



# TREASURE STATE RESOURCES ASSOCIATION OF MONTANA

P.O Box 1700, Helena, Montana 59624

Phone: (406) 443-5541

## TREASURE STATE RESOURCES ASSOCIATION NEWS July, 2019

### **Montana DEQ Air Quality Bureau Update**

Source: Montana Department of Environmental Quality, July 3, 2019

Can you believe it's already July? School is out and summer is upon us here in Helena! Before we get too deep into the distractions of summer vacations, the Air Quality Bureau (AQB) would like to share a few updates with you. We're aware there are several other association meetings happening around the state this summer, so rather than ask anyone to travel to Helena, please accept these email updates. If you have questions or would like more information, just let us know.

#### **Air Quality Fees**

Last year, the AQB determined it needed to increase operating fees, and we appreciate your involvement in that process. We are happy to let you know that we are not pursuing a fee increase in 2019 and we continue to evaluate our processes to ensure they are as efficient as possible. In the meantime, we are examining our current fee structure and how we need to revise it to make it sustainable, equitable, and adequate moving into the future.

#### **Sand & Gravel, Asphalt, and Concrete Registration Program**

In April, the Board of Environmental Review adopted new administrative rules putting in place a registration program for certain source categories that previously required Montana air quality permits. The AQB had been working with stakeholders to develop the new program since late-2016, with the goal of implementing a more streamlined administrative process that will enable

staff to focus their time and energy on areas with more environmental benefit. The new registration program became effective in late-April and staff in the AQB have been busy providing education and technical assistance to help companies transition from permit to registration. All registration-eligible facilities are required to be registered before the end of 2019. More information is available at <http://deq.mt.gov/Air/BI/NewFacility>. If you have questions about the new program, please contact us at 406-444-3490.

## **Regional Haze**

The AQB continues to coordinate at the regional level on efforts to address the second planning period under the federal Regional Haze Rule. The AQB is on track to submit a state implementation plan to EPA in advance of the July 2021 due date. Provided EPA approves the plan, Montana will be the administrative lead on the Regional Haze program. As part of the planning process, AQB is working closely with 17 facilities that were identified as needing further analysis of NO<sub>x</sub> and/or SO<sub>2</sub> control equipment. To learn more about Regional Haze, you may wish to review presentations from past meetings on the CAAAC website, or visit <http://deq.mt.gov/Air/AQ/RegionalHaze>.

## **Nonattainment Area Redesignations**

EPA published final redesignation of the Missoula PM<sub>10</sub> nonattainment area in May 2019. EPA has indicated they intend to act on redesignation of the East Helena lead and SO<sub>2</sub> areas by the end of the federal fiscal year. AQB is working diligently to prepare redesignation requests for several more areas, including: the Libby, Kalispell, and Columbia Falls PM<sub>10</sub> areas, all of which have already undergone public review, and the Butte PM<sub>10</sub>, Libby PM<sub>2.5</sub>, Whitefish PM<sub>10</sub>, and Thompson Falls PM<sub>10</sub> areas, which we hope to publish for public review before the end of the calendar year.

## **Ongoing Outreach Efforts**

The Air Quality Bureau has been actively engaged with stakeholders. This spring we've met with the following groups to discuss several specific topics:

- Montana Petroleum Association Refinery Committee – We discussed regional haze and benzene fence line monitoring;
- Montana Petroleum Association Upstream Oil and Gas Facilities – We discussed the inspection process;
- Montana County Air Quality Programs – We discussed many aspects of county programs and how we work together; and
- Treasure State Resources Association – We provided a general update at the annual meeting.

In closing, please contact us if you have any questions on the updates above or another air quality topic not covered here.

The Air Quality Bureau

## **TSRA Elects New Officers**

During the TSRA Annual Meeting held June 20, 2019; the membership elected new officers for the coming two years. They are:

**Mark Baker, ABS Legal - President; Bill Ryan, IBEW #44 – First Vice President; Tammy Johnson, Montana Mining Association – Second Vice President; and Steve Wade, BKBH – Secretary /Treasurer. Jay Bodner, Executive Director of the Montana Stockgrowers Association, will serve as Immediate Past President.**

**A big “thank you” to all of these folks for their willingness to serve the Association, and especially to Jay Bodner for his leadership over the past two years.**

We also appreciate all those who were able to attend and/or support the 2019 TSRA Annual Meeting. We think it’s important to share information about legislative, regulatory and resource development issues around the state and stay in touch with those who share a common interest in Montana’s economy.

**In particular, TSRA again sincerely thanks our Annual Meeting Sponsors:**

### **Trailblazer Level: MDU Resources Group**

**Champion Level: Atlantic Richfield, BNSF Railway, Crowley Fleck, Denbury Resources, NorthWestern Energy, Washington Business Services and Weyerhaeuser**

**Groundbreaker Level (Golf Sponsorship): Citizens for Balanced Use, Hecla Montana, IBEW Local #44, NorthWestern Energy and Solvay U.S.A**

**Advocate Level: ABS Legal, Browning, Kalecyzc, Berry and Hoven, Enbridge Energy, Energy Laboratories, Montana Chamber of Commerce, Montana Farm Bureau Federation, Phillips 66 and Solvay U.S.A.**

## 2019 – 2020 Legislative Interim Launched

Legislators and staff took a short break post session and now it's back to business as Interim Committees begin their work for the next 18 months.

**The Water Policy Interim Committee** met June 10<sup>th</sup> in Helena for their organizational meeting, electing Rep. Zach Brown of Bozeman as Chair and Sen. Jeff Welborn of Dillon as Vice Chair. For purposes of "process" going forward, the committee determined a simple majority of 6 of 10 members is needed to pass general motions, but decisions about committee bills will require a larger majority, or 7 of 10 members. The rationale for the difference is an expectation that bills advancing to the 2021 session should demonstrate strong bipartisan support.

WPIC will be focusing on two studies, the primary one being HJ 14 that will look at the future of the Water Court in the administration of water rights in Montana. The Court is primarily concerned with adjudication of pre-1973 water rights, but has played an increasing role in resolving water rights disputes.

The other study, HJ 40 is a study of weather modification. The study will look at current state laws and propose changes in order to encourage its use as a scientific technique.

WPIC has general oversight responsibilities for "issues where the primary concern is the quality or quantity of water" in programs of the Department of Environmental Quality (DEQ), the Department of Fish, Wildlife and Parks (FWP); and the Department of Natural Resources and Conservation (DNRC). Several committee members expressed an interest in what was happening with the nutrient variance litigation, as well as implementation of SB 48 authorizing other options for qualifying for a variance. There is particular concern for the cost to small communities as they try to meet stricter standards. The Committee will also be looking for updates on implementation of SB 325 from the 2015 Legislative Session that addresses the issue of how to set water quality standards that are not lower than naturally occurring levels of a contaminant.

WPIC's next meeting will be September 10 – 11<sup>th</sup> in Dillon.

**The Environmental Quality Council** (EQC) has also held its organizational meeting, gathering in Helena on June 26-27<sup>th</sup>. Rep. Jim Keane was elected Chair, and Sen. Mike Lang as Vice Chair. EQC was tasked with three studies by the Legislative Council, including HJ 38, a study of bonding, decommissioning, and remediation for energy facilities; SJ 30, a study of the dissemination of fish and wildlife location data; and SJ 20, a study of federal wilderness study areas.

The Committee allotted a fairly modest amount of time in the work plan to SJ 30 and HJ 38, limiting the efforts to gathering information from other states and gaining a better understanding of current laws and rules.

Some committee members expressed reservations about taking a deep dive into SJ 20 since it involves a federal matter. Thanks to the efforts of Rep. Kerry White and others, the EQC opted to use the study as an opportunity to update the body of information known about mineral potential, grazing, the suitable timber base and other resources in the WSA's. It has been 40 years since the nearly 663,000 acres was been designated for study and "refreshing" the data could potentially help move the issue closer to resolution. Various stakeholder groups offered to assist the EQC in providing current data, including the Montana Mining Association, the Montana Stockgrowers Association, and the Montana Wood Products Association.

EQC members are also very concerned about the spread of chronic wasting disease and allocated the lion's share of study time to looking at the issue from a range of perspectives including public education and research into management efforts in other states.

The Committee allotted the remaining study time to other oversight responsibilities, including energy issues, water quality concerns, and preventing the spread of aquatic invasive species.

**The Energy and Transportation Committee** will hold their first meeting on July 29<sup>th</sup> at the State Capitol in Helena. They were only assigned one study by the Legislative Council - HJ 12, a Study on Defense of State Infrastructure. Some anticipate they will also allocate time to looking further at the implications of the use of electric cars.

## **Briefing Continues in Nutrient Water Quality Litigation**

Earlier this year, Judge Brian Morris found that nutrient water quality variances, as well as the allowance for a demonstration of widespread economic impact in granting such a variance, fell within the scope of the Clean Water Act. However, he took issue with the timeline for reaching the base numeric nutrient standards. He directed the parties in the matter to try to find agreement on a solution that would lead to a more clear, and timely deadline. The Plaintiff in the case, Upper Missouri Waterkeeper, proposed a solution that was not acceptable to MT DEQ, EPA, TSRA, the MT League of Cities and Towns and NACWA – which was not surprise given their opposition to water quality variances in general.

July 1<sup>st</sup> was the deadline for parties to file briefs on the remedy for addressing the timeline. MT DEQ is seeking more time to address the court's concerns related to the term of the general variance. TSRA is supportive of that approach.

As a reminder, private dischargers are not currently eligible for the general variance having been deemed "out of scope" by the EPA. However, TSRA continues to participate in the matter to

preserve the option should the situation change in the future. Like other intervenors, we hope to reduce the risk that the court might institute changes that prove too costly or are otherwise unworkable. It is also possible the court could revisit the earlier finding that the Clean Water Act allows the use of variances.

Upper Missouri Waterkeeper is expected to argue for more restrictive timelines, as well as continue to oppose the issuance of water quality variances. Currently there isn't a sense of how long the Judge will take to respond to this latest round of briefing.

## **Invasive Clam Shells Found In Lake**

Source: [Missoulian](#) July 2, 2019

Montana wildlife officials say evidence of an invasive clam that can out-compete native species has been found for the first time in a state waterbody.

Fish, Wildlife and Parks officials say Asian clam shells were recently found near the boat ramp at Lake Elmo State Park in Billings. The discovery was made by participants in a training session on the detection of aquatic invasive species.

No live clams were found. The quarter-sized mollusks are smaller than native clams that live in Montana. In large enough numbers officials say they can clog screens on irrigation pumps or other water intakes.

## **Justices to Decide Major Superfund Case**

Source: E&E News, June 10, 2019 By: Ellen M. Gilmer

The U.S. Supreme Court has another big environmental case on its docket, as the justices agreed to review a Superfund fight that could affect cleanup efforts across the country. The court will hear *Atlantic Richfield v. Christian*, a battle over an old copper processing site in Montana. At issue in the case is whether landowners can go to court to seek money for restoration when EPA is already overseeing an effort under the Superfund law, officially known as the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Industry lawyers told the Supreme Court the case could be "one of the most consequential decisions interpreting CERCLA in years".

The Anaconda Smelter Superfund Site has been on EPA's National Priorities List since 1983. The soil, groundwater and some surface waters in the 300-square-mile area surrounding the old industrial site are laced with high concentrations of arsenic and other hazardous substances released during a century of copper smelting.

Neighbors filed suit in state court in 2008, seeking money from Atlantic Richfield Co., which acquired Anaconda Minerals Co. years ago, for restoration work beyond what EPA required in a cleanup plan. Specifically, the landowners wanted to reduce arsenic levels in their soil and groundwater below the threshold EPA set. State courts allowed the case to move forward, and Atlantic Richfield asked the Supreme Court to intervene.

“The state court’s holding throws remediation efforts at Anaconda and other massive sites into chaos and opens the door for thousands of private individuals to select and impose their own remedies at CERCLA sites at a potential cost of many millions of dollars per site,” lawyers for the BP PLC subsidiary told the high court last year.

The landowners maintain the Superfund law preserves their right to bring claims under state common law. The Trump administration filed a brief in April saying it disagreed with the landowners but thought the court should nevertheless reject Atlantic Richfield’s petition as premature.

The Supreme Court is expected to hear the case this fall. The outcome could encourage more landowners to seek restoration damages outside the Superfund process or set clearer limits on landowner’s legal options.

Harvard Law School professor Richard Lazarus said he was surprised by the Supreme Court’s decision to take the case against the administration’s recommendation.

“That the U.S. Supreme Court nonetheless granted review is not good news for the respondents and strongly suggests that the minimum of four Justices who favored review are currently inclined to rule in favor of Atlantic Richfield,” he said in an email to E&E News.

“It also suggests that petitioner’s lawyers did an especially effective job of persuading the Court to review. Never easy in any case, but especially so in a CERCLA case, which none of the Justices are doing jumping jacks to hear,” he said.

Still, Lazarus cautioned, the arguments on both sides are strong, and it’s “far from clear” the court will ultimately favor industry.

“There is clear tension between the purpose of the judicial review preclusion provisions of CERCLA, seeking to avoid interference with CERCLA remediation, and the savings clause provisions, that preserve state common law causes of action,” he said.

The U.S. Chamber of Commerce, which filed an amicus brief last year, warned that a win for the landowners would upset the “relative certainty” companies have about cleanup liability for Superfund sites.

*Editor's Note: TSRA joined with other business groups in a joint amicus brief asking the U.S. Supreme Court to accept certiorari in the above-referenced matter. We are obviously pleased with the Court's decision and look forward to participating in the next stage of this matter.*

## **Colstrip Units 1 and 2 to Retire Early**

Source: Talen Energy Press Release, June 11, 2019 and E&E News, June 11, 2019 article by Benjamin Storrow

Talen Energy, the operator of the Colstrip Steam Electric Station (“Colstrip”) announced that, effective December 31, 2019, the owners of Colstrip Units 1 and 2 (Talen Montana and Puget Sound Energy) will permanently retire the units, which have a total 614 megawatt capacity rating. Colstrip’s other two units, 3 and 4, will remain in operation. Talen Montana is a 50 percent owner (307) megawatts of Colstrip Units 1 and 2. Puget Sound Energy owns the other 50 percent share of Units 1 and 2.

“The decision to retire Colstrip Units 1 and 2 comes after extensive review and exhaustive efforts over the last few years to address the financial challenges that these units face,” said Lebsak, Talen Montana President. Lebsack continued, “ The plant team has done a great job of responding to the challenges faced by Units 1 and 2, but we have been unsuccessful in making the units economically viable”...

According to federal figures, Colstrip 1 and 2 account for roughly a quarter of Colstrip’s electricity output in 2018.

Colstrip has been at the center of a growing divide between Rocky Mountain and Pacific States. It is owned by six utilities. Historically, much of the plant’s electricity has been shipped to Washington and Oregon.

But those states have passed laws in recent years designed to wean their power companies off Colstrip, as they move to green their power sectors...The push by Pacific states to ditch Colstrip has prompted efforts in Montana to save the plant. Lawmakers there worry the plant’s closure could decimate Montana’s tax take and upend the community of Colstrip, which is highly reliant on the plant and Westmoreland’s nearby Rosebud mine. A legislative effort to boost the ownership stake of NorthWestern in Colstrip failed earlier this year...Washington utilities need to be out of the plant by 2025. Oregon utilities need to divest from the plant by 2030, and Portland General Electric will not be able to buy electrically from Colstrip after 2035. NorthWestern Energy expects the plant to run through 2042.

Talen, in its statement, forged ahead.



“Going forward, as operator of the Colstrip plant, Talen Montana’s primary focus will be to ensure that Colstrip Units 3 and 4 remain an economically viable source of safe, reliable power to Montana and the Northwest U.S.” the company said.

## **Oregon to Regulate Diesel Emissions from Heavy-Duty Trucks**

Source: Associated Press, July 1, 2019

Oregon will work to clean up diesel emissions from heavy-duty trucks in its most urban areas.

Senators voted 16-11 to send the controversial measure to the governor’s desk. It requires medium-and heavy-duty diesel trucks and buses in the state’s three most populated counties to phase out older vehicle engines. Heavy-duty trucks titled in these counties must be model year 2007 or newer by 2025.

The measure also includes grant money to help some trucks transition to newer engines. Governor Kate Brown (D) is expected to sign it.

The bill proved controversial among rural communities. Loggers and truckers protested at the Capitol last week expressing concerns that the proposal would put them out of business.

### **Upcoming Events/Dates**

July 9, 2019	Transportation Interim Committee State Capitol, Helena, MT
July 23, 2019	Local Government Interim Committee State Capitol, Helena, MT
July 29, 2019	Energy and Telecommunications Interim Committee Room 172, State Capitol, Helena, MT
August 27-29, 2019	Montana Petroleum Association Annual Meeting Billings, MT
September 10-11, 2019	Water Policy Interim Committee Dillon, MT

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