



# ENVIRONMENTAL QUALITY COUNCIL

PO BOX 201704  
HELENA, MONTANA 59620-1704  
(406) 444-3742

---

**GOVERNOR BRIAN SCHWEITZER  
DESIGNATED REPRESENTATIVE****HOUSE MEMBERS**

DUANE ANKNEY--Vice  
JERRY BENNETT  
BILL MCCHESENEY  
MICHELE REINHART  
CARY SMITH  
KATHLEEN WILLIAMS

**SENATE MEMBERS**

JIM KEANE--Chair  
JOHN BRENDEN  
BRADLEY MAXON HAMLETT  
RICK RIPLEY  
CHAS VINCENT  
GENE VUCKOVICH

**PUBLIC MEMBERS**

DEXTER BUSBY  
DIANE CONRADI  
MARY FITZPATRICK  
JOHN YOUNGBERG

**COUNCIL STAFF**

JASON MOHR, Research Analyst  
SONJA NOWAKOWSKI, Research Analyst  
HOPE STOCKWELL, Research Analyst  
HELEN THIGPEN, Staff Attorney  
KEVIN MCCUE, Secretary  
JOE KOLMAN, Legislative Environmental Analyst

Aug. 27, 2012

To: Environmental Quality Council (EQC) members

From: EQC staff

Re: Public comment related to LC9021

In May, the EQC approved draft legislation to eliminate the Air Pollution Control Advisory Council. This legislation is related to HB142, which requires interim committees to review statutorily required agency reports and statutorily established advisory councils.

The documents were posted for a 30-day public comment period that ended on August 22. A request for comment was posted on the EQC Listserv, included in the *Interim* newsletter, and sent out on Newslinks.

No comments were received by the deadline. The draft legislation has been attached.

If any comments are received in the meantime, copies will be provided in your meeting folder on September 12.

CL5923 2240OMXB.

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the Environmental Quality Council

A Bill for an Act entitled: "An Act eliminating the air pollution control advisory council and its functions; amending sections 75-2-103, and 75-2-205, MCA; providing an immediate effective date; and repealing sections 2-15-2106, 75-2-121, 75-2-122, and 75-2-123, MCA."

Be it enacted by the Legislature of the State of Montana:

**Section 1.** Section 75-2-103 , MCA, is amended to read:

**"75-2-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

~~(1) "Advisory council" means the air pollution control advisory council provided for in 2-15-2106.~~

~~(2)~~(1) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination ~~thereof~~ of those air contaminants.

~~(3)~~(2) "Air pollutants" means one or more air contaminants that are present in the outdoor atmosphere, including those pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

~~(4)~~(3) "Air pollution" means the presence of air pollutants in a quantity and for a duration that are or tend to be injurious to human

health or welfare, animal or plant life, or property or that would unreasonably interfere with the enjoyment of life, property, or the conduct of business.

~~(5)~~(4) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.

~~(6)~~(5) "Board" means the board of environmental review provided for in 2-15-3502.

~~(7)~~(6) (a) "Commercial hazardous waste incinerator" means:

(i) an incinerator that burns hazardous waste; or

(ii) a boiler or industrial furnace subject to the provisions of 75-10-406.

(b) Commercial hazardous waste incinerator does not include a research and development facility that receives federal or state research funds and that burns hazardous waste primarily to test and evaluate waste treatment remediation technologies.

~~(8)~~(7) "Department" means the department of environmental quality provided for in 2-15-3501.

~~(9)~~(8) "Emission" means a release into the outdoor atmosphere of air contaminants.

~~(10)~~(9) (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

- (i) generating electricity;
- (ii) producing gas derived from coal;
- (iii) producing liquid hydrocarbon products;
- (iv) refining crude oil or natural gas;
- (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;

(vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or

(vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.

~~(11)~~(10) "Environmental protection law" means a law contained in or an administrative rule adopted pursuant to Title 75, chapter 2, 5, 10, or 11.

~~(12)~~(11) "Hazardous waste" means:

(a) a substance defined as hazardous under 75-10-403 or defined as hazardous in department administrative rules adopted pursuant to Title 75, chapter 10, part 4; or

(b) a waste containing 2 parts or more per million of polychlorinated biphenyl (PCB).

~~(13)~~(12) (a) "Incinerator" means any single- or multiple-chambered combustion device that burns combustible material, alone or with a supplemental fuel or with catalytic combustion assistance, primarily for the purpose of removal, destruction, disposal, or volume reduction of any portion of the input material.

(b) Incinerator does not include:

(i) safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;

(ii) space heaters that burn used oil;

(iii) wood-fired boilers; or

(iv) wood waste burners, such as tepee, wigwam, truncated cone, or silo burners.

~~(14)~~(13) "Medical waste" means any waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in medical research on humans or animals, or in the production or testing of biologicals. The term includes:

(a) cultures and stocks of infectious agents;

(b) human pathological wastes;

(c) waste human blood or products of human blood;

(d) sharps;

(e) contaminated animal carcasses, body parts, and bedding

that were known to have been exposed to infectious agents during research;

(f) laboratory wastes and wastes from autopsy or surgery that were in contact with infectious agents; and

(g) biological waste and discarded material contaminated with blood, excretion, exudates, or secretions from humans or animals.

~~(15)~~(14) (a) "Oil or gas well facility" means a well that produces oil or natural gas. The term includes:

(i) equipment associated with the well and used for the purpose of producing, treating, separating, or storing oil, natural gas, or other liquids produced by the well; and

(ii) a group of wells under common ownership or control that produce oil or natural gas and that share common equipment used for the purpose of producing, treating, separating, or storing oil, natural gas, or other liquids produced by the wells.

(b) The equipment referred to in subsection (15)(a) includes but is not limited to wellhead assemblies, amine units, prime mover engines, phase separators, heater treater units, dehydrator units, tanks, and connecting tubing.

(c) The term does not include equipment such as compressor engines used for transmission of oil or natural gas.

~~(16)~~(15) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or private corporation, the state or a subdivision or agency of the state, a trust, an estate, an interstate body, the federal government or an agency of the federal government, or any other legal entity and includes persons resident

in Canada.

~~(17)~~(16) "Principal" means a principal of a corporation, including but not limited to a partner, associate, officer, parent corporation, or subsidiary corporation.

~~(18)~~(17) "Small business stationary source" means a stationary source that:

(a) is owned or operated by a person who employs 100 or fewer individuals;

(b) is a small business concern as defined in the Small Business Act, 15 U.S.C. 631, et seq.;

(c) is not a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.;

(d) emits less than 50 tons per year of an air pollutant;

(e) emits less than a total of 75 tons per year of all air pollutants combined; and

(f) is not excluded from this definition under 75-2-108(3).

~~(19)~~(18) (a) "Solid waste" means all putrescible and nonputrescible solid, semisolid, liquid, or gaseous wastes, including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or industrial wastes; medical waste; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction, demolition, or salvage wastes; dead animals, dead animal parts, offal, animal droppings, or litter; discarded home and industrial appliances; automobile bodies, tires, interiors, or parts thereof; wood products or wood byproducts and inert materials; styrofoam and other plastics; rubber materials;

asphalt shingles; tarpaper; electrical equipment, transformers, or insulated wire; oil or petroleum products or oil or petroleum products and inert materials; treated lumber and timbers; and pathogenic or infectious waste.

(b) Solid waste does not include municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of environmental quality, or slash and forest debris regulated under laws administered by the department of natural resources and conservation."

{Internal References to 75-2-103:

75-2-108X      75-10-803X }

**Section 2.** Section 75-2-205 , MCA, is amended to read:

**"75-2-205. Public hearings on rules.** No rule and no amendment or repeal ~~thereof~~ of a rule may take effect except after notice of a public hearing ~~on due notice and after the advisory council has been given, at the time of publication, the proposed text to comment thereon. Such notice shall be given and any hearing conducted in accordance with the provisions of the Montana Administrative Procedure Act and rules made pursuant thereto."~~

{Internal References to 75-2-205:

75-2-402X }

NEW SECTION. **Section 3. {standard} Repealer.** The following sections of the Montana Code Annotated are repealed:

2-15-2106.      Air pollution control advisory council.

75-2-121.      Advisory council.



75-2-122. Presiding officer -- secretary.

75-2-123. Meetings.

{*Internal References to 2-15-2106: 75-2-103X*

*Internal References to 75-2-121: None.*

*Internal References to 75-2-122: None.*

*Internal References to 75-2-123: None.}*

NEW SECTION. **Section 4.** {standard} **Effective date.** [This act]  
is effective on passage and approval.

- END -

{Name : Jason Mohr  
Title : Research analyst  
Agency : Legislative Environmental Policy Office  
Phone : 444-1640  
E-Mail : jmohr2@mt.gov}

## Air Pollution Control Advisory Council

**Purpose:** The Air Pollution Control Advisory Council (APCAC) serves in an advisory capacity to the Department of Environmental Quality (Department) on matters relating to air pollution. [75-2-121, MCA.](#)

No rule and no amendment or repeal thereof may take effect except after public hearing on due notice and after the advisory council has been given, at the time of publication, the proposed text to comment thereon. Such notice shall be given and any hearing conducted in accordance with the provisions of the Montana Administrative Procedure Act and rules made pursuant thereto. [75-2-205, MCA.](#)

**History:** The Montana Clean Air Act was signed into law on March 3, 1967. [75-2 Parts 1-5, MCA.](#) The Act required the then Board of Health and Environmental Sciences (BHES) to establish ambient air quality standards for the entire state within 90 days following promulgation. On March 21, 1967, Governor Babcock appointed nine of the 11 original APCAC members to assist BHES in adopting initial standards later adopted on May 27, 1967. Since these initial standards were considered simply goals and guidelines, future development of enforceable standards and other planning actions required a formally defined advisory council for the rule-making process. In 1971, APCAC membership was formally defined and to date remains unchanged. [2-15-2106, MCA.](#)

**Membership:** APCAC is composed of ten members appointed by the Governor with the consent of the Senate. Members serve at the pleasure of the Governor. APCAC is directed to convene meetings at least twice each calendar year. [75-2-123, MCA.](#) Each member represents one of the interests outlined below:

- Labor representative;
- Agriculture representative;
- Manufacturing industry representative;
- Fuel industry representative;
- Licensed practicing physician;
- Licensed practicing veterinarian;
- Registered practicing professional chemical or environmental engineer;
- Meteorologist;
- Conservationist; and
- Urban planning consultant.

**Status:** Meeting statutory requirements. Since its re-emphasis in 1997, APCAC has been ineffective in providing advice to the Department. Despite the Department's best efforts, recruitment and retention remains an ongoing challenge. In fact, APCAC is usually unable to establish a quorum. APCAC provided only one recommendation to the Department over the past 15 years. The Department budgets over \$5,000 annually for APCAC support - paid for by permit fees and EPA grant.

The Department attributes the ineffectiveness of APCAC to the complex nature of air regulatory issues and diverse member composition not routinely associated with air pollution control. Former APCAC members indicated that the study and understanding necessary to fully comprehend agenda items often exceeds their available time and interest.

The Department is currently evaluating the benefits of eliminating the requirement for APCAC in favor of streamlining stakeholder involvement through the MAPA process and the Clean Air Act Advisory Committee process, which has been the mainstay of agency substantive outreach since the early 1990s.

As required, APCAC meeting agendas minutes are posted on the Department's website:

<http://deq.mt.gov/AirQuality/APCAC/APCAC.mcp>