



TREASURE STATE
RESOURCES ASSOCIATION
OF MONTANA

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TREASURE STATE RESOURCES ASSOCIATION NEWS
October, 2018

**Registration Open – Treasure State Resources Association
2019 Legislative Reception and Showcase of Natural Resources
January 8, 2019 Delta Helena Colonial Hotel, Helena, MT
5:30 p.m. – 8:00 p.m.**

TSRA members can now sign up for the 2019 Legislative Reception and Showcase of Natural Resources scheduled for Tuesday, January 8, 2019 at the Delta Colonial Hotel in Helena, MT

This event has become a “tradition” for both TSRA members and legislators at the launch of a new session of the Montana Legislature. It provides an opportunity to showcase our members’ contributions to Montana’s economy and way of life to our invited guests – Montana legislators and other elected officials. TSRA members will have a welcoming meeting place to educate legislators and others about their industry, business, association, or organization. Legislators can meet representatives from TSRA’s broad-ranging coalition and better appreciate the diversity of Montana’s “working (and recreating) landscape”. In 2017 more than 120 legislators attended the event.

The Legislative Reception and Showcase is scheduled from 5:30 p.m. to 8:00 p.m. and offers a variety of ways to participate:

- Sign up for a booth to feature your company or organization.
- Be a sponsor of the event and have your name prominently displayed.
- Have a tabletop exhibit to display your information.

- Attend the Reception/Showcase as a member and mingle with elected officials and your TSRA peers.
- Provide tickets to the event to your personnel.

This is a great opportunity for TSRA members to share information about their businesses, associations, organizations and projects with a diverse and important audience. You are urged to attend and be generous hosts to our legislative guests. With your assistance and participation, TSRA can continue to make this a unique tradition for the Montana Legislative Session.

The 2019 Showcase Sponsorship and Reservation Form can be downloaded here: [2019 Showcase Sponsorship and Reservation Form](#). It can also be found on the “Events” page on TSRA’s website. Booth and display space is limited so act soon.

Montana Sage Grouse Oversight Team Meets October 4 to Consider Initiation of Formal Rulemaking

Source: Montana Sage Grouse Program

The Montana Sage Grouse Oversight Team (MSGOT) will meet via teleconference on Thursday, October 4, 2018, from 12:30 p.m. to 2 p.m. in the Montana Room at the Montana Department of Natural Resources and Conservation headquarters, located at 1539 Eleventh Avenue, in Helena.

During the teleconference, MSGOT will consider whether to take executive action to initiate formal administrative rulemaking to designate the Habitat Quantification Tool, and to adopt and incorporate by reference the Habitat Quantification Tool Technical Manual October 2018 v1.0 and the Policy Guidance Document October 2018 v1.0.

The proposed rules would direct MSGOT and the Program to implement the Habitat Quantification Tool and the Technical Manual that describes the methods and steps to evaluate the effects on habitat quality and quantity of development activities or conservation actions, respectively. The proposed rules would also direct MSGOT to implement the Guidance document, which describes how the Habitat Quantification Tool results are applied by MSGOT, the Sage-grouse Program, developers, private landowners, and others participating in the mitigation marketplace.

These products and proposed actions have developed through an intensive, two-year stakeholder effort, MSGOT discussion, and several general public opportunities. The overall approach to mitigation arises from Executive Order 12-2015 and the Greater Sage-grouse Stewardship Act, which call for creation of voluntary incentives to conserve habitat through a mitigation marketplace.

All meeting materials are available on MSGOT’s meeting web page. See <https://sagegrouse.mt.gov/Team>.

Following the September 14, 2018 MSGOT meeting during which several individuals spoke to concerns about the cost of mitigation for projects that served a public safety need, as well as to the inability for nonprofit entities such as electrical cooperatives to recover costs, the Program has revised the September versions of the HQT Technical Manual and the Policy Guidance. Those revisions include more detailed information about how tall structures (cell towers) and power lines will be analyzed. They also reflect the addition of: industry-related economic considerations in the adaptive management revisions that highlight the importance of having reliable data and meaningful collaboration with industry to more fully understand how mitigation obligations affect them; the explicit consideration of how Montana is balancing conservation with the economics of mitigation and the broader public interest; and policy-based tools to address economic feasibility constraints when mitigation obligations are high using financial and/or credit-matching approaches.

Some MSGOT members will participate by telephone and some will participate in person. Members of the public can participate and offer comment on MSGOT's pending decision by attending in person. If MSGOT moves forward with rulemaking, that will trigger a formal public comment period. That would begin on October 19, 2018 with the publication of the proposed rules in the Montana Administrative Register. A public hearing would be held in Helena on November 9, 2018 and written comments would be due no later than November 19, 2018. Based on this schedule, MSGOT could adopt final rules during their December 18, 2018 meeting.

The Montana Sage Grouse Habitat Conservation Program works to sustain viable sage grouse populations and conserve habitat, enabling Montanans to maintain control of their lands, wildlife, and economy by avoiding a listing of the greater sage grouse under the federal Endangered Species Act.

Board of Environmental Review Poised to Adopt Increases in Air Quality Operation Fees

The Montana Board of Environmental Review (BER) meets Friday, October 5, 2018 in Helena to consider a number of enforcement and regulatory matters, including adoption of increases in some air quality operation fees affecting TSRA members.

As reported in previous newsletters, the DEQ Air Quality Division advised participants in the Clean Air Act Advisory Working Group (CAAAC) that they would need to propose a fee increase to cover operations in the next fiscal year. Fees have not been increased for almost a

decade and DEQ staff pointed to internal efforts to reduce operational costs prior to seeking the change. TSRA worked with the MT Petroleum Association to garner input from our members.

The tonnage fee increase for emissions will be “an amount not to exceed \$44.35 per ton” and the air quality operation fee increase for registered oil and gas well facilities will be \$850. Those amounts reflect a change from the original rule notice that were made at the request of DEQ based on updated budget information. TSRA’s testimony on the proposal reflected that while the association took no position on the specific increase, we did acknowledge that resources were needed to run an effective air quality program. However, we shared concerns raised by others, including member companies, that DEQ needs to take a look at the long game in terms of how to fund their regulatory program in the face of declining emissions levels and other changes in regulated industries. The BER is expected to adopt the new fees.

Editor’s Note: TSRA has been invited to participate in a new stakeholder work group to be established by the DEQ Air Quality Division in the coming weeks that will be charged with developing recommendations for “future funding” of the program in light of the reduction in emissions and other considerations. Individual TSRA members are encouraged to offer their input as well.

Other BER Agenda Items include a briefing from the Air Quality Division on an upcoming administrative rule package that will transition the regulation of portable sources of emissions from case-by-case permitting to a more “efficient and effective” registration program similar to that for oil and gas well facilities. The change results from work with a stakeholder group of those impacted. DEQ currently plans to ask the BER to initiate a formal rulemaking process at their December 7, 2018 meeting.

BER will also revisit a petition from the Cottonwood Environmental Law Center and the Gallatin Wildlife Association to classify a section of the Gallatin River from the Boundary of Yellowstone National Park to the confluence with Spanish Creek in Gallatin Canyon as an Outstanding Resource Water. ORW Status would likely lead to more stringent regulations that could impact the community of Big Sky as well as future development along that segment of the river. If BER determines the petition meets statutory requirements for acceptance by the Board, that would trigger a number of steps, including updating an earlier EIS prepared for a similar request for ORW status. Under state law, the Petitioner, Cottonwood Environmental Law Center, is obligated to pay the costs for public notice and comment, as well as those for updating the EIS. The work on the EIS could cost \$250,000 or more and no work could begin until the Petitioner provided payment.

Cottonwood Environmental Law Center’s primary argument for ORW designation point to the possibility that a water treatment plant might be built by the Big Sky Water and Sewer District that might hypothetically put pharmaceuticals into the water of the Gallatin River. At present, whether pharmaceuticals present a risk is an open question.

In a memo prepared for the BER , their attorney states that *a preponderance of the evidence does not indicate there is a known “risk” of having the Gallatin River between Yellowstone National Park and Spanish Creek “compromised as a result of pollution,” with “no other effective process to achieve the necessary protection....Based on the evidence before the BER at this time, and consideration of all the necessary factors...it is my recommendation that the BER reject Cottonwood’s Petition for Rulemaking.*

EPA Approves Montana’s Individual Water Quality Variances Authorized under SB 325 (2015)

After an extended stakeholder process in which TSRA participated, and adoption of a new individual variance rule by the Montana Board of Environmental Review, EPA Region 8 has approved the new water quality standard (individual variance) authorized by ARM 17.30.661. Created under Part 2 of SB 325 passed in 2015, this variance gives some relief from treating water that has been impacted by such things as historic mining operations – an impact not likely to be remedied in the near future.

Work Continues on SB 325, Part 1 – Determining “Natural” Water Quality Conditions – Watch for Upcoming Rulemaking

While the individual variance addressed in Part 2 of SB 325 has been adopted, the larger effort to identify the nonanthropogenic or “natural” condition of a water body segment continues. DEQ cannot require a discharger to treat water to meet standards more stringent than the natural condition. Sounds simple. But the mechanics of demonstrating the natural condition, documenting the nonanthropogenic standard, then applying that standard to the permitting process is anything but simple. Using the results of an extensive data collection effort that tracks the journey of arsenic coming from Yellowstone National Park through the different stream segments along the Yellowstone River, DEQ proposes moving forward with the first such demonstration for “natural” levels of arsenic in the Yellowstone River.

Those on the front lines of this new approach are the refineries at Laurel and Billings, and the City of Billings itself, who are all working with DEQ representatives via MPA to identify how the “natural” arsenic standard is going to be implemented in the permitting process. DEQ is anticipating appearing before the Board of Environmental Review as early as their December 7, 2018 meeting to begin the process of initiating formal rulemaking. EPA representatives have been actively involved throughout the extensive stakeholder process and will ultimately have to approve any changes to water quality standards that might be adopted by the Board of Environmental Review. DEQ hopes to undertake similar efforts for determining the “natural” condition for arsenic, salinity, aluminum and iron as applicable to other streams or stream reaches in Montana.

Interim Committees Move Draft Bills Forward to 2019 Montana Legislative Session

Most of the 2017-2018 Interim Committees of the Montana Legislature have wrapped up their work for the year. Several proposals of interest to TSRA members either coming from the committees, or via the agencies they oversee will be introduced in the 2019 Session. Draft language for the agency proposals is not yet available but a short summary follows:

- DEQ will introduce a bill that consolidates water quality variances (currently the nutrient standards variance and variances under 85-5-222(2) referenced earlier) under a single statute. The bill will expand the criteria for variances to make it consistent with federal regulations and provide dischargers with more options for variances beyond having to demonstrate that compliance represents an economic hardship. *Editors Note: As a reminder, on behalf of several members TSRA intervened in a legal challenge to Montana's nutrient standards variance (Upper Missouri Waterkeeper v. USEPA). Briefing has been ongoing for the last several months and a decision is expected late this year. The outcome could have implications for this DEQ legislative proposal.*
- DEQ seeks to amend the Voluntary Cleanup and Redevelopment Act (VCRA) to provide clarification and additional time for groundwater cleanup. In late 2016, with the assistance of TSRA, DEQ solicited feedback on VCRA from stakeholders who prepared, paid for, or were otherwise involved in the submittal of Voluntary Cleanup Plans under VCRA. Based on the feedback received, and experience with VCRA, DEQ has identified two areas where clarification is needed. The proposed bill will: 1) allow property owners to grant access for remedial activities once those activities have been identified, and 2) add flexibility in addressing groundwater contamination at sites where it may take longer than 60 months to meet water quality standards.
- DNRC has several proposals that impact the logging/timber industry. Those include measures allowing the department to: 1) have the option to consider implementing an online auction process for state school trust land oil and gas leasing; 2) increase the amount of green timber than can be harvested under a commercial permit to take advantage of short term market changes; 3) clarify circumstances under which a conservation license in lieu of a timber sale can be used; 4) increase the bond and fees for the Hazard Reduction Agreement (HRA) Program; 5) allow for statutory authority to be requested for income earned under Good Neighbor Authority agreements, and 6) Change the "Responsible Party" language within the Streamside Management Zone Law. Representatives of the timber industry and the MT. Forest Owners Association had concerns with, or opposed, changes to the bond program and the "responsible party" language. DNRC will work with those entities for more input prior to finalizing bill drafts.

The Environmental Quality Council also passed a committee bill that has implications for many of our TSRA members across the state. It expands collection of fees now authorized in areas of western Montana for “wildland fire protection preparedness” statewide. Wildland is defined as all land outside the boundaries of an incorporated municipality. Fees would be established in three parts: a base fee assessed to each parcel, an additional fee for a dwelling on the parcel, and for parcels classified as forest land, there is also a forest land fee. There was some interest in including municipalities in the program, but due to opposition from the Montana League of Cities and Towns that was not added to the bill. The measure is expected to draw a great deal of interest as individuals and organizations seek to better understand the mechanics and the impacts.

Unlike the last interim, there were not many bills coming from the Energy and Telecommunications Committee or the Water Policy Committee that had widespread implications for TSRA members.

EPA Proposes Oil and Gas Targeted Improvements Package to Advance President Trump’s Energy Dominance Agenda

Proposal to save \$484 million in regulatory costs

09/11/2018

Contact Information:

(press@epa.gov)

WASHINGTON — Today, the U.S. Environmental Protection Agency (EPA) proposed targeted improvements to the 2016 New Source Performance Standards for the oil and gas industry that streamline implementation, reduce duplicative EPA and state requirements, and significantly decrease unnecessary burdens on domestic energy producers. This oil and gas targeted improvements package is expected to save up to approximately \$484 million in regulatory costs from 2019 – 2025 or \$75 million annually.

“These common-sense reforms will alleviate unnecessary and duplicative red tape and give the energy sector the regulatory certainty it needs to continue providing affordable and reliable energy to the American people,” **said EPA Acting Administrator Andrew Wheeler.** “Removing these excessive regulatory burdens will generate roughly \$484 million in cost savings and support increased domestic energy production – a top priority of President Trump.”

The proposed improvements include: aligning requirements between EPA's rule and existing state programs; modifying the frequency for monitoring leaks (also known as “fugitive emissions”) at well sites and compressor stations; and making it easier for owners and operators to use emerging measurement technologies in their leaks monitoring surveys.

“Today’s technical amendments recognize successful infrastructure already in place in states like Ohio to protect public health and the environment,” **said Ohio EPA Director Craig Butler.** “EPA’s commonsense proposal supports state leadership through cooperative federalism

and removes unnecessary red tape and burdensome duplication that only serve as roadblocks to responsible energy development in Ohio.”

“America’s oil and natural gas producers understand the importance of fair, commonsense regulations. But, for too long, the federal bureaucracy has buried our industry in unnecessary and often duplicative red-tape,” **said Independent Petroleum Association of America President and CEO Barry Russell.** “Today’s EPA proposal reverses the growing mistakes of the past. This proposal not only reassures America’s continued path toward global energy leadership, but also continues to protect the environment and communities where energy production is located. It is important for the states to play an important role in decisions that affect their citizens, industries and natural resources. This proposal does just that: it empowers the states to work with the federal government on the best regulatory approaches. IPAA welcomes these proposed changes and is encouraged by these reasonable actions.”

“Western Energy Alliance is pleased that EPA is fixing a rule that was purposefully designed by the Obama Administration to tie up the American oil and natural gas industry in red tape,” **said Western Energy Alliance President Kathleen Sgamma.** “By fixing the numerous technical problems with the original rule, EPA will enable industry to continue its four-decade success record of reducing methane emissions. This new rule encapsulates the energy dominance agenda that is leading to huge increases in American energy production and jobs with dramatically lower levels of imports from overseas, all while delivering environmental protection.”

The Agency continues to consider other policy issues in the 2016 rule, including the regulation of greenhouse gases in the oil and gas sector, and will be addressed in a separate proposal at a later date.

EPA will take comment on the proposed rule for 60 days after the proposal is published in the Federal Register and will hold a public hearing in Denver, Colo. Details on the public hearing will be available shortly.

For more information, visit <https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry/actions-and-notice-about-oil-and-natural-gas#regactions>

Montana Chamber of Commerce Creates Montana Energy Reliability Coalition (MERC)

Given the number of challenges (and opportunities) faced by the energy industry, the Montana Chamber of Commerce has facilitated the creation of a coalition effort aimed at emphasizing the need for “stable, affordable, and reliable energy” in the state. Called the Montana Energy Reliability Coalition (MERC), the effort brings together a range of interests including energy generation, energy development, elected officials and community leaders to sharpen their

collective focus on planning and policies that promote a “stable, affordable, and reliable energy future in Montana”.

According to its Mission Statement, “MERC embraces an all-of-the-above approach when it comes to Montana’s energy portfolio makeup. We value the reliability, affordability and economic support provided by traditional fuel and hydro sources, while recognizing the importance of developing new and innovative ways to use technology to improve those sources as well as to incorporate new sources to meet the energy needs of the future.”

To learn more about this effort, contact Bridger Mahlum, Montana Chamber of Commerce Government Relations Director at bridger@montanachamber.com.

Upcoming Events/Dates

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| November 7-10, 2018 | MT Farm Bureau Federation Convention Double Tree and Northern Hotels, Billings, MT |
| November 19, 2018 | Revenue and Transportation Interim Committee State Capitol, Helena, MT |
| December 5, 2018 | Montana Taxpayers Association Annual Meeting Delta Helena Colonial Hotel, Helena MT |
| December 11-13, 2018 | Montana Stockgrowers Association Convention Double Tree and Northern Hotels, Billings, MT |
| January 7, 2019 | Montana Legislative Session Convenes State Capitol, Helena, MT |
| January 7-8, 2019 | Montana Chamber Days at the Capitol Helena, MT |
| January 8, 2019 | TSRA Legislative Reception and Showcase of Natural Resources 5:30 – 8:00 pm. Delta Helena Colonial Hotel, Helena, MT |
| June 19-20, 2019 | TSRA 2019 Annual Meeting Holiday Inn Downtown, Missoula, MT |

If you don't want to receive the TSRA Newsletter, please let me know. If you want to share with others in your company or organization, please do so. The mission of the Treasure State Resources Association is to promote and enhance the Montana Way of Life through responsible resource development.