may require for presentation to the next regular session of the legislature.

(3) The legislative services division shall keep accurate records of the activities and proceedings of each interim committee.

## **Goals**

- To assist the EQC in its agency oversight responsibilities by conducting detailed analyses of issues, programs, or policies as assigned to the subcommittee or initiated by the subcommittee within the limits of time and available resources. To provide any findings and recommendations to the agencies, the EQC, and to the legislature.
- Obtain information from a broad range of participants and interested persons.

## **Tasks**

- Also see Statutory Duties Tasks above.
- Review and analyze insurance and responsibility issues involving the protection of private property from wildland fire in the rural/urban interface.
- Review and comment on the proposed revisions to the state elk management plan.
- Track litigation that involves a MEPA cause of action.
- Review multi-agency collaboration and progress on issue of cleanup of property contaminated by illegal methamphetamine labs.

## **5. Timeline**

The timeline is based on the EQC meeting timeline. Subcommittee meetings will take place on or before the EQC meeting and the timeline will be revised as subcommittee meeting dates are set.

## 2003

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| October 8 | Subcommittee meeting <ul style="list-style-type: none"><li>▼ Review and adopt subcommittee interim workplan</li><li>▼ Compliance and Enforcement report - DEQ presentation</li><li>▼ Holcim, Inc. tire burning proposal - update and MEPA issues</li><li>▼ Agency rules - DEQ baled tire rule proposal; DNRC state land use proposed rules</li></ul> |
| October 9 | EQC meeting <ul style="list-style-type: none"><li>▼ Submit workplan to EQC for approval</li></ul>  |

## 2004

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| January 14 | Subcommittee meeting <ul style="list-style-type: none"><li>▼ Compliance and Enforcement report - Dept of Agriculture</li><li>▼ Update on MEPA litigation</li><li>▼ Review of selected EQC statutory duties</li><li>▼ Elk management plan update - DFWP</li><li>▼ Methamphetamine cleanup standards panel - DOJ, DPHHS, DEQ</li><li>▼ Wild land fire issues - private property insurance panel</li><li>▼ Agency rules review - as needed</li></ul> |
| January 15 | EQC meeting <ul style="list-style-type: none"><li>▼ Subcommittee report to EQC</li><li>▼ DEQ and DPHHS presentation on environmental and human health indicators</li></ul>  |

March 9	Subcommittee meeting <ul style="list-style-type: none"> <li>▼ Compliance and Enforcement report - DNRC</li> <li>▼ Review of EQC statutory duties - solid waste</li> <li>▼ Agency rules review - as needed</li> <li>▼ Oversight topics as assigned</li> <li>▼ MEPA website information - demonstration</li> </ul>
March 10	EQC meeting - <ul style="list-style-type: none"> <li>▼ Subcommittee report to EQC</li> </ul>

July 22	Subcommittee meeting <ul style="list-style-type: none"> <li>▼ Update on MEPA litigation - summary report</li> <li>▼ Draft Subcommittee decisions on findings and recommendations to EQC.</li> <li>▼ Agency rules review - as needed</li> <li>▼ Oversight topics as assigned</li> </ul>
July 23	EQC meeting <ul style="list-style-type: none"> <li>▼ Subcommittee briefing to EQC on potential legislative proposals</li> <li>▼ Draft recommendations to EQC</li> </ul>

Sept 13-14	Final EQC meeting <ul style="list-style-type: none"> <li>▼ Decision by EQC on proposed legislation, if any</li> <li>▼ Selection of bill sponsors</li> <li>▼ Adoption of any final subcommittee reports</li> <li>▼ Facilitate oversight agenda items as needed</li> </ul>
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