

SENATE BILL NO. ³³¹ ~~Burns~~ *Grinoe*

Knox
 INTRODUCED BY *Beck* *Merrihan* *Deulin* *Grinoe* *Felan* *Rehbein*
~~State~~ ~~AKLESTAD~~ ~~Lonner~~ ~~Harding~~ ~~Brook~~ ~~Cole~~ ~~Jules~~ ~~Stovall~~ ~~Rehbein~~ ~~ASH~~ ~~Ly~~ ~~Gracison~~ ~~Clint~~
 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA WATER QUALITY ACT;
 ESTABLISHING WATER QUALITY STANDARDS; REQUIRING THAT RULES OR STANDARDS BE
 ECONOMICALLY AND TECHNOLOGICALLY FEASIBLE; AND AMENDING SECTIONS 75-5-103, 75-5-106,
 75-5-201, 75-5-301, 75-5-302, 75-5-304, 75-5-305, 75-5-306, 75-5-401, 75-5-403, 75-5-605, 75-5-611,
 75-5-614, 75-5-631, 75-5-636, AND 75-6-112, MCA." *Smyer* *HARP* *Clark* *Emerson*
Grinoe *Clark* *Emerson*

WHEREAS, experience with implementation and enforcement of the Montana water quality statutes has revealed deficiencies in the statutes that have led to inefficiency and unfairness in administration and enforcement of the statutes; and

WHEREAS, those deficiencies can be addressed by selective amendment of the statutes.

STATEMENT OF INTENT

A statement of intent is required to provide guidance to the board of health and environmental sciences regarding rulemaking. The legislature confirms the policy of this state, as reflected in 75-5-101. It is concerned that implementation of the water quality laws has in the past been too dependent on assumptions and conjecture springing from experiences and circumstances from other states and has not been sufficiently based on the conditions and needs of our state. The legislature intends that, in promulgating rules under this bill, the board of health and environmental sciences should seriously consider the impact of proposed rules and that the rules should be adopted only on the basis of sound, scientific justification and never on the basis of projections or conjecture. The legislature is specifically concerned that water quality criteria must reflect concentrations that can be reliably measured, or the rules will, as a practical matter, be unenforceable.

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

NEW SECTION. Section 1. Standards more stringent than federal standards. (1) In adopting rules to implement this chapter, the board may adopt rules that are more stringent than corresponding draft or

1 final federal regulations, guidelines, or criteria if:

2 (a) the board makes written findings, based on sound scientific or technical evidence in the record,
3 which state that rules that are more stringent than corresponding federal regulations, guidelines, or criteria
4 are necessary to protect the public health, beneficial use of water, or the environment of the state; and

5 (b) the action is taken pursuant to 75-5-307.

6 (2) The board's written findings must be accompanied by a board opinion referring to and
7 evaluating the public health and environmental information and studies contained in the record that forms
8 the basis for the board's conclusion.

9

10 **NEW SECTION. Section 2. Standards of water quality.** (1) Notwithstanding the provisions of
11 [section 1], 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 shall comply with the following procedures:

13 (a) Except as provided in subsection (1)(b), the board shall use as standards of water quality values
14 that are no more stringent than the values set forth in the following table:

15

Water Quality Criteria			
<u>Parameter</u>	<u>Human Health</u>	Aquatic Life	Aquatic Life
		<u>(Acute)</u>	<u>(Chronic)</u>
18 A. <u>Metal Parameters</u> (expressed in micrograms per liter)			
19 Aluminum	-	750	87
20 Antimony	6	-	-
21 Arsenic	50	360	190
22 Beryllium	4	-	-
23 Barium	2,000	-	-
24 Cadmium	5	3.9*	1.1*
25 Chromium	100	16**	11**
26 Copper	1,300	18*	12*
27 Fluoride	4,000	-	-
28 Iron	300	-	1,000
29 Lead	5	82*	3.2*
30 Manganese	50	-	-

1	Mercury	2	2.4	0.012
2	Nickel	100	1,400*	160*
3	Selenium	50	20	5
4	Silver	50	4.1	-
5	Thallium	2	-	-
6	Zinc	5,000	120*	110*
7	B. <u>Other Parameters</u> (expressed in milligrams per liter)			
8	Nitrate	10	-	-
9	Ammonia	-	25***	2.2***
10	pH	6 to 9 std. units		
11	Sulfate	1,800		

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

14 * Hardness dependent (value assumes hardness of 100)

15 ** Hexavalent

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

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

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

22 (i) The values must be based on scientifically valid studies and derived in a manner consistent with
23 draft or final federal regulations, guidelines, or criteria for assessing the health risks of environmental
24 pollutants.

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

27 (iii) For systemic toxicants, the values must represent a concentration to which the human
28 population, including sensitive subgroups, could be exposed on a daily basis without appreciable risk of
29 deleterious effects during a lifetime.

30 (d) For all metal parameters not included in subsection (1)(a), the values used by the board as

1 standards of water quality must be stated as dissolved concentrations.

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

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

7

8 NEW SECTION. **Section 3. Site-specific standards of water quality for aquatic life.**

9 Notwithstanding any other provisions of this chapter, the board, upon application by a permit applicant,
10 shall adopt site-specific standards of water quality for aquatic life, both acute and chronic, as the standards
11 of water quality required under 75-5-301(2) and (3). The site-specific standards of water quality must be
12 developed in accordance with the procedures set forth in draft or final federal regulations, guidelines, or
13 criteria.

14

15 **Section 4.** Section 75-5-103, MCA, is amended to read:

16 "75-5-103. **Definitions.** Unless the context requires otherwise, in this chapter, the following
17 definitions apply:

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

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

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

22 (4) "Degradation" means a change in water quality that lowers the quality of high-quality waters
23 ~~for a parameter~~. The term does not include those changes in water quality determined to be nonsignificant
24 pursuant to 75-5-301(5)(c).

25 (5) "Department" means the department of health and environmental sciences provided for in Title
26 2, chapter 15, part 21.

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

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

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

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

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

9 (b) The term does not mean materials incorporated or placed into a structure, facility, or location
10 authorized in a permit issued by a state or federal agency.

11 (11) "Interested person" means a person who has submitted oral or written comments on the
12 department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term
13 includes a person who has requested authorization to degrade high-quality waters.

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

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

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

23 (b) The term does not mean materials incorporated or placed into a structure, facility, or location
24 authorized in a permit issued by a state or federal agency.

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

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

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

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

4 (19) "Pollution" means contamination or other alteration of the physical, chemical, or biological
5 properties of state waters which exceeds that permitted by Montana water quality standards, including but
6 not limited to standards relating to change in temperature, taste, color, turbidity, or odor; ~~or~~ the discharge,
7 seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state
8 water ~~which that~~ will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious
9 to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.
10 A discharge, seepage, drainage, infiltration or flow ~~which that~~ is authorized under the pollution discharge
11 permit rules of the board is not pollution under this chapter. Activities conducted under the conditions
12 imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution
13 under this chapter.

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

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

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

23 (23) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface
24 or underground; ~~however, this subsection.~~

25 (b) The term does not apply to:

26 (i) privately owned ponds or lagoons; or

27 (ii) irrigation waters or land application disposal waters ~~where when~~ the waters are used up within
28 the irrigation or land application disposal system and the waters are not returned to ~~any other~~ state waters.

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

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

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

10
11 **Section 5.** Section 75-5-106, MCA, is amended to read:

12 **"75-5-106. Interagency cooperation -- enforcement authorization.** (1) The council, board, and
13 department may require the use of records of all state agencies and may seek the assistance of ~~such~~ the
14 agencies. The department shall coordinate permit proceedings under this chapter with permit proceedings
15 involving the same project conducted by the department of state lands under Title 82, chapter 4, and by
16 the department of natural resources and conservation under Title 75, chapter 20. State, county, and
17 municipal officers and employees, including sanitarians and other employees of local departments of health,
18 shall cooperate with the council, board, and department in furthering the purposes of this chapter, so far
19 as is practicable and consistent with their other duties.

20 (2) The department may authorize a local water quality district established according to the
21 provisions of Title 7, chapter 13, part 45, to enforce the provisions of this chapter and rules adopted under
22 this chapter on a case-by-case basis. If a local water quality district requests the authorization, the local
23 water quality district shall present appropriate documentation to the department that a person is violating
24 permit requirements established by the department or may be causing pollution, as defined in 75-5-103,
25 of state waters or placing or causing to be placed wastes in a location where they are likely to cause
26 pollution of state waters. The board may adopt rules regarding the granting of enforcement authority to
27 local water quality districts."

28
29 **Section 6.** Section 75-5-201, MCA, is amended to read:

30 **"75-5-201. Board rules authorized.** (1) The board shall adopt rules for the administration of this

1 chapter and shall ensure that requirements imposed by the rules are cost-effective and economically and
 2 technologically feasible.

3 (2) The board's rules may include a fee schedule or system for assessment of administrative
 4 penalties as provided under 75-5-611."

5
 6 **Section 7.** Section 75-5-301, MCA, is amended to read:

7 "**75-5-301. Classification and standards for state waters.** Consistent with the provisions of
 8 ~~75-5-302 through 75-5-307~~ and 80-15-201 and this chapter, the board shall:

9 (1) establish ~~and modify~~ the classification of all state waters in accordance with their present and
 10 future most beneficial uses, creating an appropriate classification for intermittent or ephemeral streams that
 11 do not support a viable fishery;

12 (2) formulate and adopt standards of water ~~purity and classification of water according to its most~~
 13 ~~beneficial uses, giving consideration to the economics of waste treatment and prevention~~ quality that are
 14 cost-effective and economically and technologically feasible;

15 (3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by
 16 this chapter, revise established classifications of waters and adopted standards of water ~~purity and~~
 17 ~~classification~~ quality;

18 (4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the
 19 department be specifically identified, and requiring that mixing zones have:

20 (a) the smallest practicable size;

21 (b) a minimum practicable effect on water uses; and

22 (c) definable boundaries;

23 (5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not
 24 limited to rules that:

25 (a) provide a procedure for department review and authorization of degradation;

26 (b) establish criteria for the following:

27 (i) determining important economic or social development; and

28 (ii) weighing the social and economic importance to the public of allowing the proposed project
 29 against the cost to society associated with a loss of water quality; ~~and~~

30 (c) establish criteria for determining whether a proposed activity or class of activities will result in

1 nonsignificant changes in water quality for any parameter in order that those activities are not required to
 2 undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

3 (i) equates significance with the potential for harm to human health or the environment;

4 (ii) considers both the quantity and the strength of the pollutant;

5 (iii) considers the length of time the degradation will occur; ~~and~~

6 (iv) considers the character of the pollutant so that greater significance is associated with
 7 carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with
 8 substances that are less harmful or less persistent.

9 (d) provide that a domestic septic system and drain field that meets the minimum state standards
 10 results in nonsignificant changes to water quality and is not required to undergo review under 75-5-303(3)
 11 unless the predicted nitrate contamination at the end of the drain field exceeds 10 milligrams per liter.

12 (6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective
 13 and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute
 14 guidelines for granting or denying applications for authorization to degrade high-quality waters under the
 15 policy established in 75-5-303(2) and (3).

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

18 **Section 8.** Section 75-5-302, MCA, is amended to read:

19 **"75-5-302. Revised classifications not to lower water quality standards -- exception.** In revising
 20 classifications or standards or in adopting new classifications or standards, the board may not so formulate
 21 standards of water ~~purity~~ quality or classify ~~any~~ state water as to lower ~~any~~ the water quality standard
 22 applicable to ~~any~~ state water below the level applicable under the classifications and standards adopted
 23 except upon a finding that a particular state water has been classified under a standard or classification of
 24 water quality that is higher than the actual water quality that existed at the time of classification and only
 25 if the action is taken pursuant to 75-5-307. When the board or department acquires information that a
 26 body of water is misclassified, the board shall, within 60 days of acquiring the information, take action
 27 pursuant to 75-5-307 to correct the misclassification."
 28

29 **Section 9.** Section 75-5-304, MCA, is amended to read:

30 **"75-5-304. Adoption of standards -- pretreatment, effluent, performance.** (1) The board shall:

- 1 (a) adopt pretreatment standards for wastewater discharged into a municipal disposal system;
 2 (b) adopt effluent standards as defined in 75-5-103;
 3 (c) adopt toxic effluent standards and prohibitions; and
 4 (d) establish standards of performance for new point source discharges.

5 (2) In taking action under subsection (1), the board shall ensure that the standards are
 6 cost-effective and economically and technologically feasible."

7
 8 **Section 10.** Section 75-5-305, MCA, is amended to read:

9 **"75-5-305. Adoption of requirements for treatment of wastes -- variance procedure -- appeals.**

10 (1) The board may establish minimum requirements for the treatment of wastes. For cases in which the
 11 federal government has adopted technology-based treatment requirements for a particular industry or
 12 activity in 40 CFR, chapter I, subchapter N, the board shall adopt those requirements by reference. To the
 13 extent that the federal government has not adopted minimum treatment requirements for a particular
 14 industry or activity, the board may do so, ensuring that the requirements are cost-effective and
 15 economically and technologically feasible.

16 (2) The board shall establish minimum requirements for the control and disposal of sewage from
 17 private and public buildings, including standards and procedures for variances from the requirements.

18 (3) An applicant for a variance from minimum requirements adopted by a local board of health
 19 pursuant to 50-2-116(1)(i) may appeal the local board of health's final decision to the department by
 20 submitting a written request for a hearing within 30 days after the decision. The written request must
 21 describe the activity for which the variance is requested, include copies of all documents submitted to the
 22 local board of health in support of the variance, and specify the reasons for the appeal of the local board
 23 of health's final decision.

24 (4) The department shall conduct a hearing on the request pursuant to Title 2, chapter 4, part 6.
 25 Within 30 days after the hearing, the department shall grant, conditionally grant, or deny the variance. The
 26 department shall base its decision on the board's standards for a variance.

27 (5) A decision of the department pursuant to subsection (4) is appealable to district court under
 28 the provisions of Title 2, chapter 4, part 7."

29
 30 **Section 11.** Section 75-5-306, MCA, is amended to read:

1 **"75-5-306. Purer than natural unnecessary -- dams.** (1) It is not necessary that wastes be treated
 2 to a purer condition than the natural condition of the receiving ~~stream~~ water as long as the minimum
 3 treatment requirements established under this chapter are met.

4 (2) For the purpose of issuing permits under this part, "Natural" "natural" refers to conditions or
 5 material present from runoff or percolation over which man has no control the water quality as of July 1,
 6 1971, or to runoff or percolation from developed land where all reasonable land, soil, and water
 7 conservation practices have been applied. Conditions resulting from the reasonable operation of dams at
 8 July 1, 1971, are natural."

9

10 **Section 12.** Section 75-5-401, MCA, is amended to read:

11 **"75-5-401. Board rules for permits.** (1) The board shall adopt rules:

12 (a) governing application for permits to discharge sewage, industrial wastes, or other wastes into
 13 state waters, including rules requiring the filing of plans and specifications relating to the construction,
 14 modification, or operation of disposal systems;

15 (b) governing the issuance, denial, modification, or revocation of permits. The board may not
 16 require a permit for a water conveyance structure or for a natural spring if the water discharged to state
 17 waters does not contain industrial waste, sewage, or other wastes. The board may not require a permit
 18 for the discharge of ground water that is not altered from its ambient quality by the discharger as long as
 19 existing uses are not impacted in the receiving state waters.

20 (2) The rules ~~shall~~ may allow the issuance or continuance of a permit only if the department finds
 21 that operation consistent with the limitations of the permit will not result in pollution of any state waters,
 22 except that the rules may allow the issuance of a temporary permit under which pollution may result if the
 23 department ~~insures~~ ensures that ~~such~~ the permit contains a compliance schedule designed to meet all
 24 applicable effluent standards and water quality standards in the shortest reasonable period of time.

25 (3) The rules shall provide that the department may revoke a permit if the department finds that
 26 the holder of the permit has violated its terms, unless the department also finds that the violation was
 27 accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the
 28 violation as soon as was reasonably possible.

29 (4) The board may adopt rules governing reclamation of sites disturbed by construction,
 30 modification, or operation of disposal systems for which a bond is voluntarily filed by a permittee pursuant

1 to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond
2 or other surety and release of portions of a bond or other surety."

3

4 **Section 13.** Section 75-5-403, MCA, is amended to read:

5 **"75-5-403. Denial or modification of permit -- time for review of permit application.** (1) The
6 department shall review for completeness all applications for permits within 30 days of the receipt of the
7 initial application and within 30 days of receipt of responses to notices of deficiencies. The initial
8 completeness notice must note all deficiency issues, and the department may not in a later completeness
9 notice raise an issue pertaining to the initial application that was not raised in the initial notice. An
10 application is considered complete unless the applicant is notified of a deficiency within the appropriate
11 review period.

12 (2) If the department denies an application for a permit or modifies a permit, the department shall
13 give written notice of its action to the applicant or holder and ~~he~~ the applicant or holder may request a
14 hearing before the board, in the manner stated in 75-5-611, for the purpose of petitioning the board to
15 reverse or modify the action of the department. ~~Such~~ The hearing shall must be held within 30 days after
16 receipt of written request. After the hearing, the board shall affirm, modify, or reverse the action of the
17 department. If the holder does not request a hearing before the board, modification of a permit ~~shall be~~
18 is effective 30 days after receipt of notice by the holder unless the department specifies a later date. If the
19 holder does request a hearing before the board, ~~an~~ an order modifying his the permit shall be is not
20 effective until 20 days after ~~he has received~~ receipt of notice of the action of the board.

21 ~~(2) This section does not apply to any modification made in permit conditions at the time of~~
22 ~~reissuance, but only to those modifications made in existing permits during their terms."~~

23

24 **Section 14.** Section 75-5-605, MCA, is amended to read:

25 **"75-5-605. Prohibited activity.** (1) It is unlawful to:

26 (a) cause pollution as defined in 75-5-103 of any state waters or to place or cause to be placed
27 any industrial or other wastes where they will ~~in a location where they are likely to~~ cause pollution of any
28 state waters;

29 (b) violate any provision set forth in a permit or stipulation, including but not limited to limitations
30 and conditions contained in the permit;

- 1 (c) site and construct a sewage lagoon less than 500 feet from an existing water well;
 2 (d) cause degradation of state waters without authorization pursuant to 75-5-303;
 3 (e) violate any order issued pursuant to this chapter; or
 4 (f) violate any provision of this chapter.

5 (2) It is unlawful to carry on any of the following activities without a current permit from the
 6 department:

- 7 (a) construct, modify, or operate a disposal system ~~which~~ that discharges into any state waters;
 8 (b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes into
 9 any state waters; or
 10 (c) discharge sewage, industrial wastes, or other wastes into any state waters."

11

12 **Section 15.** Section 75-5-611, MCA, is amended to read:

13 **"75-5-611. Violation of chapter -- administrative actions and penalties -- notice and hearing.** (1)

14 When the department has reason to believe that a violation of this chapter, a rule adopted under this
 15 chapter, or a condition of a permit or authorization required by a rule adopted under this chapter has
 16 occurred, it may have a written notice letter served personally or by certified mail on the alleged violator
 17 or the violator's agent. The notice letter must state:

- 18 (a) the provision of statute, rule, permit, or approval alleged to be violated;
 19 (b) the facts alleged to constitute the violation;
 20 (c) the specific nature of corrective action that the department requires;
 21 (d) as applicable, the amount of the administrative penalty that will be assessed by order under
 22 subsection (2) if the corrective action is not taken within the time provided under subsection (1)(e); and
 23 (e) as applicable, the time within which the corrective action is to be taken or the administrative
 24 penalty will be assessed. For the purposes of this chapter, service by certified mail is complete on the date
 25 of receipt. Except as provided in subsection (2)(a)(ii), an administrative penalty may not be assessed until
 26 the provisions of subsection (1) have been complied with.

27 (2) (a) The department may issue an administrative notice and order in lieu of the notice letter
 28 provided under subsection (1) if the department's action:

- 29 (i) does not involve assessment of an administrative penalty; or
 30 (ii) seeks an administrative penalty only for an activity that it believes and alleges has violated or

1 is violating 75-5-605.

2 (b) A notice and order issued under this section must meet all of the requirements specified in
3 subsection (1).

4 (3) In a notice and order given under subsection (1), the department may require the alleged
5 violator to appear before the board for a public hearing and to answer the charges. The hearing must be
6 held no sooner than 15 days after service of the notice and order, except that the board may set an earlier
7 date for hearing if it is requested to do so by the alleged violator. The board may set a later date for
8 hearing at the request of the alleged violator if the alleged violator shows good cause for delay.

9 (4) If the department does not require an alleged violator to appear before the board for a public
10 hearing, the alleged violator may request the board to conduct the hearing. The request must be in writing
11 and must be filed with the department no later than 30 days after service of a notice and order under
12 subsection (2). If a request is filed, a hearing must be held within a reasonable time. If a hearing is not
13 requested within 30 days after service upon the alleged violator, the opportunity for a contested case
14 appeal to the board under Title 2, chapter 4, part 6, is waived.

15 (5) If a contested case hearing is held under this section, it must be public and must be held in the
16 county in which the violation is alleged to have occurred or, at the request of the alleged violator, in Lewis
17 and Clark County.

18 (6) (a) After a hearing, the board shall make findings and conclusions that explain its decision.

19 (b) If the board determines that a violation has occurred, it shall also issue an appropriate order for
20 the prevention, abatement, or control of pollution, the assessment of administrative penalties, or both.

21 (c) If the order requires abatement or control of pollution, the board shall state the date or dates
22 by which a violation must cease and may prescribe timetables for necessary action in preventing, abating,
23 or controlling the pollution.

24 (d) If the order requires payment of an administrative penalty, the board shall explain how it
25 determined the amount of the administrative penalty.

26 (e) If the board determines that a violation has not occurred, it shall declare the department's notice
27 void.

28 (7) The alleged violator may petition the board for a rehearing on the basis of new evidence, ~~which~~
29 ~~petition~~ and the board may grant the petition for good cause shown.

30 (8) Instead of issuing an order, the board may direct the department to initiate appropriate action

1 for recovery of a penalty under 75-5-631, 75-5-632, 75-5-633, or 75-5-635.

2 (9) (a) An action initiated under this section may include an administrative penalty of not more than
3 \$10,000 for each day of each violation; ~~however~~ However, the maximum penalty may not exceed
4 \$100,000 for any related series of violations.

5 (b) Administrative penalties collected under this section must be deposited in the general fund.

6 (c) In determining the amount of penalty to be assessed to a person, the department and board
7 shall consider the criteria stated in 75-5-631(4) and rules promulgated under 75-5-201.

8 (d) The contested case provisions of the Montana Administrative Procedure Act, provided for in
9 Title 2, chapter 4, part 6, apply to a hearing conducted under this section."

10

11 **Section 16.** Section 75-5-614, MCA, is amended to read:

12 **"75-5-614. Injunctions authorized.** (1) The department is authorized to commence a civil action
13 seeking appropriate relief, including a permanent or temporary injunction, for a violation ~~which~~ that would
14 be subject to a compliance order under 75-5-613. An action under this subsection may be commenced in
15 the district court of ~~the county in which the defendant is located or resides or is doing business or any~~ the
16 county where a violation occurs or is threatened ~~if the defendant cannot be located in Montana~~, and the
17 court ~~shall have~~ has jurisdiction to restrain the violation and to require compliance.

18 (2) The department may bring an action for an injunction against the continuation of an alleged
19 violation of the terms or conditions of a permit issued by the department or any rule or effluent standard
20 promulgated under this chapter or against a person who fails to comply with an emergency order issued
21 by the department under 75-5-621 or a final order of the board. The court to which the department applies
22 for an injunction may issue a temporary injunction if it finds that there is reasonable cause to believe that
23 the allegations of the department are true, and it may issue a temporary restraining order pending action
24 on the temporary injunction."

25

26 **Section 17.** Section 75-5-631, MCA, is amended to read:

27 **"75-5-631. Civil penalties -- injunctions not barred.** (1) A person who violates this chapter or a
28 rule, permit, effluent standard, or order issued under the provisions of this chapter ~~shall be~~ is subject to a
29 civil penalty not to exceed \$25,000. Each day of violation constitutes a separate violation.

30 (2) Action under this section does not bar enforcement of this chapter or of rules or orders issued

1 under it by injunction or other appropriate remedy.

2 (3) The department shall institute and maintain ~~any~~ enforcement proceedings in the name of the
3 state.

4 (4) When seeking penalties under this section, the department shall take into account the following
5 factors in determining an appropriate settlement, if any, subsequent to the filing of a complaint:

6 (a) the nature, circumstances, extent, and gravity of the violation; and

7 (b) with respect to the violator, ~~his~~ the violator's ability to pay, ~~any~~ and prior history of ~~such~~
8 violations, the economic benefit or savings, if any, to the violator resulting from the violator's action,
9 amounts expended by the violator to address or mitigate the violation or impacts of the violation to waters
10 of the state, and any other matters as justice may require."

11

12 **Section 18.** Section 75-5-636, MCA, is amended to read:

13 **"75-5-636. Action by other parties.** A person, association, corporation, or agency of the state or
14 federal government may apply to the department protesting a violation of this chapter. The department
15 shall make an investigation and make a written report to the person, association, corporation, or agency
16 ~~which~~ that made the protest. If a violation is established by the investigation of the department,
17 appropriate enforcement action ~~shall~~ must be taken. If the investigation proves the protest to have been
18 without reasonable cause, the department may seek recovery of investigative costs from the person who
19 made the application."

20

21 **Section 19.** Section 75-6-112, MCA, is amended to read:

22 **"75-6-112. Prohibited acts.** A person may not:

23 (1) discharge sewage, ~~drainage~~, industrial waste, or other wastes that will cause pollution of state
24 waters used by a person for domestic use or as a source for a public water supply system or water or ice
25 company;

26 (2) discharge sewage, ~~drainage~~, industrial waste, or other waste into any state waters or on the
27 banks of any state waters or into any abandoned or operating water well unless the sewage, ~~drainage~~,
28 industrial waste, or other waste is treated as prescribed by the board;

29 (3) build or operate any railroad, logging road, logging camp, or electric or manufacturing plant of
30 any kind on any watershed of a public water supply system unless:

1 (a) the water supply is protected from pollution by sanitary precautions prescribed by the board;
2 and

3 (b) a permit has been issued by the department after approval of detailed plans and specifications
4 for sanitary precautions;

5 (4) commence construction, alteration, or extension of any system of water supply, water
6 distribution, sewer, ~~drainage~~, wastewater, or sewage disposal before ~~he~~ the person submits to the
7 department necessary maps, plans, and specifications for its review and the department approves those
8 maps, plans, and specifications;

9 (5) operate or maintain any public water supply system ~~which~~ that exceeds a maximum
10 contaminant level established by the board unless ~~he~~ the person has been granted or has an application
11 pending for a variance or exemption pursuant to this part;

12 (6) violate any provision of this part or a rule adopted under this part; or

13 (7) violate any condition or requirement of an approval issued pursuant to this part."
14

15 NEW SECTION. **Section 20. Codification instruction.** [Sections 1 through 3] are intended to be
16 codified as an integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3,
17 apply to [sections 1 through 3].

18 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0331, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the Montana Water Quality Act (MWQA), and establishing water quality standards; requiring that rules or standards be economically and technologically feasible.

ASSUMPTIONS:

1. The proposed changes to the MWQA and Surface Water Quality Standards would not be acceptable to the Environmental Protection Agency (EPA). The EPA would terminate the Department of Health and Environmental Science's (DHES) agreement for issuance of waste discharge permits under the Federal Clean Water Act. In addition to the EPA requiring a federal permit for all discharges to surface waters, the DHES would still be required to issue permits by the MWQA. The EPA would also adopt water quality standards for Montana, creating two sets of standards for Montana waters.
2. The Governor's Executive Budget, as submitted, provides the basis for determining changes for fiscal impact.
3. Revising the existing water quality standards and nondegradation rules would require one FTE (grade 15) for FY96 only. Normal operating costs, plus an amount for the 11.5% indirect rate and greater than normal travel would be required. Normal office equipment of \$5,000 would be needed.
4. Two FTE (grade 15) would be required for at least 5 years to correct the known misclassifications of Montana waters. An average reclassification action takes approximately 4 months and there are 30 known reclassifications.
5. The EPA would not participate in the costs of re-writing the water standards or the costs of reclassification, and new fees could not be charged. Thus, no new revenue would be generated as a result of this bill.
6. Funding for the above positions would be provided by the state special revenue fund, either from overhead revenues, or if this is insufficient, increased fees.
7. Assume an October 1, 1995 effective date, with FY96 expenditures reflected at 75% of the full year.
7. No water standards stricter than the federal standards would be developed.

(continued)

David Lewis 2-14-95

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Sen Tom Beck 2-14-95

TOM BECK, PRIMARY SPONSOR DATE

Fiscal Note for SB0331, as introduced

SB 331

FISCAL IMPACT:

Expenditures:

	<u>FY96</u>	<u>FY97</u>
DHES - Water Quality Div.:	<u>Difference</u>	<u>Difference</u>
FTE	3.00	2.00
Personal services	76,300	68,000
Operating expenses	25,300	23,600
Equipment	<u>15,000</u>	<u>0</u>
Total	116,600	91,600

Funding:

State special revenue (02)	116,600	91,600
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LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Water dischargers in Montana would be required to have both a state and federal permit, and those affected would be subject to both state and federal surface water quality standards.

TECHNICAL NOTES:

SB330 also requires the re-writing of water quality standards, and one FTE in FY96. If both bills pass, only one FTE would be required.

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0331, reference bill as amended

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the Montana Water Quality Act; establishing water quality standards; and requiring that treatment standards be economically, environmentally, and technologically feasible.

ASSUMPTIONS:

1. The Executive Budget present law base serves as the starting point from which to calculate any potential fiscal impact from this proposed legislation.
2. The bill will be effective upon passage and approval. Assume that the FTE, with related operating and equipment, will not be hired until October 1, 1995.
3. Development of industrial wastewater system design standards and reviewing waste disposal and treatment systems in compliance with the time-frames required by the revisions to 75-5-403, MCA would require 1.00 FTE.
4. In order to correct the known misclassifications of Montana waters, 2.00 FTE would be required during the 1997 biennium, and for at least three years beyond. An average reclassification action takes approximately four months and there are 30 known reclassifications.
5. There would be increased travel costs required. Normal operating costs for the FTE and equipment costs of \$5,000 per FTE would also be needed. The indirect rates applied to the personal services will be 20.9% in FY96 and FY97 (the fiscal note on the introduced bill was too low).
6. No standards stricter than the federal standards would be developed.
7. The Environmental Protection Agency (EPA) will not participate in the costs of reclassification or the cost of reviewing waste disposal and treatment plans and no new fees could be charged. Thus, no new revenue would be generated as a result of this bill.
8. Funding for the above positions would be provided by the state special revenue fund, either from overhead revenues, or if this is insufficient, increased fees.

FISCAL IMPACT:

Expenditures:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
FTE	3.00	3.00
Personal Services	76,300	68,000
Operating Expenses	29,700	40,000
Equipment	<u>15,000</u>	<u>0</u>
Total Expenditures	121,000	108,000

Funding:

State Special Revenue (02)	121,000	108,000
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Dave Lewis 3-31-95
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

Tom Beck 3-31-95
 TOM BECK, PRIMARY SPONSOR DATE

1 SENATE BILL NO. 331

2 INTRODUCED BY BECK, FELAND, OHS, ORR, KNOX, BURNETT, ELLIS, HARGROVE, PIPINICH,
3 MENAHAN, SLITER, DEVLIN, GRIMES, BAER, CRISMORE, STOVALL, REHBEIN, TASH, LYNCH,
4 JACOBSON, AKLESTAD, FORRESTER, HARDING, GRADY, COLE, JENKINS, PAVLOVICH, QUILICI,
5 GRINDE, SWYSGOOD, CLARK, HARP, FOSTER, HERTEL, KEATING, EMERSON
6

7 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA WATER QUALITY ACT;
8 ESTABLISHING WATER QUALITY STANDARDS; REQUIRING THAT ~~RULES OR~~ TREATMENT STANDARDS
9 BE ECONOMICALLY, ENVIRONMENTALLY, AND TECHNOLOGICALLY FEASIBLE; ~~AND~~ AMENDING
10 SECTIONS 75-5-103, 75-5-106, ~~75-5-201~~, 75-5-301, 75-5-302, 75-5-304, 75-5-305, ~~75-5-306~~, 75-5-401,
11 75-5-403, 75-5-605, ~~75-5-611~~, 75-5-614, 75-5-631, 75-5-636, AND 75-6-112, MCA; AND PROVIDING
12 AN IMMEDIATE EFFECTIVE DATE."
13

14 WHEREAS, experience with implementation and enforcement of the Montana water quality statutes
15 has revealed deficiencies in the statutes that have led to inefficiency and unfairness in administration and
16 enforcement of the statutes; and

17 WHEREAS, those deficiencies can be addressed by selective amendment of the statutes.
18

19 STATEMENT OF INTENT

20 A statement of intent is required to provide guidance to the board of health and environmental
21 sciences regarding rulemaking. The legislature confirms the policy of this state, as reflected in 75-5-101.
22 It is concerned that implementation of the water quality laws has in the past been too dependent on
23 assumptions and conjecture springing from experiences and circumstances from other states and has not
24 been sufficiently based on the conditions and needs of our state. The legislature intends that, in
25 promulgating rules under this bill, the board of health and environmental sciences should seriously consider
26 the impact of proposed rules and that the rules should be adopted only on the basis of sound, scientific
27 justification and never on the basis of projections or conjecture. The legislature is specifically concerned
28 that water quality criteria must reflect concentrations that can be reliably measured, or the rules will, as
29 a practical matter, be unenforceable. [SECTION 1], PROVIDING CONDITIONS FOR ADOPTION OF
30 STANDARDS MORE STRINGENT THAN FEDERAL STANDARDS, IS NOT INTENDED TO PROHIBIT THE

1 ADOPTION OF GROUND WATER QUALITY STANDARDS.

2

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

4

5 NEW SECTION. Section 1. Standards more stringent than federal standards. (1) In adopting rules
6 to implement this chapter, the board may adopt rules that are more stringent than corresponding draft or
7 final federal regulations, guidelines, or criteria if:

8 (a) the board makes written findings, based on sound scientific or technical evidence in the record,
9 which state that rules that are more stringent than corresponding federal regulations, guidelines, or criteria
10 are necessary to protect the public health, beneficial use of water, or the environment of the state; and

11 ~~(b) the action is taken pursuant to 75-5-307.~~

12 (2) The board's written findings must be accompanied by a board opinion referring to and
13 evaluating the public health and environmental information and studies contained in the record that forms
14 the basis for the board's conclusion.

15

16 ~~NEW SECTION. Section 2. Standards of water quality.~~ (1) ~~Notwithstanding the provisions of~~
17 ~~[section 1], in formulating and adopting standards of water quality under 75-5-301(2) or in reviewing and~~
18 ~~revising standards of water quality under 75-5-301(3) the board shall comply with the following procedures:~~

19 ~~(a) Except as provided in subsection (1)(b), the board shall use as standards of water quality values~~
20 ~~that are no more stringent than the values set forth in the following table:~~

21

~~Water Quality Criteria~~

22

Parameter	Human Health	Aquatic Life	Aquatic Life
		(Acute)	(Chronic)

23

24 ~~A. Metal Parameters (expressed in micrograms per liter)~~

25

Aluminum	750	87
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26

Antimony	6	
---------------------	--------------	--

27

Arsenic	50	360	190
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28

Beryllium	4	
----------------------	--------------	--

29

Barium	2,000	
-------------------	------------------	--

30

Cadmium	5	3.9*	1.1*
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1	Chromium	100	16**	11**
2	Copper	1,300	18*	12*
3	Fluoride	4,000		
4	Iron	300		1,000
5	Lead	5	82*	3.2*
6	Manganese	50		
7	Mercury	2	2.4	0.012
8	Nickel	100	1,400*	160*
9	Selenium	50	20	5
10	Silver	50	4.1	
11	Thallium	2		
12	Zinc	5,000	120*	110*

13 ~~B. Other Parameters (expressed in milligrams per liter)~~

14	Nitrate	10		
15	Ammonia		25***	2.2***
16	pH	6 to 9 std. units		
17	Sulfate	1,800		

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

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

21 ~~** Hexavalent~~

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

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

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

28 ~~(i) The values must be based on scientifically valid studies and derived in a manner consistent with~~
 29 ~~draft or final federal regulations, guidelines, or criteria for assessing the health risks of environmental~~
 30 ~~pollutants.~~

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

3 ~~(iii) For systemic toxicants, the values must represent a concentration to which the human~~
 4 ~~population, including sensitive subgroups, could be exposed on a daily basis without appreciable risk of~~
 5 ~~deleterious effects during a lifetime.~~

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

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

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

13
 14 **NEW SECTION.** **Section 2. Site-specific standards of water quality for aquatic life.**
 15 Notwithstanding any other provisions of this chapter, the board, upon application by a permit applicant,
 16 **PERMITTEE, OR PERSON POTENTIALLY LIABLE UNDER ANY STATE OR FEDERAL ENVIRONMENTAL**
 17 **REMEDICATION STATUTE,** shall adopt site-specific standards of water quality for aquatic life, both acute
 18 and chronic, as the standards of water quality required under 75-5-301(2) and (3). The site-specific
 19 standards of water quality must be developed in accordance with the procedures set forth in draft or final
 20 federal regulations, guidelines, or criteria.

21
 22 **Section 3.** Section 75-5-103, MCA, is amended to read:

23 **"75-5-103. Definitions.** Unless the context requires otherwise, in this chapter, the following
 24 definitions apply:

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

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

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

29 (4) "Degradation" means a change in water quality that lowers the quality of high-quality waters
 30 ~~for a parameter~~ **FOR A PARAMETER IF THAT CHANGE IS LIKELY TO AFFECT A BENEFICIAL USE.** The term

1 does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

2 (5) "Department" means the department of health and environmental sciences provided for in Title
3 2, chapter 15, part 21.

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

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

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

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

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

16 ~~(b) The term does not mean materials incorporated or placed into a structure, facility, or location~~
17 ~~authorized in a permit issued by a state or federal agency.~~

18 (11) "Interested person" means a person who has submitted oral or written comments on the
19 department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term
20 includes a person who has requested authorization to degrade high-quality waters.

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

23 (13) "METAL PARAMETERS" INCLUDES BUT IS NOT LIMITED TO ALUMINUM, ANTIMONY,
24 ARSENIC, BERYLLIUM, BARIUM, CADMIUM, CHROMIUM, COPPER, FLUORIDE, IRON, LEAD,
25 MANGANESE, MERCURY, NICKEL, SELENIUM, SILVER, THALLIUM, AND ZINC.

26 ~~(13)~~(14) "Mixing zone" means an area established in a permit or final decision on nondegradation
27 issued by the department where water quality standards may be exceeded, subject to conditions that are
28 imposed by the department and that are consistent with the rules adopted by the board.

29 ~~(14)~~(15) ~~(a)~~ "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings,
30 bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked

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

3 ~~(b) The term does not mean materials incorporated or placed into a structure, facility, or location~~
4 ~~authorized in a permit issued by a state or federal agency.~~

5 ~~(15)(16)~~ "Owner or operator" means a person who owns, leases, operates, controls, or supervises
6 a point source.

7 ~~(16)(17)~~ "Parameter" means a physical, biological, or chemical property of state water when a value
8 of that property affects the quality of the state water.

9 ~~(17)(18)~~ "Person" means the state, a political subdivision of the state, institution, firm, corporation,
10 partnership, individual, or other entity and includes persons resident in Canada.

11 ~~(18)(19)~~ "Point source" means a discernible, confined, and discrete conveyance, including but not
12 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel
13 or other floating craft, from which pollutants are or may be discharged.

14 ~~(19)(20)~~ "Pollution" means contamination or other alteration of the physical, chemical, or biological
15 properties of state waters which exceeds that permitted by Montana water quality standards, including but
16 not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or the discharge,
17 seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state
18 water ~~which that~~ will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious
19 to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.
20 A discharge, seepage, drainage, infiltration or flow ~~which that~~ is authorized under the pollution discharge
21 permit rules of the board is not pollution under this chapter. Activities conducted under the conditions
22 imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution
23 under this chapter.

24 ~~(20)(21)~~ "Sewage" means water-carried waste products from residences, public buildings,
25 institutions, or other buildings, including discharge from human beings or animals, together with ground
26 water infiltration and surface water present.

27 ~~(21)(22)~~ "Sewage system" means a device for collecting or conducting sewage, industrial wastes,
28 or other wastes to an ultimate disposal point.

29 ~~(22)(23)~~ "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)(24)~~ (a) "State waters" means a body of water, irrigation system, or drainage system, either
 4 surface or underground; ~~however, this subsection.~~

5 (b) The term does not apply to:

6 (i) privately owned ponds or lagoons USED SOLELY FOR TREATING, TRANSPORTING, OR
 7 IMPOUNDING POLLUTANTS; or

8 (ii) irrigation waters or land application disposal waters ~~where~~ when the waters are used up within
 9 the irrigation or land application disposal system and the waters are not returned to ~~any other~~ state waters.

10 ~~(24)(25)~~ "Treatment works" means works, including sewage lagoons, installed for treating or
 11 holding sewage, industrial wastes, or other wastes.

12 ~~(25)(26)~~ "Water quality protection practices" means those activities, prohibitions, maintenance
 13 procedures, or other management practices applied to point and nonpoint sources designed to protect,
 14 maintain, and improve the quality of state waters. Water quality protection practices include but are not
 15 limited to treatment requirements, standards of performance, effluent standards, and operating procedures
 16 and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material
 17 storage.

18 ~~(26)(27)~~ "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug,
 19 jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition
 20 of ground water."

21

22 **Section 4.** Section 75-5-106, MCA, is amended to read:

23 **"75-5-106. Interagency cooperation -- enforcement authorization.** (1) The council, board, and
 24 department may require the use of records of all state agencies and may seek the assistance of ~~such~~ the
 25 agencies. The department shall coordinate permit proceedings under this chapter with permit proceedings
 26 involving the same project conducted by the department of state lands under Title 82, chapter 4, and by
 27 the department of natural resources and conservation under Title 75, chapter 20, FOLLOWING THE TIME
 28 SCHEDULE OF THE LEAD AGENCY. State, county, and municipal officers and employees, including
 29 sanitarians and other employees of local departments of health, shall cooperate with the council, board,
 30 and department in furthering the purposes of this chapter, so far as is practicable and consistent with their

1 other duties.

2 (2) The department may authorize a local water quality district established according to the
3 provisions of Title 7, chapter 13, part 45, to enforce the provisions of this chapter and rules adopted under
4 this chapter on a case-by-case basis. If a local water quality district requests the authorization, the local
5 water quality district shall present appropriate documentation to the department that a person is violating
6 permit requirements established by the department or may be causing pollution, as defined in 75-5-103,
7 of state waters or placing or causing to be placed wastes in a location where they are likely to cause
8 pollution of state waters. The board may adopt rules regarding the granting of enforcement authority to
9 local water quality districts."

10

11 ~~Section 6. Section 75-5-201, MCA, is amended to read:~~

12 ~~"75-5-201. Board rules authorized. (1) The board shall adopt rules for the administration of this~~
13 ~~chapter and shall ensure that requirements imposed by the rules are cost effective and economically and~~
14 ~~technologically feasible.~~

15 ~~(2) The board's rules may include a fee schedule or system for assessment of administrative~~
16 ~~penalties as provided under 75-5-611."~~

17

18 Section 5. Section 75-5-301, MCA, is amended to read:

19 "75-5-301. Classification and standards for state waters. Consistent with the provisions of
20 ~~75-5-302 through 75-5-307 and 80-15-201 and this chapter,~~ the board shall:

21 (1) establish ~~and modify~~ the classification of all state waters in accordance with their present and
22 future most beneficial uses, ~~creating an appropriate classification for intermittent or ephemeral streams that~~
23 STREAMS THAT, DUE TO SPORADIC FLOW, do not support a viable fishery AN AQUATIC ECOSYSTEM
24 THAT INCLUDES SALMONID OR NONSALMONID FISH;

25 (2) formulate and adopt standards of water ~~purity and classification of water according to its most~~
26 ~~beneficial uses, giving consideration to the economics of waste treatment and prevention~~ quality that are
27 cost effective and economically and technologically feasible, GIVING CONSIDERATION TO THE
28 ECONOMICS OF WASTE TREATMENT AND PREVENTION. STANDARDS ADOPTED BY THE BOARD MUST
29 MEET THE FOLLOWING REQUIREMENTS:

30 (A) FOR MEASURING CARCINOGENS IN SURFACE WATER, THE WATER QUALITY STANDARD

1 FOR PROTECTION OF HUMAN HEALTH MUST BE THE VALUE ASSOCIATED WITH AN EXCESS LIFETIME
 2 CANCER RISK LEVEL, ASSUMING CONTINUOUS LIFETIME EXPOSURE, NOT TO EXCEED 1×10^{-3} IN THE
 3 CASE OF ARSENIC AND 1×10^{-5} FOR OTHER CARCINOGENS;

4 (B) FOR ALL METAL PARAMETERS, THE VALUES USED BY THE BOARD AS CRITERIA FOR
 5 STANDARDS OF WATER QUALITY MUST BE STATED AS DISSOLVED CONCENTRATIONS;

6 (C) STANDARDS FOR THE PROTECTION OF AQUATIC LIFE DO NOT APPLY TO GROUND WATER;

7 AND

8 (D) STANDARDS MAY NOT EXCEED THE MAXIMUM CONTAMINANT LEVELS OBTAINED FROM
 9 40 CFR, PART 141, AS OF [THE EFFECTIVE DATE OF THIS ACT];

10 (3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by
 11 this chapter, revise established classifications of waters and adopted standards of water ~~purity and~~
 12 ~~classification quality;~~

13 (4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the
 14 department be specifically identified, and requiring that mixing zones have:

15 (a) the smallest practicable size;

16 (b) a minimum practicable effect on water uses; and

17 (c) definable boundaries;

18 (5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not
 19 limited to rules that:

20 (a) provide a procedure for department review and authorization of degradation;

21 (b) establish criteria for the following:

22 (i) determining important economic or social development; and

23 (ii) weighing the social and economic importance to the public of allowing the proposed project
 24 against the cost to society associated with a loss of water quality; ~~and~~

25 (c) establish criteria for determining whether a proposed activity or class of activities will result in
 26 nonsignificant changes in water quality for any parameter in order that those activities are not required to
 27 undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

28 (i) equates significance with the potential for harm to human health or the environment;

29 (ii) considers both the quantity and the strength of the pollutant;

30 (iii) considers the length of time the degradation will occur; ~~and~~

1 (iv) considers the character of the pollutant so that greater significance is associated with
 2 carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with
 3 substances that are less harmful or less persistent.

4 ~~(d) provide that a domestic septic system and drain field that meets the minimum state standards~~
 5 ~~results in nonsignificant changes to water quality and is not required to undergo review under 75-5-303(3)~~
 6 ~~unless the predicted nitrate contamination at the end of the drain field exceeds 10 milligrams per liter~~

7 CHANGES TO GROUND WATER QUALITY ARE NONSIGNIFICANT IF THE DISCHARGE WILL NOT CAUSE
 8 DEGRADATION OF SURFACE WATER AND THE PREDICTED CONCENTRATION OF NITRATE AT THE
 9 BOUNDARY OF THE GROUND WATER MIXING ZONE DOES NOT EXCEED:

10 (I) 7.5 MILLIGRAMS PER LITER FOR NITRATE SOURCES OTHER THAN DOMESTIC SEWAGE;

11 (II) 5.0 MILLIGRAMS PER LITER FOR DOMESTIC SEWAGE EFFLUENT DISCHARGED FROM A
 12 CONVENTIONAL SEPTIC SYSTEM;

13 (III) 7.5 MILLIGRAMS PER LITER FOR DOMESTIC SEWAGE EFFLUENT DISCHARGED FROM A
 14 SEPTIC SYSTEM USING LEVEL TWO TREATMENT, WHICH MUST BE DEFINED IN THE RULES; OR

15 (IV) 7.5 MILLIGRAMS PER LITER FOR DOMESTIC SEWAGE EFFLUENT DISCHARGED FROM A
 16 CONVENTIONAL SEPTIC SYSTEM IN AREAS WHERE THE GROUND WATER NITRATE LEVEL EXCEEDS
 17 5.0 MILLIGRAMS PER LITER PRIMARILY FROM SOURCES OTHER THAN HUMAN WASTE.

18 (6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective
 19 and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute
 20 guidelines for granting or denying applications for authorization to degrade high-quality waters under the
 21 policy established in 75-5-303(2) and (3).

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

24 **Section 6.** Section 75-5-302, MCA, is amended to read:

25 **"75-5-302. Revised classifications not to lower water quality standards -- exception.** In revising
 26 classifications or standards or in adopting new classifications or standards, the board may not so formulate
 27 standards of water ~~purity~~ quality or classify ~~any~~ state water as to lower ~~any~~ the water quality standard
 28 applicable to ~~any~~ state water below the level applicable under the classifications and standards adopted
 29 except upon a finding that a particular state water has been classified under a standard or classification of
 30 water quality that is higher than the actual water quality that existed at the time of classification and only

1 if the action is taken pursuant to 75-5-307. When the board or department acquires information IS
 2 PRESENTED WITH FACTS INDICATING that a body of water is misclassified, the board shall, within 60
 3 days of acquiring the information, take action pursuant to 75-5-307 90 DAYS, INITIATE RULEMAKING to
 4 correct the misclassification."

5
 6 **Section 7.** Section 75-5-304, MCA, is amended to read:

7 **"75-5-304. Adoption of standards -- pretreatment, effluent, performance. (1)** The board shall:

8 (a) adopt pretreatment standards for wastewater discharged into a municipal disposal system;

9 (b) adopt effluent standards as defined in 75-5-103;

10 (c) adopt toxic effluent standards and prohibitions; and

11 (d) establish standards of performance for new point source discharges.

12 (2) In taking action under subsection (1), the board shall ensure that the standards are
 13 cost-effective and economically, ENVIRONMENTALLY, and technologically feasible."

14
 15 **Section 8.** Section 75-5-305, MCA, is amended to read:

16 **"75-5-305. Adoption of requirements for treatment of wastes -- variance procedure -- appeals.**

17 (1) The board may establish minimum requirements for the treatment of wastes. For cases in which the
 18 federal government has adopted technology-based treatment requirements for a particular industry or
 19 activity in 40 CFR, chapter I, subchapter N, the board shall adopt those requirements by reference. To the
 20 extent that the federal government has not adopted minimum treatment requirements for a particular
 21 industry or activity, the board may do so, THROUGH RULEMAKING, FOR PARAMETERS LIKELY TO AFFECT
 22 BENEFICIAL USES, ensuring that the requirements are cost-effective and economically,
 23 ENVIRONMENTALLY, and technologically feasible. EXCEPT FOR THE TECHNOLOGY-BASED TREATMENT
 24 REQUIREMENTS SET FORTH IN 40 CFR, CHAPTER I, SUBCHAPTER N, MINIMUM TREATMENT MAY NOT
 25 BE REQUIRED TO ADDRESS THE DISCHARGE OF A PARAMETER WHEN THE DISCHARGE IS CONSIDERED
 26 NONSIGNIFICANT UNDER RULES ADOPTED PURSUANT TO 75-5-301.

27 (2) The board shall establish minimum requirements for the control and disposal of sewage from
 28 private and public buildings, including standards and procedures for variances from the requirements.

29 (3) An applicant for a variance from minimum requirements adopted by a local board of health
 30 pursuant to 50-2-116(1)(i) may appeal the local board of health's final decision to the department by

1 submitting a written request for a hearing within 30 days after the decision. The written request must
 2 describe the activity for which the variance is requested, include copies of all documents submitted to the
 3 local board of health in support of the variance, and specify the reasons for the appeal of the local board
 4 of health's final decision.

5 (4) The department shall conduct a hearing on the request pursuant to Title 2, chapter 4, part 6.
 6 Within 30 days after the hearing, the department shall grant, conditionally grant, or deny the variance. The
 7 department shall base its decision on the board's standards for a variance.

8 (5) A decision of the department pursuant to subsection (4) is appealable to district court under
 9 the provisions of Title 2, chapter 4, part 7."
 10

11 **Section 11.** ~~Section 75-5-306, MCA, is amended to read:~~

12 ~~"75-5-306. Purer than natural unnecessary dams. (1) It is not necessary that wastes be treated~~
 13 ~~to a purer condition than the natural condition of the receiving stream water as long as the minimum~~
 14 ~~treatment requirements established under this chapter are met.~~

15 ~~(2) For the purpose of issuing permits under this part, "Natural" "natural" refers to conditions or~~
 16 ~~material present from runoff or percolation over which man has no control the water quality as of July 1,~~
 17 ~~1971, or to runoff or percolation from developed land where all reasonable land, soil, and water~~
 18 ~~conservation practices have been applied. Conditions resulting from the reasonable operation of dams at~~
 19 ~~July 1, 1971, are natural."~~

20
 21 **Section 9.** Section 75-5-401, MCA, is amended to read:

22 **"75-5-401. Board rules for permits.** (1) The board shall adopt rules:

23 (a) governing application for permits to discharge sewage, industrial wastes, or other wastes into
 24 state waters, including rules requiring the filing of plans and specifications relating to the construction,
 25 modification, or operation of disposal systems;

26 (b) governing the issuance, denial, modification, or revocation of permits. The board may not
 27 require a permit for a water conveyance structure or for a natural spring if the water discharged to state
 28 waters does not contain industrial waste, sewage, or other wastes. The board may not require a permit
 29 for the discharge of ground water that is not altered from its ambient quality by the discharger as long as
 30 existing uses are not impacted in the receiving state waters DISCHARGE TO SURFACE WATER OF

1 GROUND WATER THAT IS NOT ALTERED FROM ITS AMBIENT QUALITY DOES NOT CONSTITUTE A
 2 DISCHARGE REQUIRING A PERMIT UNDER THIS PART AND IS NOT DEGRADATION IF:

3 (I) THE WATER DISCHARGED DOES NOT CAUSE THE RECEIVING WATERS TO EXCEED
 4 APPLICABLE STANDARDS FOR ANY PARAMETERS; OR

5 (II) TO THE EXTENT THAT THE RECEIVING WATERS IN THEIR AMBIENT STATE EXCEED
 6 STANDARDS FOR ANY PARAMETERS, THE DISCHARGE DOES NOT INCREASE THE CONCENTRATION
 7 OF THE PARAMETERS.

8 (2) The rules ~~shall~~ may allow the issuance or continuance of a permit only if the department finds
 9 that operation consistent with the limitations of the permit will not result in pollution of any state waters,
 10 except that the rules may allow the issuance of a temporary permit under which pollution may result if the
 11 department ~~insures~~ ensures that ~~such~~ the permit contains a compliance schedule designed to meet all
 12 applicable effluent standards and water quality standards in the shortest reasonable period of time.

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

17 (4) The board may adopt rules governing reclamation of sites disturbed by construction,
 18 modification, or operation of disposal systems for which a bond is voluntarily filed by a permittee pursuant
 19 to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond
 20 or other surety and release of portions of a bond or other surety."

21

22 **Section 10.** Section 75-5-403, MCA, is amended to read:

23 **"75-5-403. Denial or modification of permit -- time for review of permit application.** (1) The
 24 department shall review for completeness all applications for NEW permits within 30 60 days of the receipt
 25 of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial
 26 completeness notice must note all ~~deficiency issues, and the department may not in a later completeness~~
 27 ~~notice raise an issue pertaining to the initial application that was not raised in the initial notice~~ MAJOR
 28 DEFICIENCY ISSUES, BASED ON THE INFORMATION SUBMITTED. THE DEPARTMENT AND THE
 29 APPLICANT MAY EXTEND THESE TIMEFRAMES, BY MUTUAL AGREEMENT, BY NOT MORE THAN 75
 30 DAYS. An application is considered complete unless the applicant is notified of a deficiency within the

1 appropriate review period.

2 (2) If the department denies an application for a permit or modifies a permit, the department shall
 3 give written notice of its action to the applicant or holder and ~~he~~ the applicant or holder may request a
 4 hearing before the board, in the manner stated in 75-5-611, for the purpose of petitioning the board to
 5 reverse or modify the action of the department. ~~Such~~ The hearing ~~shall~~ must be held within 30 days after
 6 receipt of written request. After the hearing, the board shall affirm, modify, or reverse the action of the
 7 department. If the holder does not request a hearing before the board, modification of a permit ~~shall be~~
 8 is effective 30 days after receipt of notice by the holder unless the department specifies a later date. If the
 9 holder does request a hearing before the board, ~~he~~ an order modifying ~~his~~ the permit ~~shall be~~ is not
 10 effective until 20 days after ~~he has received~~ receipt of notice of the action of the board.

11 ~~(2) This section does not apply to any modification made in permit conditions at the time of~~
 12 ~~reissuance, but only to those modifications made in existing permits during their terms."~~

13

14 **Section 11.** Section 75-5-605, MCA, is amended to read:

15 **"75-5-605. Prohibited activity.** (1) It is unlawful to:

16 (a) cause pollution as defined in 75-5-103 of any state waters or to place or cause to be placed
 17 any ~~industrial or other~~ wastes where they will ~~in a location where they are likely to~~ cause pollution of any
 18 state waters; ANY PLACEMENT OF MATERIALS THAT IS AUTHORIZED BY A PERMIT ISSUED BY ANY
 19 STATE OR FEDERAL AGENCY IS NOT A PLACEMENT OF WASTES WITHIN THE PROHIBITION OF THIS
 20 SUBSECTION IF THE AGENCY'S PERMITTING AUTHORITY INCLUDES PROVISIONS FOR REVIEW OF THE
 21 PLACEMENT OF MATERIALS TO ENSURE THAT IT WILL NOT CAUSE POLLUTION OF STATE WATERS
 22 AND THE DEPARTMENT HAS THE OPPORTUNITY TO PARTICIPATE IN THE REVIEW OF THE ACTIVITY.

23 (b) violate any provision set forth in a permit or stipulation, including but not limited to limitations
 24 and conditions contained in the permit;

25 (c) site and construct a sewage lagoon less than 500 feet from an existing water well;

26 (d) cause degradation of state waters without authorization pursuant to 75-5-303;

27 (e) violate any order issued pursuant to this chapter; or

28 (f) violate any provision of this chapter.

29 (2) It is unlawful to carry on any of the following activities without a current permit from the
 30 department:

- 1 (a) construct, modify, or operate a disposal system ~~which~~ that discharges into any state waters;
- 2 (b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes into
- 3 any state waters; or
- 4 (c) discharge sewage, industrial wastes, or other wastes into any state waters."

5

6 ~~Section 15. Section 75-5-611, MCA, is amended to read:~~

7 ~~"75-5-611. Violation of chapter administrative actions and penalties notice and hearing. (1)~~

8 ~~When the department has reason to believe that a violation of this chapter, a rule adopted under this~~

9 ~~chapter, or a condition of a permit or authorization required by a rule adopted under this chapter has~~

10 ~~occurred, it may have a written notice letter served personally or by certified mail on the alleged violator~~

11 ~~or the violator's agent. The notice letter must state:~~

12 ~~(a) the provision of statute, rule, permit, or approval alleged to be violated;~~

13 ~~(b) the facts alleged to constitute the violation;~~

14 ~~(c) the specific nature of corrective action that the department requires;~~

15 ~~(d) as applicable, the amount of the administrative penalty that will be assessed by order under~~

16 ~~subsection (2) if the corrective action is not taken within the time provided under subsection (1)(c); and~~

17 ~~(e) as applicable, the time within which the corrective action is to be taken or the administrative~~

18 ~~penalty will be assessed. For the purposes of this chapter, service by certified mail is complete on the date~~

19 ~~of receipt. Except as provided in subsection (2)(a)(ii), an administrative penalty may not be assessed until~~

20 ~~the provisions of subsection (1) have been complied with.~~

21 ~~(2) (a) The department may issue an administrative notice and order in lieu of the notice letter~~

22 ~~provided under subsection (1) if the department's action:~~

23 ~~(i) does not involve assessment of an administrative penalty; or~~

24 ~~(iii) seeks an administrative penalty only for an activity that it believes and alleges has violated or~~

25 ~~is violating 75-5-605.~~

26 ~~(b) A notice and order issued under this section must meet all of the requirements specified in~~

27 ~~subsection (1).~~

28 ~~(3) In a notice and order given under subsection (1), the department may require the alleged~~

29 ~~violator to appear before the board for a public hearing and to answer the charges. The hearing must be~~

30 ~~held no sooner than 15 days after service of the notice and order, except that the board may set an earlier~~

1 ~~date for hearing if it is requested to do so by the alleged violator. The board may set a later date for~~
2 ~~hearing at the request of the alleged violator if the alleged violator shows good cause for delay.~~

3 ~~(4) If the department does not require an alleged violator to appear before the board for a public~~
4 ~~hearing, the alleged violator may request the board to conduct the hearing. The request must be in writing~~
5 ~~and must be filed with the department no later than 30 days after service of a notice and order under~~
6 ~~subsection (2). If a request is filed, a hearing must be held within a reasonable time. If a hearing is not~~
7 ~~requested within 30 days after service upon the alleged violator, the opportunity for a contested case~~
8 ~~appeal to the board under Title 2, chapter 4, part 6, is waived.~~

9 ~~(5) If a contested case hearing is held under this section, it must be public and must be held in the~~
10 ~~county in which the violation is alleged to have occurred or, at the request of the alleged violator, in Lewis~~
11 ~~and Clark County.~~

12 ~~(6) (a) After a hearing, the board shall make findings and conclusions that explain its decision.~~

13 ~~(b) If the board determines that a violation has occurred, it shall also issue an appropriate order for~~
14 ~~the prevention, abatement, or control of pollution, the assessment of administrative penalties, or both.~~

15 ~~(c) If the order requires abatement or control of pollution, the board shall state the date or dates~~
16 ~~by which a violation must cease and may prescribe timetables for necessary action in preventing, abating,~~
17 ~~or controlling the pollution.~~

18 ~~(d) If the order requires payment of an administrative penalty, the board shall explain how it~~
19 ~~determined the amount of the administrative penalty.~~

20 ~~(e) If the board determines that a violation has not occurred, it shall declare the department's notice~~
21 ~~void.~~

22 ~~(7) The alleged violator may petition the board for a rehearing on the basis of new evidence, which~~
23 ~~petition and the board may grant the petition for good cause shown.~~

24 ~~(8) Instead of issuing an order, the board may direct the department to initiate appropriate action~~
25 ~~for recovery of a penalty under 75-5-631, 75-5-632, 75-5-633, or 75-5-635.~~

26 ~~(9) (a) An action initiated under this section may include an administrative penalty of not more than~~
27 ~~\$10,000 for each day of each violation; however ~~However~~, the maximum penalty may not exceed~~
28 ~~\$100,000 for any related series of violations.~~

29 ~~(b) Administrative penalties collected under this section must be deposited in the general fund.~~

30 ~~(c) In determining the amount of penalty to be assessed to a person, the department and board~~

1 ~~shall consider the criteria stated in 75-5-631(4) and rules promulgated under 75-5-201.~~

2 ~~(d) The contested case provisions of the Montana Administrative Procedure Act, provided for in~~
 3 ~~Title 2, chapter 4, part 6, apply to a hearing conducted under this section."~~

4
 5 **Section 12.** Section 75-5-614, MCA, is amended to read:

6 **"75-5-614. Injunctions authorized.** (1) The department is authorized to commence a civil action
 7 seeking appropriate relief, including a permanent or temporary injunction, for a violation ~~which~~ that would
 8 be subject to a compliance order under 75-5-613. An action under this subsection may be commenced in
 9 the district court of ~~the county in which the defendant is located or resides or is doing business or any~~ the
 10 county where a violation occurs or is threatened ~~if the defendant cannot be located in Montana,~~ and the
 11 court ~~shall have~~ has jurisdiction to restrain the violation and to require compliance.

12 (2) The department may bring an action for an injunction against the continuation of an alleged
 13 violation of the terms or conditions of a permit issued by the department or any rule or effluent standard
 14 promulgated under this chapter or against a person who fails to comply with an emergency order issued
 15 by the department under 75-5-621 or a final order of the board. The court to which the department applies
 16 for an injunction may issue a temporary injunction if it finds that there is reasonable cause to believe that
 17 the allegations of the department are true, and it may issue a temporary restraining order pending action
 18 on the temporary injunction."

19
 20 **Section 13.** Section 75-5-631, MCA, is amended to read:

21 **"75-5-631. Civil penalties -- injunctions not barred.** (1) A person who violates this chapter or a
 22 rule, permit, effluent standard, or order issued under the provisions of this chapter ~~shall be~~ is subject to a
 23 civil penalty not to exceed \$25,000. Each day of violation constitutes a separate violation.

24 (2) Action under this section does not bar enforcement of this chapter or of rules or orders issued
 25 under it by injunction or other appropriate remedy.

26 (3) The department shall institute and maintain ~~any~~ enforcement proceedings in the name of the
 27 state.

28 (4) ~~When~~ IN AN ACTION seeking penalties under this section, the department shall take into
 29 account AND THE COURT SHALL CONSIDER the following factors in determining an appropriate settlement,
 30 if any, subsequent to the filing of a complaint:

1 (a) the nature, circumstances, extent, and gravity of the violation; and

2 (b) with respect to the violator, ~~his~~ the violator's ability to pay, any and prior history of such
3 violations, the economic benefit or savings, if any, to the violator resulting from the violator's action,
4 amounts VOLUNTARILY expended by the violator to address or mitigate the violation or impacts of the
5 violation to waters of the state, and ~~any~~ other matters as justice may require."

6

7 **Section 14.** Section 75-5-636, MCA, is amended to read:

8 **"75-5-636. Action by other parties.** A person, association, corporation, or agency of the state or
9 federal government may apply to the department protesting a violation of this chapter. The department
10 shall make an investigation and make a written report to the person, association, corporation, or agency
11 ~~which that~~ made the protest. If a violation is established by the investigation of the department,
12 appropriate enforcement action ~~shall~~ must be taken. If the investigation proves the protest to have been
13 without reasonable cause, the department may seek recovery of investigative costs from the person who
14 made the application."

15

16 **Section 15.** Section 75-6-112, MCA, is amended to read:

17 **"75-6-112. Prohibited acts.** A person may not:

18 (1) discharge sewage, ~~drainage,~~ DRAINAGE, industrial waste, or other wastes that will cause
19 pollution of state waters used by a person for domestic use or as a source for a public water supply system
20 or water or ice company;

21 (2) discharge sewage, ~~drainage,~~ DRAINAGE, industrial waste, or other waste into any state waters
22 or on the banks of any state waters or into any abandoned or operating water well unless the sewage,
23 ~~drainage,~~ DRAINAGE, industrial waste, or other waste is treated as prescribed by the board;

24 (3) build or operate any railroad, logging road, logging camp, or electric or manufacturing plant of
25 any kind on any watershed of a public water supply system unless:

26 (a) the water supply is protected from pollution by sanitary precautions prescribed by the board;
27 and

28 (b) a permit has been issued by the department after approval of detailed plans and specifications
29 for sanitary precautions;

30 (4) commence construction, alteration, or extension of any system of water supply, water

1 distribution, sewer, ~~drainage~~, DRAINAGE, wastewater, or sewage disposal before ~~he~~ the person submits
2 to the department necessary maps, plans, and specifications for its review and the department approves
3 those maps, plans, and specifications; HOWEVER, ANY FACILITY REVIEWED BY THE DEPARTMENT
4 UNDER TITLE 75, CHAPTER 5, IS NOT SUBJECT TO THE PROVISIONS OF THIS SECTION.

5 (5) operate or maintain any public water supply system ~~which~~ that exceeds a maximum
6 contaminant level established by the board unless ~~he~~ the person has been granted or has an application
7 pending for a variance or exemption pursuant to this part;

8 (6) violate any provision of this part or a rule adopted under this part; or

9 (7) violate any condition or requirement of an approval issued pursuant to this part."
10

11 NEW SECTION. SECTION 16. Codification instruction. [Sections 1 ~~through 3~~ AND 2] are intended
12 to be codified as an integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5,
13 part 3, apply to [sections 1 ~~through 3~~ AND 2].
14

15 NEW SECTION. SECTION 17. SAVING CLAUSE. SECTION 75-5-614 DOES NOT AFFECT
16 PROCEEDINGS THAT WERE BEGUN BEFORE [THE EFFECTIVE DATE OF THIS ACT].
17

18 NEW SECTION. SECTION 18. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND
19 APPROVAL.
20

-END-

SENATE BILL NO. 331

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

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA WATER QUALITY ACT;
 ESTABLISHING WATER QUALITY STANDARDS; REQUIRING THAT ~~RULES OR~~ TREATMENT STANDARDS
 BE ECONOMICALLY, ENVIRONMENTALLY, AND TECHNOLOGICALLY FEASIBLE; ~~AND~~ AMENDING
 SECTIONS 75-5-103, 75-5-106, ~~75-5-201~~, 75-5-301, 75-5-302, 75-5-304, 75-5-305, ~~75-5-306~~, 75-5-401,
 75-5-403, 75-5-605, ~~75-5-611~~, 75-5-614, 75-5-631, 75-5-636, AND 75-6-112, MCA; AND PROVIDING
AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, experience with implementation and enforcement of the Montana water quality statutes
 has revealed deficiencies in the statutes that have led to inefficiency and unfairness in administration and
 enforcement of the statutes; and

WHEREAS, those deficiencies can be addressed by selective amendment of the statutes.

STATEMENT OF INTENT

A statement of intent is required to provide guidance to the board of health and environmental
 sciences regarding rulemaking. The legislature confirms the policy of this state, as reflected in 75-5-101.
 It is concerned that implementation of the water quality laws has in the past been too dependent on
 assumptions and conjecture springing from experiences and circumstances from other states and has not
 been sufficiently based on the conditions and needs of our state. The legislature intends that, in
 promulgating rules under this bill, the board of health and environmental sciences should seriously consider
 the impact of proposed rules and that the rules should be adopted only on the basis of sound, scientific
 justification and never on the basis of projections or conjecture. The legislature is specifically concerned
 that water quality criteria must reflect concentrations that can be reliably measured, or the rules will, as
 a practical matter, be unenforceable. [SECTION 1], PROVIDING CONDITIONS FOR ADOPTION OF
STANDARDS MORE STRINGENT THAN FEDERAL STANDARDS, IS NOT INTENDED TO PROHIBIT THE

1 ADOPTION OF GROUND WATER QUALITY STANDARDS.

2
3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

4
5 NEW SECTION. Section 1. Standards more stringent than federal standards. (1) In adopting rules
6 to implement this chapter, the board may adopt rules that are more stringent than corresponding draft or
7 final federal regulations, guidelines, or criteria if:

8 (a) the board makes written findings, based on sound scientific or technical evidence in the record,
9 which state that rules that are more stringent than corresponding federal regulations, guidelines, or criteria
10 are necessary to protect the public health, beneficial use of water, or the environment of the state; and

11 (b) the action is taken pursuant to 75-5-307.

12 (2) The board's written findings must be accompanied by a board opinion referring to and
13 evaluating the public health and environmental information and studies contained in the record that forms
14 the basis for the board's conclusion.

15
16 ~~NEW SECTION. Section 2. Standards of water quality. (1) Notwithstanding the provisions of~~
17 ~~[section 1], in formulating and adopting standards of water quality under 75-5-301(2) or in reviewing and~~
18 ~~revising standards of water quality under 75-5-301(3) the board shall comply with the following procedures:~~

19 (a) ~~Except as provided in subsection (1)(b), the board shall use as standards of water quality values~~
20 ~~that are no more stringent than the values set forth in the following table:~~

21 Water Quality Criteria

<u>Parameter</u>	<u>Human Health</u>	<u>Aquatic Life</u>	
		(Acute)	<u>(Chronic)</u>
A. <u>Metal Parameters</u> (expressed in micrograms per liter)			
Aluminum		750	87
Antimony	6		
Arsenic	50	360	190
Beryllium	4		
Barium	2,000		
Cadmium	5	3.9*	1.1*

1	Chromium	100	16**	11**
2	Copper	1,300	18*	12*
3	Fluoride	4,000		
4	Iron	300		1,000
5	Lead	5	82*	3.2*
6	Manganese	50		
7	Mercury	2	2.4	0.012
8	Nickel	100	1,400*	160*
9	Selenium	50	20	5
10	Silver	50	4.1	
11	Thallium	2		
12	Zinc	5,000	120*	110*

13 ~~B. Other Parameters (expressed in milligrams per liter)~~

14	Nitrate	10		
15	Ammonia		25***	2.2***
16	pH	6 to 9 std. units		
17	Sulfate	1,800		

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

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

21 ~~** Hexavalent~~

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

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

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

28 ~~(i) The values must be based on scientifically valid studies and derived in a manner consistent with~~
 29 ~~draft or final federal regulations, guidelines, or criteria for assessing the health risks of environmental~~
 30 ~~pollutants.~~

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

3 ~~(iii) For systemic toxicants, the values must represent a concentration to which the human~~
4 ~~population, including sensitive subgroups, could be exposed on a daily basis without appreciable risk of~~
5 ~~deleterious effects during a lifetime.~~

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

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

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

13
14 **NEW SECTION. Section 2. Site-specific standards of water quality for aquatic life.**

15 Notwithstanding any other provisions of this chapter, the board, upon application by a permit applicant,
16 **PERMITEE, OR PERSON POTENTIALLY LIABLE UNDER ANY STATE OR FEDERAL ENVIRONMENTAL**
17 **REMEDATION STATUTE,** shall adopt site-specific standards of water quality for aquatic life, both acute
18 and chronic, as the standards of water quality required under 75-5-301(2) and (3). The site-specific
19 standards of water quality must be developed in accordance with the procedures set forth in draft or final
20 federal regulations, guidelines, or criteria.

21
22 **Section 3.** Section 75-5-103, MCA, is amended to read:

23 **"75-5-103. Definitions.** Unless the context requires otherwise, in this chapter, the following
24 definitions apply:

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

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

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

29 (4) "Degradation" means a change in water quality that lowers the quality of high-quality waters
30 ~~for a parameter~~ **FOR A PARAMETER IF THAT CHANGE IS LIKELY TO AFFECT A BENEFICIAL USE.** The term

1 does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

2 (5) "Department" means the department of health and environmental sciences provided for in Title
3 2, chapter 15, part 21.

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

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

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

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

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

16 ~~(b) The term does not mean materials incorporated or placed into a structure, facility, or location~~
17 ~~authorized in a permit issued by a state or federal agency.~~

18 (11) "Interested person" means a person who has submitted oral or written comments on the
19 department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term
20 includes a person who has requested authorization to degrade high-quality waters.

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

23 (13) "METAL PARAMETERS" INCLUDES BUT IS NOT LIMITED TO ALUMINUM, ANTIMONY,
24 ARSENIC, BERYLLIUM, BARIUM, CADMIUM, CHROMIUM, COPPER, FLUORIDE, IRON, LEAD,
25 MANGANESE, MERCURY, NICKEL, SELENIUM, SILVER, THALLIUM, AND ZINC.

26 ~~(13)~~(14) "Mixing zone" means an area established in a permit or final decision on nondegradation
27 issued by the department where water quality standards may be exceeded, subject to conditions that are
28 imposed by the department and that are consistent with the rules adopted by the board.

29 ~~(14)~~(15) ~~(a)~~ "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings,
30 bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked

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

3 ~~(b) The term does not mean materials incorporated or placed into a structure, facility, or location~~
4 ~~authorized in a permit issued by a state or federal agency.~~

5 ~~(15)~~(16) "Owner or operator" means a person who owns, leases, operates, controls, or supervises
6 a point source.

7 ~~(16)~~(17) "Parameter" means a physical, biological, or chemical property of state water when a value
8 of that property affects the quality of the state water.

9 ~~(17)~~(18) "Person" means the state, a political subdivision of the state, institution, firm, corporation,
10 partnership, individual, or other entity and includes persons resident in Canada.

11 ~~(18)~~(19) "Point source" means a discernible, confined, and discrete conveyance, including but not
12 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel
13 or other floating craft, from which pollutants are or may be discharged.

14 ~~(19)~~(20) "Pollution" means contamination or other alteration of the physical, chemical, or biological
15 properties of state waters which exceeds that permitted by Montana water quality standards, including but
16 not limited to standards relating to change in temperature, taste, color, turbidity, or odor; $\frac{1}{2}$ or the discharge,
17 seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state
18 water ~~which~~ that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious
19 to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.
20 A discharge, seepage, drainage, infiltration or flow ~~which~~ that is authorized under the pollution discharge
21 permit rules of the board is not pollution under this chapter. Activities conducted under the conditions
22 imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution
23 under this chapter.

24 ~~(20)~~(21) "Sewage" means water-carried waste products from residences, public buildings,
25 institutions, or other buildings, including discharge from human beings or animals, together with ground
26 water infiltration and surface water present.

27 ~~(21)~~(22) "Sewage system" means a device for collecting or conducting sewage, industrial wastes,
28 or other wastes to an ultimate disposal point.

29 ~~(22)~~(23) "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)(24)~~ (a) "State waters" means a body of water, irrigation system, or drainage system, either
 4 surface or underground; ~~however, this subsection.~~

5 (b) The term does not apply to:

6 (i) privately owned ponds or lagoons USED SOLELY FOR TREATING, TRANSPORTING, OR
 7 IMPOUNDING POLLUTANTS; or

8 (ii) irrigation waters or land application disposal waters ~~where~~ when the waters are used up within
 9 the irrigation or land application disposal system and the waters are not returned to ~~any other~~ state waters.

10 ~~(24)(25)~~ "Treatment works" means works, including sewage lagoons, installed for treating or
 11 holding sewage, industrial wastes, or other wastes.

12 ~~(25)(26)~~ "Water quality protection practices" means those activities, prohibitions, maintenance
 13 procedures, or other management practices applied to point and nonpoint sources designed to protect,
 14 maintain, and improve the quality of state waters. Water quality protection practices include but are not
 15 limited to treatment requirements, standards of performance, effluent standards, and operating procedures
 16 and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material
 17 storage.

18 ~~(26)(27)~~ "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug,
 19 jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition
 20 of ground water."

21

22 **Section 4.** Section 75-5-106, MCA, is amended to read:

23 **"75-5-106. Interagency cooperation -- enforcement authorization.** (1) The council, board, and
 24 department may require the use of records of all state agencies and may seek the assistance of ~~such~~ the
 25 agencies. The department shall coordinate permit proceedings under this chapter with permit proceedings
 26 involving the same project conducted by the department of state lands under Title 82, chapter 4, and by
 27 the department of natural resources and conservation under Title 75, chapter 20, FOLLOWING THE TIME
 28 SCHEDULE OF THE LEAD AGENCY. State, county, and municipal officers and employees, including
 29 sanitarians and other employees of local departments of health, shall cooperate with the council, board,
 30 and department in furthering the purposes of this chapter, so far as is practicable and consistent with their

1 other duties.

2 (2) The department may authorize a local water quality district established according to the
3 provisions of Title 7, chapter 13, part 45, to enforce the provisions of this chapter and rules adopted under
4 this chapter on a case-by-case basis. If a local water quality district requests the authorization, the local
5 water quality district shall present appropriate documentation to the department that a person is violating
6 permit requirements established by the department or may be causing pollution, as defined in 75-5-103,
7 of state waters or placing or causing to be placed wastes in a location where they are likely to cause
8 pollution of state waters. The board may adopt rules regarding the granting of enforcement authority to
9 local water quality districts."

10

11 ~~Section 6. Section 75-5-201, MCA, is amended to read:~~

12 ~~"75-5-201. Board rules authorized. (1) The board shall adopt rules for the administration of this~~
13 ~~chapter and shall ensure that requirements imposed by the rules are cost effective and economically and~~
14 ~~technologically feasible.~~

15 ~~(2) The board's rules may include a fee schedule or system for assessment of administrative~~
16 ~~penalties as provided under 75-5-611."~~

17

18 **Section 5.** Section 75-5-301, MCA, is amended to read:

19 **"75-5-301. Classification and standards for state waters.** Consistent with the provisions of
20 ~~75-5-302 through 75-5-307 and 80-15-201 and this chapter,~~ the board shall:

21 (1) establish ~~and modify~~ the classification of all state waters in accordance with their present and
22 future most beneficial uses, ~~creating an appropriate classification for intermittent or ephemeral streams that~~
23 STREAMS THAT, DUE TO SPORADIC FLOW, do not support a viable fishery AN AQUATIC ECOSYSTEM
24 THAT INCLUDES SALMONID OR NONSALMONID FISH;

25 (2) formulate and adopt standards of water ~~purity and classification of water according to its most~~
26 ~~beneficial uses, giving consideration to the economics of waste treatment and prevention~~ quality that are
27 cost effective and economically and technologically feasible, GIVING CONSIDERATION TO THE
28 ECONOMICS OF WASTE TREATMENT AND PREVENTION. STANDARDS ADOPTED BY THE BOARD MUST
29 MEET THE FOLLOWING REQUIREMENTS:

30 (A) FOR MEASURING CARCINOGENS IN SURFACE WATER, THE WATER QUALITY STANDARD

1 FOR PROTECTION OF HUMAN HEALTH MUST BE THE VALUE ASSOCIATED WITH AN EXCESS LIFETIME
2 CANCER RISK LEVEL, ASSUMING CONTINUOUS LIFETIME EXPOSURE, NOT TO EXCEED 1×10^{-3} IN THE
3 CASE OF ARSENIC AND 1×10^{-5} FOR OTHER CARCINOGENS;

4 (B) FOR ALL METAL PARAMETERS, THE VALUES USED BY THE BOARD AS CRITERIA FOR
5 STANDARDS OF WATER QUALITY MUST BE STATED AS DISSOLVED CONCENTRATIONS;

6 (C) STANDARDS FOR THE PROTECTION OF AQUATIC LIFE DO NOT APPLY TO GROUND WATER;

7 AND

8 (D) STANDARDS MAY NOT EXCEED THE MAXIMUM CONTAMINANT LEVELS OBTAINED FROM
9 40 CFR, PART 141, AS OF [THE EFFECTIVE DATE OF THIS ACT];

10 (3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by
11 this chapter, revise established classifications of waters and adopted standards of water ~~purity and~~
12 ~~classification~~ quality;

13 (4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the
14 department be specifically identified, and requiring that mixing zones have:

15 (a) the smallest practicable size;

16 (b) a minimum practicable effect on water uses; and

17 (c) definable boundaries;

18 (5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not
19 limited to rules that:

20 (a) provide a procedure for department review and authorization of degradation;

21 (b) establish criteria for the following:

22 (i) determining important economic or social development; and

23 (ii) weighing the social and economic importance to the public of allowing the proposed project
24 against the cost to society associated with a loss of water quality; ~~and~~

25 (c) establish criteria for determining whether a proposed activity or class of activities will result in
26 nonsignificant changes in water quality for any parameter in order that those activities are not required to
27 undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

28 (i) equates significance with the potential for harm to human health or the environment;

29 (ii) considers both the quantity and the strength of the pollutant;

30 (iii) considers the length of time the degradation will occur; ~~and~~

1 (iv) considers the character of the pollutant so that greater significance is associated with
 2 carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with
 3 substances that are less harmful or less persistent.

4 (d) provide that a domestic septic system and drain field that meets the minimum state standards
 5 results in nonsignificant changes to water quality and is not required to undergo review under 75-5-303(3)
 6 unless the predicted nitrate contamination at the end of the drain field exceeds 10 milligrams per liter
 7 CHANGES TO GROUND WATER QUALITY ARE NONSIGNIFICANT IF THE DISCHARGE WILL NOT CAUSE
 8 DEGRADATION OF SURFACE WATER AND THE PREDICTED CONCENTRATION OF NITRATE AT THE
 9 BOUNDARY OF THE GROUND WATER MIXING ZONE DOES NOT EXCEED:

10 (I) 7.5 MILLIGRAMS PER LITER FOR NITRATE SOURCES OTHER THAN DOMESTIC SEWAGE;

11 (II) 5.0 MILLIGRAMS PER LITER FOR DOMESTIC SEWAGE EFFLUENT DISCHARGED FROM A
 12 CONVENTIONAL SEPTIC SYSTEM;

13 (III) 7.5 MILLIGRAMS PER LITER FOR DOMESTIC SEWAGE EFFLUENT DISCHARGED FROM A
 14 SEPTIC SYSTEM USING LEVEL TWO TREATMENT, WHICH MUST BE DEFINED IN THE RULES; OR

15 (IV) 7.5 MILLIGRAMS PER LITER FOR DOMESTIC SEWAGE EFFLUENT DISCHARGED FROM A
 16 CONVENTIONAL SEPTIC SYSTEM IN AREAS WHERE THE GROUND WATER NITRATE LEVEL EXCEEDS
 17 5.0 MILLIGRAMS PER LITER PRIMARILY FROM SOURCES OTHER THAN HUMAN WASTE.

18 (6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective
 19 and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute
 20 guidelines for granting or denying applications for authorization to degrade high-quality waters under the
 21 policy established in 75-5-303(2) and (3).

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

24 **Section 6.** Section 75-5-302, MCA, is amended to read:

25 **"75-5-302. Revised classifications not to lower water quality standards -- exception.** In revising
 26 classifications or standards or in adopting new classifications or standards, the board may not so formulate
 27 standards of water ~~purity~~ quality or classify ~~any~~ state water as to lower ~~any~~ the water quality standard
 28 applicable to ~~any~~ state water below the level applicable under the classifications and standards adopted
 29 except upon a finding that a particular state water has been classified under a standard or classification of
 30 water quality that is higher than the actual water quality that existed at the time of classification and only

1 if the action is taken pursuant to 75-5-307. When the board or department acquires information IS
 2 PRESENTED WITH FACTS INDICATING that a body of water is misclassified, the board shall, within 60
 3 days of acquiring the information, take action pursuant to 75-5-307 90 DAYS, INITIATE RULEMAKING to
 4 correct the misclassification."

5

6 **Section 7.** Section 75-5-304, MCA, is amended to read:

7 **"75-5-304. Adoption of standards -- pretreatment, effluent, performance.** (1) The board shall:

8 (a) adopt pretreatment standards for wastewater discharged into a municipal disposal system;

9 (b) adopt effluent standards as defined in 75-5-103;

10 (c) adopt toxic effluent standards and prohibitions; and

11 (d) establish standards of performance for new point source discharges.

12 (2) In taking action under subsection (1), the board shall ensure that the standards are
 13 cost-effective and economically, ENVIRONMENTALLY, and technologically feasible."

14

15 **Section 8.** Section 75-5-305, MCA, is amended to read:

16 **"75-5-305. Adoption of requirements for treatment of wastes -- variance procedure -- appeals.**

17 (1) The board may establish minimum requirements for the treatment of wastes. For cases in which the
 18 federal government has adopted technology-based treatment requirements for a particular industry or
 19 activity in 40 CFR, chapter I, subchapter N, the board shall adopt those requirements by reference. To the
 20 extent that the federal government has not adopted minimum treatment requirements for a particular
 21 industry or activity, the board may do so, THROUGH RULEMAKING, FOR PARAMETERS LIKELY TO AFFECT
 22 BENEFICIAL USES, ensuring that the requirements are cost-effective and economically,
 23 ENVIRONMENTALLY, and technologically feasible. EXCEPT FOR THE TECHNOLOGY-BASED TREATMENT
 24 REQUIREMENTS SET FORTH IN 40 CFR, CHAPTER I, SUBCHAPTER N, MINIMUM TREATMENT MAY NOT
 25 BE REQUIRED TO ADDRESS THE DISCHARGE OF A PARAMETER WHEN THE DISCHARGE IS CONSIDERED
 26 NONSIGNIFICANT UNDER RULES ADOPTED PURSUANT TO 75-5-301.

27 (2) The board shall establish minimum requirements for the control and disposal of sewage from
 28 private and public buildings, including standards and procedures for variances from the requirements.

29 (3) An applicant for a variance from minimum requirements adopted by a local board of health
 30 pursuant to 50-2-116(1)(i) may appeal the local board of health's final decision to the department by

1 submitting a written request for a hearing within 30 days after the decision. The written request must
 2 describe the activity for which the variance is requested, include copies of all documents submitted to the
 3 local board of health in support of the variance, and specify the reasons for the appeal of the local board
 4 of health's final decision.

5 (4) The department shall conduct a hearing on the request pursuant to Title 2, chapter 4, part 6.
 6 Within 30 days after the hearing, the department shall grant, conditionally grant, or deny the variance. The
 7 department shall base its decision on the board's standards for a variance.

8 (5) A decision of the department pursuant to subsection (4) is appealable to district court under
 9 the provisions of Title 2, chapter 4, part 7."

10
 11 ~~Section 11. Section 75-5-306, MCA, is amended to read:~~

12 ~~"75-5-306. Purer than natural unnecessary dams. (1) It is not necessary that wastes be treated~~
 13 ~~to a purer condition than the natural condition of the receiving stream water as long as the minimum~~
 14 ~~treatment requirements established under this chapter are met.~~

15 ~~(2) For the purpose of issuing permits under this part, "Natural" "natural" refers to conditions or~~
 16 ~~material present from runoff or percolation over which man has no control the water quality as of July 1,~~
 17 ~~1971, or to runoff or percolation from developed land where all reasonable land, soil, and water~~
 18 ~~conservation practices have been applied. Conditions resulting from the reasonable operation of dams at~~
 19 ~~July 1, 1971, are natural."~~

20
 21 **Section 9.** Section 75-5-401, MCA, is amended to read:

22 **"75-5-401. Board rules for permits.** (1) The board shall adopt rules:

23 (a) governing application for permits to discharge sewage, industrial wastes, or other wastes into
 24 state waters, including rules requiring the filing of plans and specifications relating to the construction,
 25 modification, or operation of disposal systems;

26 (b) governing the issuance, denial, modification, or revocation of permits. The board may not
 27 require a permit for a water conveyance structure or for a natural spring if the water discharged to state
 28 waters does not contain industrial waste, sewage, or other wastes. ~~The board may not require a permit~~
 29 for the discharge of ground water that is not altered from its ambient quality by the discharger as long as
 30 existing uses are not impacted in the receiving state waters DISCHARGE TO SURFACE WATER OF

1 GROUND WATER THAT IS NOT ALTERED FROM ITS AMBIENT QUALITY DOES NOT CONSTITUTE A
 2 DISCHARGE REQUIRING A PERMIT UNDER THIS PART AND IS NOT DEGRADATION IF:

3 (I) THE WATER DISCHARGED DOES NOT CAUSE THE RECEIVING WATERS TO EXCEED
 4 APPLICABLE STANDARDS FOR ANY PARAMETERS; OR

5 (II) TO THE EXTENT THAT THE RECEIVING WATERS IN THEIR AMBIENT STATE EXCEED
 6 STANDARDS FOR ANY PARAMETERS, THE DISCHARGE DOES NOT INCREASE THE CONCENTRATION
 7 OF THE PARAMETERS.

8 (2) The rules ~~shall~~ may allow the issuance or continuance of a permit only if the department finds
 9 that operation consistent with the limitations of the permit will not result in pollution of any state waters,
 10 except that the rules may allow the issuance of a temporary permit under which pollution may result if the
 11 department ~~insures~~ ensures that ~~such~~ the permit contains a compliance schedule designed to meet all
 12 applicable effluent standards and water quality standards in the shortest reasonable period of time.

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

17 (4) The board may adopt rules governing reclamation of sites disturbed by construction,
 18 modification, or operation of disposal systems for which a bond is voluntarily filed by a permittee pursuant
 19 to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond
 20 or other surety and release of portions of a bond or other surety."

21

22 **Section 10.** Section 75-5-403, MCA, is amended to read:

23 **"75-5-403. Denial or modification of permit -- time for review of permit application.** (1) The
 24 department shall review for completeness all applications for NEW permits within ~~30~~ 60 days of the receipt
 25 of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial
 26 completeness notice must note all ~~deficiency issues, and the department may not in a later completeness~~
 27 ~~notice raise an issue pertaining to the initial application that was not raised in the initial notice~~ MAJOR
 28 DEFICIENCY ISSUES, BASED ON THE INFORMATION SUBMITTED. THE DEPARTMENT AND THE
 29 APPLICANT MAY EXTEND THESE TIMEFRAMES, BY MUTUAL AGREEMENT, BY NOT MORE THAN 75
 30 DAYS. An application is considered complete unless the applicant is notified of a deficiency within the

1 appropriate review period.

2 (2) If the department denies an application for a permit or modifies a permit, the department shall
 3 give written notice of its action to the applicant or holder and ~~he~~ the applicant or holder may request a
 4 hearing before the board, in the manner stated in 75-5-611, for the purpose of petitioning the board to
 5 reverse or modify the action of the department. ~~Such~~ The hearing ~~shall~~ must be held within 30 days after
 6 receipt of written request. After the hearing, the board shall affirm, modify, or reverse the action of the
 7 department. If the holder does not request a hearing before the board, modification of a permit ~~shall be~~
 8 is effective 30 days after receipt of notice by the holder unless the department specifies a later date. If the
 9 holder does request a hearing before the board, ~~an~~ an order modifying ~~his~~ the permit ~~shall be~~ is not
 10 effective until 20 days after ~~he has received~~ receipt of notice of the action of the board.

11 ~~(2) This section does not apply to any modification made in permit conditions at the time of~~
 12 ~~reissuance, but only to those modifications made in existing permits during their terms."~~

13

14 **Section 11.** Section 75-5-605, MCA, is amended to read:

15 **"75-5-605. Prohibited activity.** (1) It is unlawful to:

16 (a) cause pollution as defined in 75-5-103 of any state waters or to place or cause to be placed
 17 any ~~industrial or other~~ wastes where they will in a location where they are likely to cause pollution of any
 18 state waters; ANY PLACEMENT OF MATERIALS THAT IS AUTHORIZED BY A PERMIT ISSUED BY ANY
 19 STATE OR FEDERAL AGENCY IS NOT A PLACEMENT OF WASTES WITHIN THE PROHIBITION OF THIS
 20 SUBSECTION IF THE AGENCY'S PERMITTING AUTHORITY INCLUDES PROVISIONS FOR REVIEW OF THE
 21 PLACEMENT OF MATERIALS TO ENSURE THAT IT WILL NOT CAUSE POLLUTION OF STATE WATERS
 22 AND THE DEPARTMENT HAS THE OPPORTUNITY TO PARTICIPATE IN THE REVIEW OF THE ACTIVITY.

23 (b) violate any provision set forth in a permit or stipulation, including but not limited to limitations
 24 and conditions contained in the permit;

25 (c) site and construct a sewage lagoon less than 500 feet from an existing water well;

26 (d) cause degradation of state waters without authorization pursuant to 75-5-303;

27 (e) violate any order issued pursuant to this chapter; or

28 (f) violate any provision of this chapter.

29 (2) It is unlawful to carry on any of the following activities without a current permit from the
 30 department:

- 1 (a) construct, modify, or operate a disposal system ~~which~~ that discharges into any state waters;
- 2 (b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes into
- 3 any state waters; or
- 4 (c) discharge sewage, industrial wastes, or other wastes into any state waters."

5

6 ~~Section 15. Section 75-5-611, MCA, is amended to read:~~

7 ~~"75-5-611. Violation of chapter administrative actions and penalties notice and hearing. (1)~~

8 ~~When the department has reason to believe that a violation of this chapter, a rule adopted under this~~

9 ~~chapter, or a condition of a permit or authorization required by a rule adopted under this chapter has~~

10 ~~occurred, it may have a written notice letter served personally or by certified mail on the alleged violator~~

11 ~~or the violator's agent. The notice letter must state:~~

12 ~~(a) the provision of statute, rule, permit, or approval alleged to be violated;~~

13 ~~(b) the facts alleged to constitute the violation;~~

14 ~~(c) the specific nature of corrective action that the department requires;~~

15 ~~(d) as applicable, the amount of the administrative penalty that will be assessed by order under~~

16 ~~subsection (2) if the corrective action is not taken within the time provided under subsection (1)(c); and~~

17 ~~(e) as applicable, the time within which the corrective action is to be taken or the administrative~~

18 ~~penalty will be assessed. For the purposes of this chapter, service by certified mail is complete on the date~~

19 ~~of receipt. Except as provided in subsection (2)(a)(ii), an administrative penalty may not be assessed until~~

20 ~~the provisions of subsection (1) have been complied with.~~

21 ~~(2) (a) The department may issue an administrative notice and order in lieu of the notice letter~~

22 ~~provided under subsection (1) if the department's action:~~

23 ~~(i) does not involve assessment of an administrative penalty; or~~

24 ~~(ii) seeks an administrative penalty only for an activity that it believes and alleges has violated or~~

25 ~~is violating 75-5-606.~~

26 ~~(b) A notice and order issued under this section must meet all of the requirements specified in~~

27 ~~subsection (1).~~

28 ~~(3) In a notice and order given under subsection (1), the department may require the alleged~~

29 ~~violator to appear before the board for a public hearing and to answer the charges. The hearing must be~~

30 ~~held no sooner than 15 days after service of the notice and order, except that the board may set an earlier~~

1 ~~date for hearing if it is requested to do so by the alleged violator. The board may set a later date for~~
2 ~~hearing at the request of the alleged violator if the alleged violator shows good cause for delay.~~

3 ~~(4) If the department does not require an alleged violator to appear before the board for a public~~
4 ~~hearing, the alleged violator may request the board to conduct the hearing. The request must be in writing~~
5 ~~and must be filed with the department no later than 30 days after service of a notice and order under~~
6 ~~subsection (2). If a request is filed, a hearing must be held within a reasonable time. If a hearing is not~~
7 ~~requested within 30 days after service upon the alleged violator, the opportunity for a contested case~~
8 ~~appeal to the board under Title 2, chapter 4, part 6, is waived.~~

9 ~~(5) If a contested case hearing is held under this section, it must be public and must be held in the~~
10 ~~county in which the violation is alleged to have occurred or, at the request of the alleged violator, in Lewis~~
11 ~~and Clark County.~~

12 ~~(6) (a) After a hearing, the board shall make findings and conclusions that explain its decision.~~

13 ~~(b) If the board determines that a violation has occurred, it shall also issue an appropriate order for~~
14 ~~the prevention, abatement, or control of pollution, the assessment of administrative penalties, or both.~~

15 ~~(c) If the order requires abatement or control of pollution, the board shall state the date or dates~~
16 ~~by which a violation must cease and may prescribe timetables for necessary action in preventing, abating,~~
17 ~~or controlling the pollution.~~

18 ~~(d) If the order requires payment of an administrative penalty, the board shall explain how it~~
19 ~~determined the amount of the administrative penalty.~~

20 ~~(e) If the board determines that a violation has not occurred, it shall declare the department's notice~~
21 ~~void.~~

22 ~~(7) The alleged violator may petition the board for a rehearing on the basis of new evidence, which~~
23 ~~petition and the board may grant the petition for good cause shown.~~

24 ~~(8) Instead of issuing an order, the board may direct the department to initiate appropriate action~~
25 ~~for recovery of a penalty under 75-5-631, 75-5-632, 75-5-633, or 75-5-635.~~

26 ~~(9) (a) An action initiated under this section may include an administrative penalty of not more than~~
27 ~~\$10,000 for each day of each violation; however ~~However,~~ the maximum penalty may not exceed~~
28 ~~\$100,000 for any related series of violations.~~

29 ~~(b) Administrative penalties collected under this section must be deposited in the general fund.~~

30 ~~(c) In determining the amount of penalty to be assessed to a person, the department and board~~

1 ~~shall consider the criteria stated in 75-5-631(4) and rules promulgated under 75-5-201.~~

2 ~~(d) The contested case provisions of the Montana Administrative Procedure Act, provided for in~~
 3 ~~Title 2, chapter 4, part 6, apply to a hearing conducted under this section."~~

4

5 **Section 12.** Section 75-5-614, MCA, is amended to read:

6 **"75-5-614. Injunctions authorized.** (1) The department is authorized to commence a civil action
 7 seeking appropriate relief, including a permanent or temporary injunction, for a violation ~~which~~ that would
 8 be subject to a compliance order under 75-5-613. An action under this subsection may be commenced in
 9 the district court of ~~the county in which the defendant is located or resides or is doing business or any~~ the
 10 county where a violation occurs or is threatened ~~if the defendant cannot be located in Montana,~~ and the
 11 court ~~shall have~~ has jurisdiction to restrain the violation and to require compliance.

12 (2) The department may bring an action for an injunction against the continuation of an alleged
 13 violation of the terms or conditions of a permit issued by the department or any rule or effluent standard
 14 promulgated under this chapter or against a person who fails to comply with an emergency order issued
 15 by the department under 75-5-621 or a final order of the board. The court to which the department applies
 16 for an injunction may issue a temporary injunction if it finds that there is reasonable cause to believe that
 17 the allegations of the department are true, and it may issue a temporary restraining order pending action
 18 on the temporary injunction."

19

20 **Section 13.** Section 75-5-631, MCA, is amended to read:

21 **"75-5-631. Civil penalties -- injunctions not barred.** (1) A person who violates this chapter or a
 22 rule, permit, effluent standard, or order issued under the provisions of this chapter ~~shall be~~ is subject to a
 23 civil penalty not to exceed \$25,000. Each day of violation constitutes a separate violation.

24 (2) Action under this section does not bar enforcement of this chapter or of rules or orders issued
 25 under it by injunction or other appropriate remedy.

26 (3) The department shall institute and maintain ~~any~~ enforcement proceedings in the name of the
 27 state.

28 (4) ~~When~~ IN AN ACTION seeking penalties under this section, the department shall take into
 29 account AND THE COURT SHALL CONSIDER the following factors in determining an appropriate settlement,
 30 if any, subsequent to the filing of a complaint:

- 1 (a) the nature, circumstances, extent, and gravity of the violation; and
- 2 (b) with respect to the violator, ~~his~~ the violator's ability to pay, ~~any~~ and prior history of ~~such~~
- 3 violations, the economic benefit or savings, if any, to the violator resulting from the violator's action,
- 4 amounts VOLUNTARILY expended by the violator to address or mitigate the violation or impacts of the
- 5 violation to waters of the state, and ~~any~~ other matters as justice may require."

6

7 **Section 14.** Section 75-5-636, MCA, is amended to read:

8 "**75-5-636. Action by other parties.** A person, association, corporation, or agency of the state or

9 federal government may apply to the department protesting a violation of this chapter. The department

10 shall make an investigation and make a written report to the person, association, corporation, or agency

11 ~~which~~ that made the protest. If a violation is established by the investigation of the department,

12 appropriate enforcement action ~~shall~~ must be taken. If the investigation proves the protest to have been

13 without reasonable cause, the department may seek recovery of investigative costs from the person who

14 made the application."

15

16 **Section 15.** Section 75-6-112, MCA, is amended to read:

17 "**75-6-112. Prohibited acts.** A person may not:

18 (1) discharge sewage, ~~drainage,~~ DRAINAGE, industrial waste, or other wastes that will cause

19 pollution of state waters used by a person for domestic use or as a source for a public water supply system

20 or water or ice company;

21 (2) discharge sewage, ~~drainage,~~ DRAINAGE, industrial waste, or other waste into any state waters

22 or on the banks of any state waters or into any abandoned or operating water well unless the sewage,

23 ~~drainage,~~ DRAINAGE, industrial waste, or other waste is treated as prescribed by the board;

24 (3) build or operate any railroad, logging road, logging camp, or electric or manufacturing plant of

25 any kind on any watershed of a public water supply system unless:

26 (a) the water supply is protected from pollution by sanitary precautions prescribed by the board;

27 and

28 (b) a permit has been issued by the department after approval of detailed plans and specifications

29 for sanitary precautions;

30 (4) commence construction, alteration, or extension of any system of water supply, water

1 distribution, sewer, ~~drainage~~, DRAINAGE, wastewater, or sewage disposal before ~~he~~ the person submits
2 to the department necessary maps, plans, and specifications for its review and the department approves
3 those maps, plans, and specifications; HOWEVER, ANY FACILITY REVIEWED BY THE DEPARTMENT
4 UNDER TITLE 75, CHAPTER 5, IS NOT SUBJECT TO THE PROVISIONS OF THIS SECTION.

5 (5) operate or maintain any public water supply system ~~which~~ that exceeds a maximum
6 contaminant level established by the board unless ~~he~~ the person has been granted or has an application
7 pending for a variance or exemption pursuant to this part;

8 (6) violate any provision of this part or a rule adopted under this part; or

9 (7) violate any condition or requirement of an approval issued pursuant to this part."
10

11 NEW SECTION. Section 16. Codification instruction. [Sections 1 ~~through 3~~ AND 2] are intended
12 to be codified as an integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5,
13 part 3, apply to [sections 1 ~~through 3~~ AND 2].
14

15 NEW SECTION. SECTION 17. SAVING CLAUSE. SECTION 75-5-614 DOES NOT AFFECT
16 PROCEEDINGS THAT WERE BEGUN BEFORE [THE EFFECTIVE DATE OF THIS ACT].
17

18 NEW SECTION. SECTION 18. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND
19 APPROVAL.
20

-END-




HOUSE STANDING COMMITTEE REPORT

March 22, 1995

Page 1 of 3

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 331 (third reading copy -- blue) be concurred in as amended.

Signed:


Dick Knox, Chair

And, that such amendments read:

Carried by: Rep. Tash

1. Page 4, line 14.
Following: "life."
Insert: "(1)"

2. Page 4, line 15.
Following: "chapter"
Insert: "and except as provided in subsection (2)"

3. Page 4.
Following: line 20
Insert: "(2) If the department, based upon its review of an application submitted under subsection (1) and sound scientific, technical, and available site-specific evidence, determines that the development of site-specific criteria in accordance with draft or final federal regulations, guidelines, or criteria would not be protective of beneficial uses, the department, within 90 days of the submission of an application under subsection (1), shall notify the applicant in writing of its determination and of all additional procedures that the applicant is required to comply with in the development of site-specific standards of water quality under this section. If there is a dispute between the department and the applicant as to the additional procedures, the board shall, on the request of

Committee Vote:
Yes 12, No 6.

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HOUSE
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the department or the applicant, hear and determine the dispute. The board's decision must be based on sound scientific, technical, and available site-specific evidence."

4. Page 4, line 30.

Strike: "IF" through "USE"

5. Page 7, line 6.

Strike: "privately owned"

6. Page 7, lines 25 through 28.

Strike: "The" on line 25 through "AGENCY." on line 28

Insert: "When the department's review of a permit application submitted under another chapter or title is required or requested, the department shall coordinate the review under this chapter with the review conducted by the agency or unit under the other chapter, following the time schedule for that review."

7. Page 8, line 25.

Following: "(2)"

Insert: "(a)"

8. Page 8, line 28.

Following: "PREVENTION."

Insert: "(b)"

9. Page 8, line 30.

Strike: "(A)"

Insert: "(i)"

Strike: "MEASURING"

Strike: "IN SURFACE WATER"

10. Page 9, line 3.

Strike: "i"

Insert: ". However, if a standard established at a risk level of 1×10^{-3} for arsenic or 1×10^{-5} for other carcinogens violates the maximum contaminant level obtained from 40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen."

11. Page 9, lines 4 through 6.

Strike: "(B)" on line 4 through "(C)" on line 6

Insert: "(ii)"

12. Page 9, lines 6 through 9.

Strike: "i" on line 6 through "ACTL:" on line 9

Insert: "."

13. Page 10, line 7.

Strike: "TO"

Insert: "of nitrate in"

Strike: "QUALITY"

14. Page 13.

Following: line 2

Insert: "(i) the discharge does not contain industrial waste,
sewage, or other wastes;"

Re-number: subsequent subsections

15. Page 13, line 4.

Strike: "OR"

Insert: "and"

16. Page 13, line 8.

Strike: "may"

Insert: "must"

17. Page 17, line 29.

Strike: "AND" through "CONSIDER"

18. Page, 19

Following: line 13

Insert: "NEW SECTION. Section 17. Coordination instruction. If Senate Bill No. 330 is passed and approved and if it includes a section that amends the definition of "degradation" contained in 75-5-103, then the definition of degradation provided in [section 3 of this act], amending 75-5-103, is effective and the definition provided in Senate Bill No. 330 is void."

Re-number: subsequent sections

19. Page 19, lines 15 and 16.

Strike: "SECTION" through "ACT]."

Insert: "[This act] does not apply to civil or administrative actions commenced prior to [the effective date of this act] or to claims made in those actions, except that compliance plans resulting from those actions must reflect changes made by [this act]."

-END-



HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 331
Representative Harper

March 25, 1995 8:15 am

Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 331 (third reading copy -- blue).

Signed: 
Representative Harper

And, that such amendments to Senate Bill 331 read as follows:

AMEND HOUSE COMMITTEE ON NATURAL RESOURCES COMMITTEE REPORT DATED
MARCH 22, 1995, AS FOLLOWS:

Amendment No. 18

Strike: Amendment No. 18 in its entirety

Renumber: subsequent sections

-END-

ADOPT

92-1

SB 331

REJECT

HOUSE

1 SENATE BILL NO. 331

2 INTRODUCED BY BECK, FELAND, OHS, ORR, KNOX, BURNETT, ELLIS, HARGROVE, PIPINICH,
3 MENAHAN, SLITER, DEVLIN, GRIMES, BAER, CRISMORE, STOVALL, REHBEIN, TASH, LYNCH,
4 JACOBSON, AKLESTAD, FORRESTER, HARDING, GRADY, COLE, JENKINS, PAVLOVICH, QUILICI,
5 GRINDE, SWYSGOOD, CLARK, HARP, FOSTER, HERTEL, KEATING, EMERSON
6

7 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA WATER QUALITY ACT;
8 ESTABLISHING WATER QUALITY STANDARDS; REQUIRING THAT ~~RULES OR~~ TREATMENT STANDARDS
9 BE ECONOMICALLY, ENVIRONMENTALLY, AND TECHNOLOGICALLY FEASIBLE; ~~AND~~ AMENDING
10 SECTIONS 75-5-103, 75-5-106, ~~75-5-201~~, 75-5-301, 75-5-302, 75-5-304, 75-5-305, ~~75-5-306~~, 75-5-401,
11 75-5-403, 75-5-605, ~~75-5-611~~, 75-5-614, 75-5-631, 75-5-636, AND 75-6-112, MCA; AND PROVIDING
12 AN IMMEDIATE EFFECTIVE DATE."
13

14 WHEREAS, experience with implementation and enforcement of the Montana water quality statutes
15 has revealed deficiencies in the statutes that have led to inefficiency and unfairness in administration and
16 enforcement of the statutes; and

17 WHEREAS, those deficiencies can be addressed by selective amendment of the statutes.
18

19 STATEMENT OF INTENT

20 A statement of intent is required to provide guidance to the board of health and environmental
21 sciences regarding rulemaking. The legislature confirms the policy of this state, as reflected in 75-5-101.
22 It is concerned that implementation of the water quality laws has in the past been too dependent on
23 assumptions and conjecture springing from experiences and circumstances from other states and has not
24 been sufficiently based on the conditions and needs of our state. The legislature intends that, in
25 promulgating rules under this bill, the board of health and environmental sciences should seriously consider
26 the impact of proposed rules and that the rules should be adopted only on the basis of sound, scientific
27 justification and never on the basis of projections or conjecture. The legislature is specifically concerned
28 that water quality criteria must reflect concentrations that can be reliably measured, or the rules will, as
29 a practical matter, be unenforceable. [SECTION 1], PROVIDING CONDITIONS FOR ADOPTION OF
30 STANDARDS MORE STRINGENT THAN FEDERAL STANDARDS, IS NOT INTENDED TO PROHIBIT THE

1 ADOPTION OF GROUND WATER QUALITY STANDARDS.

2

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

4

5 NEW SECTION. Section 1. Standards more stringent than federal standards. (1) In adopting rules
6 to implement this chapter, the board may adopt rules that are more stringent than corresponding draft or
7 final federal regulations, guidelines, or criteria if:

8 (a) the board makes written findings, based on sound scientific or technical evidence in the record,
9 which state that rules that are more stringent than corresponding federal regulations, guidelines, or criteria
10 are necessary to protect the public health, beneficial use of water, or the environment of the state; and

11 (b) the action is taken pursuant to 75-5-307.

12 (2) The board's written findings must be accompanied by a board opinion referring to and
13 evaluating the public health and environmental information and studies contained in the record that forms
14 the basis for the board's conclusion.

15

16 NEW SECTION. Section 2. Standards of water quality. (1) ~~Notwithstanding the provisions of~~
17 ~~{section 11, in formulating and adopting standards of water quality under 75-5-301(2) or in reviewing and~~
18 ~~revising standards of water quality under 75-5-301(3) the board shall comply with the following procedures:~~

19 (a) ~~Except as provided in subsection (1)(b), the board shall use as standards of water quality values~~
20 ~~that are no more stringent than the values set forth in the following table:~~

21

Water Quality Criteria

<u>Parameter</u>	<u>Human Health</u>	<u>Aquatic Life</u>	<u>Aquatic Life</u>
		<u>(Acute)</u>	<u>(Chronic)</u>

24 A. Metal Parameters (expressed in micrograms per liter)

25 Aluminum		750	87
26 Antimony	6		
27 Arsenic	50	360	190
28 Beryllium	4		
29 Barium	2,000		
30 Cadmium	5	3.9*	1.1*

1	Chromium	100	16**	11**
2	Copper	1,300	18*	12*
3	Fluoride	4,000		
4	Iron	300		1,000
5	Lead	5	82*	3.2*
6	Manganese	50		
7	Mercury	2	2.4	0.012
8	Nickel	100	1,400*	160*
9	Selenium	50	20	5
10	Silver	50	4.1	
11	Thallium	2		
12	Zinc	5,000	120*	110*

B. ~~Other Parameters~~ (expressed in milligrams per liter)

14	Nitrate	10		
15	Ammonia		25***	2.2***
16	pH	6 to 9 std. units		
17	Sulfate	1,800		

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

* Hardness dependent (value assumes hardness of 100)

** Hexavalent

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

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

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

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

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

3 ~~(iii) For systemic toxicants, the values must represent a concentration to which the human~~
4 ~~population, including sensitive subgroups, could be exposed on a daily basis without appreciable risk of~~
5 ~~deleterious effects during a lifetime.~~

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

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

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

13
14 **NEW SECTION. Section 2. Site-specific standards of water quality for aquatic life.**

15 (1) Notwithstanding any other provisions of this chapter AND EXCEPT AS PROVIDED IN SUBSECTION (2),
16 the board, upon application by a permit applicant, PERMITTEE, OR PERSON POTENTIALLY LIABLE UNDER
17 ANY STATE OR FEDERAL ENVIRONMENTAL REMEDIATION STATUTE, shall adopt site-specific standards
18 of water quality for aquatic life, both acute and chronic, as the standards of water quality required under
19 75-5-301(2) and (3). The site-specific standards of water quality must be developed in accordance with
20 the procedures set forth in draft or final federal regulations, guidelines, or criteria.

21 (2) IF THE DEPARTMENT, BASED UPON ITS REVIEW OF AN APPLICATION SUBMITTED UNDER
22 SUBSECTION (1) AND SOUND SCIENTIFIC, TECHNICAL, AND AVAILABLE SITE-SPECIFIC EVIDENCE,
23 DETERMINES THAT THE DEVELOPMENT OF SITE-SPECIFIC CRITERIA IN ACCORDANCE WITH DRAFT OR
24 FINAL FEDERAL REGULATIONS, GUIDELINES, OR CRITERIA WOULD NOT BE PROTECTIVE OF BENEFICIAL
25 USES, THE DEPARTMENT, WITHIN 90 DAYS OF THE SUBMISSION OF AN APPLICATION UNDER
26 SUBSECTION (1), SHALL NOTIFY THE APPLICANT IN WRITING OF ITS DETERMINATION AND OF ALL
27 ADDITIONAL PROCEDURES THAT THE APPLICANT IS REQUIRED TO COMPLY WITH IN THE
28 DEVELOPMENT OF SITE-SPECIFIC STANDARDS OF WATER QUALITY UNDER THIS SECTION. IF THERE
29 IS A DISPUTE BETWEEN THE DEPARTMENT AND THE APPLICANT AS TO THE ADDITIONAL
30 PROCEDURES, THE BOARD SHALL, ON THE REQUEST OF THE DEPARTMENT OR THE APPLICANT, HEAR

1 AND DETERMINE THE DISPUTE. THE BOARD'S DECISION MUST BE BASED ON SOUND SCIENTIFIC,
 2 TECHNICAL, AND AVAILABLE SITE-SPECIFIC EVIDENCE.

3
 4 **Section 3.** Section 75-5-103, MCA, is amended to read:

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

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

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

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

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

14 (5) "Department" means the department of health and environmental sciences provided for in Title
 15 2, chapter 15, part 21.

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

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

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

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

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

28 ~~(b) The term does not mean materials incorporated or placed into a structure, facility, or location~~
 29 ~~authorized in a permit issued by a state or federal agency.~~

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

1 department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term
2 includes a person who has requested authorization to degrade high-quality waters.

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

5 (13) "METAL PARAMETERS" INCLUDES BUT IS NOT LIMITED TO ALUMINUM, ANTIMONY,
6 ARSENIC, BERYLLIUM, BARIUM, CADMIUM, CHROMIUM, COPPER, FLUORIDE, IRON, LEAD,
7 MANGANESE, MERCURY, NICKEL, SELENIUM, SILVER, THALLIUM, AND ZINC.

8 ~~(13)~~(14) "Mixing zone" means an area established in a permit or final decision on nondegradation
9 issued by the department where water quality standards may be exceeded, subject to conditions that are
10 imposed by the department and that are consistent with the rules adopted by the board.

11 ~~(14)~~(15) ~~(a)~~ "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings,
12 bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked
13 or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state
14 waters.

15 ~~(b) The term does not mean materials incorporated or placed into a structure, facility, or location~~
16 ~~authorized in a permit issued by a state or federal agency.~~

17 ~~(15)~~(16) "Owner or operator" means a person who owns, leases, operates, controls, or supervises
18 a point source.

19 ~~(16)~~(17) "Parameter" means a physical, biological, or chemical property of state water when a value
20 of that property affects the quality of the state water.

21 ~~(17)~~(18) "Person" means the state, a political subdivision of the state, institution, firm, corporation,
22 partnership, individual, or other entity and includes persons resident in Canada.

23 ~~(18)~~(19) "Point source" means a discernible, confined, and discrete conveyance, including but not
24 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel
25 or other floating craft, from which pollutants are or may be discharged.

26 ~~(19)~~(20) "Pollution" means contamination or other alteration of the physical, chemical, or biological
27 properties of state waters which exceeds that permitted by Montana water quality standards, including but
28 not limited to standards relating to change in temperature, taste, color, turbidity, or odor; $\frac{1}{2}$ or the discharge,
29 seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state
30 water ~~which~~ that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious

1 to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.
 2 A discharge, seepage, drainage, infiltration or flow ~~which~~ that is authorized under the pollution discharge
 3 permit rules of the board is not pollution under this chapter. Activities conducted under the conditions
 4 imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution
 5 under this chapter.

6 ~~(20)~~(21) "Sewage" means water-carried waste products from residences, public buildings,
 7 institutions, or other buildings, including discharge from human beings or animals, together with ground
 8 water infiltration and surface water present.

9 ~~(21)~~(22) "Sewage system" means a device for collecting or conducting sewage, industrial wastes,
 10 or other wastes to an ultimate disposal point.

11 ~~(22)~~(23) "Standard of performance" means a standard adopted by the board for the control of the
 12 discharge of pollutants ~~which~~ that reflects the greatest degree of effluent reduction achievable through
 13 application of the best available demonstrated control technology, processes, operating methods, or other
 14 alternatives, including, ~~where~~ when practicable, a standard permitting no discharge of pollutants.

15 ~~(23)~~(24) (a) "State waters" means a body of water, irrigation system, or drainage system, either
 16 surface or underground; ~~however, this subsection,~~

17 (b) The term does not apply to:

18 (i) ~~privately owned~~ ponds or lagoons USED SOLELY FOR TREATING, TRANSPORTING, OR
 19 IMPOUNDING POLLUTANTS; or

20 (ii) irrigation waters or land application disposal waters ~~where~~ when the waters are used up within
 21 the irrigation or land application disposal system and the waters are not returned to ~~any other~~ state waters.

22 ~~(24)~~(25) "Treatment works" means works, including sewage lagoons, installed for treating or
 23 holding sewage, industrial wastes, or other wastes.

24 ~~(25)~~(26) "Water quality protection practices" means those activities, prohibitions, maintenance
 25 procedures, or other management practices applied to point and nonpoint sources designed to protect,
 26 maintain, and improve the quality of state waters. Water quality protection practices include but are not
 27 limited to treatment requirements, standards of performance, effluent standards, and operating procedures
 28 and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material
 29 storage.

30 ~~(26)~~(27) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug,

1 jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition
2 of ground water."
3

4 **Section 4.** Section 75-5-106, MCA, is amended to read:

5 **"75-5-106. Interagency cooperation -- enforcement authorization.** (1) The council, board, and
6 department may require the use of records of all state agencies and may seek the assistance of such the
7 agencies. ~~The department shall coordinate permit proceedings under this chapter with permit proceedings~~
8 ~~involving the same project conducted by the department of state lands under Title 82, chapter 4, and by~~
9 ~~the department of natural resources and conservation under Title 75, chapter 20, FOLLOWING THE TIME~~
10 ~~SCHEDULE OF THE LEAD AGENCY. WHEN THE DEPARTMENT'S REVIEW OF A PERMIT APPLICATION~~
11 ~~SUBMITTED UNDER ANOTHER CHAPTER OR TITLE IS REQUIRED OR REQUESTED, THE DEPARTMENT~~
12 ~~SHALL COORDINATE THE REVIEW UNDER THIS CHAPTER WITH THE REVIEW CONDUCTED BY THE~~
13 ~~AGENCY OR UNIT UNDER THE OTHER CHAPTER, FOLLOWING THE TIME SCHEDULE FOR THAT REVIEW.~~
14 State, county, and municipal officers and employees, including sanitarians and other employees of local
15 departments of health, shall cooperate with the council, board, and department in furthering the purposes
16 of this chapter, so far as is practicable and consistent with their other duties.

17 (2) The department may authorize a local water quality district established according to the
18 provisions of Title 7, chapter 13, part 45, to enforce the provisions of this chapter and rules adopted under
19 this chapter on a case-by-case basis. If a local water quality district requests the authorization, the local
20 water quality district shall present appropriate documentation to the department that a person is violating
21 permit requirements established by the department or may be causing pollution, as defined in 75-5-103,
22 of state waters or placing or causing to be placed wastes in a location where they are likely to cause
23 pollution of state waters. The board may adopt rules regarding the granting of enforcement authority to
24 local water quality districts."
25

26 ~~**Section 6.** Section 75-5-201, MCA, is amended to read:~~

27 ~~**"75-5-201. Board rules authorized.** (1) The board shall adopt rules for the administration of this~~
28 ~~chapter and shall ensure that requirements imposed by the rules are cost effective and economically and~~
29 ~~technologically feasible.~~

30 ~~(2) The board's rules may include a fee schedule or system for assessment of administrative~~

1 ~~penalties as provided under 75-5-611."~~

2

3 Section 5. Section 75-5-301, MCA, is amended to read:

4 "75-5-301. Classification and standards for state waters. Consistent with the provisions of
5 ~~75-5-302 through 75-5-307 and 80-15-201 and this chapter,~~ the board shall:

6 (1) establish ~~and modify~~ the classification of all state waters in accordance with their present and
7 future most beneficial uses, creating an appropriate classification for intermittent or ephemeral streams that
8 STREAMS THAT, DUE TO SPORADIC FLOW, do not support a viable fishery AN AQUATIC ECOSYSTEM
9 THAT INCLUDES SALMONID OR NONSALMONID FISH;

10 (2) (A) formulate and adopt standards of water purity and classification of water according to its
11 most beneficial uses, giving consideration to the economics of waste treatment and prevention quality that
12 are cost effective and economically and technologically feasible, GIVING CONSIDERATION TO THE
13 ECONOMICS OF WASTE TREATMENT AND PREVENTION.

14 (B) STANDARDS ADOPTED BY THE BOARD MUST MEET THE FOLLOWING REQUIREMENTS:

15 (A)(I) FOR MEASURING CARCINOGENS IN SURFACE WATER, THE WATER QUALITY STANDARD
16 FOR PROTECTION OF HUMAN HEALTH MUST BE THE VALUE ASSOCIATED WITH AN EXCESS LIFETIME
17 CANCER RISK LEVEL, ASSUMING CONTINUOUS LIFETIME EXPOSURE, NOT TO EXCEED 1 X 10⁻³ IN THE
18 CASE OF ARSENIC AND 1 X 10⁻⁵ FOR OTHER CARCINOGENS;. HOWEVER, IF A STANDARD
19 ESTABLISHED AT A RISK LEVEL OF 1 X 10⁻³ FOR ARSENIC OR 1 X 10⁻⁵ FOR OTHER CARCINOGENS
20 VIOLATES THE MAXIMUM CONTAMINANT LEVEL OBTAINED FROM 40 CFR, PART 141, THEN THE
21 MAXIMUM CONTAMINANT LEVEL MUST BE ADOPTED AS THE STANDARD FOR THAT CARCINOGEN.

22 (B) FOR ALL METAL PARAMETERS, THE VALUES USED BY THE BOARD AS CRITERIA FOR
23 STANDARDS OF WATER QUALITY MUST BE STATED AS DISSOLVED CONCENTRATIONS;

24 (C)(II) STANDARDS FOR THE PROTECTION OF AQUATIC LIFE DO NOT APPLY TO GROUND
25 WATER; AND

26 (D) STANDARDS MAY NOT EXCEED THE MAXIMUM CONTAMINANT LEVELS OBTAINED FROM
27 40 CFR, PART 141, AS OF [THE EFFECTIVE DATE OF THIS ACT];.

28 (3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by
29 this chapter, revise established classifications of waters and adopted standards of water ~~purity and~~
30 ~~classification quality;~~

1 (4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the
2 department be specifically identified, and requiring that mixing zones have:

3 (a) the smallest practicable size;

4 (b) a minimum practicable effect on water uses; and

5 (c) definable boundaries;

6 (5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not
7 limited to rules that:

8 (a) provide a procedure for department review and authorization of degradation;

9 (b) establish criteria for the following:

10 (i) determining important economic or social development; and

11 (ii) weighing the social and economic importance to the public of allowing the proposed project
12 against the cost to society associated with a loss of water quality; and

13 (c) establish criteria for determining whether a proposed activity or class of activities will result in
14 nonsignificant changes in water quality for any parameter in order that those activities are not required to
15 undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

16 (i) equates significance with the potential for harm to human health or the environment;

17 (ii) considers both the quantity and the strength of the pollutant;

18 (iii) considers the length of time the degradation will occur; and

19 (iv) considers the character of the pollutant so that greater significance is associated with
20 carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with
21 substances that are less harmful or less persistent.

22 ~~(d) provide that a domestic septic system and drain field that meets the minimum state standards~~
23 ~~results in nonsignificant changes to water quality and is not required to undergo review under 75-5-303(3)~~
24 ~~unless the predicted nitrate contamination at the end of the drain field exceeds 10 milligrams per liter~~

25 CHANGES TO OF NITRATE IN GROUND WATER QUALITY ARE NONSIGNIFICANT IF THE DISCHARGE
26 WILL NOT CAUSE DEGRADATION OF SURFACE WATER AND THE PREDICTED CONCENTRATION OF
27 NITRATE AT THE BOUNDARY OF THE GROUND WATER MIXING ZONE DOES NOT EXCEED:

28 (I) 7.5 MILLIGRAMS PER LITER FOR NITRATE SOURCES OTHER THAN DOMESTIC SEWAGE;

29 (II) 5.0 MILLIGRAMS PER LITER FOR DOMESTIC SEWAGE EFFLUENT DISCHARGED FROM A
30 CONVENTIONAL SEPTIC SYSTEM;

1 (III) 7.5 MILLIGRAMS PER LITER FOR DOMESTIC SEWAGE EFFLUENT DISCHARGED FROM A
 2 SEPTIC SYSTEM USING LEVEL TWO TREATMENT, WHICH MUST BE DEFINED IN THE RULES; OR

3 (IV) 7.5 MILLIGRAMS PER LITER FOR DOMESTIC SEWAGE EFFLUENT DISCHARGED FROM A
 4 CONVENTIONAL SEPTIC SYSTEM IN AREAS WHERE THE GROUND WATER NITRATE LEVEL EXCEEDS
 5 5.0 MILLIGRAMS PER LITER PRIMARILY FROM SOURCES OTHER THAN HUMAN WASTE.

6 (6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective
 7 and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute
 8 guidelines for granting or denying applications for authorization to degrade high-quality waters under the
 9 policy established in 75-5-303(2) and (3).

10 (7) adopt rules to implement this section."

11
 12 **Section 6.** Section 75-5-302, MCA, is amended to read:

13 **"75-5-302. Revised classifications not to lower water quality standards -- exception.** In revising
 14 classifications or standards or in adopting new classifications or standards, the board may not so formulate
 15 standards of water ~~purity~~ quality or classify ~~any~~ state water as to lower ~~any~~ the water quality standard
 16 applicable to ~~any~~ state water below the level applicable under the classifications and standards adopted
 17 except upon a finding that a particular state water has been classified under a standard or classification of
 18 water quality that is higher than the actual water quality that existed at the time of classification and only
 19 if the action is taken pursuant to 75-5-307. ~~When the board or department acquires information IS~~
 20 PRESENTED WITH FACTS INDICATING that a body of water is misclassified, the board shall, within 60
 21 days of acquiring the information, take action pursuant to 75-5-307 90 DAYS, INITIATE RULEMAKING to
 22 correct the misclassification."

23
 24 **Section 7.** Section 75-5-304, MCA, is amended to read:

25 **"75-5-304. Adoption of standards -- pretreatment, effluent, performance.** (1) The board shall:

- 26 (a) adopt pretreatment standards for wastewater discharged into a municipal disposal system;₂
 27 (b) adopt effluent standards as defined in 75-5-103;₂
 28 (c) adopt toxic effluent standards and prohibitions;₂ and
 29 (d) establish standards of performance for new point source discharges.

30 (2) In taking action under subsection (1), the board shall ensure that the standards are

1 cost-effective and economically, ENVIRONMENTALLY, and technologically feasible."

2
3 **Section 8.** Section 75-5-305, MCA, is amended to read:

4 **"75-5-305. Adoption of requirements for treatment of wastes -- variance procedure -- appeals.**

5 (1) The board may establish minimum requirements for the treatment of wastes. For cases in which the
6 federal government has adopted technology-based treatment requirements for a particular industry or
7 activity in 40 CFR, chapter I, subchapter N, the board shall adopt those requirements by reference. To the
8 extent that the federal government has not adopted minimum treatment requirements for a particular
9 industry or activity, the board may do so, THROUGH RULEMAKING, FOR PARAMETERS LIKELY TO AFFECT
10 BENEFICIAL USES, ensuring that the requirements are cost-effective and economically,
11 ENVIRONMENTALLY, and technologically feasible. EXCEPT FOR THE TECHNOLOGY-BASED TREATMENT
12 REQUIREMENTS SET FORTH IN 40 CFR, CHAPTER I, SUBCHAPTER N, MINIMUM TREATMENT MAY NOT
13 BE REQUIRED TO ADDRESS THE DISCHARGE OF A PARAMETER WHEN THE DISCHARGE IS CONSIDERED
14 NONSIGNIFICANT UNDER RULES ADOPTED PURSUANT TO 75-5-301.

15 (2) The board shall establish minimum requirements for the control and disposal of sewage from
16 private and public buildings, including standards and procedures for variances from the requirements.

17 (3) An applicant for a variance from minimum requirements adopted by a local board of health
18 pursuant to 50-2-116(1)(i) may appeal the local board of health's final decision to the department by
19 submitting a written request for a hearing within 30 days after the decision. The written request must
20 describe the activity for which the variance is requested, include copies of all documents submitted to the
21 local board of health in support of the variance, and specify the reasons for the appeal of the local board
22 of health's final decision.

23 (4) The department shall conduct a hearing on the request pursuant to Title 2, chapter 4, part 6.
24 Within 30 days after the hearing, the department shall grant, conditionally grant, or deny the variance. The
25 department shall base its decision on the board's standards for a variance.

26 (5) A decision of the department pursuant to subsection (4) is appealable to district court under
27 the provisions of Title 2, chapter 4, part 7."
28

29 ~~**Section 11.** Section 75-5-306, MCA, is amended to read:~~

30 ~~**"75-5-306. Purer than natural unnecessary dams. (1) It is not necessary that wastes be treated**~~

1 ~~to a purer condition than the natural condition of the receiving stream water as long as the minimum~~
 2 ~~treatment requirements established under this chapter are met.~~

3 ~~(2) For the purpose of issuing permits under this part, "Natural" "natural" refers to conditions or~~
 4 ~~material present from runoff or percolation over which man has no control the water quality as of July 1,~~
 5 ~~1971, or to runoff or percolation from developed land where all reasonable land, soil, and water~~
 6 ~~conservation practices have been applied. Conditions resulting from the reasonable operation of dams at~~
 7 ~~July 1, 1971, are natural."~~

8
 9 **Section 9.** Section 75-5-401, MCA, is amended to read:

10 **"75-5-401. Board rules for permits.** (1) The board shall adopt rules:

11 (a) governing application for permits to discharge sewage, industrial wastes, or other wastes into
 12 state waters, including rules requiring the filing of plans and specifications relating to the construction,
 13 modification, or operation of disposal systems;

14 (b) governing the issuance, denial, modification, or revocation of permits. The board may not
 15 require a permit for a water conveyance structure or for a natural spring if the water discharged to state
 16 waters does not contain industrial waste, sewage, or other wastes. ~~The board may not require a permit~~
 17 for the discharge of ground water that is not altered from its ambient quality by the discharger as long as
 18 existing uses are not impacted in the receiving state waters **DISCHARGE TO SURFACE WATER OF**
 19 **GROUND WATER THAT IS NOT ALTERED FROM ITS AMBIENT QUALITY DOES NOT CONSTITUTE A**
 20 **DISCHARGE REQUIRING A PERMIT UNDER THIS PART AND IS NOT DEGRADATION IF:**

21 (I) THE DISCHARGE DOES NOT CONTAIN INDUSTRIAL WASTE, SEWAGE, OR OTHER WASTES;

22 ~~(II)~~ (II) THE WATER DISCHARGED DOES NOT CAUSE THE RECEIVING WATERS TO EXCEED
 23 APPLICABLE STANDARDS FOR ANY PARAMETERS; ~~OR~~ AND

24 ~~(III)~~ (III) TO THE EXTENT THAT THE RECEIVING WATERS IN THEIR AMBIENT STATE EXCEED
 25 STANDARDS FOR ANY PARAMETERS, THE DISCHARGE DOES NOT INCREASE THE CONCENTRATION
 26 OF THE PARAMETERS.

27 (2) The rules ~~shall may~~ **MUST** allow the issuance or continuance of a permit only if the department
 28 finds that operation consistent with the limitations of the permit will not result in pollution of any state
 29 waters, except that the rules may allow the issuance of a temporary permit under which pollution may
 30 result if the department ~~insures~~ ensures that ~~such~~ the permit contains a compliance schedule designed to

1 meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

2 (3) The rules shall provide that the department may revoke a permit if the department finds that
3 the holder of the permit has violated its terms, unless the department also finds that the violation was
4 accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the
5 violation as soon as was reasonably possible.

6 (4) The board may adopt rules governing reclamation of sites disturbed by construction,
7 modification, or operation of disposal systems for which a bond is voluntarily filed by a permittee pursuant
8 to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond
9 or other surety and release of portions of a bond or other surety."

10

11 **Section 10.** Section 75-5-403, MCA, is amended to read:

12 **"75-5-403. Denial or modification of permit -- time for review of permit application.** (1) The
13 department shall review for completeness all applications for NEW permits within 30 60 days of the receipt
14 of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial
15 completeness notice must note all deficiency issues, and the department may not in a later completeness
16 notice raise an issue pertaining to the initial application that was not raised in the initial notice MAJOR
17 DEFICIENCY ISSUES, BASED ON THE INFORMATION SUBMITTED. THE DEPARTMENT AND THE
18 APPLICANT MAY EXTEND THESE TIMEFRAMES, BY MUTUAL AGREEMENT, BY NOT MORE THAN 75
19 DAYS. An application is considered complete unless the applicant is notified of a deficiency within the
20 appropriate review period.

21 (2) If the department denies an application for a permit or modifies a permit, the department shall
22 give written notice of its action to the applicant or holder and ~~he~~ the applicant or holder may request a
23 hearing before the board, in the manner stated in 75-5-611, for the purpose of petitioning the board to
24 reverse or modify the action of the department. ~~Such~~ The hearing shall must be held within 30 days after
25 receipt of written request. After the hearing, the board shall affirm, modify, or reverse the action of the
26 department. If the holder does not request a hearing before the board, modification of a permit ~~shall be~~
27 is effective 30 days after receipt of notice by the holder unless the department specifies a later date. If the
28 holder does request a hearing before the board, ~~an~~ an order modifying ~~his~~ the permit ~~shall be~~ is not
29 effective until 20 days after ~~he has received~~ receipt of notice of the action of the board.

30 ~~(2) This section does not apply to any modification made in permit conditions at the time of~~

1 ~~reissuance, but only to those modifications made in existing permits during their terms."~~

2
3 **Section 11.** Section 75-5-605, MCA, is amended to read:

4 **"75-5-605. Prohibited activity.** (1) It is unlawful to:

5 (a) cause pollution as defined in 75-5-103 of any state waters or to place or cause to be placed
6 any ~~industrial or other~~ wastes ~~where they will~~ in a location where they are likely to cause pollution of any
7 state waters; ANY PLACEMENT OF MATERIALS THAT IS AUTHORIZED BY A PERMIT ISSUED BY ANY
8 STATE OR FEDERAL AGENCY IS NOT A PLACEMENT OF WASTES WITHIN THE PROHIBITION OF THIS
9 SUBSECTION IF THE AGENCY'S PERMITTING AUTHORITY INCLUDES PROVISIONS FOR REVIEW OF THE
10 PLACEMENT OF MATERIALS TO ENSURE THAT IT WILL NOT CAUSE POLLUTION OF STATE WATERS
11 AND THE DEPARTMENT HAS THE OPPORTUNITY TO PARTICIPATE IN THE REVIEW OF THE ACTIVITY.

12 (b) violate any provision set forth in a permit or stipulation, including but not limited to limitations
13 and conditions contained in the permit;

14 (c) site and construct a sewage lagoon less than 500 feet from an existing water well;

15 (d) cause degradation of state waters without authorization pursuant to 75-5-303;

16 (e) violate any order issued pursuant to this chapter; or

17 (f) violate any provision of this chapter.

18 (2) It is unlawful to carry on any of the following activities without a current permit from the
19 department:

20 (a) construct, modify, or operate a disposal system ~~which~~ that discharges into any state waters;

21 (b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes into
22 any state waters; or

23 (c) discharge sewage, industrial wastes, or other wastes into any state waters."
24

25 ~~**Section 15.** Section 75-5-611, MCA, is amended to read:~~

26 ~~**"75-5-611. Violation of chapter administrative actions and penalties -- notice and hearing.** (1)~~

27 ~~When the department has reason to believe that a violation of this chapter, a rule adopted under this~~
28 ~~chapter, or a condition of a permit or authorization required by a rule adopted under this chapter has~~
29 ~~occurred, it may have a written notice letter served personally or by certified mail on the alleged violator~~
30 ~~or the violator's agent. The notice letter must state:~~

1 ~~(a) the provision of statute, rule, permit, or approval alleged to be violated;~~

2 ~~(b) the facts alleged to constitute the violation;~~

3 ~~(c) the specific nature of corrective action that the department requires;~~

4 ~~(d) as applicable, the amount of the administrative penalty that will be assessed by order under~~
5 ~~subsection (2) if the corrective action is not taken within the time provided under subsection (1)(c); and~~

6 ~~(e) as applicable, the time within which the corrective action is to be taken or the administrative~~
7 ~~penalty will be assessed. For the purposes of this chapter, service by certified mail is complete on the date~~
8 ~~of receipt. Except as provided in subsection (2)(a)(ii), an administrative penalty may not be assessed until~~
9 ~~the provisions of subsection (1) have been complied with.~~

10 ~~(2) (a) The department may issue an administrative notice and order in lieu of the notice letter~~
11 ~~provided under subsection (1) if the department's action:~~

12 ~~(i) does not involve assessment of an administrative penalty; or~~

13 ~~(ii) seeks an administrative penalty only for an activity that it believes and alleges has violated or~~
14 ~~is violating 75-5-605.~~

15 ~~(b) A notice and order issued under this section must meet all of the requirements specified in~~
16 ~~subsection (1).~~

17 ~~(3) In a notice and order given under subsection (1), the department may require the alleged~~
18 ~~violator to appear before the board for a public hearing and to answer the charges. The hearing must be~~
19 ~~held no sooner than 15 days after service of the notice and order, except that the board may set an earlier~~
20 ~~date for hearing if it is requested to do so by the alleged violator. The board may set a later date for~~
21 ~~hearing at the request of the alleged violator if the alleged violator shows good cause for delay.~~

22 ~~(4) If the department does not require an alleged violator to appear before the board for a public~~
23 ~~hearing, the alleged violator may request the board to conduct the hearing. The request must be in writing~~
24 ~~and must be filed with the department no later than 30 days after service of a notice and order under~~
25 ~~subsection (2). If a request is filed, a hearing must be held within a reasonable time. If a hearing is not~~
26 ~~requested within 30 days after service upon the alleged violator, the opportunity for a contested case~~
27 ~~appeal to the board under Title 2, chapter 4, part 6, is waived.~~

28 ~~(5) If a contested case hearing is held under this section, it must be public and must be held in the~~
29 ~~county in which the violation is alleged to have occurred or, at the request of the alleged violator, in Lewis~~
30 ~~and Clark County.~~

1 ~~(6) (a) After a hearing, the board shall make findings and conclusions that explain its decision.~~

2 ~~(b) If the board determines that a violation has occurred, it shall also issue an appropriate order for~~
3 ~~the prevention, abatement, or control of pollution, the assessment of administrative penalties, or both.~~

4 ~~(c) If the order requires abatement or control of pollution, the board shall state the date or dates~~
5 ~~by which a violation must cease and may prescribe timetables for necessary action in preventing, abating,~~
6 ~~or controlling the pollution.~~

7 ~~(d) If the order requires payment of an administrative penalty, the board shall explain how it~~
8 ~~determined the amount of the administrative penalty.~~

9 ~~(e) If the board determines that a violation has not occurred, it shall declare the department's notice~~
10 ~~void.~~

11 ~~(7) The alleged violator may petition the board for a rehearing on the basis of new evidence, which~~
12 ~~petition and the board may grant the petition for good cause shown.~~

13 ~~(8) Instead of issuing an order, the board may direct the department to initiate appropriate action~~
14 ~~for recovery of a penalty under 75-5-631, 75-5-632, 75-5-633, or 75-5-635.~~

15 ~~(9) (a) An action initiated under this section may include an administrative penalty of not more than~~
16 ~~\$10,000 for each day of each violation; however, However, the maximum penalty may not exceed~~
17 ~~\$100,000 for any related series of violations.~~

18 ~~(b) Administrative penalties collected under this section must be deposited in the general fund.~~

19 ~~(c) In determining the amount of penalty to be assessed to a person, the department and board~~
20 ~~shall consider the criteria stated in 75-5-631(4) and rules promulgated under 75-5-201.~~

21 ~~(d) The contested case provisions of the Montana Administrative Procedure Act, provided for in~~
22 ~~Title 2, chapter 4, part 6, apply to a hearing conducted under this section."~~

23
24 **Section 12.** Section 75-5-614, MCA, is amended to read:

25 **"75-5-614. Injunctions authorized.** (1) The department is authorized to commence a civil action
26 seeking appropriate relief, including a permanent or temporary injunction, for a violation ~~which~~ that would
27 be subject to a compliance order under 75-5-613. An action under this subsection may be commenced in
28 the district court of ~~the county in which the defendant is located or resides or is doing business or any the~~
29 county where a violation occurs or is threatened ~~if the defendant cannot be located in Montana, and the~~
30 court shall have has jurisdiction to restrain the violation and to require compliance.

1 (2) The department may bring an action for an injunction against the continuation of an alleged
2 violation of the terms or conditions of a permit issued by the department or any rule or effluent standard
3 promulgated under this chapter or against a person who fails to comply with an emergency order issued
4 by the department under 75-5-621 or a final order of the board. The court to which the department applies
5 for an injunction may issue a temporary injunction if it finds that there is reasonable cause to believe that
6 the allegations of the department are true, and it may issue a temporary restraining order pending action
7 on the temporary injunction."

8
9 **Section 13.** Section 75-5-631, MCA, is amended to read:

10 **"75-5-631. Civil penalties -- injunctions not barred.** (1) A person who violates this chapter or a
11 rule, permit, effluent standard, or order issued under the provisions of this chapter ~~shall be~~ is subject to a
12 civil penalty not to exceed \$25,000. Each day of violation constitutes a separate violation.

13 (2) Action under this section does not bar enforcement of this chapter or of rules or orders issued
14 under it by injunction or other appropriate remedy.

15 (3) The department shall institute and maintain ~~any~~ enforcement proceedings in the name of the
16 state.

17 (4) ~~When~~ IN AN ACTION seeking penalties under this section, the department shall take into
18 account AND THE COURT SHALL CONSIDER the following factors in determining an appropriate settlement,
19 if any, subsequent to the filing of a complaint:

20 (a) the nature, circumstances, extent, and gravity of the violation; and

21 (b) with respect to the violator, ~~his~~ the violator's ability to pay, ~~any~~ and prior history of ~~such~~
22 violations, the economic benefit or savings, if any, to the violator resulting from the violator's action,
23 amounts VOLUNTARILY expended by the violator to address or mitigate the violation or impacts of the
24 violation to waters of the state, and ~~any~~ other matters as justice may require."

25
26 **Section 14.** Section 75-5-636, MCA, is amended to read:

27 **"75-5-636. Action by other parties.** A person, association, corporation, or agency of the state or
28 federal government may apply to the department protesting a violation of this chapter. The department
29 shall make an investigation and make a written report to the person, association, corporation, or agency
30 ~~which~~ that made the protest. If a violation is established by the investigation of the department,

1 appropriate enforcement action ~~shall~~ must be taken. If the investigation proves the protest to have been
 2 without reasonable cause, the department may seek recovery of investigative costs from the person who
 3 made the application."

4
 5 **Section 15.** Section 75-6-112, MCA, is amended to read:

6 **"75-6-112. Prohibited acts.** A person may not:

7 (1) discharge sewage, ~~drainage,~~ DRAINAGE, industrial waste, or other wastes that will cause
 8 pollution of state waters used by a person for domestic use or as a source for a public water supply system
 9 or water or ice company;

10 (2) discharge sewage, ~~drainage,~~ DRAINAGE, industrial waste, or other waste into any state waters
 11 or on the banks of any state waters or into any abandoned or operating water well unless the sewage,
 12 ~~drainage,~~ DRAINAGE, industrial waste, or other waste is treated as prescribed by the board;

13 (3) build or operate any railroad, logging road, logging camp, or electric or manufacturing plant of
 14 any kind on any watershed of a public water supply system unless:

15 (a) the water supply is protected from pollution by sanitary precautions prescribed by the board;

16 and

17 (b) a permit has been issued by the department after approval of detailed plans and specifications
 18 for sanitary precautions;

19 (4) commence construction, alteration, or extension of any system of water supply, water
 20 distribution, sewer, ~~drainage,~~ DRAINAGE, wastewater, or sewage disposal before ~~he~~ the person submits
 21 to the department necessary maps, plans, and specifications for its review and the department approves
 22 those maps, plans, and specifications; HOWEVER, ANY FACILITY REVIEWED BY THE DEPARTMENT
 23 UNDER TITLE 75, CHAPTER 5, IS NOT SUBJECT TO THE PROVISIONS OF THIS SECTION.

24 (5) operate or maintain any public water supply system ~~which~~ that exceeds a maximum
 25 contaminant level established by the board unless ~~he~~ the person has been granted or has an application
 26 pending for a variance or exemption pursuant to this part;

27 (6) violate any provision of this part or a rule adopted under this part; or

28 (7) violate any condition or requirement of an approval issued pursuant to this part."
 29

30 NEW SECTION. **Section 16. Codification instruction.** [Sections 1 ~~through 3~~ AND 2] are intended

1 to be codified as an integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5,
2 part 3, apply to [sections 1 through 3 AND 2].
3

4 ~~NEW SECTION. SECTION 17. COORDINATION INSTRUCTION. IF SENATE BILL NO. 330 IS~~
5 ~~PASSED AND APPROVED AND IF IT INCLUDES A SECTION THAT AMENDS THE DEFINITION OF~~
6 ~~"DEGRADATION" CONTAINED IN 75-5-103, THEN THE DEFINITION OF DEGRADATION PROVIDED IN~~
7 ~~[SECTION 3 OF THIS ACT], AMENDING 75-5-103, IS EFFECTIVE AND THE DEFINITION PROVIDED IN~~
8 ~~SENATE BILL NO. 330 IS VOID.~~
9

10 ~~NEW SECTION. SECTION 17. SAVING CLAUSE. SECTION 75-5-614 DOES NOT AFFECT~~
11 ~~PROCEEDINGS THAT WERE BEGUN BEFORE [THE EFFECTIVE DATE OF THIS ACT]. [THIS ACT] DOES~~
12 ~~NOT APPLY TO CIVIL OR ADMINISTRATIVE ACTIONS COMMENCED PRIOR TO [THE EFFECTIVE DATE~~
13 ~~OF THIS ACT] OR TO CLAIMS MADE IN THOSE ACTIONS, EXCEPT THAT COMPLIANCE PLANS~~
14 ~~RESULTING FROM THOSE ACTIONS MUST REFLECT CHANGES MADE BY [THIS ACT].~~
15

16 ~~NEW SECTION. SECTION 18. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND~~
17 ~~APPROVAL.~~
18

-END-