

1 House BILL NO. 370
 2 INTRODUCED BY Mary by request of DEPARTMENT
 3 OF HEALTH AND ENVIRONMENTAL
SCIENCES

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
 5 WATER POLLUTION CONTROL LAWS TO CONFORM WITH FEDERAL
 6 REQUIREMENTS, TO IMPROVE ENFORCEMENT PROCEDURES, AND TO
 7 PROVIDE FOR USER CHARGES FOR INDUSTRIAL AND OTHER USERS OF
 8 PUBLIC SEWAGE TREATMENT SYSTEMS; AMENDING SECTIONS 69-4801,
 9 69-4802, 69-4806, 69-4807.1, 69-4808.2, 69-4809.1,
 10 69-4809.2, 69-4820, 69-4820.1, 69-4822, 69-4823, 69-4825,
 11 AND 69-4826, R.C.M. 1947."

12
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 69-4801, R.C.M. 1947, is amended to
 15 read as follows:

16 "69-4801. Public policy of the state. (1) It is the
 17 public policy of this state to:

18 (a) conserve water by protecting, maintaining, and
 19 improving the quality and potability of water for public
 20 water supplies, wildlife, fish and aquatic life,
 21 agriculture, industry, recreation, and other beneficial
 22 uses;

23 (b) provide a comprehensive program for the prevention,
 24 abatement, and control of water pollution.

25 (2) It is not necessary that wastes be treated to a

1 purer condition than the natural condition of the receiving
 2 stream as long as the minimum treatment requirements
 3 established under this chapter are met. "Natural" refers to
 4 conditions or material present from runoff or percolation
 5 over which man has no control or from developed land where
 6 all reasonable land, soil and water conservation practices
 7 have been applied. Conditions resulting from the reasonable
 8 operation of dams at the effective date of this act are
 9 "natural."

10 Section 2. Section 69-4802, R.C.M. 1947, is amended to
 11 read as follows:

12 "69-4802. Definitions. Unless the context requires
 13 otherwise in this chapter:

14 (1) "Sewage" means water-carried waste products from
 15 residences, public buildings, institutions, or other
 16 buildings including discharge from human beings or animals
 17 together with ground water infiltration and surface water
 18 present.

19 (2) "Industrial waste" means any waste substance from
 20 the process of business or industry, or from the development
 21 of any natural resource together with any sewage that may be
 22 present;

23 (3) "Other wastes" means garbage, municipal refuse,
 24 decayed wood, sawdust, shavings, bark, lime, sand, ashes,
 25 offal, night soil, oil, grease, tar, heat, chemicals, dead

1 animals, sediment, wrecked or discarded equipment,
 2 radioactive materials, solid waste, and all other substances
 3 that may pollute state waters; resulting from industrial,
 4 municipal, or agricultural activities;

5 (4) "Contamination" means impairment of the quality of
 6 state waters by sewage, industrial wastes, or other wastes
 7 creating a hazard to human health;

8 (5) "Pollution" means contamination, or other
 9 alteration of the physical, chemical, or biological
 10 properties of any state waters, which exceeds that permitted
 11 by Montana water quality standards, including, but not
 12 limited to, standards relating to change in temperature,
 13 taste, color, turbidity, or odor; or discharge of any
 14 liquid, gaseous, solid, radioactive, or other substance into
 15 any state water which will or is likely to create a nuisance
 16 or render the waters harmful, detrimental, or injurious to
 17 public health, recreation, safety, welfare, livestock, wild
 18 animals, birds, fish, or other wildlife. A discharge which
 19 is permitted--by-Montana-water-quality-standards authorized
 20 under the pollution discharge permit regulations of the
 21 board is not "pollution" under this chapter.

22 (6) "Sewerage system" means a device for collecting or
 23 conducting sewage, industrial wastes, or other wastes to an
 24 ultimate disposal point;

25 (7) "Treatment works" means works installed for

1 treating or holding sewage, industrial wastes, or other
 2 wastes;

3 (8) "Disposal system" means a system for disposing of
 4 sewage, industrial, or other wastes, and includes sewerage
 5 systems and treatment works;

6 (9) "State waters" means any body of water, irrigation
 7 system, or drainage system either surface or underground;
 8 however, this subsection does not apply to irrigation waters
 9 where the waters are used up within the irrigation system
 10 and the waters are not returned to any other state waters;

11 (10) "Person" means the state, a political subdivision
 12 of the state, institution, firm, corporation, partnership,
 13 individual, or other entity;

14 (11) "Council" means the state water pollution control
 15 advisory council provided for in section 82A-607;

16 (12) "Board" means the board of health and
 17 environmental sciences, provided for in section 82A-605;

18 (13) "Department" means the department of health and
 19 environmental sciences, provided for in Title 82A, chapter
 20 6;

21 (14) "Local department of health" means the staff,
 22 including health officers, employed by a county, city,
 23 city-county, or district board of health;

24 (15) "Point source" means any discernible, confined and
 25 discrete conveyance, including but not limited to any pipe,

1 ditch, channel, tunnel, conduit, well, discrete fissure,
2 container, rolling stock, or vessel or other floating craft,
3 from which pollutants are or may be discharged;

4 (16) "Owner or operator" means any person who owns,
5 leases, operates, controls or supervises a point source;

6 (17) "Standard of performance" means a standard adopted
7 by the board for the control of the discharge of pollutants
8 which reflects the greatest degree of effluent reduction
9 achievable through application of the best available
10 demonstrated control technology, processes, operating
11 methods, or other alternatives, including, where
12 practicable, a standard permitting no discharge of
13 pollutants;

14 (18) "Effluent standard" means any restriction or
15 prohibition on quantities, rates and concentrations of
16 chemical, physical, biological and other constituents which
17 are discharged into state waters."

18 Section 3. Section 69-4806, R.C.M. 1947, is amended to
19 read as follows:

20 "69-4806. Pollution unlawful--permits. It is unlawful
21 to:

22 (1) cause pollution as defined in section 69-4802 (5),
23 R. C. M. 1947, of any state waters or to place or cause to
24 be placed any wastes in a location where they are likely to
25 cause pollution of any state waters;

1 (2) carry on any of the following activities without a
2 current permit from the department;

3 (a) construct, modify, or operate a disposal system
4 which discharges to any state waters; or

5 (b) construct or use any outlet for the discharge of
6 sewage, industrial wastes, or other wastes to any state
7 waters; or

8 (c) discharge sewage, industrial wastes, or other
9 wastes into any state waters; or

10 (3) violate any limitation imposed by a current
11 permit."

12 Section 4. Section 69-4807.1, R.C.M. 1947, is amended
13 to read as follows:

14 "69-4807.1. Denial, modification, suspension, and
15 revocation of permit--notice--hearing--effective date. (1)
16 If the department denies an application for a permit or
17 modifies a permit, the department shall give written notice
18 of its action to the applicant or holder, and he may request
19 a hearing before the board, in the manner stated in section
20 13 [69-4820] of this act, for the purpose of petitioning the
21 board to reverse or modify the action of the department.
22 Such hearing shall be held within thirty (30) days after
23 receipt of written request. After the hearing, the board
24 shall affirm, modify, or reverse the action of the
25 department. Modification of a permit shall be effective

1 thirty (30) days after receipt of notice by the holder,
 2 unless the department specifies a later date, if the holder
 3 does not request a hearing before the board. If the holder
 4 does request a hearing before the board, no order modifying
 5 his permit shall be effective until twenty (20) days after
 6 he has received notice of the action of the board. This
 7 subsection does not apply to any modification made in permit
 8 conditions at the time of reissuance but only to those
 9 modifications made in existing permits during their terms.

10 (2) If the department suspends or revokes a permit
 11 because it has reason to believe that the holder has
 12 violated this chapter, the department may specify that the
 13 suspension or revocation is effective immediately, if the
 14 department finds that the violation is likely to continue
 15 and will cause pollution the harmful effects of which will
 16 not be remedied immediately on the cessation of the
 17 violation. Upon petition by the holder of the permit, the
 18 board shall grant the holder a hearing, to be conducted in
 19 the manner specified in section 13 [69-4820] of this act and
 20 shall issue an order affirming, modifying, or reversing the
 21 action of the department. The order of the board shall be
 22 effective immediately, unless the board directs otherwise."

23 Section 5. Section 69-4808.2, R.C.M. 1947, is amended
 24 to read as follows:

25 "69-4808.2. Duties of board. (1) The board shall:

1 (a) Establish and modify the classification of all
 2 waters in accordance with their present and future most
 3 beneficial uses.

4 (b) Formulate standards of water purity and
 5 classification of water according to its most beneficial
 6 uses, giving consideration to the economics of waste
 7 treatment and prevention.

8 (c) Review from time to time, at intervals of not more
 9 than three (3) years, established classifications of waters
 10 and standards of water purity and classification, and:

11 (i) The classifications, standards, and rules which
 12 have been adopted by the state water pollution control
 13 council under section 69-4813 are, without necessity of a
 14 hearing, initially adopted by the board.

15 (ii) In revising classifications or standards or in
 16 adopting new classifications or standards the board may not
 17 so formulate standards of water purity or classify any state
 18 water as to lower any water quality standard applicable to
 19 any state water below the level applicable under the
 20 classifications and standards adopted by the state water
 21 pollution control council under section 69-4813.

22 (iii) The board shall require that any state waters,
 23 whose existing quality is better higher than the established
 24 water quality standards, as--of--the--date--on--which--the
 25 standards--become--effective be maintained at that high

1 quality unless it has been affirmatively demonstrated to the
2 board that a change is justifiable as a result of necessary
3 economic or social development and will not preclude present
4 and anticipated use of these waters; and

5 (iv) The board shall require any industrial, public, or
6 private project or development, which would constitute a new
7 source of pollution or an increased source of pollution to
8 high quality waters, referred to in subsection (1) (c)
9 (iii), to provide the degree of waste treatment necessary to
10 maintain that existing high water quality.

11 (d) Advise, consult, and co-operate with other states,
12 other state and federal agencies, affected groups, political
13 subdivisions, and industries in the formulation of a
14 comprehensive plan to prevent and control pollution.

15 (e) Adopt rules governing application for permits to
16 discharge sewage, industrial wastes, or other wastes into
17 state waters including rules requiring the filing of plans
18 and specifications relating to the construction,
19 modification, or operation of disposal systems.

20 (f) Adopt rules governing the issuance, denial,
21 modification, or revocation of permits, and:

22 (i) The rules shall allow the issuance or continuance
23 of a permit only if the department finds that operation
24 consistent with the limitations of the permit will not
25 result in pollution of any state waters, except that:

1 (ii) The rules may allow the issuance of a temporary
2 permit under which pollution may result, ~~for a period no~~
3 ~~longer than three (3) years and subject to no extension;~~ if
4 the department ~~finds that the issuance of a permit is proper~~
5 ~~for obtaining compliance with the applicable standards;~~
6 insures that such permit contains a compliance schedule
7 designed to meet all applicable effluent standards and water
8 quality standards in the shortest reasonable period of time.

9 (iii) The rules shall provide that the department may
10 revoke a permit if the department finds that the holder of
11 the permit has violated its terms, unless the department
12 also finds that the violation was accidental and
13 unforeseeable and that the holder of the permit corrected
14 the condition resulting in the violation as soon as was
15 reasonably possible; and

16 ~~(iv) A person introducing a new or increased~~
17 ~~source of sewage, industrial waste, or other wastes as~~
18 ~~defined in section 69-402-(1), (2), and (3) to waters and~~
19 ~~tributaries of waters classified as A open B-1 or higher by~~
20 ~~the board shall be required to install and maintain the~~
21 ~~highest and best degree of treatment works necessary to~~
22 ~~maintain adequately this classification, as defined in~~
23 ~~section 69-402-(7) before the issuance of a permit by the~~
24 ~~department.~~

25 (g) Hold hearings necessary for the proper

1 administration of this chapter or, in the case of permit
2 issuance hearings, delegate this function to the department.

3 (h) Adopt rules for the administration of this chapter.

4 (i) Adopt pretreatment standards for waste-water
5 discharged into a municipal disposal system, adopt effluent
6 standards as defined in section 69-4802(20), (18), adopt
7 toxic effluent standards and prohibitions, and establish
8 standards of performance for new point source discharges.

9 (2) The board may:

10 (a) accept loans and grants from the federal government
11 and other sources to carry out the provisions of this
12 chapter; and

13 (b) establish minimum requirements for the treatment of
14 wastes."

15 Section 6. Section 69-4809.1, R.C.M. 1947, is amended
16 to read as follows:

17 "69-4809.1. Duties of department. (1) The department
18 shall:

19 (a) Issue, suspend, revoke, modify, or deny permits to
20 discharge sewage, industrial wastes, or other wastes to
21 state waters; consistently with rules made by the board;

22 (b) Examine ~~and approve or disapprove~~ plans and other
23 information needed to determine whether a permit should be
24 issued or suggest changes in plans as a condition to the
25 issuance of a permit;

1 (c) Clearly specify in any permit any limitations
2 imposed as to the volume, strength, and other significant
3 characteristics of the waste to be discharged;

4 (d) Collect and furnish information relating to the
5 prevention and control of water pollution;

6 (e) Conduct or encourage necessary research and
7 demonstrations concerning water pollution;

8 (f) Issue orders to any person to clean up any material
9 which he or his employee, agent, or subcontractor has
10 accidentally or purposely dumped, spilled, or otherwise
11 deposited in or near state waters and which may pollute
12 them.

13 (g) Take such actions as are authorized or required
14 under section 69-4820.1 to insure that the terms and
15 conditions of issued permits are complied with and to insure
16 that violations of this chapter are appropriately
17 prosecuted."

18 Section 7. Section 69-4809.2, R.C.M. 1947, is amended
19 to read as follows:

20 "69-4809.2. Power to inspect and monitor--authority.

21 (1) In order to carry out the objectives of this act and to
22 effectively monitor the discharge of sewage, industrial
23 wastes and other wastes into state waters, the department
24 may require the owner or operator of any point source, or
25 the owner or operator of any facility that discharges into a

1 municipal sewer system and to which pretreatment standards,
2 promulgated under this chapter apply, to:

- 3 (a) establish and maintain records;
4 (b) make reports;
5 (c) install, use and maintain monitoring equipment or
6 methods, including biological monitoring techniques;
7 (d) sample effluents using specified monitoring methods
8 at designated locations and intervals;
9 (e) provide other information as may be reasonably
10 required by the department.

11 (2) The authorized representative of the department,
12 ~~upon presentation of his credentials,~~ may at reasonable
13 times enter upon any public or private property to:

14 (a) investigate conditions relating to pollution of
15 state waters or violations of permit conditions;

16 (b) and have access to and copy any records required
17 under this act;
18

19 (c) inspect any monitoring equipment or method required
20 under subsection (1)(c) and

21 (d) sample any effluents which the owner or operator of
22 such source is required to sample under that subsection.

23 (3) Any records, reports, or information obtained under
24 this section shall, in the case of effluent data, be related
25 to any applicable effluent limitations, toxic, pretreatment,
or new source performance standards."

1 Section 3. Section 69-4820, R.C.M. 1947, is amended to
2 read as follows:

3 "69-4820. Violation of chapter or rule--notice to
4 violator--hearing before board--notice, procedure, order,
5 rehearing. (1) When the department has reason to believe
6 that a violation of this chapter or a rule made under it has
7 occurred, it ~~shall~~ may have written notice served personally
8 or by mail on the alleged violator or his agent. The notice
9 shall state the provision alleged to be violated, the facts
10 alleged to constitute the violation, the nature of
11 corrective action which the department requires, and the
12 time within which the action is to be taken. For the
13 purposes of this chapter, service by mail is complete on the
14 date of mailing.

15 (2) In a notice given under subsection (1) of this
16 section, the department may require the alleged violator to
17 appear before the board for a public hearing and to answer
18 the charges made against him. The hearing shall be held no
19 sooner than fifteen (15) days after service of the notice,
20 except that the board may set an earlier date for hearing if
21 it is requested to do so by the alleged violator. The board
22 may set a later date for hearing at the request of the
23 alleged violator if the alleged violator shows good cause
24 for delay.

25 (3) If the department does not require an alleged

1 violator to appear before the board for a public hearing, he
 2 may request the board to conduct the hearing. The request
 3 shall be in writing and shall be filed with the department
 4 no later than thirty (30) days after service of a notice
 5 under subsection (1) of this section. If a request is filed,
 6 a hearing shall be held within a reasonable time.

7 (4) If a hearing is held under this section, it shall
 8 be public and shall, if the board considers it practicable,
 9 be held in a county in which the violation is alleged to
 10 have occurred.

11 (5) After a hearing or on failure of an alleged
 12 violator to make a timely request for a hearing, the board
 13 may issue an appropriate order for the prevention,
 14 abatement, or control of pollution. It shall state the date
 15 or dates by which a violation shall cease and may prescribe
 16 timetables for necessary action in preventing, abating, or
 17 controlling the pollution. The alleged violator may
 18 petition the board for a rehearing, on the basis of new
 19 evidence, which petition the board may grant for good cause
 20 shown.

21 (6) In addition to or instead of issuing an order, the
 22 board may direct the department to initiate appropriate
 23 action for recovery of a penalty under section 69-4823."

24 Section 9. Section 69-4820.1, R.C.M. 1947, is amended
 25 to read as follows:

1 "69-4820.1. Additional enforcement remedies. (1) In
 2 addition to all other remedies created by this act, the
 3 department is authorized to take appropriate enforcement
 4 action on its own initiative to:

5 (a) prevent, abate, and control the pollution of state
 6 waters;

7 (b) prevent, abate, and control any violation of a
 8 condition or limitation imposed by a permit issued under
 9 section 69-4806, R.C.M. 1947;

10 (c) prevent, abate, and control any violations of
 11 regulations relating to pretreatment standards.

12 (2) Any In furtherance of subsection (1) of this
 13 section, any person violating a any condition, limitation,
 14 standard or other requirement established pursuant to this
 15 section chapter may be served with a compliance order issued
 16 by the department. Such order must specify the condition,
 17 limitation, standard or other requirement violated and must
 18 set a time for compliance. However, in establishing a time
 19 for compliance, the department shall take into account the
 20 seriousness of the violation and any good faith efforts that
 21 have been made to comply with the condition, limitation,
 22 standard or other requirement that has been violated. The
 23 compliance order issued under this section shall be
 24 personally served by an authorized employee of the
 25 department.

1 (3) The department is authorized to commence a civil
 2 action seeking appropriate relief, including a permanent or
 3 temporary injunction, for any violation which would be
 4 subject to a compliance order under subsection (2) of this
 5 section. Any action under this subsection may be commenced
 6 in the district court of any county in which the defendant
 7 is located or resides or is doing business, and the court
 8 shall have jurisdiction to restrain such violation and to
 9 require compliance.

10 (4) Any person found to be in violation of a condition,
 11 limitation, standard or other requirement established
 12 pursuant to this section shall be subject to the penalty
 13 provisions of section 69-4823, R.C.M. 1947.

14 (5) For the purpose of this subsection, the term
 15 "person" shall mean, in addition to the definition contained
 16 in section 69-4802, R.C.M. 1947, any responsible corporate
 17 officer."

18 Section 10. Section 69-4822, R.C.M. 1947, is amended
 19 to read as follows:

20 "69-4822. Confidentiality of records. Any information
 21 concerning sources of pollution which is furnished to the
 22 board or department or which is obtained by either of them
 23 is a matter of public record and open to public use.
 24 However, any information unique to the owner or operator of
 25 a source of pollution which would, if disclosed, tend to

1 ~~weaken-his-competitive-position-shall-be-confidential-unless~~
 2 ~~he-expressly-agrees-to-its-publication-or-availability-to~~
 3 ~~the-general-public-or-unless-such-information-is-introduced~~
 4 ~~as-evidence-in-a-hearing-before-the-board~~ reveal methods or
 5 processes entitled to protection as trade secrets, shall be
 6 maintained as confidential if it is requested by the owner
 7 or operator and if it is found by the board to be a trade
 8 secret. Any information not intended to be public when
 9 submitted to the board or department shall be submitted in
 10 writing and clearly marked as confidential. The data
 11 describing physical and chemical characteristics of a waste
 12 discharged to state waters shall not be considered
 13 confidential, ~~except that the party supplying the~~
 14 ~~information to the board may apply to the board for~~
 15 ~~confidential status for the information so supplied, and the~~
 16 ~~board shall determine that the disclosure of said~~
 17 ~~information is in the public interest prior to the~~
 18 ~~disclosure to the public of said information.~~ The board may
 19 use any information in compiling or publishing analyses or
 20 summaries relating to water pollution, if such analyses or
 21 summaries do not identify any owner or operator of a source
 22 of pollution or reveal any information which is otherwise
 23 made confidential by this section."

24 Section 11. Section 69-4823, R.C.M. 1947, is amended
 25 to read as follows:

1 *69-4823. Penalties for violation of provisions, rule,
2 permit, effluent standard, or order--purpose and
3 construction of chapter. (1) A person who violates this
4 chapter or a rule, permit, effluent standard, or order
5 issued under the provisions of this act shall be ~~guilty--of~~
6 ~~an--offense-and~~ subject to a civil penalty not to exceed ten
7 thousand dollars (\$10,000). Each day of violation
8 constitutes a separate offense.

9 (2) A person who willfully or negligently violates
10 section 69-4806, R.C.M. 1947, or any pretreatment standard
11 established pursuant to this act is guilty of an offense and
12 subject to a fine not to exceed twenty-five thousand dollars
13 (\$25,000) per day of violation or by imprisonment for not
14 more than one (1) year or both. Following an initial
15 conviction under this subsection, subsequent convictions
16 shall subject a person to a fine of not more than fifty
17 thousand dollars (\$50,000) per day of violation, or
18 imprisonment for not more than two (2) years, or both.

19 (3) Action under subsection (1) of this section does
20 not bar enforcement of this chapter or of rules or orders
21 issued under it by injunction or other appropriate remedy.
22 The department shall institute and maintain any enforcement
23 proceedings in the name of the state.

24 (4) A purpose of this chapter is to provide additional
25 and cumulative remedies to prevent, abate, and control the

1 pollution of state waters. This chapter does not abridge or
2 alter rights of action or remedies in equity or under the
3 common law or statutory law, criminal or civil, nor does
4 this chapter or an act done under it estop the state or a
5 municipality or person as owners of water rights or
6 otherwise in the exercise of their rights in equity or under
7 the common law or statutory law to suppress nuisances or to
8 abate pollution.

9 (5) Fines collected shall be deposited to the state
10 general fund.

11 (6) Any person who knowingly makes any false statement,
12 representation, or certification in any application, record,
13 report, plan or other document filed or required to be
14 maintained under this act or who falsifies, tampers with or
15 knowingly renders inaccurate any monitoring device or method
16 required to be maintained under this act shall upon
17 conviction be punished by a fine of not more than ten
18 thousand dollars (\$10,000), or by imprisonment for not more
19 than six (6) months, or both.

20 (7) In a civil action initiated by the department under
21 this act, the department may ask for and the court is
22 authorized to assess a violator for the cost of the
23 investigation or monitoring survey which led to the
24 establishment of the violation, and any expense incurred by
25 the state in removing, correcting or terminating any of the

1 adverse effects upon water quality resulting from the
2 unauthorized discharge of pollutants."

3 Section 12. Section 69-4825, R.C.M. 1947, is amended
4 to read as follows:

5 "69-4825. Injunctions. The department may bring an
6 action for an injunction against the continuation of an
7 alleged violation ~~which has been the basis of suspension or~~
8 ~~reversion of the terms or conditions of a permit issued~~ by
9 the department or any rule or effluent standard promulgated
10 under this chapter or against a person who fails to comply
11 with an emergency order issued by the department under
12 section 69-4824 or a final order of the board. The court to
13 which the department applies for an injunction may issue a
14 temporary injunction, if it finds that there is reasonable
15 cause to believe that the allegations of the department are
16 true, and it may issue a temporary restraining order pending
17 action on the temporary injunction."

18 Section 13. Section 69-4826, R.C.M. 1947, is amended
19 to read as follows:

20 "69-4826. Action by other parties. A person,
21 association, corporation, or agency of the state or federal
22 government may apply to the department protesting a
23 violation of this chapter. The department shall make an
24 investigation and make a written report to the person,
25 association, corporation, or agency which made the protest.

1 If a violation is established by the investigation of the
2 department, appropriate enforcement action shall be taken."

3 Section 14. There is a new R.C.M. section that reads
4 as follows:

5 Rates and charges to meet costs of treatment works --
6 use of funds -- enforcement. (1) A municipality shall adopt
7 a system of charges and rates to assure that each recipient
8 of treatment works services within the municipality's
9 jurisdiction or service area will pay its proportionate
10 share of the costs of operation, maintenance, and
11 replacement of any treatment works facilities or services
12 provided by the municipality.

13 (2) A municipality may require industrial users of its
14 treatment works to pay to the municipality that portion of
15 the cost of construction of the treatment works which is
16 allocable to the treatment of such industrial user's wastes.
17 The department of health and environmental sciences may
18 determine whether the payment required of the industrial
19 user for the portion of the cost of the construction of the
20 treatment works is properly allocable to the treatment of
21 the industrial user's wastes.

22 (3) A municipality may retain the amounts of the
23 revenues derived from the payment of costs by industrial
24 users of its treatment works services and expend such
25 revenues, together with interest thereon, for:

1 (a) repayment to applicable agencies of government of
2 any grants or loans made to the municipality for
3 construction of the treatment works; and

4 (b) future expansion and reconstruction of the
5 treatment works; and

6 (c) other municipal purposes.

7 (4) A municipality shall keep records, financial
8 statements and books regarding its rates and charges and
9 amounts collected on account of its treatment works and how
10 such revenues are allocated. The department may inspect
11 such records, financial statements and books, audit them, or
12 cause them to be audited, at such intervals as deemed
13 necessary.

14 (5) In the event a municipality fails, neglects or
15 refuses when required by the department to adopt the system
16 of charges and rates authorized by this section, the
17 commission may adopt a system of charges and rates as
18 provided for in subsection (1) of this section and collect,
19 administer and apply such revenues for the purposes of
20 subsection (3) of this section.

21 (6) In lieu of proceeding in the manner set forth in
22 subsection (5) of this section, the commission may institute
23 proceedings at law or in equity to enforce compliance with,
24 or restrain violations of this section.

25 Section 15. There is a new R.C.M. section that reads

1 as follows:

2 Determination of costs payable by users. In determining
3 the amount of treatment works costs to be paid by recipients
4 of treatment works services, the municipality or, if
5 applicable, the department shall consider the strength,
6 volume, types and delivery flow rate characteristics of the
7 waste; the nature, location and type of treatment works; the
8 receiving waters; and such other factors as deemed
9 necessary.

10 Section 16. There is a new R.C.M. section that reads
11 as follows:

12 Rules. The department may adopt, modify or repeal rules
13 for the administration and implementation of sections [14
14 and 15 of this act].

-End-

Approved by Committee
on Natural Resources

1 HOUSE BILL NO. 370
2 INTRODUCED BY MELOY
3 (BY REQUEST, DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES)
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
6 WATER POLLUTION CONTROL LAWS TO CONFORM WITH FEDERAL
7 REQUIREMENTS, TO IMPROVE ENFORCEMENT PROCEDURES, AND TO
8 PROVIDE FOR USER CHARGES FOR INDUSTRIAL AND OTHER USERS OF
9 PUBLIC SEWAGE TREATMENT SYSTEMS; AMENDING SECTIONS 69-4801,
10 69-4802, 69-4806, 69-4807.1, 69-4808.2, 69-4809.1,
11 69-4809.2, 69-4820, 69-4820.1, 69-4822, 69-4823, 69-4825,
12 AND 69-4826, R.C.M. 1947."
13

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
15 Section 1. Section 69-4801, R.C.M. 1947, is amended to
16 read as follows:

17 "69-4801. Public policy of the state. (1) It is the
18 public policy of this state to:

19 (a) conserve water by protecting, maintaining, and
20 improving the quality and potability of water for public
21 water supplies, wildlife, fish and aquatic life,
22 agriculture, industry, recreation, and other beneficial
23 uses;

24 (b) provide a comprehensive program for the prevention,
25 abatement, and control of water pollution.

1 (2) It is not necessary that wastes be treated to a
2 purer condition than the natural condition of the receiving
3 stream as long as the minimum treatment requirements
4 established under this chapter are met. "Natural" refers to
5 conditions or material present from runoff or percolation
6 over which man has no control or from developed land where
7 all reasonable land, soil and water conservation practices
8 have been applied. Conditions resulting from the reasonable
9 operation of dams at the effective date of this act are
10 "natural."
11

12 Section 2. Section 69-4802, R.C.M. 1947, is amended to
13 read as follows:

14 "69-4802. Definitions. Unless the context requires
15 otherwise in this chapter:

16 (1) "Sewage" means water-carried waste products from
17 residences, public buildings, institutions, or other
18 buildings including discharge from human beings or animals
19 together with ground water infiltration and surface water
20 present.

21 (2) "Industrial waste" means any waste substance from
22 the process of business or industry, or from the development
23 of any natural resource together with any sewage that may be
24 present;

25 (3) "Other wastes" means garbage, municipal refuse,
decayed wood, sawdust, shavings, bark, lime, sand, ashes,

1 offal, night soil, oil, grease, tar, heat, chemicals, dead
 2 animals, sediment, wrecked or discarded equipment,
 3 radioactive materials, solid waste, and all other substances
 4 that may pollute state waters; THAT MAY POLLUTE STATE
 5 WATERS; resulting from industrial, municipal, or
 6 agricultural activities;

7 (4) "Contamination" means impairment of the quality of
 8 state waters by sewage, industrial wastes, or other wastes
 9 creating a hazard to human health;

10 (5) "Pollution" means contamination, or other
 11 alteration of the physical, chemical, or biological
 12 properties of any state waters, which exceeds that permitted
 13 by Montana water quality standards, including, but not
 14 limited to, standards relating to change in temperature,
 15 taste, color, turbidity, or odory; or discharge of any
 16 liquid, gaseous, solid, radioactive, or other substance into
 17 any state water which will or is likely to create a nuisance
 18 or render the waters harmful, detrimental, or injurious to
 19 public health, recreation, safety, welfare, livestock, wild
 20 animals, birds, fish, or other wildlife. A discharge which
 21 is permitted by Montana water quality standards authorized
 22 under the pollution discharge permit regulations RULES of
 23 the board is not "pollution" under this chapter.

24 (6) "Sewerage system" means a device for collecting or
 25 conducting sewage, industrial wastes, or other wastes to an

1 ultimate disposal point;

2 (7) "Treatment works" means works installed for
 3 treating or holding sewage, industrial wastes, or other
 4 wastes;

5 (8) "Disposal system" means a system for disposing of
 6 sewage, industrial, or other wastes, and includes sewerage
 7 systems and treatment works;

8 (9) "State waters" means any body of water, irrigation
 9 system, or drainage system either surface or underground;
 10 however, this subsection does not apply to irrigation waters
 11 where the waters are used up within the irrigation system
 12 and the waters are not returned to any other state waters;

13 (10) "Person" means the state, a political subdivision
 14 of the state, institution, firm, corporation, partnership,
 15 individual, or other entity;

16 (11) "Council" means the state water pollution control
 17 advisory council provided for in section 82A-607;

18 (12) "Board" means the board of health and
 19 environmental sciences, provided for in section 82A-605;

20 (13) "Department" means the department of health and
 21 environmental sciences, provided for in Title 82A, chapter
 22 6;

23 (14) "Local department of health" means the staff,
 24 including health officers, employed by a county, city,
 25 city-county, or district board of health;

1 (15) "Point source" means any discernible, confined and
2 discrete conveyance, including but not limited to any pipe,
3 ditch, channel, tunnel, conduit, well, discrete fissure,
4 container, rolling stock, or vessel or other floating craft,
5 from which pollutants are or may be discharged;

6 (16) "Owner or operator" means any person who owns,
7 leases, operates, controls or supervises a point source;

8 (17) "Standard of performance" means a standard adopted
9 by the board for the control of the discharge of pollutants
10 which reflects the greatest degree of effluent reduction
11 achievable through application of the best available
12 demonstrated control technology, processes, operating
13 methods, or other alternatives, including, where
14 practicable, a standard permitting no discharge of
15 pollutants;

16 (18) "Effluent standard" means any restriction or
17 prohibition on quantities, rates and concentrations of
18 chemical, physical, biological and other constituents which
19 are discharged into state waters."

20 Section 3. Section 69-4806, R.C.M. 1947, is amended to
21 read as follows:

22 "69-4806. Pollution unlawful--permits. It is unlawful
23 to:

24 (1) cause pollution as defined in section 69-4802 (5),
25 R. C. M. 1947, of any state waters or to place or cause to

1 be placed any wastes in a location where they are likely to
2 cause pollution of any state waters;

3 (2) carry on any of the following activities without a
4 current permit from the department;

5 (a) construct, modify, or operate a disposal system
6 which discharges to any state waters; or

7 (b) construct or use any outlet for the discharge of
8 sewage, industrial wastes, or other wastes to any state
9 waters; or

10 (c) discharge sewage, industrial wastes, or other
11 wastes into any state waters; or

12 (3) violate any limitation imposed by a current
13 permit."

14 Section 4. Section 69-4807.1, R.C.M. 1947, is amended
15 to read as follows:

16 "69-4807.1. Denial, modification, suspension, and
17 revocation of permit--notice--hearing--effective date. (1)
18 If the department denies an application for a permit or
19 modifies a permit, the department shall give written notice
20 of its action to the applicant or holder, and he may request
21 a hearing before the board, in the manner stated in section
22 13 [69-4820] of this act, for the purpose of petitioning the
23 board to reverse or modify the action of the department.
24 Such hearing shall be held within thirty (30) days after
25 receipt of written request. After the hearing, the board

1 shall affirm, modify, or reverse the action of the
 2 department. Modification of a permit shall be effective
 3 thirty (30) days after receipt of notice by the holder,
 4 unless the department specifies a later date, if the holder
 5 does not request a hearing before the board. If the holder
 6 does request a hearing before the board, no order modifying
 7 his permit shall be effective until twenty (20) days after
 8 he has received notice of the action of the board. This
 9 subsection does not apply to any modification made in permit
 10 conditions at the time of reissuance but only to those
 11 modifications made in existing permits during their terms.

12 (2) If the department suspends or revokes a permit
 13 because it has reason to believe that the holder has
 14 violated this chapter, the department may specify that the
 15 suspension or revocation is effective immediately, if the
 16 department finds that the violation is likely to continue
 17 and will cause pollution the harmful effects of which will
 18 not be remedied immediately on the cessation of the
 19 violation. Upon petition by the holder of the permit, the
 20 board shall grant the holder a hearing, to be conducted in
 21 the manner specified in section 13 [69-4820] of this act and
 22 shall issue an order affirming, modifying, or reversing the
 23 action of the department. The order of the board shall be
 24 effective immediately, unless the board directs otherwise."

25 Section 5. Section 69-4808.2, R.C.M. 1947, is amended

1 to read as follows:

2 "69-4808.2. Duties of board. (1) The board shall:

3 (a) Establish and modify the classification of all
 4 waters in accordance with their present and future most
 5 beneficial uses.

6 (b) Formulate standards of water purity and
 7 classification of water according to its most beneficial
 8 uses, giving consideration to the economics of waste
 9 treatment and prevention.

10 (c) Review from time to time, at intervals of not more
 11 than three (3) years, established classifications of waters
 12 and standards of water purity and classification, and:

13 (i) The classifications, standards, and rules which
 14 have been adopted by the state water pollution control
 15 council under section 69-4813 are, without necessity of a
 16 hearing, initially adopted by the board.

17 (ii) In revising classifications or standards or in
 18 adopting new classifications or standards the board may not
 19 so formulate standards of water purity or classify any state
 20 water as to lower any water quality standard applicable to
 21 any state water below the level applicable under the
 22 classifications and standards adopted by the state water
 23 pollution control council under section 69-4813.

24 (iii) The board shall require that any state waters,
 25 whose existing quality is ~~better~~ higher than the established

1 ~~water quality standards, as of the date on which the~~
2 ~~standards become effective~~ be maintained at that high
3 quality unless it has been affirmatively demonstrated to the
4 board that a change is justifiable as a result of necessary
5 economic or social development and will not preclude present
6 and anticipated use of these waters; and

7 (iv) The board shall require any industrial, public, or
8 private project or development, which would constitute a new
9 source of pollution or an increased source of pollution to
10 high quality waters, referred to in subsection (1) (c)
11 (iii), to provide the degree of waste treatment necessary to
12 maintain that existing high water quality.

13 (d) Advise, consult, and co-operate with other states,
14 other state and federal agencies, affected groups, political
15 subdivisions, and industries in the formulation of a
16 comprehensive plan to prevent and control pollution.

17 (e) Adopt rules governing application for permits to
18 discharge sewage, industrial wastes, or other wastes into
19 state waters including rules requiring the filing of plans
20 and specifications relating to the construction,
21 modification, or operation of disposal systems.

22 (f) Adopt rules governing the issuance, denial,
23 modification, or revocation of permits, and:

24 (i) The rules shall allow the issuance or continuance
25 of a permit only if the department finds that operation

1 consistent with the limitations of the permit will not
2 result in pollution of any state waters, except that:

3 (ii) The rules may allow the issuance of a temporary
4 permit under which pollution may result, ~~for a period no~~
5 ~~longer than three (3) years and subject to no extension,~~ if
6 the department ~~finds that the issuance of a permit is proper~~
7 ~~for obtaining compliance with the applicable standards,~~
8 insures that such permit contains a compliance schedule
9 designed to meet all applicable effluent standards and water
10 quality standards in the shortest reasonable period of time.

11 (iii) The rules shall provide that the department may
12 revoke a permit if the department finds that the holder of
13 the permit has violated its terms, unless the department
14 also finds that the violation was accidental and
15 unforeseeable and that the holder of the permit corrected
16 the condition resulting in the violation as soon as was
17 reasonably possible; and

18 ~~(iv) A person introducing a new source or increased~~
19 ~~source of sewage, industrial waste, or other wastes as~~
20 ~~defined in section 69-4802-(1), (2), and (3), to waters and~~
21 ~~tributaries of waters classified as A open B-1 or higher by~~
22 ~~the board shall be required to install and maintain the~~
23 ~~highest and best degree of treatment works necessary to~~
24 ~~maintain adequately this classification, as defined in~~
25 ~~section 69-4802-(7) before the issuance of a permit by the~~

1 ~~department.~~

2 (g) Hold hearings necessary for the proper
3 administration of this chapter or, in the case of permit
4 issuance hearings, delegate this function to the department.

5 (h) Adopt rules for the administration of this chapter.

6 (i) Adopt pretreatment standards for waste-water
7 discharged into a municipal disposal system, adopt effluent
8 standards as defined in section 69-4802~~(20)~~, (18), adopt
9 toxic effluent standards and prohibitions, and establish
10 standards of performance for new point source discharges.

11 (2) The board may:

12 (a) accept loans and grants from the federal government
13 and other sources to carry out the provisions of this
14 chapter; and

15 (b) establish minimum requirements for the treatment of
16 wastes."

17 Section 6. Section 69-4809.1, R.C.M. 1947, is amended
18 to read as follows:

19 "69-4809.1. Duties of department. (1) The department
20 shall:

21 (a) Issue, suspend, revoke, modify, or deny permits to
22 discharge sewage, industrial wastes, or other wastes to
23 state waters; consistently with rules made by the board;

24 (b) Examine ~~and approve or disapprove~~ plans and other
25 information needed to determine whether a permit should be

1 issued or suggest changes in plans as a condition to the
2 issuance of a permit;

3 (c) Clearly specify in any permit any limitations
4 imposed as to the volume, strength, and other significant
5 characteristics of the waste to be discharged;

6 (d) Collect and furnish information relating to the
7 prevention and control of water pollution;

8 (e) Conduct or encourage necessary research and
9 demonstrations concerning water pollution;

10 (f) Issue orders to any person to clean up any material
11 which he or his employee, agent, or subcontractor has
12 accidentally or purposely dumped, spilled, or otherwise
13 deposited in or near state waters and which may pollute
14 them.

15 (g) Take such actions as are authorized or required
16 under section 69-4820.1 to insure that the terms and
17 conditions of issued permits are complied with and to insure
18 that violations of this chapter are appropriately
19 prosecuted."

20 Section 7. Section 69-4809.2, R.C.M. 1947, is amended
21 to read as follows:

22 "69-4809.2. Power to inspect and monitor--authority.

23 (1) In order to carry out the objectives of this act and to
24 effectively monitor the discharge of sewage, industrial
25 wastes and other wastes into state waters, the department

1 may require the owner or operator of any point source, or
 2 the owner or operator of any facility that discharges into a
 3 municipal sewer system and to which pretreatment standards,
 4 promulgated under this chapter apply, to:

- 5 (a) establish and maintain records;
- 6 (b) make reports;
- 7 (c) install, use and maintain monitoring equipment or
 8 methods, including biological monitoring techniques;
- 9 (d) sample effluents using specified monitoring methods
 10 at designated locations and intervals;
- 11 (e) provide other information as may be reasonably
 12 required by the department.

13 (2) The authorized representative of the department,
 14 ~~upon--presentation-of-his-credentials,~~ UPON PRESENTATION OF
 15 HIS CREDENTIALS, may at reasonable times enter upon any
 16 public or private property to:

- 17 (a) investigate conditions relating to pollution of
 18 state waters or violations of permit conditions;
- 19 (b) ~~and~~ have access to and copy any records required
 20 under this act;;
- 21 (c) inspect any monitoring equipment or method required
 22 under subsection (1)(c); and
- 23 (d) sample any effluents which the owner or operator of
 24 such source is required to sample under that subsection.

25 (3) Any records, reports, or information obtained under

1 this section shall, in the case of effluent data, be related
 2 to any applicable effluent limitations, toxic, pretreatment,
 3 or new source performance standards."

4 Section 8. Section 69-4820, R.C.M. 1947, is amended to
 5 read as follows:

6 "69-4820. Violation of chapter or rule--notice to
 7 violator--hearing before board--notice, procedure, order,
 8 rehearing. (1) When the department has reason to believe
 9 that a violation of this chapter or a rule made under it has
 10 occurred, it ~~shall~~ may have written notice served personally
 11 or by mail on the alleged violator or his agent. The notice
 12 shall state the provision alleged to be violated, the facts
 13 alleged to constitute the violation, the nature of
 14 corrective action which the department requires, and the
 15 time within which the action is to be taken. For the
 16 purposes of this chapter, service by mail is complete on the
 17 date of mailing.

18 (2) In a notice given under subsection (1) of this
 19 section, the department may require the alleged violator to
 20 appear before the board for a public hearing and to answer
 21 the charges made against him. The hearing shall be held no
 22 sooner than fifteen (15) days after service of the notice,
 23 except that the board may set an earlier date for hearing if
 24 it is requested to do so by the alleged violator. The board
 25 may set a later date for hearing at the request of the

1 alleged violator if the alleged violator shows good cause
2 for delay.

3 (3) If the department does not require an alleged
4 violator to appear before the board for a public hearing, he
5 may request the board to conduct the hearing. The request
6 shall be in writing and shall be filed with the department
7 no later than thirty (30) days after service of a notice
8 under subsection (1) of this section. If a request is filed,
9 a hearing shall be held within a reasonable time.

10 (4) If a hearing is held under this section, it shall
11 be public and shall, if the board considers it practicable,
12 be held in a county in which the violation is alleged to
13 have occurred.

14 (5) After a hearing or on failure of an alleged
15 violator to make a timely request for a hearing, the board
16 may issue an appropriate order for the prevention,
17 abatement, or control of pollution. It shall state the date
18 or dates by which a violation shall cease and may prescribe
19 timetables for necessary action in preventing, abating, or
20 controlling the pollution. The alleged violator may
21 petition the board for a rehearing, on the basis of new
22 evidence, which petition the board may grant for good cause
23 shown.

24 (6) In addition to or instead of issuing an order, the
25 board may direct the department to initiate appropriate

1 action for recovery of a penalty under section 69-4823."

2 Section 9. Section 69-4820.1, R.C.M. 1947, is amended
3 to read as follows:

4 "69-4820.1. Additional enforcement remedies. (1) In
5 addition to all other remedies created by this act, the
6 department is authorized to take appropriate enforcement
7 action on its own initiative to:

8 (a) prevent, abate, and control the pollution of state
9 waters;

10 (b) prevent, abate, and control any violation of a
11 condition or limitation imposed by a permit issued under
12 section 69-4806, R.C.M. 1947;

13 (c) prevent, abate, and control any violations of
14 regulations relating to pretreatment standards.

15 (2) Any In furtherance of subsection (1) of this
16 section, any person violating a any condition, limitation,
17 standard or other requirement established pursuant to this
18 section chapter may be served with a compliance order issued
19 by the department. Such order must specify the condition,
20 limitation, standard or other requirement violated and must
21 set a time for compliance. However, in establishing a time
22 for compliance, the department shall take into account the
23 seriousness of the violation and any good faith efforts that
24 have been made to comply with the condition, limitation,
25 standard or other requirement that has been violated. The

1 compliance order issued under this section shall be
2 personally served by an authorized ~~employee~~ REPRESENTATIVE
3 of the department.

4 (3) The department is authorized to commence a civil
5 action seeking appropriate relief, including a permanent or
6 temporary injunction, for any violation which would be
7 subject to a compliance order under subsection (2) of this
8 section. Any action under this subsection may be commenced
9 in the district court of any county in which the defendant
10 is located or resides or is doing business, and the court
11 shall have jurisdiction to restrain such violation and to
12 require compliance.

13 (4) Any person found to be in violation of a condition,
14 limitation, standard or other requirement established
15 pursuant to this section shall be subject to the penalty
16 provisions of section 69-4823, R.C.M. 1947.

17 (5) For the purpose of this subsection, the term
18 "person" shall mean, in addition to the definition contained
19 in section 69-4802, R.C.M. 1947, any responsible corporate
20 officer."

21 Section 10. Section 69-4822, R.C.M. 1947, is amended
22 to read as follows:

23 "69-4822. Confidentiality of records. Any information
24 concerning sources of pollution which is furnished to the
25 board or department or which is obtained by either of them

1 is a matter of public record and open to public use.
2 However, any information unique to the owner or operator of
3 a source of pollution which would, if disclosed, ~~tend--to~~
4 ~~weaken-his-competitive-position-shall-be-confidential-unless~~
5 ~~he--expressly--agrees--to-its-publication-or-availability-to~~
6 ~~the-general-public-or-unless-such-information-is--introduced~~
7 ~~as--evidence-in-a-hearing-before-the-board~~ reveal methods or
8 processes entitled to protection as trade secrets, shall be
9 maintained as confidential if it is requested by the owner
10 or operator and if it is found by the board to be a trade
11 secret. Any information not intended to be public when
12 submitted to the board or department shall be submitted in
13 writing and clearly marked as confidential. The data
14 describing physical and chemical characteristics of a waste
15 discharged to state waters shall not be considered
16 confidential, ~~--except--that--the--party--supplying--the~~
17 ~~information--to--the--board--may--apply--to--the--board--for~~
18 ~~confidential-status-for-the-information-so-supplied, and the~~
19 ~~board--shall--determine--that--the--disclosure--of--said~~
20 ~~information--is--in--the--public--interest--prior--to--the~~
21 ~~disclosure-to-the-public-of-said-information.~~ The board may
22 use any information in compiling or publishing analyses or
23 summaries relating to water pollution, if such analyses or
24 summaries do not identify any owner or operator of a source
25 of pollution or reveal any information which is otherwise

1 made confidential by this section."

2 Section 11. Section 69-4823, R.C.M. 1947, is amended
3 to read as follows:

4 "69-4823. Penalties for violation of provisions, rule,
5 permit, effluent standard, or order--purpose and
6 construction of chapter. (1) A person who violates this
7 chapter or a rule, permit, effluent standard, or order
8 issued under the provisions of this act shall be ~~guilty--of~~
9 ~~an--offense--and~~ subject to a civil penalty not to exceed ten
10 thousand dollars (\$10,000). Each day of violation
11 constitutes a separate ~~offense~~ VIOLATION.

12 (2) A person who willfully or negligently violates
13 section 69-4806, R.C.M. 1947, or any pretreatment standard
14 established pursuant to this act is guilty of an offense and
15 subject to a fine not to exceed twenty-five thousand dollars
16 (\$25,000) per day of violation or by imprisonment for not
17 more than one (1) year or both. Following an initial
18 conviction under this subsection, subsequent convictions
19 shall subject a person to a fine of not more than fifty
20 thousand dollars (\$50,000) per day of violation, or
21 imprisonment for not more than two (2) years, or both.

22 (3) Action under subsection (1) of this section does
23 not bar enforcement of this chapter or of rules or orders
24 issued under it by injunction or other appropriate remedy.
25 The department shall institute and maintain any enforcement

1 proceedings in the name of the state.

2 (4) A purpose of this chapter is to provide additional
3 and cumulative remedies to prevent, abate, and control the
4 pollution of state waters. This chapter does not abridge or
5 alter rights of action or remedies in equity or under the
6 common law or statutory law, criminal or civil, nor does
7 this chapter or an act done under it estop the state or a
8 municipality or person as owners of water rights or
9 otherwise in the exercise of their rights in equity or under
10 the common law or statutory law to suppress nuisances or to
11 abate pollution.

12 (5) Fines collected shall be deposited to the state
13 general fund.

14 (6) Any person who knowingly makes any false statement,
15 representation, or certification in any application, record,
16 report, plan or other document filed or required to be
17 maintained under this act or who falsifies, tampers with or
18 knowingly renders inaccurate any monitoring device or method
19 required to be maintained under this act shall upon
20 conviction be punished by a fine of not more than ten
21 thousand dollars (\$10,000), or by imprisonment for not more
22 than six (6) months, or both.

23 (7) In a civil action initiated by the department under
24 this act, the department may ask for and the court is
25 authorized to assess a violator for the cost of the

1 investigation or monitoring survey which led to the
 2 establishment of the violation, and any expense incurred by
 3 the state in removing, correcting or terminating any of the
 4 adverse effects upon water quality resulting from the
 5 unauthorized discharge of pollutants."

6 Section 12. Section 69-4825, R.C.M. 1947, is amended
 7 to read as follows:

8 "69-4825. Injunctions. The department may bring an
 9 action for an injunction against the continuation of an
 10 alleged violation ~~which has been the basis of suspension or~~
 11 ~~revocation of the terms or conditions of~~ a permit issued by
 12 the department or any rule or effluent standard promulgated
 13 under this chapter or against a person who fails to comply
 14 with an emergency order issued by the department under
 15 section 69-4824 or a final order of the board. The court to
 16 which the department applies for an injunction may issue a
 17 temporary injunction, if it finds that there is reasonable
 18 cause to believe that the allegations of the department are
 19 true, and it may issue a temporary restraining order pending
 20 action on the temporary injunction."

21 Section 13. Section 69-4826, R.C.M. 1947, is amended
 22 to read as follows:

23 "69-4826. Action by other parties. A person,
 24 association, corporation, or agency of the state or federal
 25 government may apply to the department protesting a

1 violation of this chapter. The department shall make an
 2 investigation and make a written report to the person,
 3 association, corporation, or agency which made the protest.
 4 If a violation is established by the investigation of the
 5 department, appropriate enforcement action shall be taken."

6 Section 14. There is a new R.C.M. section that reads
 7 as follows:

8 Rates and charges to meet costs of treatment works--use
 9 of funds--enforcement. (1) A municipality ~~shall~~ OR OTHER
 10 ENTITIES OPERATING A SEWAGE SYSTEM MAY adopt a system of
 11 charges and rates to assure that each recipient of treatment
 12 works services within the municipality's jurisdiction or
 13 service area will pay its proportionate share of the costs
 14 of operation, maintenance, and replacement of any treatment
 15 works facilities or services provided by the municipality OR
 16 OTHER ENTITIES OPERATING A SEWAGE SYSTEM.

17 (2) A municipality OR OTHER ENTITIES OPERATING A
 18 SEWAGE SYSTEM may require industrial users of its treatment
 19 works to pay to the municipality OR OTHER ENTITIES OPERATING
 20 A SEWAGE SYSTEM that portion of the cost of construction of
 21 the treatment works which is allocable to the treatment of
 22 such industrial user's wastes. The department of health and
 23 environmental sciences may determine whether the payment
 24 required of the industrial user for the portion of the cost
 25 of the construction of the treatment works is properly

1 allocable to the treatment of the industrial user's wastes.

2 (3) A municipality OR OTHER ENTITIES OPERATING A
 3 SEWAGE SYSTEM may retain the amounts of the revenues derived
 4 from the payment of costs by industrial users of its
 5 treatment works services and expend such revenues, together
 6 with interest thereon, for:

7 (a) repayment to applicable agencies of government of
 8 any grants or loans made to the municipality OR OTHER
 9 ENTITIES OPERATING A SEWAGE SYSTEM for construction of the
 10 treatment works; and

11 (b) future expansion and reconstruction of the
 12 treatment works; and

13 (c) other municipal purposes.

14 (4) A municipality OR OTHER ENTITIES OPERATING SEWAGE
 15 SYSTEMS shall keep records, financial statements and books
 16 regarding its rates and charges and amounts collected on
 17 account of its treatment works and how such revenues are
 18 allocated. The department may inspect such records,
 19 financial statements and books, audit them, or cause them to
 20 be audited, at such intervals as deemed necessary.

21 (5) In the event a municipality OR OTHER ENTITIES
 22 OPERATING SEWAGE SYSTEMS fails, neglects or refuses when
 23 required by the department to adopt the system of charges
 24 and rates authorized by this section, the commission BOARD
 25 may adopt a system of charges and rates as provided for in

1 subsection (1) of this section and collect, administer and
 2 apply such revenues for the purposes of subsection (3) of
 3 this section.

4 (6) In lieu of proceeding in the manner set forth in
 5 subsection (5) of this section, the commission DEPARTMENT
 6 may institute proceedings at law or in equity to enforce
 7 compliance with, or restrain violations of this section.

8 Section 15. There is a new R.C.M. section that reads
 9 as follows:

10 Determination of costs payable by users. In determining
 11 the amount of treatment works costs to be paid by recipients
 12 of treatment works services, the municipality OR OTHER
 13 ENTITIES OPERATING SEWAGE SYSTEMS or, if applicable, the
 14 department BOARD shall consider the strength, volume, types
 15 and delivery flow rate characteristics of the waste; the
 16 nature, location and type of treatment works; the receiving
 17 waters; and such other factors as deemed necessary.

18 ~~Section 16.---There is a new R.C.M. section that reads~~
 19 ~~as follows:~~

20 ~~Rules.---The department may adopt, modify or repeat~~
 21 ~~rules for the administration and implementation of sections~~
 22 ~~{14 and 15 of this act}.~~

-End-

1 HOUSE BILL NO. 370
 2 INTRODUCED BY MELOY
 3 (BY REQUEST, DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES)
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
 6 WATER POLLUTION CONTROL LAWS TO CONFORM WITH FEDERAL
 7 REQUIREMENTS, TO IMPROVE ENFORCEMENT PROCEDURES, AND TO
 8 PROVIDE FOR USER CHARGES FOR INDUSTRIAL AND OTHER USERS OF
 9 PUBLIC SEWAGE TREATMENT SYSTEMS; AMENDING SECTIONS 69-4801,
 10 69-4802, 69-4806, 69-4807.1, 69-4808.2, 69-4809.1,
 11 69-4809.2, 69-4820, 69-4820.1, 69-4822, 69-4823, 69-4825,
 12 AND 69-4826, R.C.M. 1947."
 13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 15 Section 1. Section 69-4801, R.C.M. 1947, is amended to
 16 read as follows:
 17 "69-4801. Public policy of the state. (1) It is the
 18 public policy of this state to:
 19 (a) conserve water by protecting, maintaining, and
 20 improving the quality and potability of water for public
 21 water supplies, wildlife, fish and aquatic life,
 22 agriculture, industry, recreation, and other beneficial
 23 uses;
 24 (o) provide a comprehensive program for the prevention,
 25 abatement, and control of water pollution.

1 (2) It is not necessary that wastes be treated to a
 2 purer condition than the natural condition of the receiving
 3 stream as long as the minimum treatment requirements
 4 established under this chapter are met. "Natural" refers to
 5 conditions or material present from runoff or percolation
 6 over which man has no control or from developed land where
 7 all reasonable land, soil and water conservation practices
 8 have been applied. Conditions resulting from the reasonable
 9 operation of dams at the effective date of this act are
 10 "natural."
 11 Section 2. Section 69-4802, R.C.M. 1947, is amended to
 12 read as follows:
 13 "69-4802. Definitions. Unless the context requires
 14 otherwise in this chapter:
 15 (1) "Sewage" means water-carried waste products from
 16 residences, public buildings, institutions, or other
 17 buildings including discharge from human beings or animals
 18 together with ground water infiltration and surface water
 19 present.
 20 (2) "Industrial waste" means any waste substance from
 21 the process of business or industry, or from the development
 22 of any natural resource together with any sewage that may be
 23 present;
 24 (3) "Other wastes" means garbage, municipal refuse,
 25 decayed wood, sawdust, shavings, bark, lime, sand, ashes,

1 offal, night soil, oil, grease, tar, heat, chemicals, dead
 2 animals, sediment, wrecked or discarded equipment,
 3 radioactive materials, solid waste, and all other substances
 4 ~~that may pollute state waters;~~ THAT MAY POLLUTE STATE
 5 WATERS; resulting from industrial, municipal, or
 6 agricultural activities;

7 (4) "Contamination" means impairment of the quality of
 8 state waters by sewage, industrial wastes, or other wastes
 9 creating a hazard to human health;

10 (5) "Pollution" means contamination, or other
 11 alteration of the physical, chemical, or biological
 12 properties of any state waters, which exceeds that permitted
 13 by Montana water quality standards, including, but not
 14 limited to, standards relating to change in temperature,
 15 taste, color, turbidity, or odor; or discharge of any
 16 liquid, gaseous, solid, radioactive, or other substance into
 17 any state water which will or is likely to create a nuisance
 18 or render the waters harmful, detrimental, or injurious to
 19 public health, recreation, safety, welfare, livestock, wild
 20 animals, birds, fish, or other wildlife. A discharge which
 21 ~~is permitted by Montana water quality standards~~ authorized
 22 under the pollution discharge permit regulations RULES of
 23 the board is not "pollution" under this chapter.

24 (6) "Sewerage system" means a device for collecting or
 25 conducting sewage, industrial wastes, or other wastes to an

1 ultimate disposal point;

2 (7) "Treatment works" means works installed for
 3 treating or holding sewage, industrial wastes, or other
 4 wastes;

5 (8) "Disposal system" means a system for disposing of
 6 sewage, industrial, or other wastes, and includes sewerage
 7 systems and treatment works;

8 (9) "State waters" means any body of water, irrigation
 9 system, or drainage system either surface or underground;
 10 however, this subsection does not apply to irrigation waters
 11 where the waters are used up within the irrigation system
 12 and the waters are not returned to any other state waters;

13 (10) "Person" means the state, a political subdivision
 14 of the state, institution, firm, corporation, partnership,
 15 individual, or other entity;

16 (11) "Council" means the state water pollution control
 17 advisory council provided for in section 82A-607;

18 (12) "Board" means the board of health and
 19 environmental sciences, provided for in section 82A-605;

20 (13) "Department" means the department of health and
 21 environmental sciences, provided for in Title 82A, chapter
 22 6;

23 (14) "Local department of health" means the staff,
 24 including health officers, employed by a county, city,
 25 city-county, or district board of health;

1 (15) "Point source" means any discernible, confined and
 2 discrete conveyance, including but not limited to any pipe,
 3 ditch, channel, tunnel, conduit, well, discrete fissure,
 4 container, rolling stock, or vessel or other floating craft,
 5 from which pollutants are or may be discharged;

6 (16) "Owner or operator" means any person who owns,
 7 leases, operates, controls or supervises a point source;

8 (17) "Standard of performance" means a standard adopted
 9 by the board for the control of the discharge of pollutants
 10 which reflects the greatest degree of effluent reduction
 11 achievable through application of the best available
 12 demonstrated control technology, processes, operating
 13 methods, or other alternatives, including, where
 14 practicable, a standard permitting no discharge of
 15 pollutants;

16 (18) "Effluent standard" means any restriction or
 17 prohibition on quantities, rates and concentrations of
 18 chemical, physical, biological and other constituents which
 19 are discharged into state waters."

20 Section 3. Section 69-4806, R.C.M. 1947, is amended to
 21 read as follows:

22 "69-4806. Pollution unlawful--permits. It is unlawful
 23 to:

24 (1) cause pollution as defined in section 69-4802 (5),
 25 R. C. M. 1947, of any state waters or to place or cause to

1 be placed any wastes in a location where they are likely to
 2 cause pollution of any state waters;

3 (2) carry on any of the following activities without a
 4 current permit from the department;

5 (a) construct, modify, or operate a disposal system
 6 which discharges to any state waters; or

7 (b) construct or use any outlet for the discharge of
 8 sewage, industrial wastes, or other wastes to any state
 9 waters; or

10 (c) discharge sewage, industrial wastes, or other
 11 wastes into any state waters; or

12 (3) violate any limitation imposed by a current
 13 permit."

14 Section 4. Section 69-4807.1, R.C.M. 1947, is amended
 15 to read as follows:

16 "69-4807.1. Denial, modification, suspension, and
 17 revocation of permit--notice--hearing--effective date. (1)
 18 If the department denies an application for a permit or
 19 modifies a permit, the department shall give written notice
 20 of its action to the applicant or holder, and he may request
 21 a hearing before the board, in the manner stated in section
 22 13 [69-4820] of this act, for the purpose of petitioning the
 23 board to reverse or modify the action of the department.
 24 Such hearing shall be held within thirty (30) days after
 25 receipt of written request. After the hearing, the board

1 shall affirm, modify, or reverse the action of the
 2 department. Modification of a permit shall be effective
 3 thirty (30) days after receipt of notice by the holder,
 4 unless the department specifies a later date, if the holder
 5 does not request a hearing before the board. If the holder
 6 does request a hearing before the board, no order modifying
 7 his permit shall be effective until twenty (20) days after
 8 he has received notice of the action of the board. This
 9 subsection does not apply to any modification made in permit
 10 conditions at the time of reissuance but only to those
 11 modifications made in existing permits during their terms.

12 (2) If the department suspends or revokes a permit
 13 because it has reason to believe that the holder has
 14 violated this chapter, the department may specify that the
 15 suspension or revocation is effective immediately, if the
 16 department finds that the violation is likely to continue
 17 and will cause pollution the harmful effects of which will
 18 not be remedied immediately on the cessation of the
 19 violation. Upon petition by the holder of the permit, the
 20 board shall grant the holder a hearing, to be conducted in
 21 the manner specified in section 13 [69-4820] of this act and
 22 shall issue an order affirming, modifying, or reversing the
 23 action of the department. The order of the board shall be
 24 effective immediately, unless the board directs otherwise."

25 Section 5. Section 69-4808.2, R.C.M. 1947, is amended

1 to read as follows:

2 "69-4808.2. Duties of board. (1) The board shall:

3 (a) Establish and modify the classification of all
 4 waters in accordance with their present and future most
 5 beneficial uses.

6 (b) Formulate standards of water purity and
 7 classification of water according to its most beneficial
 8 uses, giving consideration to the economics of waste
 9 treatment and prevention.

10 (c) Review from time to time, at intervals of not more
 11 than three (3) years, established classifications of waters
 12 and standards of water purity and classification, and:

13 (i) The classifications, standards, and rules which
 14 have been adopted by the state water pollution control
 15 council under section 69-4813 are, without necessity of a
 16 hearing, initially adopted by the board.

17 (ii) In revising classifications or standards or in
 18 adopting new classifications or standards the board may not
 19 so formulate standards of water purity or classify any state
 20 water as to lower any water quality standard applicable to
 21 any state water below the level applicable under the
 22 classifications and standards adopted by the state water
 23 pollution control council under section 69-4813.

24 (iii) The board shall require that any state waters,
 25 whose existing quality is ~~better~~ higher than the established

1 water quality standards, as--of--the--date--on--which-the
 2 standards--become--effective be maintained at that high
 3 quality unless it has been affirmatively demonstrated to the
 4 board that a change is justifiable as a result of necessary
 5 economic or social development and will not preclude present
 6 and anticipated use of these waters; and

7 (iv) The board shall require any industrial, public, or
 8 private project or development, which would constitute a new
 9 source of pollution or an increased source of pollution to
 10 high quality waters, referred to in subsection (1) (c)
 11 (iii), to provide the degree of waste treatment necessary to
 12 maintain that existing high water quality.

13 (d) Advise, consult, and co-operate with other states,
 14 other state and federal agencies, affected groups, political
 15 subdivisions, and industries in the formulation of a
 16 comprehensive plan to prevent and control pollution.

17 (e) Adopt rules governing application for permits to
 18 discharge sewage, industrial wastes, or other wastes into
 19 state waters including rules requiring the filing of plans
 20 and specifications relating to the construction,
 21 modification, or operation of disposal systems.

22 (f) Adopt rules governing the issuance, denial,
 23 modification, or revocation of permits, and:

24 (i) The rules shall allow the issuance or continuance
 25 of a permit only if the department finds that operation

1 consistent with the limitations of the permit will not
 2 result in pollution of any state waters, except that:

3 (ii) The rules may allow the issuance of a temporary
 4 permit under which pollution may result, ~~for a period no~~
 5 ~~longer than three (3) years and subject to no extension,~~ if
 6 the department ~~finds that the issuance of a permit is proper~~
 7 ~~for--obtaining--compliance--with--the--applicable standards,~~
 8 insures that such permit contains a compliance schedule
 9 designed to meet all applicable effluent standards and water
 10 quality standards in the shortest reasonable period of time.

11 (iii) The rules shall provide that the department may
 12 revoke a permit if the department finds that the holder of
 13 the permit has violated its terms, unless the department
 14 also finds that the violation was accidental and
 15 unforeseeable and that the holder of the permit corrected
 16 the condition resulting in the violation as soon as was
 17 reasonably possible; and

18 ~~(iv)--A--person--introducing--a--new--source--or--increased~~
 19 ~~source--of--sewage,--industrial--waste,--or--other--wastes--as~~
 20 ~~defined--in--section--69--4802--(1),--(2),--and--(3),--to--waters--and~~
 21 ~~tributaries--of--waters--classified--as--A--open--D--1--or--higher--by~~
 22 ~~the--board--shall--be--required--to--install--and--maintain--the~~
 23 ~~highest--and--best--degree--of--treatment--works--necessary--to~~
 24 ~~maintain--adequately--this--classification,--as--defined--in~~
 25 ~~section--69--4802--(7)--before--the--issuance--of--a--permit--by--the~~

1 ~~department.~~

2 (g) Hold hearings necessary for the proper
3 administration of this chapter or, in the case of permit
4 issuance hearings, delegate this function to the department.

5 (h) Adopt rules for the administration of this chapter.

6 (i) Adopt pretreatment standards for waste-water
7 discharged into a municipal disposal system, adopt effluent
8 standards as defined in section 69-4802(20), (18), adopt
9 toxic effluent standards and prohibitions, and establish
10 standards of performance for new point source discharges.

11 (2) The board may:

12 (a) accept loans and grants from the federal government
13 and other sources to carry out the provisions of this
14 chapter; and

15 (b) establish minimum requirements for the treatment of
16 wastes."

17 Section 6. Section 69-4809.1, R.C.M. 1947, is amended
18 to read as follows:

19 "69-4809.1. Duties of department. (1) The department
20 shall:

21 (a) Issue, suspend, revoke, modify, or deny permits to
22 discharge sewage, industrial wastes, or other wastes to
23 state waters; consistently with rules made by the board;

24 (b) Examine ~~and approve or disapprove~~ plans and other
25 information needed to determine whether a permit should be

1 issued or suggest changes in plans as a condition to the
2 issuance of a permit;

3 (c) Clearly specify in any permit any limitations
4 imposed as to the volume, strength, and other significant
5 characteristics of the waste to be discharged;

6 (d) Collect and furnish information relating to the
7 prevention and control of water pollution;

8 (e) Conduct or encourage necessary research and
9 demonstrations concerning water pollution;

10 (f) Issue orders to any person to clean up any material
11 which he or his employee, agent, or subcontractor has
12 accidentally or purposely dumped, spilled, or otherwise
13 deposited in or near state waters and which may pollute
14 them.

15 (g) Take such actions as are authorized or required
16 under section 69-4820.1 to insure that the terms and
17 conditions of issued permits are complied with and to insure
18 that violations of this chapter are appropriately
19 prosecuted."

20 Section 7. Section 69-4809.2, R.C.M. 1947, is amended
21 to read as follows:

22 "69-4809.2. Power to inspect and monitor--authority.

23 (1) In order to carry out the objectives of this act and to
24 effectively monitor the discharge of sewage, industrial
25 wastes and other wastes into state waters, the department

1 may require the owner or operator of any point source, or
 2 the owner or operator of any facility that discharges into a
 3 municipal sewer system and to which pretreatment standards,
 4 promulgated under this chapter apply, to:

- 5 (a) establish and maintain records;
- 6 (b) make reports;
- 7 (c) install, use and maintain monitoring equipment or
- 8 methods, including biological monitoring techniques;
- 9 (d) sample effluents using specified monitoring methods
- 10 at designated locations and intervals;

11 (e) provide other information as may be reasonably
 12 required by the department.

13 (2) The authorized representative of the department,
 14 ~~upon--presentation-of-his-credentials,~~ UPON PRESENTATION OF
 15 HIS CREDENTIALS, may at reasonable times enter upon any
 16 public or private property to:

- 17 (a) investigate conditions relating to pollution of
 18 state waters or violations of permit conditions;
- 19 (b) and have access to and copy any records required
 20 under this act;;
- 21 (c) inspect any monitoring equipment or method required
 22 under subsection (1)(c); and
- 23 (d) sample any effluents which the owner or operator of
 24 such source is required to sample under that subsection.

25 (3) Any records, reports, or information obtained under

1 this section shall, in the case of effluent data, be related
 2 to any applicable effluent limitations, toxic, pretreatment,
 3 or new source performance standards."

4 Section 8. Section 69-4820, R.C.M. 1947, is amended to
 5 read as follows:

6 "69-4820. Violation of chapter or rule--notice to
 7 violator--hearing before board--notice, procedure, order,
 8 rehearing. (1) When the department has reason to believe
 9 that a violation of this chapter or a rule made under it has
 10 occurred, it ~~shall~~ may have written notice served personally
 11 or by mail on the alleged violator or his agent. The notice
 12 shall state the provision alleged to be violated, the facts
 13 alleged to constitute the violation, the nature of
 14 corrective action which the department requires, and the
 15 time within which the action is to be taken. For the
 16 purposes of this chapter, service by mail is complete on the
 17 date of mailing.

18 (2) In a notice given under subsection (1) of this
 19 section, the department may require the alleged violator to
 20 appear before the board for a public hearing and to answer
 21 the charges made against him. The hearing shall be held no
 22 sooner than fifteen (15) days after service of the notice,
 23 except that the board may set an earlier date for hearing if
 24 it is requested to do so by the alleged violator. The board
 25 may set a later date for hearing at the request of the

1 alleged violator if the alleged violator shows good cause
2 for delay.

3 (3) If the department does not require an alleged
4 violator to appear before the board for a public hearing, he
5 may request the board to conduct the hearing. The request
6 shall be in writing and shall be filed with the department
7 no later than thirty (30) days after service of a notice
8 under subsection (1) of this section. If a request is filed,
9 a hearing shall be held within a reasonable time.

10 (4) If a hearing is held under this section, it shall
11 be public and shall, if the board considers it practicable,
12 be held in a county in which the violation is alleged to
13 have occurred.

14 (5) After a hearing or on failure of an alleged
15 violator to make a timely request for a hearing, the board
16 may issue an appropriate order for the prevention,
17 abatement, or control of pollution. It shall state the date
18 or dates by which a violation shall cease and may prescribe
19 timetables for necessary action in preventing, abating, or
20 controlling the pollution. The alleged violator may
21 petition the board for a rehearing, on the basis of new
22 evidence, which petition the board may grant for good cause
23 shown.

24 (6) In addition to or instead of issuing an order, the
25 board may direct the department to initiate appropriate

1 action for recovery of a penalty under section 69-4823."

2 Section 9. Section 69-4820.1, R.C.M. 1947, is amended
3 to read as follows:

4 "69-4820.1. Additional enforcement remedies. (1) In
5 addition to all other remedies created by this act, the
6 department is authorized to take appropriate enforcement
7 action on its own initiative to:

8 (a) prevent, abate, and control the pollution of state
9 waters;

10 (b) prevent, abate, and control any violation of a
11 condition or limitation imposed by a permit issued under
12 section 69-4806, R.C.M. 1947;

13 (c) prevent, abate, and control any violations of
14 regulations relating to pretreatment standards.

15 (2) Any In furtherance of subsection (1) of this
16 section, any person violating a any condition, limitation,
17 standard or other requirement established pursuant to this
18 section chapter may be served with a compliance order issued
19 by the department. Such order must specify the condition,
20 limitation, standard or other requirement violated and must
21 set a time for compliance. However, in establishing a time
22 for compliance, the department shall take into account the
23 seriousness of the violation and any good faith efforts that
24 have been made to comply with the condition, limitation,
25 standard or other requirement that has been violated. The

1 compliance order issued under this section shall be
 2 personally served by an authorized ~~employee~~ REPRESENTATIVE
 3 of the department.

4 (3) The department is authorized to commence a civil
 5 action seeking appropriate relief, including a permanent or
 6 temporary injunction, for any violation which would be
 7 subject to a compliance order under subsection (2) of this
 8 section. Any action under this subsection may be commenced
 9 in the district court of any county in which the defendant
 10 is located or resides or is doing business, and the court
 11 shall have jurisdiction to restrain such violation and to
 12 require compliance.

13 (4) Any person found to be in violation of a condition,
 14 limitation, standard or other requirement established
 15 pursuant to this section shall be subject to the penalty
 16 provisions of section 69-4623, R.C.M. 1947.

17 (5) For the purpose of this subsection, the term
 18 "person" shall mean, in addition to the definition contained
 19 in section 69-4802, R.C.M. 1947, any responsible corporate
 20 officer."

21 Section 10. Section 69-4822, R.C.M. 1947, is amended
 22 to read as follows:

23 "69-4822. Confidentiality of records. Any information
 24 concerning sources of pollution which is furnished to the
 25 board or department or which is obtained by either of them

1 is a matter of public record and open to public use.
 2 However, any information unique to the owner or operator of
 3 a source of pollution which would, if disclosed, ~~tend to~~
 4 ~~weaken his competitive position shall be confidential unless~~
 5 ~~he expressly agrees to its publication or availability to~~
 6 ~~the general public or unless such information is introduced~~
 7 ~~as evidence in a hearing before the board~~ reveal methods or
 8 processes entitled to protection as trade secrets, shall be
 9 maintained as confidential if it is requested by the owner
 10 or operator and if it is found by the board to be a trade
 11 secret. Any information not intended to be public when
 12 submitted to the board or department shall be submitted in
 13 writing and clearly marked as confidential. The data
 14 describing physical and chemical characteristics of a waste
 15 discharged to state waters shall not be considered
 16 confidential, ~~except that the party supplying the~~
 17 ~~information to the board may apply to the board for~~
 18 ~~confidential status for the information so supplied, and the~~
 19 ~~board shall determine that the disclosure of said~~
 20 ~~information is in the public interest prior to the~~
 21 ~~disclosure to the public of said information.~~ The board may
 22 use any information in compiling or publishing analyses or
 23 summaries relating to water pollution, if such analyses or
 24 summaries do not identify any owner or operator of a source
 25 of pollution or reveal any information which is otherwise

1 made confidential by this section."

2 Section 11. Section 69-4823, R.C.M. 1947, is amended
3 to read as follows:

4 "69-4823. Penalties for violation of provisions, rule,
5 permit, effluent standard, or order--purpose and
6 construction of chapter. (1) A person who violates this
7 chapter or a rule, permit, effluent standard, or order
8 issued under the provisions of this act shall be ~~guilty--of~~
9 ~~an--offense--and~~ subject to a civil penalty not to exceed ten
10 thousand dollars (\$10,000). Each day of violation
11 constitutes a separate offense VIOLATION.

12 (2) A person who willfully or negligently violates
13 section 69-4806, R.C.M. 1947, or any pretreatment standard
14 established pursuant to this act is guilty of an offense and
15 subject to a fine not to exceed twenty-five thousand dollars
16 (\$25,000) per day of violation or by imprisonment for not
17 more than one (1) year or both. Following an initial
18 conviction under this subsection, subsequent convictions
19 shall subject a person to a fine of not more than fifty
20 thousand dollars (\$50,000) per day of violation, or
21 imprisonment for not more than two (2) years, or both.

22 (3) Action under subsection (1) of this section does
23 not bar enforcement of this chapter or of rules or orders
24 issued under it by injunction or other appropriate remedy.
25 The department shall institute and maintain any enforcement

1 proceedings in the name of the state.

2 (4) A purpose of this chapter is to provide additional
3 and cumulative remedies to prevent, abate, and control the
4 pollution of state waters. This chapter does not abridge or
5 alter rights of action or remedies in equity or under the
6 common law or statutory law, criminal or civil, nor does
7 this chapter or an act done under it estop the state or a
8 municipality or person as owners of water rights or
9 otherwise in the exercise of their rights in equity or under
10 the common law or statutory law to suppress nuisances or to
11 abate pollution.

12 (5) Fines collected shall be deposited to the state
13 general fund.

14 (6) Any person who knowingly makes any false statement,
15 representation, or certification in any application, record,
16 report, plan or other document filed or required to be
17 maintained under this act or who falsifies, tampers with or
18 knowingly renders inaccurate any monitoring device or method
19 required to be maintained under this act shall upon
20 conviction be punished by a fine of not more than ten
21 thousand dollars (\$10,000), or by imprisonment for not more
22 than six (6) months, or both.

23 (7) In a civil action initiated by the department under
24 this act, the department may ask for and the court is
25 authorized to assess a violator for the cost of the

1 investigation or monitoring survey which led to the
2 establishment of the violation, and any expense incurred by
3 the state in removing, correcting or terminating any of the
4 adverse effects upon water quality resulting from the
5 unauthorized discharge of pollutants."

6 Section 12. Section 69-4825, R.C.M. 1947, is amended
7 to read as follows:

8 "69-4825. Injunctions. The department may bring an
9 action for an injunction against the continuation of an
10 alleged violation ~~which has been the basis of suspension or~~
11 ~~revocation~~ of the terms or conditions of a permit issued by
12 the department or any rule or effluent standard promulgated
13 under this chapter or against a person who fails to comply
14 with an emergency order issued by the department under
15 section 69-4824 or a final order of the board. The court to
16 which the department applies for an injunction may issue a
17 temporary injunction, if it finds that there is reasonable
18 cause to believe that the allegations of the department are
19 true, and it may issue a temporary restraining order pending
20 action on the temporary injunction."

21 Section 13. Section 69-4826, R.C.M. 1947, is amended
22 to read as follows:

23 "69-4826. Action by other parties. A person,
24 association, corporation, or agency of the state or federal
25 government may apply to the department protesting a

1 violation of this chapter. The department shall make an
2 investigation and make a written report to the person,
3 association, corporation, or agency which made the protest.
4 If a violation is established by the investigation of the
5 department, appropriate enforcement action shall be taken."

6 Section 14. There is a new R.C.M. section that reads
7 as follows:

8 Rates and charges to meet costs of treatment works--use
9 of funds--enforcement. (1) A municipality ~~shall~~ OR OTHER
10 ENTITIES OPERATING A SEWAGE SYSTEM MAY adopt a system of
11 charges and rates to assure that each recipient of treatment
12 works services within the municipality's jurisdiction or
13 service area will pay its proportionate share of the costs
14 of operation, maintenance, and replacement of any treatment
15 works facilities or services provided by the municipality OR
16 OTHER ENTITIES OPERATING A SEWAGE SYSTEM.

17 (2) A municipality OR OTHER ENTITIES OPERATING A
18 SEWAGE SYSTEM may require industrial users of its treatment
19 works to pay to the municipality OR OTHER ENTITIES OPERATING
20 A SEWAGE SYSTEM that portion of the cost of construction of
21 the treatment works which is allocable to the treatment of
22 such industrial user's wastes. The department of health and
23 environmental sciences may determine whether the payment
24 required of the industrial user for the portion of the cost
25 of the construction of the treatment works is properly

1 allocable to the treatment of the industrial user's wastes.

2 (3) A municipality OR OTHER ENTITIES OPERATING A
3 SEWAGE SYSTEM may retain the amounts of the revenues derived
4 from the payment of costs by industrial users of its
5 treatment works services and expend such revenues, together
6 with interest thereon, for:

7 (a) repayment to applicable agencies of government of
8 any grants or loans made to the municipality OR OTHER
9 ENTITIES OPERATING A SEWAGE SYSTEM for construction of the
10 treatment works; and

11 (b) future expansion and reconstruction of the
12 treatment works; and

13 (c) other municipal purposes.

14 (4) A municipality OR OTHER ENTITIES OPERATING SEWAGE
15 SYSTEMS shall keep records, financial statements and books
16 regarding its rates and charges and amounts collected on
17 account of its treatment works and how such revenues are
18 allocated. The department may inspect such records,
19 financial statements and books, audit them, or cause them to
20 be audited, at such intervals as deemed necessary.

21 (5) In the event a municipality OR OTHER ENTITIES
22 OPERATING SEWAGE SYSTEMS fails, neglects or refuses when
23 required by the department to adopt the system of charges
24 and rates authorized by this section, the commission BOARD
25 may adopt a system of charges and rates as provided for in

1 subsection (1) of this section and collect, administer and
2 apply such revenues for the purposes of subsection (3) of
3 this section.

4 (6) In lieu of proceeding in the manner set forth in
5 subsection (5) of this section, the commission DEPARTMENT
6 may institute proceedings at law or in equity to enforce
7 compliance with, or restrain violations of this section.

8 Section 15. There is a new R.C.M. section that reads
9 as follows:

10 Determination of costs payable by users. In determining
11 the amount of treatment works costs to be paid by recipients
12 of treatment works services, the municipality OR OTHER
13 ENTITIES OPERATING SEWAGE SYSTEMS or, if applicable, the
14 department BOARD shall consider the strength, volume, types
15 and delivery flow rate characteristics of the waste; the
16 nature, location and type of treatment works; the receiving
17 waters; and such other factors as deemed necessary.

18 ~~Section 16. There is a new R.C.M. section that reads~~
19 ~~as follows:~~

20 ~~Rules. The department may adopt, modify or repeal~~
21 ~~rules for the administration and implementation of sections~~
22 ~~{14 and 15 of this act}.~~

-End-

March 25, 1975

SENATE COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

AMENDMENTS TO HOUSE BILL NO. 370

That House Bill No. 370, third reading, be amended as follows:

1. Amend title, line 9.

Following: "SECTIONS"

Insert: "16-4412, 16-4526,"

2. Amend page 18, section 10, lines 9 through 11.

Following: "if"

Strike: "it is requested by the owner or operator and if it is found by the board to be a trade secret."

Insert: "so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret, if he wishes such information to enjoy confidential status. The department shall be served in any such action, and may intervene as a party therein."

3. Amend page 24, section 15, line 17.

Following: line 17

Insert: "Section 16. Section 16-4412, R.C.M. 1947, is amended to read as follows:

"16-4412. Federal funds for local public works programs.

The board of county commissioners are hereby authorized to apply for, and receive from, the federal government on behalf of said metropolitan sanitary and/or storm sewer district, any moneys that may be appropriated by the Congress for aiding in local public works projects, and likewise the board of county commissioners may borrow from the federal government any funds available for assisting in the planning or financing of local public works projects, and repay the same out of the moneys received from the tax levy provided for in this act.

Notwithstanding any other section of this chapter, or limitation imposed therein, and when the board has applied pursuant to this section, the board may adopt a system of charges and rates to require that each recipient of treatment works services pays its proportionate share of the costs of operation, maintenance and replacement, and to require industrial users of treatment works to pay that portion of the cost of construction of the treatment works which is allocable to the treatment of that industrial users' wastes."

Section 17. Section 16-4526, R.C.M. 1947, is amended to read as follows:

"16-4526. Rate to pay operating expenses. The board of directors in the furnishing of water, sewer service, other services and facilities, shall fix such rate, fee, toll, rent or other charge as will pay the operating expenses of the district, provide for repairs and depreciation of works owned or operated by it, pay the interest on any bonded debt, and, so far as possible, provide a sinking or other fund for the payment of the principal of such debt as it may become due.

Notwithstanding any other section of this chapter, or limitation imposed therein, and when the board of directors has applied for and received from the federal government any moneys for the construction, operation and maintenance of treatment services and works, the board of directors may adopt a system of charges and rates to require that each recipient of treatment works services pays its proportionate share of the costs of operation, maintenance and replacement, and to require industrial users of treatment works to pay the portion of the cost of construction of the treatment works which is allocable to the treatment of that industrial users' wastes."

1 HOUSE BILL NO. 370

2 INTRODUCED BY MELOY

3 (BY REQUEST, DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES)

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
6 WATER POLLUTION CONTROL LAWS TO CONFORM WITH FEDERAL
7 REQUIREMENTS, TO IMPROVE ENFORCEMENT PROCEDURES, AND TO
8 PROVIDE FOR USER CHARGES FOR INDUSTRIAL AND OTHER USERS OF
9 PUBLIC SEWAGE TREATMENT SYSTEMS; AMENDING SECTIONS 16-4412,
10 16-4526, 69-4801, 69-4802, 69-4806, 69-4807.1, 69-4808.2,
11 69-4809.1, 69-4809.2, 69-4820, 69-4820.1, 69-4822, 69-4823,
12 69-4825, AND 69-4826, R.C.M. 1947."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Section 1. Section 69-4801, R.C.M. 1947, is amended to
16 read as follows:

17 "69-4801. Public policy of the state. (1) It is the
18 public policy of this state to:

19 (a) conserve water by protecting, maintaining, and
20 improving the quality and potability of water for public
21 water supplies, wildlife, fish and aquatic life,
22 agriculture, industry, recreation, and other beneficial
23 uses;

24 (b) provide a comprehensive program for the prevention,
25 abatement, and control of water pollution.

1 (2) It is not necessary that wastes be treated to a
2 purer condition than the natural condition of the receiving
3 stream as long as the minimum treatment requirements
4 established under this chapter are met. "Natural" refers to
5 conditions or material present from runoff or percolation
6 over which man has no control or from developed land where
7 all reasonable land, soil and water conservation practices
8 have been applied. Conditions resulting from the reasonable
9 operation of dams at the effective date of this act are
10 "natural."

11 Section 2. Section 69-4802, R.C.M. 1947, is amended to
12 read as follows:

13 "69-4802. Definitions. Unless the context requires
14 otherwise in this chapter:

15 (1) "Sewage" means water-carried waste products from
16 residences, public buildings, institutions, or other
17 buildings including discharge from human beings or animals
18 together with ground water infiltration and surface water
19 present.

20 (2) "Industrial waste" means any waste substance from
21 the process of business or industry, or from the development
22 of any natural resource together with any sewage that may be
23 present;

24 (3) "Other wastes" means garbage, municipal refuse,
25 decayed wood, sawdust, shavings, bark, lime, sand, ashes,

1 offal, night soil, oil, grease, tar, heat, chemicals, dead
 2 animals, sediment, wrecked or discarded equipment,
 3 radioactive materials, solid waste, and all other substances
 4 ~~that may pollute state waters;~~ THAT MAY POLLUTE STATE
 5 WATERS; resulting from industrial, municipal, or
 6 agricultural activities;

7 (4) "Contamination" means impairment of the quality of
 8 state waters by sewage, industrial wastes, or other wastes
 9 creating a hazard to human health;

10 (5) "Pollution" means contamination, or other
 11 alteration of the physical, chemical, or biological
 12 properties of any state waters, which exceeds that permitted
 13 by Montana water quality standards, including, but not
 14 limited to, standards relating to change in temperature,
 15 taste, color, turbidity, or odor; or discharge of any
 16 liquid, gaseous, solid, radioactive, or other substance into
 17 any state water which will or is likely to create a nuisance
 18 or render the waters harmful, detrimental, or injurious to
 19 public health, recreation, safety, welfare, livestock, wild
 20 animals, birds, fish, or other wildlife. A discharge which
 21 is ~~permitted by Montana water quality standards~~ authorized
 22 under the pollution discharge permit regulations RULES of
 23 the board is not "pollution" under this chapter.

24 (6) "Sewerage system" means a device for collecting or
 25 conducting sewage, industrial wastes, or other wastes to an

1 ultimate disposal point;

2 (7) "Treatment works" means works installed for
 3 treating or holding sewage, industrial wastes, or other
 4 wastes;

5 (8) "Disposal system" means a system for disposing of
 6 sewage, industrial, or other wastes, and includes sewerage
 7 systems and treatment works;

8 (9) "State waters" means any body of water, irrigation
 9 system, or drainage system either surface or underground;
 10 however, this subsection does not apply to irrigation waters
 11 where the waters are used up within the irrigation system
 12 and the waters are not returned to any other state waters;

13 (10) "Person" means the state, a political subdivision
 14 of the state, institution, firm, corporation, partnership,
 15 individual, or other entity;

16 (11) "Council" means the state water pollution control
 17 advisory council provided for in section 82A-607;

18 (12) "Board" means the board of health and
 19 environmental sciences, provided for in section 82A-605;

20 (13) "Department" means the department of health and
 21 environmental sciences, provided for in Title 82A, chapter
 22 6;

23 (14) "Local department of health" means the staff,
 24 including health officers, employed by a county, city,
 25 city-county, or district board of health;

1 (15) "Point source" means any discernible, confined and
 2 discrete conveyance, including but not limited to any pipe,
 3 ditch, channel, tunnel, conduit, well, discrete fissure,
 4 container, rolling stock, or vessel or other floating craft,
 5 from which pollutants are or may be discharged;

6 (16) "Owner or operator" means any person who owns,
 7 leases, operates, controls or supervises a point source;

8 (17) "Standard of performance" means a standard adopted
 9 by the board for the control of the discharge of pollutants
 10 which reflects the greatest degree of effluent reduction
 11 achievable through application of the best available
 12 demonstrated control technology, processes, operating
 13 methods, or other alternatives, including, where
 14 practicable, a standard permitting no discharge of
 15 pollutants;

16 (18) "Effluent standard" means any restriction or
 17 prohibition on quantities, rates and concentrations of
 18 chemical, physical, biological and other constituents which
 19 are discharged into state waters."

20 Section 3. Section 69-4806, R.C.M. 1947, is amended to
 21 read as follows:

22 "69-4806. Pollution unlawful--permits. It is unlawful
 23 to:

24 (1) cause pollution as defined in section 69-4802 (5),
 25 R. C. M. 1947, of any state waters or to place or cause to

1 be placed any wastes in a location where they are likely to
 2 cause pollution of any state waters;

3 (2) carry on any of the following activities without a
 4 current permit from the department:

5 (a) construct, modify, or operate a disposal system
 6 which discharges to any state waters; or

7 (b) construct or use any outlet for the discharge of
 8 sewage, industrial wastes, or other wastes to any state
 9 waters; or

10 (c) discharge sewage, industrial wastes, or other
 11 wastes into any state waters; or

12 (3) violate any limitation imposed by a current
 13 permit."

14 Section 4. Section 69-4807.1, R.C.M. 1947, is amended
 15 to read as follows:

16 "69-4807.1. Denial, modification, suspension, and
 17 revocation of permit--notice--hearing--effective date. (1)
 18 If the department denies an application for a permit or
 19 modifies a permit, the department shall give written notice
 20 of its action to the applicant or holder, and he may request
 21 a hearing before the board, in the manner stated in section
 22 13 [69-4820] of this act, for the purpose of petitioning the
 23 board to reverse or modify the action of the department.
 24 Such hearing shall be held within thirty (30) days after
 25 receipt of written request. After the hearing, the board

1 shall affirm, modify, or reverse the action of the
 2 department. Modification of a permit shall be effective
 3 thirty (30) days after receipt of notice by the holder,
 4 unless the department specifies a later date, if the holder
 5 does not request a hearing before the board. If the holder
 6 does request a hearing before the board, no order modifying
 7 his permit shall be effective until twenty (20) days after
 8 he has received notice of the action of the board. This
 9 subsection does not apply to any modification made in permit
 10 conditions at the time of reissuance but only to those
 11 modifications made in existing permits during their terms.

12 (2) If the department suspends or revokes a permit
 13 because it has reason to believe that the holder has
 14 violated this chapter, the department may specify that the
 15 suspension or revocation is effective immediately, if the
 16 department finds that the violation is likely to continue
 17 and will cause pollution the harmful effects of which will
 18 not be remedied immediately on the cessation of the
 19 violation. Upon petition by the holder of the permit, the
 20 board shall grant the holder a hearing, to be conducted in
 21 the manner specified in section 13 [69-4820] of this act and
 22 shall issue an order affirming, modifying, or reversing the
 23 action of the department. The order of the board shall be
 24 effective immediately, unless the board directs otherwise."

25 Section 5. Section 69-4808.2, R.C.M. 1947, is amended

1 to read as follows:

2 "69-4808.2. Duties of board. (1) The board shall:

3 (a) Establish and modify the classification of all
 4 waters in accordance with their present and future most
 5 beneficial uses.

6 (b) Formulate standards of water purity and
 7 classification of water according to its most beneficial
 8 uses, giving consideration to the economics of waste
 9 treatment and prevention.

10 (c) Review from time to time, at intervals of not more
 11 than three (3) years, established classifications of waters
 12 and standards of water purity and classification, and:

13 (i) The classifications, standards, and rules which
 14 have been adopted by the state water pollution control
 15 council under section 69-4813 are, without necessity of a
 16 hearing, initially adopted by the board.

17 (ii) In revising classifications or standards or in
 18 adopting new classifications or standards the board may not
 19 so formulate standards of water purity or classify any state
 20 water as to lower any water quality standard applicable to
 21 any state water below the level applicable under the
 22 classifications and standards adopted by the state water
 23 pollution control council under section 69-4813.

24 (iii) The board shall require that any state waters,
 25 whose existing quality is ~~better~~ higher than the established

1 water quality standards, as--of--the--date--on--which-the
 2 standards--become--effective be maintained at that high
 3 quality unless it has been affirmatively demonstrated to the
 4 board that a change is justifiable as a result of necessary
 5 economic or social development and will not preclude present
 6 and anticipated use of these waters; and

7 (iv) The board shall require any industrial, public, or
 8 private project or development, which would constitute a new
 9 source of pollution or an increased source of pollution to
 10 high quality waters, referred to in subsection (1) (c)
 11 (iii), to provide the degree of waste treatment necessary to
 12 maintain that existing high water quality.

13 (d) Advise, consult, and co-operate with other states,
 14 other state and federal agencies, affected groups, political
 15 subdivisions, and industries in the formulation of a
 16 comprehensive plan to prevent and control pollution.

17 (e) Adopt rules governing application for permits to
 18 discharge sewage, industrial wastes, or other wastes into
 19 state waters including rules requiring the filing of plans
 20 and specifications relating to the construction,
 21 modification, or operation of disposal systems.

22 (f) Adopt rules governing the issuance, denial,
 23 modification, or revocation of permits, and:

24 (i) The rules shall allow the issuance or continuance
 25 of a permit only if the department finds that operation

1 consistent with the limitations of the permit will not
 2 result in pollution of any state waters, except that:

3 (ii) The rules may allow the issuance of a temporary
 4 permit under which pollution may result, ~~for a period no~~
 5 ~~longer than three (3) years and subject to no extension,~~ if
 6 the department ~~finds that the issuance of a permit is proper~~
 7 ~~for obtaining compliance with the applicable standards,~~
 8 insures that such permit contains a compliance schedule
 9 designed to meet all applicable effluent standards and water
 10 quality standards in the shortest reasonable period of time.

11 (iii) The rules shall provide that the department may
 12 revoke a permit if the department finds that the holder of
 13 the permit has violated its terms, unless the department
 14 also finds that the violation was accidental and
 15 unforeseeable and that the holder of the permit corrected
 16 the condition resulting in the violation as soon as was
 17 reasonably possible; and

18 ~~(iv) A person introducing a new source or increased~~
 19 ~~source of sewage, industrial waste, or other wastes as~~
 20 ~~defined in section 69-4802-(1), (2), and (3), to waters and~~
 21 ~~tributaries of waters classified as A-open-B-1 or higher by~~
 22 ~~the board shall be required to install and maintain the~~
 23 ~~highest and best degree of treatment works necessary to~~
 24 ~~maintain adequately this classification, as defined in~~
 25 ~~section 69-4802-(7) before the issuance of a permit by the~~

1 ~~department.~~

2 (g) Hold hearings necessary for the proper
3 administration of this chapter or, in the case of permit
4 issuance hearings, delegate this function to the department.

5 (h) Adopt rules for the administration of this chapter.

6 (i) Adopt pretreatment standards for waste-water
7 discharged into a municipal disposal system, adopt effluent
8 standards as defined in section 69-4802(20), (18), adopt
9 toxic effluent standards and prohibitions, and establish
10 standards of performance for new point source discharges.

11 (2) The board may:

12 (a) accept loans and grants from the federal government
13 and other sources to carry out the provisions of this
14 chapter; and

15 (b) establish minimum requirements for the treatment of
16 wastes."

17 Section 6. Section 69-4809.1, R.C.M. 1947, is amended
18 to read as follows:

19 "69-4809.1. Duties of department. (1) The department
20 shall:

21 (a) Issue, suspend, revoke, modify, or deny permits to
22 discharge sewage, industrial wastes, or other wastes to
23 state waters; consistently with rules made by the board;

24 (b) Examine ~~and approve or disapprove~~ plans and other
25 information needed to determine whether a permit should be

1 issued or suggest changes in plans as a condition to the
2 issuance of a permit;

3 (c) Clearly specify in any permit any limitations
4 imposed as to the volume, strength, and other significant
5 characteristics of the waste to be discharged;

6 (d) Collect and furnish information relating to the
7 prevention and control of water pollution;

8 (e) Conduct or encourage necessary research and
9 demonstrations concerning water pollution;

10 (f) Issue orders to any person to clean up any material
11 which he or his employee, agent, or subcontractor has
12 accidentally or purposely dumped, spilled, or otherwise
13 deposited in or near state waters and which may pollute
14 them.

15 (g) Take such actions as are authorized or required
16 under section 69-4820.1 to insure that the terms and
17 conditions of issued permits are complied with and to insure
18 that violations of this chapter are appropriately
19 prosecuted."

20 Section 7. Section 69-4809.2, R.C.M. 1947, is amended
21 to read as follows:

22 "69-4809.2. Power to inspect and monitor--authority.

23 (1) In order to carry out the objectives of this act and to
24 effectively monitor the discharge of sewage, industrial
25 wastes and other wastes into state waters, the department

1 may require the owner or operator of any point source, or
 2 the owner or operator of any facility that discharges into a
 3 municipal sewer system and to which pretreatment standards,
 4 promulgated under this chapter apply, to:

- 5 (a) establish and maintain records;
- 6 (b) make reports;
- 7 (c) install, use and maintain monitoring equipment or
 8 methods, including biological monitoring techniques;
- 9 (d) sample effluents using specified monitoring methods
 10 at designated locations and intervals;
- 11 (e) provide other information as may be reasonably
 12 required by the department.

13 (2) The authorized representative of the department,
 14 ~~upon--presentation-of-his-credentials,~~ UPON PRESENTATION OF
 15 HIS CREDENTIALS, may at reasonable times enter upon any
 16 public or private property to:

- 17 (a) investigate conditions relating to pollution of
 18 state waters or violations of permit conditions;
- 19 (b) and have access to and copy any records required
 20 under this act; ;
- 21 (c) inspect any monitoring equipment or method required
 22 under subsection (1)(c); ; and
- 23 (d) sample any effluents which the owner or operator of
 24 such source is required to sample under that subsection.

25 (3) Any records, reports, or information obtained under

1 this section shall, in the case of effluent data, be related
 2 to any applicable effluent limitations, toxic, pretreatment,
 3 or new source performance standards."

4 Section 8. Section 69-4820, R.C.M. 1947, is amended to
 5 read as follows:

6 "69-4820. Violation of chapter or rule--notice to
 7 violator--hearing before board--notice, procedure, order,
 8 rehearing. (1) When the department has reason to believe
 9 that a violation of this chapter or a rule made under it has
 10 occurred, it ~~shall~~ may have written notice served personally
 11 or by mail on the alleged violator or his agent. The notice
 12 shall state the provision alleged to be violated, the facts
 13 alleged to constitute the violation, the nature of
 14 corrective action which the department requires, and the
 15 time within which the action is to be taken. For the
 16 purposes of this chapter, service by mail is complete on the
 17 date of mailing.

18 (2) In a notice given under subsection (1) of this
 19 section, the department may require the alleged violator to
 20 appear before the board for a public hearing and to answer
 21 the charges made against him. The hearing shall be held no
 22 sooner than fifteen (15) days after service of the notice,
 23 except that the board may set an earlier date for hearing if
 24 it is requested to do so by the alleged violator. The board
 25 may set a later date for hearing at the request of the

1 alleged violator if the alleged violator shows good cause
2 for delay.

3 (3) If the department does not require an alleged
4 violator to appear before the board for a public hearing, he
5 may request the board to conduct the hearing. The request
6 shall be in writing and shall be filed with the department
7 no later than thirty (30) days after service of a notice
8 under subsection (1) of this section. If a request is filed,
9 a hearing shall be held within a reasonable time.

10 (4) If a hearing is held under this section, it shall
11 be public and shall, if the board considers it practicable,
12 be held in a county in which the violation is alleged to
13 have occurred.

14 (5) After a hearing or on failure of an alleged
15 violator to make a timely request for a hearing, the board
16 may issue an appropriate order for the prevention,
17 abatement, or control of pollution. It shall state the date
18 or dates by which a violation shall cease and may prescribe
19 timetables for necessary action in preventing, abating, or
20 controlling the pollution. The alleged violator may
21 petition the board for a rehearing, on the basis of new
22 evidence, which petition the board may grant for good cause
23 shown.

24 (6) In addition to or instead of issuing an order, the
25 board may direct the department to initiate appropriate

1 action for recovery of a penalty under section 69-4823."

2 Section 9. Section 69-4820.1, R.C.M. 1947, is amended
3 to read as follows:

4 "69-4820.1. Additional enforcement remedies. (1) In
5 addition to all other remedies created by this act, the
6 department is authorized to take appropriate enforcement
7 action on its own initiative to:

8 (a) prevent, abate, and control the pollution of state
9 waters;

10 (b) prevent, abate, and control any violation of a
11 condition or limitation imposed by a permit issued under
12 section 69-4806, R.C.M. 1947;

13 (c) prevent, abate, and control any violations of
14 regulations relating to pretreatment standards.

15 (2) Any In furtherance of subsection (1) of this
16 section, any person violating a any condition, limitation,
17 standard or other requirement established pursuant to this
18 section chapter may be served with a compliance order issued
19 by the department. Such order must specify the condition,
20 limitation, standard or other requirement violated and must
21 set a time for compliance. However, in establishing a time
22 for compliance, the department shall take into account the
23 seriousness of the violation and any good faith efforts that
24 have been made to comply with the condition, limitation,
25 standard or other requirement that has been violated. The

1 compliance order issued under this section shall be
 2 personally served by an authorized ~~employee~~ REPRESENTATIVE
 3 of the department.

4 (3) The department is authorized to commence a civil
 5 action seeking appropriate relief, including a permanent or
 6 temporary injunction, for any violation which would be
 7 subject to a compliance order under subsection (2) of this
 8 section. Any action under this subsection may be commenced
 9 in the district court of any county in which the defendant
 10 is located or resides or is doing business, and the court
 11 shall have jurisdiction to restrain such violation and to
 12 require compliance.

13 (4) Any person found to be in violation of a condition,
 14 limitation, standard or other requirement established
 15 pursuant to this section shall be subject to the penalty
 16 provisions of section 69-4823, R.C.M. 1947.

17 (5) For the purpose of this subsection, the term
 18 "person" shall mean, in addition to the definition contained
 19 in section 69-4802, R.C.M. 1947, any responsible corporate
 20 officer."

21 Section 10. Section 69-4822, R.C.M. 1947, is amended
 22 to read as follows:

23 "69-4822. Confidentiality of records. Any information
 24 concerning sources of pollution which is furnished to the
 25 board or department or which is obtained by either of them

1 is a matter of public record and open to public use.
 2 However, any information unique to the owner or operator of
 3 a source of pollution which would, if disclosed, ~~tend to~~
 4 ~~weaken his competitive position shall be confidential unless~~
 5 ~~he expressly agrees to its publication or availability to~~
 6 ~~the general public or unless such information is introduced~~
 7 ~~as evidence in a hearing before the board~~ reveal methods or
 8 processes entitled to protection as trade secrets, shall be
 9 maintained as confidential if it is requested by the owner
 10 or operator and if it is found by the board to be a trade
 11 secret. SO DETERMINED BY A COURT OF COMPETENT JURISDICTION.
 12 THE OWNER OR OPERATOR SHALL FILE A DECLARATORY JUDGMENT
 13 ACTION TO ESTABLISH THE EXISTENCE OF A TRADE SECRET, IF HE
 14 WISHES SUCH INFORMATION TO ENJOY CONFIDENTIAL STATUS. THE
 15 DEPARTMENT SHALL BE SERVED IN ANY SUCH ACTION, AND MAY
 16 INTERVENE AS A PARTY THEREIN. Any information not intended
 17 to be public when submitted to the board or department shall
 18 be submitted in writing and clearly marked as confidential.
 19 The data describing physical and chemical characteristics of
 20 a waste discharged to state waters shall not be considered
 21 confidential, ~~except that the party supplying the~~
 22 ~~information to the board may apply to the board for~~
 23 ~~confidential status for the information so supplied, and the~~
 24 ~~board shall determine that the disclosure of said~~
 25 ~~information is in the public interest prior to the~~

1 ~~disclosure-to-the-public-of-said-information.~~ The board may
 2 use any information in compiling or publishing analyses or
 3 summaries relating to water pollution, if such analyses or
 4 summaries do not identify any owner or operator of a source
 5 of pollution or reveal any information which is otherwise
 6 made confidential by this section."

7 Section 11. Section 69-4823, R.C.M. 1947, is amended
 8 to read as follows:

9 "69-4823. Penalties for violation of provisions, rule,
 10 permit, effluent standard, or order--purpose and
 11 construction of chapter. (1) A person who violates this
 12 chapter or a rule, permit, effluent standard, or order
 13 issued under the provisions of this act shall be ~~guilty--of~~
 14 ~~an--offense-and~~ subject to a civil penalty not to exceed ten
 15 thousand dollars (\$10,000). Each day of violation
 16 constitutes a separate ~~offense~~ VIOLATION.

17 (2) A person who willfully or negligently violates
 18 section 69-4806, R.C.M. 1947, or any pretreatment standard
 19 established pursuant to this act is guilty of an offense and
 20 subject to a fine not to exceed twenty-five thousand dollars
 21 (\$25,000) per day of violation or by imprisonment for not
 22 more than one (1) year or both. Following an initial
 23 conviction under this subsection, subsequent convictions
 24 shall subject a person to a fine of not more than fifty
 25 thousand dollars (\$50,000) per day of violation, or

1 imprisonment for not more than two (2) years, or both.

2 (3) Action under subsection (1) of this section does
 3 not bar enforcement of this chapter or of rules or orders
 4 issued under it by injunction or other appropriate remedy.
 5 The department shall institute and maintain any enforcement
 6 proceedings in the name of the state.

7 (4) A purpose of this chapter is to provide additional
 8 and cumulative remedies to prevent, abate, and control the
 9 pollution of state waters. This chapter does not abridge or
 10 alter rights of action or remedies in equity or under the
 11 common law or statutory law, criminal or civil, nor does
 12 this chapter or an act done under it estop the state or a
 13 municipality or person as owners of water rights or
 14 otherwise in the exercise of their rights in equity or under
 15 the common law or statutory law to suppress nuisances or to
 16 abate pollution.

17 (5) Fines collected shall be deposited to the state
 18 general fund.

19 (6) Any person who knowingly makes any false statement,
 20 representation, or certification in any application, record,
 21 report, plan or other document filed or required to be
 22 maintained under this act or who falsifies, tampers with or
 23 knowingly renders inaccurate any monitoring device or method
 24 required to be maintained under this act shall upon
 25 conviction be punished by a fine of not more than ten

1 thousand dollars (\$10,000), or by imprisonment for not more
2 than six (6) months, or both.

3 (7) In a civil action initiated by the department under
4 this act, the department may ask for and the court is
5 authorized to assess a violator for the cost of the
6 investigation or monitoring survey which led to the
7 establishment of the violation, and any expense incurred by
8 the state in removing, correcting or terminating any of the
9 adverse effects upon water quality resulting from the
10 unauthorized discharge of pollutants."

11 Section 12. Section 69-4825, R.C.M. 1947, is amended
12 to read as follows:

13 "69-4825. Injunctions. The department may bring an
14 action for an injunction against the continuation of an
15 alleged violation ~~which has been the basis of suspension or~~
16 ~~revocation of the terms or conditions of~~ a permit issued by
17 the department or any rule or effluent standard promulgated
18 under this chapter or against a person who fails to comply
19 with an emergency order issued by the department under
20 section 69-4824 or a final order of the board. The court to
21 which the department applies for an injunction may issue a
22 temporary injunction, if it finds that there is reasonable
23 cause to believe that the allegations of the department are
24 true, and it may issue a temporary restraining order pending
25 action on the temporary injunction."

1 Section 13. Section 69-4826, R.C.M. 1947, is amended
2 to read as follows:

3 "69-4826. Action by other parties. A person,
4 association, corporation, or agency of the state or federal
5 government may apply to the department protesting a
6 violation of this chapter. The department shall make an
7 investigation and make a written report to the person,
8 association, corporation, or agency which made the protest.
9 If a violation is established by the investigation of the
10 department, appropriate enforcement action shall be taken."

11 Section 14. There is a new R.C.M. section that reads
12 as follows:

13 Rates and charges to meet costs of treatment works--use
14 of funds--enforcement. (1) A municipality ~~shall~~ OR OTHER
15 ENTITIES OPERATING A SEWAGE SYSTEM MAY adopt a system of
16 charges and rates to assure that each recipient of treatment
17 works services within the municipality's jurisdiction or
18 service area will pay its proportionate share of the costs
19 of operation, maintenance, and replacement of any treatment
20 works facilities or services provided by the municipality OR
21 OTHER ENTITIES OPERATING A SEWAGE SYSTEM.

22 (2) A municipality OR OTHER ENTITIES OPERATING A
23 SEWAGE SYSTEM may require industrial users of its treatment
24 works to pay to the municipality OR OTHER ENTITIES OPERATING
25 A SEWAGE SYSTEM that portion of the cost of construction of

1 the treatment works which is allocable to the treatment of
 2 such industrial user's wastes. The department of health and
 3 environmental sciences may determine whether the payment
 4 required of the industrial user for the portion of the cost
 5 of the construction of the treatment works is properly
 6 allocable to the treatment of the industrial user's wastes.

7 (3) A municipality OR OTHER ENTITIES OPERATING A
 8 SEWAGE SYSTEM may retain the amounts of the revenues derived
 9 from the payment of costs by industrial users of its
 10 treatment works services and expend such revenues, together
 11 with interest thereon, for:

12 (a) repayment to applicable agencies of government of
 13 any grants or loans made to the municipality OR OTHER
 14 ENTITIES OPERATING A SEWAGE SYSTEM for construction of the
 15 treatment works; and

16 (b) future expansion and reconstruction of the
 17 treatment works; and

18 (c) other municipal purposes.

19 (4) A municipality OR OTHER ENTITIES OPERATING SEWAGE
 20 SYSTEMS shall keep records, financial statements and books
 21 regarding its rates and charges and amounts collected on
 22 account of its treatment works and how such revenues are
 23 allocated. The department may inspect such records,
 24 financial statements and books, audit them, or cause them to
 25 be audited, at such intervals as deemed necessary.

1 (5) In the event a municipality OR OTHER ENTITIES
 2 OPERATING SEWAGE SYSTEMS fails, neglects or refuses when
 3 required by the department to adopt the system of charges
 4 and rates authorized by this section, the ~~commission~~ BOARD
 5 may adopt a system of charges and rates as provided for in
 6 subsection (1) of this section and collect, administer and
 7 apply such revenues for the purposes of subsection (3) of
 8 this section.

9 (6) In lieu of proceeding in the manner set forth in
 10 subsection (5) of this section, the ~~commission~~ DEPARTMENT
 11 may institute proceedings at law or in equity to enforce
 12 compliance with, or restrain violations of this section.

13 Section 15. There is a new R.C.M. section that reads
 14 as follows:

15 Determination of costs payable by users. In determining
 16 the amount of treatment works costs to be paid by recipients
 17 of treatment works services, the municipality OR OTHER
 18 ENTITIES OPERATING SEWAGE SYSTEMS or, if applicable, the
 19 ~~department~~ BOARD shall consider the strength, volume, types
 20 and delivery flow rate characteristics of the waste; the
 21 nature, location and type of treatment works; the receiving
 22 waters; and such other factors as deemed necessary.

23 SECTION 16. SECTION 16-4412, R.C.M. 1947, IS AMENDED
 24 TO READ AS FOLLOWS:

25 "16-4412. Federal funds for local public works

1 programs. The board of county commissioners are hereby
 2 authorized to apply for, and receive from, the federal
 3 government on behalf of said metropolitan sanitary and/or
 4 storm sewer district, any moneys that may be appropriated by
 5 the Congress for aiding in local public works projects, and
 6 likewise the board of county commissioners may borrow from
 7 the federal government any funds available for assisting in
 8 the planning or financing of local public works projects,
 9 and repay the same out of the moneys received from the tax
 10 levy provided for in this act.

11 Notwithstanding any other section of this chapter, or
 12 limitation imposed therein, and when the board has applied
 13 pursuant to this section, the board may adopt a system of
 14 charges and rates to require that each recipient of
 15 treatment works services pays its proportionate share of the
 16 costs of operation, maintenance and replacement, and to
 17 require industrial users of treatment works to pay that
 18 portion of the cost of construction of the treatment works
 19 which is allocable to the treatment of that industrial
 20 users' wastes."

21 SECTION 17. SECTION 16-4526, R.C.M. 1947, IS AMENDED
 22 TO READ AS FOLLOWS:

23 "16-4526. Rate to pay operating expenses. The board of
 24 directors in the furnishing of water, sewer service, other
 25 services and facilities, shall fix such rate, fee, toll,

1 rent or other charge as will pay the operating expenses of
 2 the district, provide for repairs and depreciation of works
 3 owned or operated by it, pay the interest on any bonded
 4 debt, and, so far as possible, provide a sinking or other
 5 fund for the payment of the principal of such debt as it may
 6 become due.

7 Notwithstanding any other section of this chapter, or
 8 limitation imposed therein, and when the board of directors
 9 has applied for and received from the federal government any
 10 moneys for the construction, operation and maintenance of
 11 treatment services and works, the board of directors may
 12 adopt a system of charges and rates to require that each
 13 recipient of treatment works services pays its proportionate
 14 share of the costs of operation, maintenance and
 15 replacement, and to require industrial users of treatment
 16 works to pay the portion of the cost of construction of the
 17 treatment works which is allocable to the treatment of that
 18 industrial users' wastes."

19 ~~Section 16. There is a new R.C.M. section that reads~~
 20 ~~as follows:~~

21 ~~Rules. The department may adopt, modify or repeal~~
 22 ~~rules for the administration and implementation of sections~~
 23 ~~{14 and 15 of this act}.~~

-End-