

SENATE BILL NO. 330

INTRODUCED BY *Senators: [Handwritten names]* *ORR*

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE WATER QUALITY NONDEGRADATION PROVISIONS OF MONTANA WATER QUALITY LAWS; CHANGING THE DEFINITION OF HIGH-QUALITY WATERS; CHANGING THE DEFINITION OF INTERESTED PERSON; AND AMENDING SECTIONS 75-5-103 AND 75-5-303, MCA."

WHEREAS, water quality nondegradation rules adopted by the Board of Health and Environmental Sciences in 1994 create a nondegradation review system that is unnecessarily cumbersome and that accordingly requires revision; and

WHEREAS, the water quality nondegradation statutes require amendment to remedy a conflict with the Montana Administrative Procedure Act and for clarification.

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

Section 1. Section 75-5-103, MCA, is amended to read:

"75-5-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.
- (2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.
- (3) "Council" means the water pollution control advisory council provided for in 2-15-2107.
- (4) "Degradation" means a change in water quality that lowers the quality of high-quality waters ~~for a parameter~~. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).
- (5) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.
- (6) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

1 (7) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations
2 of chemical, physical, biological, and other constituents ~~which~~ that are discharged into state waters.

3 (8) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971,
4 whether or not those uses are included in the water quality standards.

5 (9) "High-quality waters" means state waters ~~whose quality for a parameter is better than~~
6 ~~standards established pursuant to 75-5-301. All waters are high quality water unless classified by the~~
7 ~~board within a classification for waters that are not suitable for human consumption or not suitable for~~
8 ~~growth and propagation of fish and associated aquatic life~~ that:

9 (a) if ground water, were classified as of January 1, 1995, within the "I" or "II" classifications
10 established by the board's classification rules; or

11 (b) if surface waters:

12 (i) were classified as of January 1, 1995, within one of the "A" classifications or within the B-1
13 classification established by the board's classification rules;

14 (ii) meet all applicable water quality criteria as provided in [section 2] for at least 90% of the
15 parameters that are listed in [section 2]; and

16 (iii) show no significant alteration of the streambed or channel as the result of past or continuing
17 agricultural, industrial, or municipal activity.

18 (10) "Industrial waste" means a waste substance from the process of business or industry or from
19 the development of any natural resource, together with any sewage that may be present.

20 (11) "Interested person" means a person who ~~has submitted oral or written comments on~~ has a
21 property interest that may be directly affected by the department's preliminary decision regarding
22 degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested
23 authorization to degrade high-quality waters.

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

26 (13) "Mixing zone" means an area established in a permit or final decision on nondegradation issued
27 by the department where water quality standards may be exceeded, subject to conditions that are imposed
28 by the department and that are consistent with the rules adopted by the board.

29 (14) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark,
30 lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or

1 discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state
2 waters.

3 (15) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a
4 point source.

5 (16) "Parameter" means a physical, biological, or chemical property of state water when a value
6 of that property affects the quality of the state water.

7 (17) "Person" means the state, a political subdivision of the state, institution, firm, corporation,
8 partnership, individual, or other entity and includes persons resident in Canada.

9 (18) "Point source" means a discernible, confined, and discrete conveyance, including but not
10 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel
11 or other floating craft, from which pollutants are or may be discharged.

12 (19) (a) "Pollution" means:

13 (i) contamination or other alteration of the physical, chemical, or biological properties of state
14 waters ~~which~~ that exceeds that permitted by Montana water quality standards, including but not limited
15 to standards relating to change in temperature, taste, color, turbidity, or odor; or

16 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or
17 other substance into state water ~~which~~ that will or is likely to create a nuisance or render the waters
18 harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds,
19 fish, or other wildlife.

20 (b) A discharge, seepage, drainage, infiltration or flow ~~which~~ that is authorized under the pollution
21 discharge permit rules of the board is not pollution under this chapter. Activities conducted under the
22 conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered
23 pollution under this chapter.

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

27 (21) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or
28 other wastes to an ultimate disposal point.

29 (22) "Standard of performance" means a standard adopted by the board for the control of the
30 discharge of pollutants ~~which~~ that reflects the greatest degree of effluent reduction achievable through

1 application of the best available demonstrated control technology, processes, operating methods, or other
 2 alternatives, including, ~~where~~ when practicable, a standard permitting no discharge of pollutants.

3 (23) "State waters" means a body of water, irrigation system, or drainage system, either surface
 4 or underground; ~~however~~ However, this subsection does not apply to irrigation waters where the waters
 5 are used up within the irrigation system and the waters are not returned to any other state waters.

6 (24) "Treatment works" means works, including sewage lagoons, installed for treating or holding
 7 sewage, industrial wastes, or other wastes.

8 (25) "Water quality protection practices" means those activities, prohibitions, maintenance
 9 procedures, or other management practices applied to point and nonpoint sources designed to protect,
 10 maintain, and improve the quality of state waters. Water quality protection practices include but are not
 11 limited to treatment requirements, standards of performance, effluent standards, and operating procedures
 12 and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material
 13 storage.

14 (26) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted,
 15 or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of
 16 ground water."
 17

18 **NEW SECTION. Section 2. Standards of water quality.** (1) In formulating and adopting standards
 19 of water quality under 75-5-301(2) or in reviewing and revising standards of water quality under
 20 75-5-301(3):

21 (a) except as provided in subsection (1)(b), the board shall use as standards of water quality for
 22 certain parameters of common, natural occurrence in Montana values that are no more stringent than the
 23 values set forth in the following table:

24 **Water Quality Criteria**

25 <u>Parameter</u>	26 <u>Human Health</u>	27 <u>Aquatic Life</u> <u>(Acute)</u>	28 <u>Aquatic Life</u> <u>(Chronic)</u>
29 A. <u>Metal Parameters</u> (expressed in micrograms per liter)			
30 Aluminum	-	750	87
Antimony	6	-	-
Arsenic	50	360	190

1	Beryllium	4	-	-
2	Barium	2,000	-	-
3	Cadmium	5	3.9*	1.1*
4	Chromium	100	16**	11**
5	Copper	1,300	18*	12*
6	Fluoride	4,000	-	-
7	Iron	300	-	1,000
8	Lead	5	82*	3.2*
9	Manganese	50	-	-
10	Mercury	2	2.4	0.012
11	Nickel	100	1,400*	160*
12	Selenium	50	20	5
13	Silver	50	4.1	-
14	Thallium	2	-	-
15	Zinc	5,000	120*	110*
16	B. <u>Other Parameters</u> (expressed in milligrams per liter)			
17	Nitrate	10	-	-
18	Ammonia	-	25***	2.2***
19	pH	6 to 9 std. units		
20	Sulfate	1,800		

21 Notes: All metal parameters are stated as dissolved, and compliance must be measured using
22 dissolved methods.

23 * Hardness dependent (value assumes hardness if 100)

24 ** Hexavalent

25 *** Ammonia is pH and temperature dependent (value of pH = 7; T = 10);

26 (b) for parameters not included in subsection (1)(a), the board shall use maximum contaminant
27 levels, as established under 40 CFR, part 141, as the standards of water quality for human health;

28 (c) for parameters not included in subsection (1)(a) and for which maximum contaminant levels
29 have not been established, the board may formulate and adopt standards of water quality for human health
30 that satisfy the following criteria:

1 (i) the values must be based on scientifically valid studies and derived in a manner consistent with
2 draft or final federal regulations, guidelines, or criteria for assessing the health risks of environmental
3 pollutants;

4 (ii) for carcinogens, the values must represent a concentration associated with an excess lifetime
5 cancer risk level because of continuous lifetime exposure, not to exceed 1×10^{-4} ; and

6 (iii) for systemic toxicants, the values must represent a concentration to which the human
7 population, including sensitive subgroups, could be exposed on a daily basis without appreciable risk of
8 deleterious effects during a lifetime; and

9 (d) for all metal parameters not included in subsection (1)(a), the values used by the board as
10 standards of water quality must be stated as dissolved concentrations.

11 (2) In formulating and adopting standards of water quality under 75-5-301(2) or in reviewing and
12 revising standards of water quality under 75-5-301(3), the board may not use narrative statements for any
13 parameter.

14 (3) For the purpose of subsection (1)(c)(iii), systemic toxicants must include toxic chemicals that
15 cause effects other than cancer or mutation.

16
17 **Section 3.** Section 75-5-303, MCA, is amended to read:

18 **"75-5-303. Nondegradation policy.** (1) Existing uses of high-quality state waters and the level
19 of water quality necessary to protect those uses must be maintained and protected.

20 (2) Unless authorized by the department under subsection (3), the quality of high-quality waters
21 must be maintained.

22 (3) The department may not authorize degradation of high-quality waters unless it has been
23 affirmatively demonstrated by a preponderance of evidence to the department that:

24 (a) degradation is necessary because there are no economically, environmentally, and
25 technologically feasible ~~alternatives~~ modifications to the proposed project that would result in no
26 degradation;

27 (b) the proposed project will result in important economic or social development ~~that exceeds the~~
28 ~~benefit to society of maintaining existing high-quality waters~~ and that the benefit of the development
29 exceeds the costs to society of allowing degradation of high-quality waters;

30 (c) existing and anticipated use of state waters will be fully protected; and

1 (d) the least degrading water quality protection practices determined by the department to be
 2 economically, environmentally, and technologically feasible will be fully implemented by the applicant prior
 3 to and during the proposed activity.

4 (4) The department shall issue a preliminary decision either denying or authorizing degradation and
 5 shall provide public notice and a 30-day comment period prior to issuing a final decision. The department's
 6 preliminary and final decisions must include:

7 (a) a statement of the basis for the decision; and

8 (b) a detailed description of all conditions applied to any authorization to degrade state waters,
 9 including, when applicable, monitoring requirements, required water protection practices, reporting
 10 requirements, effluent limits, designation of the mixing zones, the limits of degradation authorized, and
 11 methods of determining compliance with the authorization for degradation.

12 (5) An interested person wishing to challenge a final department decision may request a hearing
 13 before the board within 30 days of the final department decision. The contested case procedures of Title
 14 2, chapter 4, part 6, apply to a hearing under this section.

15 (6) ~~Every~~ Periodically, but not more often than every 5 years, the department shall may review
 16 authorizations to degrade state waters. ~~To enable the department to adequately review authorizations as~~
 17 ~~required under this section, the authorization holder shall revise the initial authorization application no~~
 18 ~~sooner than 3 1/2 years and no later than 4 years after the date of the authorization or the date of the~~
 19 ~~latest department review. The specific revised information required must be determined by the department.~~
 20 ~~If, based on the review, the department determines that the standards and objectives of 75-5-303 or the~~
 21 ~~rules adopted pursuant to 75-5-303 are not being met, it shall revoke or~~ Following the review, the
 22 department may, after timely notice and opportunity for hearing, modify the authorization if the department
 23 determines that an economically, environmentally, and technologically feasible modification to the
 24 development exists. A decision by the department to ~~revoke or~~ modify an authorization may be appealed
 25 to the board.

26 (7) The board shall adopt rules to implement this section."
 27

28 **NEW SECTION. Section 4. Codification instruction.** [Section 2] is intended to be codified as an
 29 integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to
 30 [section 2].

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0330, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the water quality nondegradation provisions of Montana water quality laws; changing the definition of high-quality waters; changing the definition of interested person.

ASSUMPTIONS:

1. Changes to the Montana Water Quality Act (MWQA) and water quality standards would result in the Environmental Protection Agency (EPA) disapproving our water quality standards and withdrawing delegation of National Pollutant Discharge Elimination System authority. Though this bill would result in the EPA requiring a federal permit for all discharges to surface water in Montana and developing and maintaining water quality standards for Montana, the Department of Health and Environmental Sciences would still be required to maintain these functions by the MWQA.
2. Revising the existing water quality standards and nondegradation rules would require one FTE (grade 15) for one year. Operating expenses include normal expenses for an FTE, plus a 11.5% indirect cost, plus greater than normal travel and printing costs. Equipment of \$5,000 is needed for the standard office equipment plus a PC.
3. It is assumed that the EPA will not participate in the cost of the re-write, and that the cost will be absorbed by the overhead built into fees charged for permits.
4. No additional revenue will be generated by the actions of this bill.

FISCAL IMPACT:

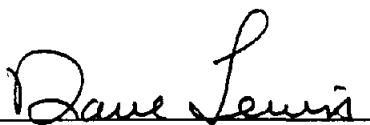
Expenditures:


	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
FTE	1.00	0
Personal services	33,900	0
Operating expenses	10,000	0
Equipment	<u>5,000</u>	<u>0</u>
Total	48,900	0

Funding:

State special revenue (02) 48,900

(continued)

 2-13-95
 DAVID LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

 2-13-95
 CHUCK SWYSGOOD, PRIMARY SPONSOR DATE

Fiscal Note for SB0330, as introduced

SB 330

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Water dischargers in Montana would be required to have both state and federal permits, and the affected people of Montana would be subject to both state and federal surface water quality standards.

TECHNICAL NOTES:

SB0331 also requires a re-write of the water quality standards with an FTE allocated for this purpose. If both bills pass, only one FTE would be required.

1 SENATE BILL NO. 330

2 INTRODUCED BY SWYSGOOD, BURNETT, FELAND, OHS, HARGROVE, PIPINICH, ORR, MENAHAN,
3 DEVLIN, GRIMES, CRISMORE, SLITER, STOVALL, REHBEIN, TASH, BAER, JACOBSON, COLE,
4 HARDING, GRADY, PAVLOVICH, JENKINS, QUILICI, CLARK, BECK, HARP, KEATING, GRINDE,
5 FOSTER, EMERSON, ELLIS, KNOX, HERTEL, LYNCH

6
7 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE WATER QUALITY
8 NONDEGRADATION PROVISIONS OF MONTANA WATER QUALITY LAWS; CHANGING THE DEFINITION
9 OF HIGH-QUALITY WATERS; CHANGING THE DEFINITION OF INTERESTED PERSON; AND AMENDING
10 SECTIONS 75-5-103 AND 75-5-303, MCA."

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12 WHEREAS, water quality nondegradation rules adopted by the Board of Health and Environmental
13 Sciences in 1994 create a nondegradation review system that is unnecessarily cumbersome and that
14 accordingly requires revision; and

15 WHEREAS, the water quality nondegradation statutes require amendment to remedy a conflict with
16 the Montana Administrative Procedure Act and for clarification.

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18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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20 **Section 1.** Section 75-5-103, MCA, is amended to read:

21 **"75-5-103. Definitions.** Unless the context requires otherwise, in this chapter, the following
22 definitions apply:

23 (1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

24 (2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes,
25 or other wastes, creating a hazard to human health.

26 (3) "Council" means the water pollution control advisory council provided for in 2-15-2107.

27 (4) "Degradation" means a change in water quality that lowers the quality of high-quality waters
28 ~~for a parameter~~ FOR A PARAMETER IF THAT CHANGE IS LIKELY TO AFFECT A BENEFICIAL USE. The term
29 does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

30 (5) "Department" means the department of health and environmental sciences provided for in Title

1 2, chapter 15, part 21.

2 (6) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and
3 includes sewage systems and treatment works.

4 (7) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations
5 of chemical, physical, biological, and other constituents ~~which~~ that are discharged into state waters.

6 (8) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971,
7 whether or not those uses are included in the water quality standards.

8 (9) "High-quality waters" means ALL state waters ~~whose quality for a parameter is better than~~
9 ~~standards established pursuant to 75-5-301. All waters are high quality water unless classified by the~~
10 ~~board within a classification for waters that are not suitable for human consumption or not suitable for~~
11 ~~growth and propagation of fish and associated aquatic life~~ that:

12 ~~(a) if ground water, were classified as of January 1, 1995, within the "I" or "II" classifications~~
13 ~~established by the board's classification rules; or~~

14 ~~(b) if surface waters:~~

15 ~~(i) were classified as of January 1, 1995, within one of the "A" classifications or within the B-1~~
16 ~~classification established by the board's classification rules;~~

17 ~~(ii) meet all applicable water quality criteria as provided in [section 2] for at least 90% of the~~
18 ~~parameters that are listed in [section 2]; and~~

19 ~~(iii) show no significant alteration of the streambed or channel as the result of past or continuing~~
20 ~~agricultural, industrial, or municipal activity, EXCEPT:~~

21 (A) GROUND WATER CLASSIFIED AS OF JANUARY 1, 1995, WITHIN THE "III" OR
22 "IV" CLASSIFICATIONS ESTABLISHED BY THE BOARD'S CLASSIFICATION RULES; AND

23 (B) SURFACE WATERS THAT:

24 (I) ARE NOT CAPABLE OF SUPPORTING ANY ONE OF THE DESIGNATED USES
25 FOR THEIR CLASSIFICATION; OR

26 (II) HAVE ZERO FLOW OR SURFACE EXPRESSION FOR MORE THAN 270 DAYS
27 DURING MOST YEARS.

28 (10) "Industrial waste" means a waste substance from the process of business or industry or from
29 the development of any natural resource, together with any sewage that may be present.

30 (11) "Interested person" means a person who ~~has submitted oral or written comments on~~ has a

1 property interest that may be directly affected by the department's preliminary decision regarding
 2 degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested
 3 authorization to degrade high-quality waters.

4 (12) "Local department of health" means the staff, including health officers, employed by a county,
 5 city, city-county, or district board of health.

6 (13) "Mixing zone" means an area established in a permit or final decision on nondegradation issued
 7 by the department where water quality standards may be exceeded, subject to conditions that are imposed
 8 by the department and that are consistent with the rules adopted by the board.

9 (14) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark,
 10 lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or
 11 discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state
 12 waters.

13 (15) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a
 14 point source.

15 (16) "Parameter" means a physical, biological, or chemical property of state water when a value
 16 of that property affects the quality of the state water.

17 (17) "Person" means the state, a political subdivision of the state, institution, firm, corporation,
 18 partnership, individual, or other entity and includes persons resident in Canada.

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 20 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel
 21 or other floating craft, from which pollutants are or may be discharged.

22 (19) (a) "Pollution" means:

23 (i) contamination or other alteration of the physical, chemical, or biological properties of state
 24 waters ~~which~~ that exceeds that permitted by Montana water quality standards, including but not limited
 25 to standards relating to change in temperature, taste, color, turbidity, or odor; or

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 27 other substance into state water ~~which~~ that will or is likely to create a nuisance or render the waters
 28 harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds,
 29 fish, or other wildlife.

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 2 conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered
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 10 discharge of pollutants ~~which~~ that reflects the greatest degree of effluent reduction achievable through
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 12 alternatives, including, ~~where~~ when practicable, a standard permitting no discharge of pollutants.

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 14 or underground; ~~however~~ However, this subsection does not apply to irrigation waters where the waters
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1 ~~Notes: All metal parameters are stated as dissolved, and compliance must be measured using~~
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4 ~~** Hexavalent~~

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 25 ~~cause effects other than cancer or mutation.~~

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1 must be maintained.

2 (3) The department may not authorize degradation of high-quality waters unless it has been
3 affirmatively demonstrated by a preponderance of evidence to the department that:

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5 technologically feasible ~~alternatives~~ modifications to the proposed project that would result in no
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24 2, chapter 4, part 6, apply to a hearing under this section.

25 ~~(6) Every Periodically, but not more often than every 5 years, the department shall may review~~
26 ~~authorizations to degrade state waters. To enable the department to adequately review authorizations as~~
27 ~~required under this section, the authorization holder shall revise the initial authorization application no~~
28 ~~sooner than 3 1/2 years and no later than 4 years after the date of the authorization or the date of the~~
29 ~~latest department review. The specific revised information required must be determined by the department.~~
30 ~~If, based on the review, the department determines that the standards and objectives of 75-5-303 or the~~

1 ~~rules adopted pursuant to 75-5-303 are not being met, it shall revoke or~~ Following the review, the
 2 department may, after timely notice and opportunity for hearing, modify the authorization if the department
 3 determines that an economically, environmentally, and technologically feasible modification to the
 4 development exists. A decision by the department to revoke or modify an authorization may be appealed
 5 to the board.

6 (6) EVERY 5 YEARS, THE DEPARTMENT SHALL REVIEW AUTHORIZATIONS TO DEGRADE STATE
 7 WATERS. TO ENABLE THE DEPARTMENT TO ADEQUATELY REVIEW AUTHORIZATIONS AS REQUIRED
 8 UNDER THIS SECTION, THE AUTHORIZATION HOLDER SHALL REVISE THE INITIAL AUTHORIZATION
 9 APPLICATION NO SOONER THAN 3 1/2 YEARS AND NO LATER THAN 4 YEARS AFTER THE DATE OF
 10 THE AUTHORIZATION OR THE DATE OF THE LATEST DEPARTMENT REVIEW. THE SPECIFIC REVISED
 11 INFORMATION REQUIRED MUST BE DETERMINED BY THE DEPARTMENT. IF, BASED ON THE REVIEW,
 12 THE DEPARTMENT DETERMINES THAT THE STANDARDS AND OBJECTIVES OF 75-5-303 OR THE RULES
 13 ADOPTED PURSUANT TO 75-5-303 ARE NOT BEING MET, IT SHALL REVOKE OR MODIFY THE
 14 AUTHORIZATION. A DECISION BY THE DEPARTMENT TO REVOKE OR MODIFY AN AUTHORIZATION MAY
 15 BE APPEALED TO THE BOARD.

16 (7) The board shall adopt rules to implement this section."
 17

18 ~~NEW SECTION. Section 4. Codification instruction. [Section 2] is intended to be codified as an~~
 19 ~~integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to~~
 20 ~~[section 2].~~

21 -END-

SENATE BILL NO. 330

INTRODUCED BY SWYSGOOD, BURNETT, FELAND, OHS, HARGROVE, PIPINICH, ORR, MENAHAN,
 DEVLIN, GRIMES, CRISMORE, SLITER, STOVALL, REHBEIN, TASH, BAER, JACOBSON, COLE,
 HARDING, GRADY, PAVLOVICH, JENKINS, QUILICI, CLARK, BECK, HARP, KEATING, GRINDE,
 FOSTER, EMERSON, ELLIS, KNOX, HERTEL, LYNCH

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE WATER QUALITY
 NONDEGRADATION PROVISIONS OF MONTANA WATER QUALITY LAWS; CHANGING THE DEFINITION
 OF HIGH-QUALITY WATERS; CHANGING THE DEFINITION OF INTERESTED PERSON; AND AMENDING
 SECTIONS 75-5-103 AND 75-5-303, MCA."

WHEREAS, water quality nondegradation rules adopted by the Board of Health and Environmental
 Sciences in 1994 create a nondegradation review system that is unnecessarily cumbersome and that
 accordingly requires revision; and

WHEREAS, the water quality nondegradation statutes require amendment to remedy a conflict with
 the Montana Administrative Procedure Act and for clarification.

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

Section 1. Section 75-5-103, MCA, is amended to read:

"75-5-103. Definitions. Unless the context requires otherwise, in this chapter, the following
 definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes,
 or other wastes, creating a hazard to human health.

(3) "Council" means the water pollution control advisory council provided for in 2-15-2107.

(4) "Degradation" means a change in water quality that lowers the quality of high-quality waters
~~for a parameter~~ FOR A PARAMETER IF THAT CHANGE IS LIKELY TO AFFECT A BENEFICIAL USE. The term
 does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

(5) "Department" means the department of health and environmental sciences provided for in Title

1 2, chapter 15, part 21.

2 (6) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and
3 includes sewage systems and treatment works.

4 (7) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations
5 of chemical, physical, biological, and other constituents ~~which~~ that are discharged into state waters.

6 (8) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971,
7 whether or not those uses are included in the water quality standards.

8 (9) "High-quality waters" means ALL state waters ~~whose quality for a parameter is better than~~
9 ~~standards established pursuant to 75-5-301. All waters are high quality water unless classified by the~~
10 ~~board within a classification for waters that are not suitable for human consumption or not suitable for~~
11 ~~growth and propagation of fish and associated aquatic life that:~~

12 ~~(a) if ground water, were classified as of January 1, 1995, within the "I" or "II" classifications~~
13 ~~established by the board's classification rules; or~~

14 ~~(b) if surface waters:~~

15 ~~(i) were classified as of January 1, 1995, within one of the "A" classifications or within the B-1~~
16 ~~classification established by the board's classification rules;~~

17 ~~(ii) meet all applicable water quality criteria as provided in [section 2] for at least 90% of the~~
18 ~~parameters that are listed in [section 2]; and~~

19 ~~(iii) show no significant alteration of the streambed or channel as the result of past or continuing~~
20 ~~agricultural, industrial, or municipal activity, EXCEPT:~~

21 (A) GROUND WATER CLASSIFIED AS OF JANUARY 1, 1995, WITHIN THE "III" OR
22 "IV" CLASSIFICATIONS ESTABLISHED BY THE BOARD'S CLASSIFICATION RULES; AND

23 (B) SURFACE WATERS THAT:

24 (I) ARE NOT CAPABLE OF SUPPORTING ANY ONE OF THE DESIGNATED USES
25 FOR THEIR CLASSIFICATION; OR

26 (II) HAVE ZERO FLOW OR SURFACE EXPRESSION FOR MORE THAN 270 DAYS
27 DURING MOST YEARS.

28 (10) "Industrial waste" means a waste substance from the process of business or industry or from
29 the development of any natural resource, together with any sewage that may be present.

30 (11) "Interested person" means a person who ~~has submitted oral or written comments on~~ has a

1 property interest that may be directly affected by the department's preliminary decision regarding
2 degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested
3 authorization to degrade high-quality waters.

4 (12) "Local department of health" means the staff, including health officers, employed by a county,
5 city, city-county, or district board of health.

6 (13) "Mixing zone" means an area established in a permit or final decision on nondegradation issued
7 by the department where water quality standards may be exceeded, subject to conditions that are imposed
8 by the department and that are consistent with the rules adopted by the board.

9 (14) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark,
10 lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or
11 discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state
12 waters.

13 (15) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a
14 point source.

15 (16) "Parameter" means a physical, biological, or chemical property of state water when a value
16 of that property affects the quality of the state water.

17 (17) "Person" means the state, a political subdivision of the state, institution, firm, corporation,
18 partnership, individual, or other entity and includes persons resident in Canada.

19 (18) "Point source" means a discernible, confined, and discrete conveyance, including but not
20 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel
21 or other floating craft, from which pollutants are or may be discharged.

22 (19) (a) "Pollution" means:

23 (i) contamination or other alteration of the physical, chemical, or biological properties of state
24 waters ~~which~~ that exceeds that permitted by Montana water quality standards, including but not limited
25 to standards relating to change in temperature, taste, color, turbidity, or odor; or

26 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or
27 other substance into state water ~~which~~ that will or is likely to create a nuisance or render the waters
28 harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds,
29 fish, or other wildlife.

30 (b) A discharge, seepage, drainage, infiltration or flow ~~which~~ that is authorized under the pollution

1 discharge permit rules of the board is not pollution under this chapter. Activities conducted under the
 2 conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered
 3 pollution under this chapter.

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

7 (21) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or
 8 other wastes to an ultimate disposal point.

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

13 (23) "State waters" means a body of water, irrigation system, or drainage system, either surface
 14 or underground; ~~however~~ However, this subsection does not apply to irrigation waters where the waters
 15 are used up within the irrigation system and the waters are not returned to any other state waters.

16 (24) "Treatment works" means works, including sewage lagoons, installed for treating or holding
 17 sewage, industrial wastes, or other wastes.

18 (25) "Water quality protection practices" means those activities, prohibitions, maintenance
 19 procedures, or other management practices applied to point and nonpoint sources designed to protect,
 20 maintain, and improve the quality of state waters. Water quality protection practices include but are not
 21 limited to treatment requirements, standards of performance, effluent standards, and operating procedures
 22 and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material
 23 storage.

24 (26) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted,
 25 or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of
 26 ground water."
 27

28 ~~NEW SECTION. Section 2. Standards of water quality. (1) In formulating and adopting standards~~
 29 ~~of water quality under 75-5-301(2) or in reviewing and revising standards of water quality under~~
 30 ~~75-5-301(3):~~

1 ~~Notes: All metal parameters are stated as dissolved, and compliance must be measured using~~
 2 ~~dissolved methods.~~

3 ~~* Hardness dependent (value assumes hardness of 100)~~

4 ~~** Hexavalent~~

5 ~~*** Ammonia is pH and temperature dependent (value of pH = 7; T = 10);~~

6 ~~(b) for parameters not included in subsection (1)(a), the board shall use maximum contaminant~~
 7 ~~levels, as established under 40 CFR, part 141, as the standards of water quality for human health;~~

8 ~~(c) for parameters not included in subsection (1)(a) and for which maximum contaminant levels~~
 9 ~~have not been established, the board may formulate and adopt standards of water quality for human health~~
 10 ~~that satisfy the following criteria:~~

11 ~~(i) the values must be based on scientifically valid studies and derived in a manner consistent with~~
 12 ~~draft or final federal regulations, guidelines, or criteria for assessing the health risks of environmental~~
 13 ~~pollutants;~~

14 ~~(ii) for carcinogens, the values must represent a concentration associated with an excess lifetime~~
 15 ~~cancer risk level because of continuous lifetime exposure, not to exceed 1×10^{-4} ; and~~

16 ~~(iii) for systemic toxicants, the values must represent a concentration to which the human~~
 17 ~~population, including sensitive subgroups, could be exposed on a daily basis without appreciable risk of~~
 18 ~~deleterious effects during a lifetime; and~~

19 ~~(d) for all metal parameters not included in subsection (1)(a), the values used by the board as~~
 20 ~~standards of water quality must be stated as dissolved concentrations.~~

21 ~~(2) In formulating and adopting standards of water quality under 75-5-301(2) or in reviewing and~~
 22 ~~revising standards of water quality under 75-5-301(3), the board may not use narrative statements for any~~
 23 ~~parameter.~~

24 ~~(3) For the purpose of subsection (1)(c)(iii), systemic toxicants must include toxic chemicals that~~
 25 ~~cause effects other than cancer or mutation.~~

26
 27 **Section 2.** Section 75-5-303, MCA, is amended to read:

28 **"75-5-303. Nondegradation policy.** (1) Existing uses of high quality state waters and the level
 29 of water quality necessary to protect those uses must be maintained and protected.

30 (2) Unless authorized by the department under subsection (3), the quality of high-quality waters

1 must be maintained.

2 (3) The department may not authorize degradation of high-quality waters unless it has been
3 affirmatively demonstrated by a preponderance of evidence to the department that:

4 (a) degradation is necessary because there are no economically, environmentally, and
5 technologically feasible ~~alternatives~~ modifications to the proposed project that would result in no
6 degradation;

7 (b) the proposed project will result in important economic or social development ~~that exceeds the~~
8 ~~benefit to society of maintaining existing high-quality waters~~ and that the benefit of the development
9 exceeds the costs to society of allowing degradation of high-quality waters;

10 (c) existing and anticipated use of state waters will be fully protected; and

11 (d) the least degrading water quality protection practices determined by the department to be
12 economically, environmentally, and technologically feasible will be fully implemented by the applicant prior
13 to and during the proposed activity.

14 (4) The department shall issue a preliminary decision either denying or authorizing degradation and
15 shall provide public notice and a 30-day comment period prior to issuing a final decision. The department's
16 preliminary and final decisions must include:

17 (a) a statement of the basis for the decision; and

18 (b) a detailed description of all conditions applied to any authorization to degrade state waters,
19 including, when applicable, monitoring requirements, required water protection practices, reporting
20 requirements, effluent limits, designation of the mixing zones, the limits of degradation authorized, and
21 methods of determining compliance with the authorization for degradation.

22 (5) An interested person wishing to challenge a final department decision may request a hearing
23 before the board within 30 days of the final department decision. The contested case procedures of Title
24 2, chapter 4, part 6, apply to a hearing under this section.

25 ~~(6) Every Periodically, but not more often than every 5 years, the department shall may review~~
26 ~~authorizations to degrade state waters. To enable the department to adequately review authorizations as~~
27 ~~required under this section, the authorization holder shall revise the initial authorization application no~~
28 ~~sooner than 3 1/2 years and no later than 4 years after the date of the authorization or the date of the~~
29 ~~latest department review. The specific revised information required must be determined by the department.~~
30 ~~If, based on the review, the department determines that the standards and objectives of 75-5-303 or the~~

1 ~~rules adopted pursuant to 75-5-303 are not being met, it shall revoke or~~ Following the review, the
 2 department may, after timely notice and opportunity for hearing, modify the authorization if the department
 3 determines that an economically, environmentally, and technologically feasible modification to the
 4 development exists. A decision by the department to revoke or modify an authorization may be appealed
 5 to the board.

6 ~~(6) EVERY 5 YEARS, THE DEPARTMENT SHALL REVIEW AUTHORIZATIONS TO DEGRADE STATE~~
 7 ~~WATERS. TO ENABLE THE DEPARTMENT TO ADEQUATELY REVIEW AUTHORIZATIONS AS REQUIRED~~
 8 ~~UNDER THIS SECTION, THE AUTHORIZATION HOLDER SHALL REVISE THE INITIAL AUTHORIZATION~~
 9 ~~APPLICATION NO SOONER THAN 3 1/2 YEARS AND NO LATER THAN 4 YEARS AFTER THE DATE OF~~
 10 ~~THE AUTHORIZATION OR THE DATE OF THE LATEST DEPARTMENT REVIEW. THE SPECIFIC REVISED~~
 11 ~~INFORMATION REQUIRED MUST BE DETERMINED BY THE DEPARTMENT. IF, BASED ON THE REVIEW,~~
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 14 ~~AUTHORIZATION. A DECISION BY THE DEPARTMENT TO REVOKE OR MODIFY AN AUTHORIZATION MAY~~
 15 ~~BE APPEALED TO THE BOARD.~~

16 (6) PERIODICALLY, BUT NOT MORE OFTEN THAN EVERY 5 YEARS, THE DEPARTMENT MAY
 17 REVIEW AUTHORIZATIONS TO DEGRADE STATE WATERS. FOLLOWING THE REVIEW, THE
 18 DEPARTMENT MAY, AFTER TIMELY NOTICE AND OPPORTUNITY FOR HEARING, MODIFY THE
 19 AUTHORIZATION IF THE DEPARTMENT DETERMINES THAT AN ECONOMICALLY, ENVIRONMENTALLY,
 20 AND TECHNOLOGICALLY FEASIBLE MODIFICATION TO THE DEVELOPMENT EXISTS. THE DECISION BY
 21 THE DEPARTMENT TO MODIFY AN AUTHORIZATION MAY BE APPEALED TO THE BOARD.

22 (7) The board shall adopt rules to implement this section."
 23

24 ~~NEW SECTION. Section 4. Codification instruction. [Section 2] is intended to be codified as an~~
 25 ~~integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to~~
 26 ~~{section 2}.~~

27 -END-



HOUSE STANDING COMMITTEE REPORT

March 23, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 330 (third reading copy -- blue) be concurred in as amended.

Signed: *Dick Knox*
Dick Knox, Chair

And, that such amendments read:

Carried by: Rep. Ohs

1. Page 3, line 1.

Strike: "property" through "directly"

Insert: "real property interest, a water right, or an economic interest that is or may be directly and adversely"

-END-

SB 330

Committee Vote:
Yes 12, No 6.

HOUSE



HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 330
Representative Larson

March 25, 1995 7:56 am
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 330 (third reading copy -- blue).

Signed: Larson
Representative Larson

And, that such amendments to Senate Bill 330 read as follows:

1. Page 1, line 28.
Strike: "IF" through "USE"

-END-

ADOPT

82-6

REJECT

SB 330

HOUSE

1 SENATE BILL NO. 330

2 INTRODUCED BY SWYSGOOD, BURNETT, FELAND, OHS, HARGROVE, PIPINICH, ORR, MENAHAN,
 3 DEVLIN, GRIMES, CRISMORE, SLITER, STOVALL, REHBEIN, TASH, BAER, JACOBSON, COLE,
 4 HARDING, GRADY, PAVLOVICH, JENKINS, QUILICI, CLARK, BECK, HARP, KEATING, GRINDE,
 5 FOSTER, EMERSON, ELLIS, KNOX, HERTEL, LYNCH

6
 7 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE WATER QUALITY
 8 NONDEGRADATION PROVISIONS OF MONTANA WATER QUALITY LAWS; CHANGING THE DEFINITION
 9 OF HIGH-QUALITY WATERS; CHANGING THE DEFINITION OF INTERESTED PERSON; AND AMENDING
 10 SECTIONS 75-5-103 AND 75-5-303, MCA."

11
 12 WHEREAS, water quality nondegradation rules adopted by the Board of Health and Environmental
 13 Sciences in 1994 create a nondegradation review system that is unnecessarily cumbersome and that
 14 accordingly requires revision; and

15 WHEREAS, the water quality nondegradation statutes require amendment to remedy a conflict with
 16 the Montana Administrative Procedure Act and for clarification.

17
 18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19
 20 **Section 1.** Section 75-5-103, MCA, is amended to read:

21 **"75-5-103. Definitions.** Unless the context requires otherwise, in this chapter, the following
 22 definitions apply:

23 (1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

24 (2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes,
 25 or other wastes, creating a hazard to human health.

26 (3) "Council" means the water pollution control advisory council provided for in 2-15-2107.

27 (4) "Degradation" means a change in water quality that lowers the quality of high-quality waters
 28 ~~for a parameter~~ FOR A PARAMETER IF THAT CHANGE IS LIKELY TO AFFECT A BENEFICIAL USE. The term
 29 does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

30 (5) "Department" means the department of health and environmental sciences provided for in Title

1 2, chapter 15, part 21.

2 (6) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and
3 includes sewage systems and treatment works.

4 (7) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations
5 of chemical, physical, biological, and other constituents ~~which~~ that are discharged into state waters.

6 (8) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971,
7 whether or not those uses are included in the water quality standards.

8 (9) "High-quality waters" means ALL state waters ~~whose quality for a parameter is better than~~
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10 ~~board within a classification for waters that are not suitable for human consumption or not suitable for~~
11 ~~growth and propagation of fish and associated aquatic life~~ that:

12 ~~(a) if ground water, were classified as of January 1, 1995, within the "I" or "II" classifications~~
13 ~~established by the board's classification rules; or~~

14 ~~(b) if surface waters:~~

15 ~~(i) were classified as of January 1, 1995, within one of the "A" classifications or within the B-1~~
16 ~~classification established by the board's classification rules;~~

17 ~~(ii) meet all applicable water quality criteria as provided in [section 2] for at least 90% of the~~
18 ~~parameters that are listed in [section 2]; and~~

19 ~~(iii) show no significant alteration of the streambed or channel as the result of past or continuing~~
20 ~~agricultural, industrial, or municipal activity, EXCEPT:~~

21 ~~(A) GROUND WATER CLASSIFIED AS OF JANUARY 1, 1995, WITHIN THE "III" OR "IV"~~
22 ~~CLASSIFICATIONS ESTABLISHED BY THE BOARD'S CLASSIFICATION RULES; AND~~

23 ~~(B) SURFACE WATERS THAT:~~

24 ~~(I) ARE NOT CAPABLE OF SUPPORTING ANY ONE OF THE DESIGNATED USES FOR THEIR~~
25 ~~CLASSIFICATION; OR~~

26 ~~(II) HAVE ZERO FLOW OR SURFACE EXPRESSION FOR MORE THAN 270 DAYS DURING MOST~~
27 ~~YEARS.~~

28 (10) "Industrial waste" means a waste substance from the process of business or industry or from
29 the development of any natural resource, together with any sewage that may be present.

30 (11) "Interested person" means a person who ~~has submitted oral or written comments on~~ has a

1 ~~property interest that may be directly~~ REAL PROPERTY INTEREST, A WATER RIGHT, OR AN ECONOMIC
 2 INTEREST THAT IS OR MAY BE DIRECTLY AND ADVERSELY affected by the department's preliminary
 3 decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has
 4 requested authorization to degrade high-quality waters.

5 (12) "Local department of health" means the staff, including health officers, employed by a county,
 6 city, city-county, or district board of health.

7 (13) "Mixing zone" means an area established in a permit or final decision on nondegradation issued
 8 by the department where water quality standards may be exceeded, subject to conditions that are imposed
 9 by the department and that are consistent with the rules adopted by the board.

10 (14) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark,
 11 lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or
 12 discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state
 13 waters.

14 (15) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a
 15 point source.

16 (16) "Parameter" means a physical, biological, or chemical property of state water when a value
 17 of that property affects the quality of the state water.

18 (17) "Person" means the state, a political subdivision of the state, institution, firm, corporation,
 19 partnership, individual, or other entity and includes persons resident in Canada.

20 (18) "Point source" means a discernible, confined, and discrete conveyance, including but not
 21 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel
 22 or other floating craft, from which pollutants are or may be discharged.

23 (19) (a) "Pollution" means:

24 (i) contamination or other alteration of the physical, chemical, or biological properties of state
 25 waters ~~which~~ that exceeds that permitted by Montana water quality standards, including but not limited
 26 to standards relating to change in temperature, taste, color, turbidity, or odor; or

27 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or
 28 other substance into state water ~~which~~ that will or is likely to create a nuisance or render the waters
 29 harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds,
 30 fish, or other wildlife.

1 **(b)** A discharge, seepage, drainage, infiltration or flow ~~which~~ that is authorized under the pollution
2 discharge permit rules of the board is not pollution under this chapter. Activities conducted under the
3 conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered
4 pollution under this chapter.

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

8 (21) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or
9 other wastes to an ultimate disposal point.

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

14 (23) "State waters" means a body of water, irrigation system, or drainage system, either surface
15 or underground; ~~however~~ However, this subsection does not apply to irrigation waters where the waters
16 are used up within the irrigation system and the waters are not returned to any other state waters.

17 (24) "Treatment works" means works, including sewage lagoons, installed for treating or holding
18 sewage, industrial wastes, or other wastes.

19 (25) "Water quality protection practices" means those activities, prohibitions, maintenance
20 procedures, or other management practices applied to point and nonpoint sources designed to protect,
21 maintain, and improve the quality of state waters. Water quality protection practices include but are not
22 limited to treatment requirements, standards of performance, effluent standards, and operating procedures
23 and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material
24 storage.

25 (26) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted,
26 or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of
27 ground water."

28
29 ~~NEW SECTION. Section 2. Standards of water quality. (1) In formulating and adopting standards~~
30 ~~of water quality under 75-5-301(2) or in reviewing and revising standards of water quality under~~

1 ~~75-5-301(3):~~

2 ~~(a) except as provided in subsection (1)(b), the board shall use as standards of water quality for~~
 3 ~~certain parameters of common, natural occurrence in Montana values that are no more stringent than the~~
 4 ~~values set forth in the following table:~~

5 Water Quality Criteria

6 <u>Parameter</u>	7 <u>Human Health</u>	8 <u>Aquatic Life</u>	9 <u>Aquatic Life</u>
		10 <u>(Acute)</u>	11 <u>(Chronic)</u>
12 <u>A. Metal Parameters (expressed in micrograms per liter)</u>			
13 Aluminum		14 750	15 87
16 Antimony	17 6		
18 Arsenic	19 50	20 360	21 190
22 Beryllium	23 4		
24 Barium	25 2,000		
26 Cadmium	27 5	28 3.9*	29 1.1*
30 Chromium	100	16**	11**
Copper	1,300	18*	12*
Fluoride	4,000		
Iron	300		1,000
Lead	5	82*	3.2*
Manganese	50		
Mercury	2	2.4	0.012
Nickel	100	1,400*	160*
Selenium	50	20	5
Silver	50	4.1	
Thallium	2		
Zinc	5,000	120*	110*
31 <u>B. Other Parameters (expressed in milligrams per liter)</u>			
32 Nitrate	10		
33 Ammonia		25***	2.2***
34 pH	6 to 9 std. units		

1 Sulfate ~~1,800~~

2 Notes: All metal parameters are stated as dissolved, and compliance must be measured using
3 dissolved methods.

4 ~~* Hardness dependent (value assumes hardness of 100)~~

5 ~~** Hexavalent~~

6 ~~*** Ammonia is pH and temperature dependent (value of pH = 7; T = 10);~~

7 ~~(b) for parameters not included in subsection (1)(a), the board shall use maximum contaminant
8 levels, as established under 40 CFR, part 141, as the standards of water quality for human health;~~

9 ~~(c) for parameters not included in subsection (1)(a) and for which maximum contaminant levels
10 have not been established, the board may formulate and adopt standards of water quality for human health
11 that satisfy the following criteria:~~

12 ~~(i) the values must be based on scientifically valid studies and derived in a manner consistent with
13 draft or final federal regulations, guidelines, or criteria for assessing the health risks of environmental
14 pollutants;~~

15 ~~(ii) for carcinogens, the values must represent a concentration associated with an excess lifetime
16 cancer risk level because of continuous lifetime exposure, not to exceed 1×10^{-4} ; and~~

17 ~~(iii) for systemic toxicants, the values must represent a concentration to which the human
18 population, including sensitive subgroups, could be exposed on a daily basis without appreciable risk of
19 deleterious effects during a lifetime; and~~

20 ~~(d) for all metal parameters not included in subsection (1)(a), the values used by the board as
21 standards of water quality must be stated as dissolved concentrations.~~

22 ~~(2) In formulating and adopting standards of water quality under 75-5-301(2) or in reviewing and
23 revising standards of water quality under 75-5-301(3), the board may not use narrative statements for any
24 parameter.~~

25 ~~(3) For the purpose of subsection (1)(c)(iii), systemic toxicants must include toxic chemicals that
26 cause effects other than cancer or mutation.~~

27

28 Section 2. Section 75-5-303, MCA, is amended to read:

29 "75-5-303. Nondegradation policy. (1) Existing uses of high quality state waters and the level
30 of water quality necessary to protect those uses must be maintained and protected.

1 (2) Unless authorized by the department under subsection (3), the quality of high-quality waters
2 must be maintained.

3 (3) The department may not authorize degradation of high-quality waters unless it has been
4 affirmatively demonstrated by a preponderance of evidence to the department that:

5 (a) degradation is necessary because there are no economically, environmentally, and
6 technologically feasible ~~alternatives~~ modifications to the proposed project that would result in no
7 degradation;

8 (b) the proposed project will result in important economic or social development ~~that exceeds the~~
9 ~~benefit to society of maintaining existing high-quality waters~~ and that the benefit of the development
10 exceeds the costs to society of allowing degradation of high-quality waters;

11 (c) existing and anticipated use of state waters will be fully protected; and

12 (d) the least degrading water quality protection practices determined by the department to be
13 economically, environmentally, and technologically feasible will be fully implemented by the applicant prior
14 to and during the proposed activity.

15 (4) The department shall issue a preliminary decision either denying or authorizing degradation and
16 shall provide public notice and a 30-day comment period prior to issuing a final decision. The department's
17 preliminary and final decisions must include:

18 (a) a statement of the basis for the decision; and

19 (b) a detailed description of all conditions applied to any authorization to degrade state waters,
20 including, when applicable, monitoring requirements, required water protection practices, reporting
21 requirements, effluent limits, designation of the mixing zones, the limits of degradation authorized, and
22 methods of determining compliance with the authorization for degradation.

23 (5) An interested person wishing to challenge a final department decision may request a hearing
24 before the board within 30 days of the final department decision. The contested case procedures of Title
25 2, chapter 4, part 6, apply to a hearing under this section.

26 ~~(6) Every Periodically, but not more often than every 5 years, the department shall may review~~
27 ~~authorizations to degrade state waters. To enable the department to adequately review authorizations as~~
28 ~~required under this section, the authorization holder shall revise the initial authorization application no~~
29 ~~sooner than 3 1/2 years and no later than 4 years after the date of the authorization or the date of the~~
30 ~~latest department review. The specific revised information required must be determined by the department.~~

1 If, based on the review, the department determines that the standards and objectives of 75-5-303 or the
 2 rules adopted pursuant to 75-5-303 are not being met, it shall revoke or ~~Following the review, the~~
 3 ~~department may, after timely notice and opportunity for hearing, modify the authorization if the department~~
 4 ~~determines that an economically, environmentally, and technologically feasible modification to the~~
 5 ~~development exists. A decision by the department to revoke or modify an authorization may be appealed~~
 6 ~~to the board.~~

7 ~~(6) EVERY 5 YEARS, THE DEPARTMENT SHALL REVIEW AUTHORIZATIONS TO DEGRADE STATE~~
 8 ~~WATERS. TO ENABLE THE DEPARTMENT TO ADEQUATELY REVIEW AUTHORIZATIONS AS REQUIRED~~
 9 ~~UNDER THIS SECTION, THE AUTHORIZATION HOLDER SHALL REVISE THE INITIAL AUTHORIZATION~~
 10 ~~APPLICATION NO SOONER THAN 3 1/2 YEARS AND NO LATER THAN 4 YEARS AFTER THE DATE OF~~
 11 ~~THE AUTHORIZATION OR THE DATE OF THE LATEST DEPARTMENT REVIEW. THE SPECIFIC REVISED~~
 12 ~~INFORMATION REQUIRED MUST BE DETERMINED BY THE DEPARTMENT. IF, BASED ON THE REVIEW,~~
 13 ~~THE DEPARTMENT DETERMINES THAT THE STANDARDS AND OBJECTIVES OF 75-5-303 OR THE RULES~~
 14 ~~ADOPTED PURSUANT TO 75-5-303 ARE NOT BEING MET, IT SHALL REVOKE OR MODIFY THE~~
 15 ~~AUTHORIZATION. A DECISION BY THE DEPARTMENT TO REVOKE OR MODIFY AN AUTHORIZATION MAY~~
 16 ~~BE APPEALED TO THE BOARD.~~

17 ~~(6) PERIODICALLY, BUT NOT MORE OFTEN THAN EVERY 5 YEARS, THE DEPARTMENT MAY~~
 18 ~~REVIEW AUTHORIZATIONS TO DEGRADE STATE WATERS. FOLLOWING THE REVIEW, THE~~
 19 ~~DEPARTMENT MAY, AFTER TIMELY NOTICE AND OPPORTUNITY FOR HEARING, MODIFY THE~~
 20 ~~AUTHORIZATION IF THE DEPARTMENT DETERMINES THAT AN ECONOMICALLY, ENVIRONMENTALLY,~~
 21 ~~AND TECHNOLOGICALLY FEASIBLE MODIFICATION TO THE DEVELOPMENT EXISTS. THE DECISION BY~~
 22 ~~THE DEPARTMENT TO MODIFY AN AUTHORIZATION MAY BE APPEALED TO THE BOARD.~~

23 (7) The board shall adopt rules to implement this section."
 24

25 ~~NEW SECTION. Section 4. Codification instruction. [Section 2] is intended to be codified as an~~
 26 ~~integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to~~
 27 ~~{section 2}.~~

28 -END-