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# A Guide to **MONTANA WATER QUALITY REGULATION**

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# TABLE OF CONTENTS

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|   |     |
|---|-----|
| <b>DEDICATION</b> .....   | i   |
| <b>FOREWORD</b> .....   | iii |
| <b>MONTANA'S WATER</b> .....  | 1   |
| WHY IS MONTANA WATER QUALITY IMPORTANT? .....                                 | 1   |
| <b>REGULATION</b> .....   | 3   |
| WHICH STATE WATERS ARE PROTECTED BY<br>THE WATER QUALITY ACT? .....           | 3   |
| WHO IS REGULATED? .....   | 3   |
| WHAT WATER USES ARE REGULATED? .....  | 3   |
| WHERE DO MONTANA'S WATER QUALITY LAWS ORIGINATE?<br>.....                     | 4   |
| <b>WATER QUALITY ACT</b> .....  | 5   |
| WHO ADMINISTERS THE WATER QUALITY ACT? .....                                  | 5   |
| HOW IS THE WATER QUALITY ACT ADMINISTERED? .....                              | 6   |
| HOW IS THE WATER QUALITY ACT ADMINISTERED<br>ON TRIBAL LANDS? .....           | 14  |
| <b>THE WATER QUALITY ACT PERMIT PROCESS</b> .....                             | 15  |
| WHO IS IN CHARGE OF THE PERMIT PROCESS? .....                                 | 15  |
| HOW DOES THE PERMIT PROCESS WORK? .....                                       | 15  |
| WHAT ROLE DOES THE NONDEGRADATION POLICY PLAY IN<br>THE PERMIT PROCESS? ..... | 18  |
| <b>ENFORCEMENT AND COMPLIANCE</b> .....                                       | 19  |
| WHO ENFORCES WATER QUALITY LAWS? .....  | 19  |
| WHO IS A VIOLATOR? .....  | 20  |

|  |           |
|--|-----------|
| WHAT ABOUT IRRIGATION ACTIVITY? .....  | 21        |
| WHAT HAPPENS WHEN A VIOLATION IS SUSPECTED? .....                            | 21        |
| WHAT HAPPENS WHEN A VIOLATION IS DETERMINED? .....                           | 21        |
| CAN ENFORCEMENT DECISIONS BE CHALLENGED? .....                               | 25        |
| <br>   |           |
| <b>WATER QUALITY ASSESSMENT</b> .....  | <b>27</b> |
| WHAT IS THE WATER QUALITY ASSESSMENT LISTING? .....                          | 27        |
| HOW IS THE 303(d) LIST REVISED? .....  | 27        |
| WHAT HAPPENS ONCE A WATER BODY IS ON<br>THE 303(d) LIST? .....               | 28        |
| HOW ARE WATER BODIES PRIORITIZED FOR TMDL<br>DEVELOPMENT? .....              | 29        |
| WHO ADVISES THE DEQ ON TMDL DEVELOPMENT? .....                               | 30        |
| HOW ARE TMDLs DEVELOPED? .....   | 31        |
| WHAT HAPPENS ONCE A TMDL IS DEVELOPED<br>FOR A WATER BODY? .....             | 32        |
| <br>   |           |
| <b>PUBLIC AND COMMUNITY INVOLVEMENT</b> .....                                | <b>33</b> |
| HOW CAN CITIZENS PARTICIPATE IN WATER QUALITY<br>PROTECTION? .....           | 33        |
| HOW CAN COMMUNITIES PARTICIPATE IN WATER QUALITY<br>PROTECTION? .....        | 39        |
| <br>   |           |
| <b>RELATED LAWS</b> .....  | <b>42</b> |
| HOW DOES THE MONTANA WATER QUALITY ACT<br>INTERRELATE WITH OTHER LAWS? ..... | 42        |
| <br>   |           |
| <b>GLOSSARY OF TERMS</b> .....   | <b>52</b> |
| <br>   |           |
| <b>INFORMATION RESOURCES</b> .....   | <b>59</b> |

# DEDICATION

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**In memory of Robert J. Thompson . . .**

for his immeasurable effort and commitment to  
Montana's water resources.



# FOREWORD

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A primer for the citizen, this manual addresses commonly asked policy questions regarding water quality. Explanations attempt to relay principles in understandable terms. In the simplification process, some technical nuances may be lost. For the legally curious, we recommend direct reference to cited laws and state regulations.

Except for a reference to enforcement of state laws on tribal lands, this manual does not specifically address water quality regulation with regard to tribal lands and reservations. Please do not infer that the statements and information contained in this manual apply to tribal lands; they may or may not depending on the circumstances.

Throughout the manual you will find terms that are in bold print and underlined. These terms are defined in the glossary. Other terms are in bold for emphasis.

This publication was first published in 1996, the result of the dedicated work of Michael Kakuk, an Environmental Quality Council staff member, and Michelle Bryan, a Montana Water Center intern. Since the original publication, many of Montana's laws and rules have been amended or repealed and new sections have been added. These changes are reflected in this revised publication.





# MONTANA'S WATER

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Whether fishing in hip-deep mountain streams, diverting lowland creeks over alfalfa crops, or simply drinking a glass of water, each Montanan has a unique view of **water quality**. Consensus emerges, nonetheless, in the belief that Montana's waters are integral to our economic and environmental well-being. To protect our state waters, for the present and the future, a framework of water quality laws exists.

## WHY IS MONTANA WATER QUALITY IMPORTANT?

From our households to our workplaces to our favorite recreational spots, Montanans depend on water. Yet it is not just the **presence** of water that is critical, but the **quality** of the water as well.

The Montana Constitution recognizes the significant role environmental quality plays in our human activities:

All persons . . . have certain inalienable rights . . . includ[ing] the right to a clean and healthful environment and the rights of pursuing life's basic necessities . . . . In enjoying these rights, all persons recognize corresponding responsibilities. (Article II, section 3)

In other words, just as each person holds the fundamental **right to seek a livelihood**, each person also possesses a **right and responsibility** to safeguard state waters from **degradation**.

This balance between human activity and water quality resurfaces in the **Montana Code Annotated** (MCA), where public policy strives to:

- conserve water by protecting, maintaining, and improving the quality and **potability** of water for public water supplies, wildlife, fish and aquatic life, agriculture, industry, recreation, and other **beneficial uses** (MCA § 75-5-101(1));

- provide a comprehensive program for the prevention, abatement, and control of water pollution (MCA § 75-5-101(2));
- balance the inalienable rights to pursue life's basic necessities and possess and use property in lawful ways with the policy of preventing, abating, and controlling water pollution in implementing a water pollution program (MCA § 75-5-101(3)).

Thus, the state promotes water quality, while also accommodating human uses, through laws that guide our water-related activities.

# REGULATION

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## WHICH STATE WATERS ARE PROTECTED BY THE WATER QUALITY ACT?

Water quality laws govern **only certain** state waters. Specifically regulated are **surface or underground**:

- bodies of water;
  - irrigation systems; or
  - drainage systems.
- (MCA § 75-5-103(29)(a))

Outside this regulatory realm are:

- ponds or lagoons used solely for treating, transporting, or impounding pollutants; or
  - irrigation or land application disposal waters used up within the system and not returned to state waters.
- (MCA § 75-5-103(29)(b))

## WHO IS REGULATED?

Montana water quality laws regulate every entity in the state, including individuals, businesses, organizations, and units of government.

## WHAT WATER USES ARE REGULATED?

It is difficult to imagine a use of water that does not alter that water somehow. Whether utilized in industrial processes, irrigation, or even in the home, water undergoes change. Chemicals may be added or removed, or the temperature, color, or **turbidity** may vary. Although **any** water use may cause an alteration, water quality laws regulate **only certain** uses.

Regulated uses are those entailing potential **pollution** (either **point source pollution** or **nonpoint source pollution**) to state waters: that is, activities that threaten water quality, human or wildlife health, or established beneficial uses (MCA §§ 75-5-103(2), (24), and (25) and 80-15-102(11)).

## WHERE DO MONTANA'S WATER QUALITY LAWS ORIGINATE?

### Clean Water Act — Federal

Today's Montana water quality protection reflects the federal legislation in 1972 that later became known as the **Clean Water Act** (CWA). (33 U.S.C. 1251, et seq.) The CWA regulates the discharge of pollutants into waters by establishing national standards and **permit** guidelines. The federal Environmental Protection Agency (EPA) oversees the act's implementation.

In 1974, the EPA delegated Montana authority to implement many CWA programs within the state. Through agencies and laws, Montana executes federal water quality guidelines, updating its delegated programs to reflect changes at the federal level.

### Montana Constitution — State

The **Montana Constitution** complements federal mandates with state environmental quality priorities:

The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations. (Article IX, section 1(1))

These national and state agendas merge in Montana's primary source of water quality law: the **Montana Water Quality Act** (WQA), Title 75, chapter 5, MCA.

# WATER QUALITY ACT

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The Montana Legislature passed its first water quality law in 1907, responding to typhoid outbreaks in the Milk River basin. The law required treatment of all sewage discharged into public water supplies. This legislation became the first in a series leading to our current water quality **statutes**, collectively known as the **Montana Water Quality Act (WQA)**.

The WQA incorporates **both national and state** policy by integrating the directives of the federal CWA while also codifying the priorities of the Montana Constitution's environmental quality clauses.

When the Environmental Protection Agency delegated Montana authority to implement certain CWA programs, the federal agency's role shifted from direct administration to support and **oversight**. However, the EPA retains ultimate authority to administer aspects of the CWA on a case-by-case basis if needed.

The WQA provides guidelines to prevent, abate, and control the pollution of Montana waters in a manner consistent with national standards. (MCA § 75-5-102(1))

## WHO ADMINISTERS THE WATER QUALITY ACT?

### Department of Environmental Quality — State

The Department of Environmental Quality (DEQ) is the state agency primarily responsible for implementing the WQA. The Governor appoints its director. (MCA § 2-15-3501) In administering water quality laws, the DEQ:

- collects and furnishes information relating to water pollution prevention/control (MCA § 75-5-212);

- conducts and encourages research relating to water pollution (MCA § 75-5-212);
- advises, consults, and cooperates with other states, other state and federal agencies, affected groups, political subdivisions, and industries in formulating pollution prevention/control plans (MCA § 75-5-213); and
- monitors, inspects, and otherwise enforces water quality laws (MCA §§ 75-5-602 and 75-5-603).

### **Board of Environmental Review — State**

The Board of Environmental Review (Board) is a **quasi-judicial**, seven-member body appointed by the Governor to provide policy guidance to the DEQ. Members represent the geographic areas of the state, with backgrounds in hydrology, local government planning, environmental sciences, and county health or medicine. (MCA § 2-15-3502)

The Board adopts administrative rules, holds hearings, delegates functions, and assesses administrative penalties for water quality violations. (MCA §§ 75-5-201 and 75-5-202)

## **HOW IS THE WATER QUALITY ACT ADMINISTERED?**

To enable DEQ implementation of water quality laws, the Board adopts administrative rules and policies, including:

- classification of state waters;
- water quality standards; and
- the nondegradation policy.

### **●● CLASSIFICATION OF WATERS ●●**

The Board classifies all state **surface water** and **ground water** according to the beneficial uses supported by each water body/segment. (MCA § 75-5-301(1))

## Surface Water

Surface water classification uses four basic categories based primarily on beneficial use: **A, B, C, and I.** (ARM 17.30.621 through 17.30.629)

| CLASS           | BENEFICIAL USE   |
|-----------------|--|
| <b>A-Closed</b> | <ul style="list-style-type: none"> <li>• Suitable for drinking, culinary, and food processing purposes after simple disinfection; swimming and recreation; and growth and propagation of fishes and associated aquatic life, although access restrictions to protect public health may limit actual use of these waters.</li> </ul>  |
| <b>A-1</b>      | <ul style="list-style-type: none"> <li>• Suitable for drinking, culinary, and food processing purposes after conventional treatment for removal of naturally present impurities; bathing, swimming, and recreation; growth and propagation of salmonid fishes and associated aquatic life, waterfowl, and furbearers; and agricultural and industrial water supply.</li> </ul> |
| <b>B-1</b>      | <ul style="list-style-type: none"> <li>• Suitable for drinking, culinary, and food processing purposes after conventional treatment; bathing, swimming, and recreation; growth and propagation of salmonid fishes and associated aquatic life, waterfowl, and furbearers; and agricultural and industrial water supply.</li> </ul>   |
| <b>B-2</b>      | <ul style="list-style-type: none"> <li>• Suitable for drinking, culinary, and food processing purposes after conventional treatment; bathing, swimming, and recreation; growth and marginal propagation of salmonid fishes and associated aquatic life, waterfowl, and furbearers; and agricultural and industrial water supply.</li> </ul>                                    |
| <b>B-3</b>      | <ul style="list-style-type: none"> <li>• Suitable for drinking, culinary, and food processing purposes after conventional treatment; bathing, swimming, and recreation; growth and propagation of nonsalmonid fishes and associated aquatic life, waterfowl, and furbearers; and agricultural and industrial water supply.</li> </ul>  |
| <b>C-1</b>      | <ul style="list-style-type: none"> <li>• Suitable for bathing, swimming, and recreation; growth and propagation of salmonid fishes and associated aquatic life, waterfowl, and furbearers; and agricultural and industrial water supply.</li> </ul>  |
| <b>C-2</b>      | <ul style="list-style-type: none"> <li>• Suitable for bathing, swimming, and recreation; growth and marginal propagation of salmonid fishes and associated aquatic life, waterfowl, and furbearers; and agricultural and industrial water supply.</li> </ul>   |
| <b>C-3</b>      | <ul style="list-style-type: none"> <li>• Suitable for bathing, swimming, and recreation; and growth and propagation of nonsalmonid fishes and associated aquatic life, waterfowl, and furbearers. The quality of these waters is naturally marginal for drinking, culinary, and food processing purposes, agriculture, and industrial water supply.</li> </ul>                 |

| CLASS | BENEFICIAL USE  |
|-------|---|
| I     | <ul style="list-style-type: none"> <li>The goal of the State of Montana is to have these waters fully support the following uses: drinking, culinary, and food processing purposes after conventional treatment; bathing, swimming, and recreation; growth and propagation of fishes and associated aquatic life, waterfowl, and furbearers; and agricultural and industrial water supply.</li> </ul> |

## Ground Water

Ground water classification involves four classes based on natural **specific conductance**: I, II, III, and IV. (ARM 17.30.1005 and 17.30.1006)

| CLASS | BENEFICIAL USE  | SPECIFIC CONDUCTANCE (microSiemens/cm at 25° C) |
|-------|---|---|
| I     | <ul style="list-style-type: none"> <li>Suitable for public and private water supplies, food processing, irrigation, etc., with little or no treatment required.</li> </ul>  | less than 1,000                                 |
| II    | <ul style="list-style-type: none"> <li>May be used for public and private water supplies where better quality water is not available. The primary use is for irrigation, stock water, and industrial purposes.</li> </ul> | 1,000-2,500                                     |
| III   | <ul style="list-style-type: none"> <li>Used primarily for stock water and industrial purposes.</li> </ul>   | 2,500-15,000                                    |
| IV    | <ul style="list-style-type: none"> <li>Used primarily for industrial purposes.</li> </ul>   | greater than 15,000                             |

The Board is obligated to review classifications at least every 3 years and to revise them as needed. (MCA § 75-5-301(3)) Water classifications **cannot be lowered** unless the Board finds an original misclassification occurred. (MCA § 75-5-302)



## ●● WATER QUALITY STANDARDS ●●

The Board formulates and adopts water quality standards specifying maximum allowable levels of alteration during use of state waters.

Water quality standards are either numeric or narrative. An example of a numeric value is the state nitrate standard that equals 10 **parts per million** (ppm) (DEQ Circular 7). An example of a narrative standard that is contained in the water classifications is:

No increases are allowed above naturally occurring concentrations of sediment or suspended sediment (except as permitted in 75-5-318, MCA), settleable solids, oils, or floating solids, which will or are likely to create a nuisance or render the waters harmful, detrimental, or injurious . . . (ARM 17.30.621 through 17.30.629).

### Exceptions

**Temporary Standards.** The Board may temporarily modify a water quality standard for a specific water body or segment on a **parameter-by-parameter** basis when substantive information indicates the water body or segment is not supporting its designated uses.

When the Board adopts temporary standards, the goal is to improve water quality to the point at which all the beneficial uses designated for that water body or segment are supported. Temporary standards may not exceed a 20-year period and are subject to Board review at least every 3 years. (MCA § 75-5-312(1) and (8) through (10))

**Short-Term Authorizations.** The DEQ may authorize short-term water quality standards to allow:

- emergency **remediation** activities that have been approved, authorized, or required by DEQ;
- pesticide application when it is used to control nuisance aquatic organisms or to eliminate undesirable and nonnative aquatic species;

- stream-related construction or enhancement activities if authorization is received from the Montana Department of Fish, Wildlife, and Parks and if the site-specific conditions applied to the authorization ensure that the activity is not harmful, detrimental, or injurious to public health and the uses of state water and that the site-specific conditions ensure that existing and designated beneficial uses are protected and maintained upon completion of the activity.  
(MCA §§ 75-5-308 and 75-5-318)

To gain DEQ authorization, the activity must:

- **minimize**, to the extent practicable, the magnitude of any change in the concentration of the parameters affected by the activity;
- **minimize** the length of time during which any change may occur;
- **maximize** the prevention of significant risk to public health; and
- **maximize** the protection of beneficial uses immediately after the **exemption** expires.  
(MCA § 75-5-308)

**Site-Specific Standards for Aquatic Life.** The Board can raise specific standards pertaining to aquatic life, without finding the water “misclassified”, if:

- the increase is site-specific; and
- there is no **adverse** impact to established beneficial uses.  
(MCA § 75-5-310)

**Mixing Zones.** Both the federal CWA and the Montana WQA allow surface water **mixing zones**, with the WQA permitting ground water mixing zones as well. Board rules require these areas to have:

- the smallest practicable size;
- a minimum effect on established beneficial uses; and
- definable boundaries.  
(MCA § 75-5-301(4))

## ●● NONDEGRADATION POLICY ●●

Montana is fortunate to contain an abundance of clean water. To protect these waters, the state adopted the nondegradation policy that applies to

all **new or increased** discharges after April 1993. Under this policy, dischargers of pollutants are required to:

- apply for an authorization to degrade; and
  - undergo a nondegradation review to evaluate the nature of the discharge in relation to the quality of the receiving waters.
- (MCA § 75-5-303 and Title 17, chapter 30, subchapter 7, ARM)

Overall, this policy outlines three levels of water protection, stipulating what degradation, if any, is allowable in each level. Rules have been developed and are provided in the **Administrative Rules of Montana** (ARM).

### **Outstanding Resource Waters**

The highest level of protection pertains to **outstanding resource waters** (ORW). Apart from **nonsignificant** activities (mentioned below), the state **may not** authorize **any** degradation of ORW. (MCA § 75-5-316(2)) The WQA acknowledges that:

. . . certain state waters are of such environmental, ecological, or economic value that the state should, upon a showing of necessity, prohibit, to the greatest extent practicable, changes to the existing water quality of those waters. Outstanding resource waters must be afforded the greatest protection feasible under state law . . . . (MCA § 75-5-315(1)) (emphasis added)

### **High-Quality Waters**

A middle tier of protection applies to **high-quality waters**. The state may authorize degradation of high-quality waters **up to but not exceeding** water quality standards. (MCA § 75-5-303(2) and (3)(c))

### **Other Waters**

The lowest level of protection is for waters classified neither as ORW nor high-quality waters. There is no nondegradation review requirement to

discharge into these waters, but water quality standards and discharge permit conditions still apply.

| WATER TYPE           | PROTECTION LEVEL | ALLOWABLE DEGRADATION                             | APPLICATION TO DEGRADE/ NONDEGRADATION REVIEW               |
|----------------------|------------------|---|---|
| Outstanding Resource | highest          | • none (except nonsignificant activities)         | required  |
| High-Quality         | moderate         | • up to but not exceeding water quality standards | required  |
| Other                | lowest           | • up to but not exceeding water quality standards | not required, but water quality and permit laws still apply |

### Exceptions to the Rule

**Nonsignificant Activities.** The Board establishes criteria for determining if a proposed activity or class of activities will result in nonsignificant changes to water quality for any parameter. Once an activity is **designated** “nonsignificant,” it is exempt from future nondegradation review provided no changes are made.

The criteria cover:

- the potential for harm to human health, a beneficial use, or the environment;
- both the quantity and the strength of the pollutant;
- the length of time the degradation will occur; and
- the character of the pollutant—placing greater significance on carcinogens and toxins that **bioaccumulate** or biomagnify and lesser significance on less harmful, less persistent substances.

(MCA § 75-5-301(5)(c))

Beyond the above general criteria, the WQA identifies specific activities as nonsignificant, including (please see the statute and associated rules for a complete list):

- certain forms of nonpoint source pollution;
- emergency or remedial activity;
- recreational activities;
- dam maintenance; and
- mineral exploration that does not result in discharge to surface water and is permitted and performed according to state law.

(MCA § 75-5-317(2) and ARM 17.30.715)

**Authorizations to Degrade.** The DEQ, in accordance with Board rules and statutes, may authorize degradation if a discharger demonstrates by a preponderance of evidence that:

- there are no economically, environmentally, and technologically feasible modifications to the proposed project that would result in **no degradation**;
- the proposed project will result in **important economic or social benefits that exceed societal costs** of allowing degradation;
- existing and anticipated uses of state waters will be fully protected; and
- the least degrading water quality protection practices will be used.

(MCA § 75-5-303(3))

The DEQ issues a **preliminary decision** either denying or authorizing degradation, providing public notice and a 30-day comment period before issuing a **final decision**. The DEQ's preliminary and final decisions must contain: (1) a statement of the basis for the decision and (2) a detailed description of all authorization conditions, stipulating, when applicable:

- monitoring requirements;
- required water protection practices;
- reporting requirements;
- **effluent** limits;
- designation of mixing zones;
- limits of degradation authorized; and
- methods of determining compliance.

(MCA § 75-5-303(4))

Only **interested persons** can **appeal** a nondegradation decision. The DEQ may review and revise—but not revoke—authorizations to degrade once every 5 years.

## **HOW IS THE WATER QUALITY ACT ADMINISTERED ON TRIBAL LANDS?**

### **Federal**

The Clean Water Act authorizes the EPA to treat Indian Tribes in a manner similar to the states for implementing CWA programs, including water quality standards. Under this provision, a tribal government must first apply for "treatment-as-a-state" (TAS) authority to administer a water quality standards program for its reservation. Upon receiving TAS program authority, Tribes may submit water quality standards for EPA approval. Once approved, tribal water quality standards are used to implement regulatory controls, such as discharge permits. These standards apply to both tribal and nontribal members within reservation boundaries. As of 2009, Montana tribes with this status include the Assiniboine and Sioux Tribes of the Fort Peck Reservation, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, and the Northern Cheyenne Tribe.

### **State**

EPA's approval language for Montana water quality standards states that Montana water quality laws do not apply on tribal reservations. State officials and tribes are discussing ways to ensure that waters in Montana are properly protected under the CWA.

Ultimately, the implementation water quality standards on tribal lands is a blend of federal, state, and tribal cooperation that varies depending on the water use, type of water source, and region of the state.

# THE WATER QUALITY ACT PERMIT PROCESS

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Anyone proposing to discharge sewage, industrial waste, or other pollutants into regulated state waters (i.e., surface, ground, or storm waters) must apply for a discharge permit. The two main permits issued pursuant to the WQA are:

- **Montana pollutant discharge elimination system** (MPDES) permit—for surface water discharge (Title 17, chapter 30, subchapters 12 and 13, ARM); and
- **Montana ground water pollution control system** (MGWPCS) permit—for ground water discharge (Title 17, chapter 30, subchapter 10, ARM).

## WHO IS IN CHARGE OF THE PERMIT PROCESS?

### Board of Environmental Review

The Board adopts rules governing the application process for the permits. These rules direct how the DEQ issues, denies, revises, or revokes a permit.

### Department of Environmental Quality

The DEQ, according to Board guidelines, processes permit applications, dictates permit conditions and limitations, and reviews permit renewals.

## HOW DOES THE PERMIT PROCESS WORK?

Dischargers whose activities do not fall under the exemptions provided in law (outlined below) must submit permit applications **at least** 180 days

before commencement of discharge unless a later timeframe has been agreed to by the DEQ. Specific application requirements vary, depending on: (1) the entity applying, (2) the type/characteristics of the discharge, and (3) the receiving waters. However, typically required information may include:

- date of expected discharge commencement;
- description of the proposed discharge (e.g., frequency/duration of flow and quantitative pollutant data);
- location of the discharge, affected drainage areas, and receiving waters; and/or disclosure of any treatments applied to the discharge.

(ARM 17.30.1322)

### **Water Quality Act Permit Exemptions**

Certain discharges are exempt from permit requirements.

#### ■ Discharges to Ground Water

- discharge or activities at wells injecting fluids associated with oil and gas exploration/production and regulated by federal law;
- disposal by **solid waste** management systems that are licensed under Montana law;
- agricultural irrigation facilities;
- disposal of normal household wastes on private property;
- storm water disposal or storm water detention facilities;
- subsurface disposal systems for **sanitary** wastes serving individual residences;
- certain mining operations subject to operating permits/exploration licenses;
- projects reviewed under the Montana Major Facility Siting Act; and
- a carbon dioxide injection well permitted pursuant to Title 82, chapter

11, part 1.

(MCA § 75-5-401(5) and ARM 17.30.1310)

#### ■ Discharges to Surface Water

A permit is not required for a water conveyance structure or for a natural spring if the water discharged to state waters does not contain industrial waste, sewage, or other wastes.

(MCA § 75-5-401(1)(b) and ARM 17.30.1310)



## ■ Discharges of Ground Water to Surface Water

A permit is not required for discharge of ground water that is not altered from its ambient quality to surface water if:

- the discharge does not contain industrial waste, sewage, or other wastes;
- the water that is discharged doesn't cause the receiving surface water to exceed water quality standards; and
- in the event the receiving water already exceeds standards for any parameter, the discharge does not increase the concentration of the parameter.

(MCA § 75-5-401(1)(b) and ARM 17.30.1310)

Although such discharges are exempt from the permit process, the DEQ may still require monitoring information (MCA § 75-5-602) and the development of mixing zones (MCA § 75-5-301(4)).

### **Timeline and Review**

A water quality permit cannot exceed 5 years, after which time the permit holder must reapply (ARM 17.30.1346). This reapplication requirement also functions as a form of permit review.

### **Permit Suspension or Revocation**

The DEQ may suspend or revoke a permit if the permit holder violates the WQA. The suspension or revocation may be **effective immediately** if the violation is likely to continue causing pollution (MCA § 75-5-404).

If the permit holder **petitions** against a DEQ suspension or revocation, the Board shall: (1) grant a hearing, and (2) issue a decision affirming, modifying, or reversing the DEQ action. The order of the Board is effective immediately unless the Board directs otherwise.

## WHAT ROLE DOES THE NONDEGRADATION POLICY PLAY IN THE PERMIT PROCESS?

A strong relationship exists between the permit process and the nondegradation policy. In considering a permit application, the DEQ shall:

- determine the classification of the receiving water, thereby determining if the receiving water is high quality for the purposes of nondegradation review;
- determine whether natural conditions, as defined in 75-5-306, MCA, in the receiving water result in exceedance of standards;
- determine if the discharge is considered significant; and
- if parameters in the discharge will be significant, review the application to degrade state waters under the nondegradation policy, which the applicant is required to complete.

(MCA §§ 75-5-301, 75-5-303, and 75-5-306 and Title 17, chapter 30, subchapter 7, ARM)

# ENFORCEMENT AND COMPLIANCE

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## WHO ENFORCES WATER QUALITY LAWS?

### Environmental Protection Agency — Federal

Under the partnership between the EPA and the state, emphasis is placed on performance-based evaluations, differential oversight, and greater participation by the state in evaluating performance and determining solutions. In doing so, the focus of EPA oversight is on identifying and solving problems and taking action, where appropriate, in order to deliver more effective and efficient environmental protection. Such an approach necessitates a continuing strong EPA presence, a workable state-EPA relationship, and continuous dialogue and communication between EPA and the state. (Annual Montana Environmental Performance Partnership Agreement between the Montana Department of Environmental Quality and the U.S. Environmental Protection Agency, Region VIII).

### Department of Environmental Quality — State

The DEQ responds to **suspected or determined** water quality violations by monitoring and inspecting discharges to ensure **compliance** with permits and laws.

**Monitoring Power.** To effectively monitor discharges, the DEQ can require a discharger to:

- establish and maintain records;
  - make reports;
  - install, use, and maintain monitoring equipment or methods, including biological monitoring techniques;
  - sample effluents at assigned locations and intervals; or
  - provide other information as required by the DEQ.
- (MCA § 75-5-602)

**Inspection Power.** The DEQ, at reasonable times, may enter any public or private property to:

- investigate conditions relating to pollution of state waters or permit violations;
- access and copy relevant records;
- inspect monitoring equipment or methods; or
- sample effluents that the owner or operator is required to sample as a term of a permit.

(MCA § 75-5-603)

### **Board of Environmental Review — State**

The Board establishes the procedures that the DEQ follows in its enforcement actions. The Board presides over enforcement hearings, handing down decisions.

## **WHO IS A VIOLATOR?**

A violator is anyone who causes pollution of any state water. Legally permitted or exempted discharges do not constitute pollution under the WQA. (MCA § 75-5-605(1)(a))

It is unlawful for any person to:

- place wastes or pollution where they will cause pollution to state waters;
- violate any provision of the WQA;
- violate any provision of a permit or order issued under the WQA;
- cause degradation of state waters without authorization; or
- construct a sewage lagoon less than 500 feet from an existing water well.

(MCA § 75-5-605(1))

Except for the permit exclusions identified in 75-5-401(5), MCA, it is unlawful to carry on any of the following activities without a current permit from the department:

- construct, modify, or operate a disposal system that discharges into any state waters;
- construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes into any state waters; or
- discharge sewage, industrial wastes, or other wastes into any state waters.

## WHAT ABOUT IRRIGATION ACTIVITY?

Activities associated with the operation or maintenance of irrigation water conveyance systems are allowed if water quality standards for receiving waters outside the systems do not exceed standards. (MCA § 75-5-605(3))

## WHAT HAPPENS WHEN A VIOLATION IS SUSPECTED?

Any person, association, corporation, or government agency may notify the DEQ of an alleged violation. When the DEQ **suspects** that a person violated water quality law, it conducts an investigation to determine the validity of the complaint. (MCA § 75-5-636)

When there is an alleged violation, the DEQ may do one of two things:

- issue a notice letter as outlined below in the notice of violation section; or
- issue an administrative notice and order in lieu of the notice letter, if the DEQ's action does not involve assessment of an administrative penalty or seeks an administrative penalty only for an activity that it believes and alleges has violated a prohibited activity as outlined in state law. These prohibited activities are outlined above.

(MCA §§ 75-5-605 and 75-5-611)

## WHAT HAPPENS WHEN A VIOLATION IS DETERMINED?

When the DEQ **determines** that a person has violated a water quality law or a condition or limitation in a permit, authorization, or order issued under the WQA and an informal response is either unsuccessful or unsuitable to

the nature of the violation, the DEQ initiates an enforcement response. The enforcement response may include:

- issuing a letter notifying the person of the violation and requiring compliance;
- issuing an order requiring the person to correct the violation pursuant to the WQA;
- bringing a judicial action as authorized in the WQA; or
- seeking administrative or judicial penalties.

These enforcement responses are generally broken into two categories:

- administrative action—addressed through the DEQ and the Board; and
- judicial action—addressed through the state or federal court system. (MCA § 75-5-617)

### ●● ADMINISTRATIVE ACTION ●●

Administrative actions may consist of:

- notices of violation;
- compliance orders; and
- public hearings.

### Notice of Violation

Unless a violation represents an immediate threat to human health, safety, or welfare or to the environment, the DEQ must first issue a letter notifying the person of the violation and requiring compliance. (MCA § 75-5-617(2))

The notice letter must state:

- the provision of statute, rule, permit, or approval alleged to be violated;
- the facts alleged to constitute the violation; and
- the specific nature of corrective action required. (MCA § 75-5-611(1)(a) through (1)(c))

## Compliance Orders

In conjunction with or following the violation notice, the DEQ may serve the violator with a compliance order, stipulating:

- a timetable for reaching compliance; and
  - the amount of the administrative penalty that will be assessed if corrective action is not completed within the timeframe provided.
- (MCA § 75-5-611(1)(d) and (1)(e))

In establishing the compliance timetable, the DEQ considers the seriousness of the violation and any good faith efforts made to abate or control pollution. (MCA § 75-5-613)

**Cleanup Orders.** The DEQ may order cleanup when a person dumps, spills, or otherwise deposits waste in or near state waters, creating potential pollution. (MCA § 75-5-601(1))

**Emergency Orders.** If the DEQ finds that substantial human or environmental injury will result from a violation, the DEQ may order the action stopped **immediately**. Upon issuing an emergency order, the DEQ must set a place and time for a hearing before the Board that is not later than 5 days after the issuance of the order unless a later date is requested by the alleged violator. (MCA § 75-5-621)

## Public Hearings

As a part of the notice and order, the DEQ may require the violator to appear before the Board at a public hearing to answer the charges. After a hearing, the Board delivers a finding and explanation of its decision. If the DEQ does not require an alleged violator to appear before the Board for a hearing, the alleged violator may request that the Board conduct a hearing. (MCA § 75-5-611)

**Board Orders and Penalties.** If the Board finds that a violation **occurred**, it:

- issues an order for the **abatement**/control of pollution, with a date or dates by which the violation must cease and any corrective action must take place; and/or
- assesses administrative penalties.  
(MCA § 75-5-611(6)(b) through (6)(d))

If, on the other hand, the Board finds that a violation **has not occurred**, it declares the DEQ notice/order void and the alleged violator faces no penalty. (MCA § 75-5-611(6)(e))

## ●● JUDICIAL ACTION ●●

Upon receipt of evidence that substantial, harmful pollution has occurred, the DEQ may sue in a District Court of the county where the violator resides or conducts business. (MCA § 75-5-622)

### **Injunctions**

Once the court finds reasonable cause to believe the DEQ allegations, it may issue a permanent or temporary **injunction** to stop the activity causing the violation and requiring compliance. (MCA § 75-5-614)

### **Penalties**

Besides an injunction, a person found guilty may also be subject to monetary penalties and/or imprisonment.

**Civil Penalties.** Civil penalties do not include potential imprisonment. The violator is subject to a fine of up to \$25,000 for each violation. Each day of violation constitutes a separate violation. In assessing the penalty, the court considers, among other things:



- the nature, circumstances, extent, and gravity of the violation;
- the violator's ability to pay;
- prior history of violations;
- economic benefit, if any, to the violator resulting from the violator's action; and
- amounts voluntarily spent by the violator to **mitigate** the violation or impacts of the violation to state waters.

(MCA § 75-1-1001)

**Criminal Penalties.** When a violation is willful or negligent, the court may impose criminal penalties, including imprisonment. Upon conviction, the violator is subject to a fine of up to \$25,000/day of violation, imprisonment for up to 1 year, or both. Subsequent convictions subject a person to a fine of not more than \$50,000/day of violation, imprisonment for up to 2 years, or both. (MCA § 75-5-632)

**Administrative Penalties.** The DEQ may request the court to assess a violator for: (1) the cost of the investigation and (2) any other expense incurred by the state in correcting the adverse water quality effects resulting from the violation. (MCA § 75-5-635)

| TYPE OF ACTION        | ENFORCEMENT LEVEL                     | POTENTIAL COMPLIANCE MEASURES                                 |
|-----------------------|---------------------------------------|---|
| <b>Administrative</b> | DEQ and Board of Environmental Review | • notice of violation, compliance orders, and public hearings |
| <b>Judicial</b>       | Court System                          | • injunctions, monetary penalties, and imprisonment           |

## CAN ENFORCEMENT DECISIONS BE CHALLENGED?

### Notices and Orders

If the DEQ **does not** call a hearing when issuing a notice and order, the violator may request the Board to do so. The request must be in writing and

filed **no later than** 30 days after receipt of the notice/order. Additionally, the violator may petition the Board for a rehearing based on new evidence. (MCA § 75-5-611(4) and (7))

### **Board Orders**

A violator may appeal a Board order in the District Court of the county where the violation occurred. The court may **overturn** an order if:

- the order will cause serious harm to the affected party;
- violations found by the Board will not continue; or
- any harmful effects on state waters will be remedied immediately when the violation stops.

(MCA § 75-5-641(1) and (4))

However, if the court **upholds** the order, it may issue a temporary restraining order or, at the request of the Board, enforce compliance by issuing an injunction.

### **Court Injunctions and Penalties**

An appeal of a District Court injunction or penalty or both follows the traditional path through the court system, with a superior court reviewing the decision of the District Court and: (1) affirming the decision, (2) reversing the decision, or (3) **remanding** the decision back to the District Court for further action that is consistent with the direction contained in the higher court's opinion.

# WATER QUALITY ASSESSMENT

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To provide a comprehensive program for the prevention, abatement, and control of water pollution, the purpose of the water quality assessment portion of state law is to further direct the DEQ to monitor state waters to accurately assess their quality and, when required, to develop **total maximum daily loads** (TMDLs) for those water bodies identified as **threatened** or **impaired**. (MCA § 75-5-701)

## WHAT IS THE WATER QUALITY ASSESSMENT LISTING?

The DEQ is required to monitor state waters to assess the quality of those waters and to identify surface water bodies or segments of surface water bodies that are threatened or impaired. The result of this review is the **303(d) list**, which must be submitted to the EPA every other year. (MCA § 75-5-702)

Section 303(d) of the federal CWA also requires states to prioritize and target water bodies on their list for development of water quality improvement strategies (i.e., TMDLs) and to develop such strategies for impaired and threatened waters. State law requires that within 15 years of May 5, 1997, the DEQ must have TMDLs written for all of the water bodies that were on the 303(d) list as of May 5, 1997. This mandated schedule does not include other water bodies that were added to the list after May 5, 1997. However, the DEQ is required to have a TMDL completed for those water bodies within a reasonable timeframe. (MCA § 75-5-703(3))

## HOW IS THE 303(d) LIST REVISED?

The DEQ is required by the federal CWA to assess the list and make revisions as monitoring data is collected and as necessary at least every

2 years. In revising the list, the DEQ uses all currently available data, including information or data obtained from federal, state, and local agencies, private entities, or individuals with an interest in water quality protection. (MCA § 75-5-702)

Anyone can formally petition the DEQ to add or remove a water body from the list. The DEQ must determine whether the data provided by the petitioner is sufficient and credible and, if so, will provide for a public comment period before taking action on the request. (MCA § 75-5-702(3))

### **Removing a Water Body From the List**

A water body may be removed from the list under three scenarios:

- **sufficient credible data** shows that the water body is neither threatened nor impaired (MCA § 75-5-702);
- there is lack of sufficient credible data to support the water body's listing; in this instance, the DEQ is required to monitor and assess the water body during the next field season or as soon as possible to determine whether it is a threatened or impaired water body (MCA § 75-5-702(6)); or
- the natural condition of the water body exceeds water quality standards. It must be shown that the water body meets the natural condition criteria that are outlined in state law. (MCA § 75-5-306)

### **Adding a Water Body to the List**

A water body may be added to the list if **sufficient credible data** shows that the water body is threatened or impaired. (MCA § 75-5-702(2))

## **WHAT HAPPENS ONCE A WATER BODY IS ON THE 303(d) LIST?**

Once the DEQ has determined that a water body belongs on the 303(d) list because it is either threatened or impaired, the DEQ must develop a TMDL for that water body. Because there are numerous water bodies in Montana

that are on the 303(d) list, the DEQ must prioritize and rank the water bodies with regard to TMDL development. This prioritized ranking helps the DEQ with workload allocation and helps to ensure that all of the TMDLs that are required as a result of the 1997 303(d) list are completed by May 5, 2012. (MCA § 75-5-703)

## **HOW ARE WATER BODIES PRIORITIZED FOR TMDL DEVELOPMENT?**

In prioritizing water bodies for TMDL development, the DEQ, in consultation with the statewide TMDL advisory group (described later in this manual), considers the following factors:

- the beneficial uses established for a water body;
- the extent that natural factors over which humans have no control are contributing to any impairment;
- the impacts to human health and aquatic life;
- the degree of public interest and support;
- the character of the pollutant and the severity and magnitude of water quality standard noncompliance;
- whether the water body is an important high-quality resource in an early stage of degradation;
- the size of the water body not achieving standards;
- immediate programmatic needs, such as waste load allocations for new permits or permit renewals and load allocations for new nonpoint sources;
- court orders and decisions relating to water quality;
- state policies and priorities, including the protection and restoration of native fish when appropriate;
- the availability of technology and resources to correct the problems;
- whether actions or voluntary programs that are likely to correct the impairment of a particular water body are currently in place; and
- the recreational, economic, and aesthetic importance of a particular water body.

(MCA § 75-5-702(7))

The DEQ must provide guidance for TMDL development on any threatened or impaired water body, regardless of its priority ranking, if the necessary

funding and resources from sources outside the DEQ are available to develop the TMDL and to monitor the effectiveness of implementation efforts. Once the TMDL is completed, the DEQ will review the TMDL and either approve or disapprove it. (MCA § 75-5-703(4))

## WHO ADVISES THE DEQ ON TMDL DEVELOPMENT?

The Montana Legislature ordered the DEQ to establish a statewide TMDL advisory group with representatives from specific interests to serve in a consultation capacity. The 14 members are appointed by the Director of the DEQ based upon one nomination from each of the following interests:

- livestock-oriented agriculture;
- farming-oriented agriculture;
- conservation or environmental interests;
- water-based recreationists;
- the forestry industry;
- municipalities;
- point source dischargers;
- mining;
- federal land management agencies;
- state trust land management agencies;
- supervisors of soil and water **conservation districts** for counties east of the continental divide;
- supervisors of soil and water conservation districts for counties west of the continental divide;
- the hydroelectric industry; and
- fishing-related businesses.

(MCA § 75-5-702(9))

In implementing the consultation requirements of various portions of state law, the DEQ must request the participation of representatives from the above-mentioned interests to work in an advisory capacity to the DEQ and local conservation districts. (MCA § 75-5-704)

The DEQ is required to provide public notice of meetings of the statewide TMDL advisory group as well as solicit, document, and consider public comments provided during the deliberations of the advisory group.

## HOW ARE TMDLS DEVELOPED?

The DEQ has a specific process that it uses for the development of TMDLs. This section shows the framework for TMDL development that is outlined in state law.

### General Guidance

The DEQ must develop TMDLs for threatened or impaired water bodies or segments of water bodies in order of the priority ranking established by the department. The DEQ must consult with local conservation districts and **watershed** advisory groups in the development of TMDLs in their areas.

Each TMDL must be established at a level that will achieve compliance with applicable water quality standards and must include a reasonable margin of safety that takes into account any lack of knowledge concerning the relationship between the TMDL and water quality standards.

### Waste Load Allocations

In establishing TMDLs, the DEQ may establish **waste load allocations** for point sources as well as for nonpoint sources. The DEQ may also allow for effluent trading. The DEQ must then, in consultation with local conservation districts and watershed advisory groups, develop reasonable land, soil, and water conservation practices specifically recognizing established practices and programs for the control of pollution resulting from nonpoint sources. (MCA § 75-5-703(2))

## WHAT HAPPENS ONCE A TMDL IS DEVELOPED FOR A WATER BODY?

Once the DEQ completes a TMDL, it must send it on to the EPA regional office for review and approval. Upon approval of the TMDL, the DEQ must:

- incorporate the TMDL into its current continuing planning process;
  - incorporate the waste load allocation developed for point sources during the TMDL process into appropriate water discharge permits; and
  - assist and inform landowners regarding the application of a voluntary program of reasonable land, soil, and water conservation practices.
- (MCA § 75-5-703(6))

After the control measures (listed above) have been implemented, the DEQ, in consultation with the statewide TMDL advisory group, must develop a monitoring program to assess the waters that are subject to the TMDL to determine whether compliance with water quality standards has been attained for a particular water body or whether the water body is no longer threatened. The monitoring program must be designed based on the specific impairments or pollution sources. The DEQ's monitoring program must include long-term monitoring efforts for the analysis of the effectiveness of the control measures developed. (MCA § 75-5-703(7))



# PUBLIC AND COMMUNITY INVOLVEMENT

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## HOW CAN CITIZENS PARTICIPATE IN WATER QUALITY PROTECTION?

Citizens play a vital role in the success of sustaining Montana's water quality. Citizens can contribute via:

- petitions;
- public hearings/notices;
- legal suits;
- citizen oversight; and
- volunteer activities.

### ●● PETITIONS ●●

Certain water quality statutes allow citizens to petition the Board for action on a matter. Petitions, which may lead to a public hearing, relate to:

- administrative rulemaking;
- temporary standards;
- water classifications; and
- permitting.

### Administrative Rulemaking

A person affected by a Board rule may petition for review of the rule if:

- the rule may be more **stringent** than comparable federal regulations; or
- during adoption of the rule, no comparable federal regulation existed, but the federal government has subsequently established a comparable, less stringent rule.

Affected persons must note that a petition **does not** relieve the petitioner of the duty to comply with the challenged rule and the petition rights do not apply to a rule adopted under the emergency rulemaking provisions provided in state law. (MCA § 75-5-203(4) and (5))

### **Temporary Standards**

Upon petition by any person, the Board may temporarily modify a water quality standard for a specific water body or segment of a water body on a parameter-by-parameter basis. Modification can occur only when substantive information shows that the water body or segment of a water body is not supporting its designated use. (MCA § 75-5-312)

### **Classifications**

Any person may petition the Board to classify state waters as outstanding resource waters (ORW). In considering the petition, the Board examines:

- whether the waters have been designated as wild and scenic;
- the presence of endangered or threatened species in the waters;
- the presence of an outstanding recreational fishery in the waters;
- whether the waters provide the only source of suitable water for **municipal**, industrial, or domestic water supply; and
- other factors that indicate outstanding environmental or economic values not specifically mentioned in state law.

(MCA § 75-5-316(4))

After gaining Board acceptance, the DEQ must prepare an **environmental impact statement** (EIS). Before the EIS is started, the petitioner must pay the estimated cost. Upon completion the petitioner must pay any additional costs or be reimbursed if the actual cost is less than the amount prepaid.

The Board may deny an accepted petition for failing to meet the criteria listed above if it finds another process would achieve the necessary protection or if it finds the ORW classification would cause significant adverse environmental, social, or economic impacts.

A petition granted by the board must also receive legislative approval. (MCA § 75-5-316(5) through (9))

## **Permitting**

If the DEQ denies, modifies, suspends, or revokes a permit, the applicant or permittee may petition the Board. This leads to a hearing during which the Board affirms, revises, or reverses the DEQ's action. (MCA §§ 75-5-403(2) and 75-5-404)

### **●● PUBLIC HEARINGS and PUBLIC NOTICES ●●**

Public hearings and public notices are an integral component of water quality decisionmaking, particularly:

- administrative rulemaking;
- water classifications and standards;
- permitting;
- environmental review; and
- administrative actions and penalties.

## **Administrative Rulemaking**

If the Board proposes to modify, revoke, or make a new water quality rule or if it proposes the adoption of any rule that is more stringent than federal guidelines, it must first hold a hearing to gather public comment. (MCA §§ 75-5-203(2) and (3) and 75-5-307)

## **Classifications and Standards**

When the Board creates or modifies water classifications or standards, a public hearing must be held, giving all **interested persons** an opportunity to submit data or arguments. (MCA § 75-5-307) It is during this time that the public may present evidence of water misclassification, thereby starting the reclassification process.

Before such a hearing, the Board must post a notice in a daily newspaper of general circulation in the area affected specifying the waters concerned and must mail additional notices directly to all persons potentially affected by the proposed action. (MCA § 75-5-307)

### **Permitting**

Within 30 days of receiving a permit application the DEQ must issue a tentative determination, which is available to the public upon request. The agency must also publish a legal notice once weekly for 2 consecutive weeks in a newspaper of general circulation that is circulated in the county in which the activity is proposed. Additional notice may include posting in public places near the proposed activity or near the premisses of the applicant or any other reasonable procedure to encourage public participation. If there is significant public interest in a proposed action, the department must hold a public hearing. (ARM 17.30.106 and 17.30.108)

If the DEQ denies an application for a permit or modifies a permit, the DEQ must give written notice of the action to the permit applicant or holder. The permit applicant or holder may then request a hearing before the Board. (MCA § 75-5-403)

### **Environmental Review**

A decision to classify or reclassify waters or grant a permit may trigger implementation of the **Montana Environmental Policy Act** (MEPA). This act requires some form of environmental review (e.g., an EIS or **environmental assessment** (EA)) before decisionmaking occurs. All environmental reviews under MEPA stipulate public involvement. (MCA § 75-1-201) The Board has the option of combining the environmental review process with the public hearing process.

## Administrative Actions and Penalties

All Board hearings concerning DEQ actions or penalties against a violator must be public and held in the county where the alleged violation occurred or in Lewis and Clark County. (MCA § 75-5-611(5))

### ●● CITIZEN SUITS ●●

In specific instances, citizens may choose litigation to promote water quality. Often, such cases are a method of **recourse**, limited to **interested persons** directly impacted by a regulation or action. Other times, any citizen may sue, compelling government to enforce a law.

#### Recourse

In Montana, a person may sue to recover damages for contamination, **diminution**, or interruption of a water supply resulting from:

- the operation of a geothermal facility or certain electric transmission lines or certain pipelines; or
  - mining exploration or mining operation.
- (MCA §§ 75-20-405 and 82-4-355(1))

**Restoration damages** may be sought for damage to property caused by a release from a petroleum storage tank. A release may include any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface soils, or subsurface soils. (Title 75, chapter 11, part 6, MCA)

#### Enforcement

The federal CWA allows citizens to sue the federal government to compel enforcement of the act, including specific federal water quality standards. No corresponding citizen suit provision exists in the state WQA.

## ●● CITIZEN OVERSIGHT ●●

Any person may notify the DEQ of an alleged water quality violation. Based upon submitted information, the DEQ will investigate the validity of the complaint. If a violation is determined, enforcement action will result. However, if the investigation proves the protest lacking in reasonable cause, the DEQ may recover investigative costs from the notifying party. (MCA § 75-5-636)

## ●● VOLUNTEER ACTIVITIES ●●

Citizens interested in water quality may volunteer for:

**Watershed groups** - Local volunteers participate directly in decisionmaking and problem solving, as well as initiating local cleanup, conservation, and data gathering, and ecosystem research projects.

<http://mwcc.montana.edu/groups/>

**Water quality monitoring** - Volunteers gather information for educational purposes and to establish baseline data for streams and rivers.

<http://mtwatercourse.org/watermonitoring/vwmhome.htm>

**Conservation districts** - Conservation districts are the local contact for the control of nonpoint source (NPS) pollution. Districts conduct projects that demonstrate NPS pollution control practices, preferring voluntary, educational, and incentive-based approaches over regulatory approaches. District boards work with state and federal agencies to identify problems and prioritize treatment. <http://macdnet.org>

## HOW CAN COMMUNITIES PARTICIPATE IN WATER QUALITY PROTECTION?

### ●● LOCAL WATER QUALITY DISTRICTS ●●

To provide further water quality protection at the county (or **city-county**) level, Montana law provides for **local water quality districts** to manage community waters. (Title 7, chapter 13, part 45, MCA)

**Initiation.** A board of county commissioners (or governing body of a city-county) may initiate the creation of a local water quality district by: (1) holding at least one public meeting, (2) passing a resolution of intention, (3) allowing opportunity for owners of fee-assessed units to protest, and (4) conducting a public hearing to hear and decide upon protests. (MCA § 7-13-4504).

**Planning and Information Gathering.** Once a county (or city-county) establishes a district, it consults with the DEQ to undertake planning and information-gathering activities for implementing a local water quality program. (MCA § 75-5-311(1))

**Program Implementation.** Next, a county (or city-county) takes its program plan before the Board for approval. In approving a local water quality program, the Board: (1) determines that the program is consistent with the WQA and (2) evaluates the administrative organization, staff, and financial resources available to implement the program. (MCA § 75-5-311(2) and (3))

After program approval, the district may adopt local water quality **ordinances** that: (1) are consistent with state law and (2) gain Board validation. Ordinances may regulate such items as:

- onsite wastewater disposal facilities;
- storm water runoff from paved surfaces;

- service connections between buildings and publicly owned sewer mains;
  - facilities that use or store halogenated and nonhalogenated solvents, including hazardous substances that are identified by the EPA in federal law; and
  - internal combustion engine lubricants.
- (MCA § 75-5-311(2) through (4))

**Monitoring.** The DEQ monitors these local programs to ensure consistency with the WQA and DEQ policies, reporting all inconsistencies to the Board for further action.

## ●● SOURCE WATER PROTECTION ●●

Montana, with EPA approval, has developed the **Montana Source Water Protection Program** to help public ground water systems protect their supplies from contamination. The DEQ may certify a source water protection area upon:

- receipt of a petition by a supplier for a public water supply system; and
- making a determination that the source water protection area meets criteria and thresholds for certification established by the Montana wellhead protection program. (MCA § 75-6-120)

## ●● WATERSHED PROTECTION ●●

Despite its common aims, watershed protection varies in form from one community to the next. It may be informal and flexible, involving only a handful of people, or formal and structured, with thousands of participants. Most frequently, the process consists of a diversity of citizens converging in response to identifiable water quality issues. Common components of community action are:

- watershed identification and mapping;
- development of local management strategies;
- stream monitoring; and
- educational workshops and classes.



Local conservation districts often serve as the catalyst in organizing watershed planning efforts, ensuring that all interested parties have an opportunity to play an active role. Water and sewer districts may also play a part. The Montana Watercourse, a statewide water education program, provides information on watershed decisionmaking. The Montana Watershed Coordination Council coordinates Montana's natural resource agencies and private organizations and provides a forum for local watershed groups.

# RELATED LAWS

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## HOW DOES THE MONTANA WATER QUALITY ACT INTERRELATE WITH OTHER LAWS?

### ●● FEDERAL LAW ●●

#### **Clean Water Act** (33 U.S.C. 1251, et seq.)

The **Clean Water Act** (CWA), administered by the U.S. Environmental Protection Agency (EPA), ensures national uniformity in water quality standards and serves as an umbrella law over all state water quality laws.

For the CWA to be effective and enforceable at the state level, the EPA delegated primary implementation of many CWA programs to the state (1974 Cooperative Enforcement Agreement Between U.S. EPA and DEQ). Under the partnership between the EPA and the state, emphasis is placed on performance-based evaluations, differential oversight, and greater participation by the state in evaluating performance and determining solutions. In doing so, the focus of EPA oversight is on identifying and solving problems and taking action, where appropriate, in order to deliver more effective and efficient environmental protection. Such an approach necessitates a continuing strong EPA presence, a workable state-EPA relationship, and continuous dialogue and communication between EPA and the state. (Annual Montana Environmental Performance Partnership Agreement between the Montana Department of Environmental Quality and the U.S. Environmental Protection Agency, Region VIII). Montana, under EPA supervision, achieves this state-level administration through the:

- Water Quality Act (WQA);
- Department of Environmental Quality (DEQ); and

- Board of Environmental Review (Board).

In its oversight role, the EPA provides technical support, training, interpretation of federal regulations, and related assistance to Montana.

Ultimately, the EPA retains final authority to implement or enforce any aspect of the CWA on a case-by-case basis if needed.

## ●● MONTANA LAWS ●●

### **Local Boards of Health** (Title 50, chapter 2, MCA)

Each Montana community has a local board of health. Depending on population size, the board may be at the city, county, city-county, or district level. A local board of health can help its community maintain a sanitary drinking water supply. Local boards safeguard public health by monitoring:

- communicable diseases;
- waste disposal; and
- sewage treatment systems.

Local boards may also regulate local water quality by adopting rules, regulations, and fees consistent with state laws.

### **Montana Environmental Policy Act**

(Title 75, chapter 1, parts 1 through 3, MCA, and Title 17, chapter 4, subchapters 6 and 7, ARM)

The Montana Environmental Policy Act (MEPA) generally requires state agencies taking actions that may impact the human environment to conduct environmental reviews. Those environmental reviews (either an environmental assessment or an environmental impact statement) evaluate impacts of the proposed action on the biological, physical, social, economic, cultural, and aesthetic factors that interrelate to form the human

environment. Water quality impacts are typically evaluated in these environmental reviews.

### **Public Water Supply Systems**

(Title 75, chapter 6, part 1, MCA, and Title 17, chapter 38, ARM)

The Board holds general supervision over all public water supply systems in the state. A few examples of the types of rules and standards adopted by **the Board** are:

- maximum contaminant levels for waters that are or will be used for a public water supply system;
- monitoring, recordkeeping, and reporting;
- the siting, construction, operation, and modification of a public water supply system or public sewage system;
- the collection and analysis of samples of water used for drinking or domestic purposes;
- the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act and state law.

Examples of the DEQ's responsibilities include:

- examining waters to determine their quality and the possibility that they may endanger public health;
- advising persons as to the best method of treating and disposing of their drainage, sewage, or wastewater with reference to the existing and future needs of other persons and to prevent pollution;
- establishing and maintaining experiment stations and conducts experiments to study the best methods of treating water, drainage, wastewater, and sewage to prevent pollution, including investigation of methods used in other states;
- enforcing and administering the provisions of the public drinking water laws;
- establishing a plan for the provision of safe drinking water under emergency circumstances;
- maintaining an inventory of public water supply systems and establishes a program for conducting sanitary surveys; and
- entering into agreements with local boards of health wherever appropriate for the performance of surveys and inspections.

## **Waste and Litter Control Laws**

(Title 75, chapter 10, MCA, and Title 17, chapters 50, 53, and 55, ARM)

Hazardous waste facilities, solid waste landfills, motor vehicle wrecking facilities, the disposal of septage, and the remediation of hazardous substance releases are all subject to state laws administered by the DEQ in direct response to concerns about water quality. These laws address the land disposal of (nonnuclear) solid and liquid waste materials. The siting and operation of facilities that involve the storage or land disposal storage of waste materials are regulated in order to prevent contamination of state waters and ground water in particular. Landfill liners, soil testing, ground water monitoring wells, the "cradle to grave" tracking of hazardous wastes, and requirements for the proper handling, treatment, storage, and disposal of wastes are just a small part of the waste management efforts designed to maintain ground water quality. If wastes are handled improperly, state laws that address the cleanup of hazardous substances are again focused on those steps necessary to prevent water pollution or to attempt the remediation or control of contaminated water.

## **Underground Storage Tank Laws**

(Title 75, chapter 11, MCA, and Title 17, chapters 56 and 58, ARM)

The storage of petroleum products and other chemicals in underground tanks for fire safety results in an obvious potential source of significant ground water contamination. Serious contamination of aquifers and drinking water supplies has occurred in the past due to poor installation, inadequate tank design, and inattentive operation. Laws are now in place to prevent leaks and spills from occurring by requiring the licensing of properly trained tank installers and by requiring tank design changes and improved quality of tanks and piping. Laws also require proper tank operation in order to detect the inevitable releases as early as possible before significant ground water contamination can occur. Detection methods include improved inventory control, electronic monitoring systems, ground water monitoring, vapor detection, periodic system testing, and

others. Tank owners and operators also must be financially responsible for the remediation of underground storage tank releases. Financial responsibility is partially covered by a state fund available to reimburse the remediation expenses of owners and operators who are in compliance with the law. These laws are administered by the DEQ or by the federal EPA.

### **Montana Major Facility Siting Act**

(Title 75, chapter 20, MCA, and Title 17, chapter 20, ARM)

The construction, location, and operation of certain electrical transmission facilities, pipeline facilities, and geothermal facilities may not produce unacceptable adverse effects on the environment and upon the citizens of this state. A person must obtain a **certificate of compliance** from the DEQ prior to commencing construction of a statutorily defined major facility.

As part of the certificate, a person must demonstrate that facility construction and operation will not adversely impact water quality. The DEQ monitors all certified facilities for continued compliance.

### **Montana Subdivision and Platting Act**

(Title 76, chapter 3, MCA)

Counties, cities, and towns are required to regulate subdivisions. With some exceptions, an EA must be prepared for each subdivision. The EA must include:

- a description of every surface water body that may be affected by the proposed subdivision;
- available ground water information; and
- a community impact report that addresses the need for water and sewage facilities.

The local governing body must evaluate the subdivision's effect on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety. The

governing body may require the subdivider to reasonably minimize potentially significant adverse impacts identified through this evaluation.

### **Sanitation in Subdivisions**

(Title 76, chapter 4, part 1, MCA, and Title 17, chapter 36, ARM)

The DEQ establishes standards for review and approval of subdivisions for public and private water supplies, sewage disposal facilities, storm water drainage ways, and solid waste disposal. Review of subdivisions and enforcement of these requirements may be delegated to a local department or board of health.

### **Streamside Management Zone Laws**

(Title 77, chapter 5, part 3, MCA, and Title 36, chapter 11, part 3, ARM)

A **streamside management zone** (SMZ) is crucial to water quality because it sustains the physical and biological integrity of the stream. With exceptions, an SMZ is defined in Montana as that area 50 feet from the high-water mark of a stream, lake, or other body of water. To safeguard such zones, the Department of Natural Resources and Conservation (DNRC) regulates timber harvests in these areas. Forest practices that are prohibited within an SMZ include:

- operation of wheeled vehicles;
- clearcutting of timber;
- disposal of hazardous or toxic materials;
- broadcast burning;
- road construction;
- **slash** deposits; and
- side casting of deposit of road construction materials.

Persons found responsible for causing damage to these zones must undertake site rehabilitation and may be assessed a penalty.

## **Montana Agricultural Chemical Ground Water Protection Act**

(Title 80, chapter 15, MCA, and Title 4, chapter 11, ARM)

The DEQ and the Montana Department of Agriculture work cooperatively through this act to protect Montana's ground water from contamination as the result of agricultural chemical use, allow for the proper and correct use of agricultural chemicals, provide for the management of agricultural chemicals to prevent, minimize, and mitigate their presence in ground water, and provide for education and training of agricultural chemical applicators and the general public on ground water protection, agricultural chemical use, and the use of alternative agricultural methods.

The DEQ is responsible for the establishment and enforcement of agricultural chemical ground water standards and interim numerical standards, as well as ground water monitoring.

The Department of Agriculture is responsible for the preparation, implementation, and enforcement of agricultural chemical ground water management plans, public education programs, and ground water monitoring.

### **Strip and Underground Mine Acts**

(Title 82, chapter 4, parts 1 and 2, MCA, and Title 17, chapter 24, ARM)

All proposed **strip mining** and **underground mining** sites are subject to DEQ approval. The DEQ examines both site location and reclamation plans before granting the operator a permit to explore or mine. Plans must identify and describe all water resources in the area of the project, address any potential impacts to surface and ground water resources, provide for monitoring of ground and surface water, and control any adverse mine drainage. The mining project must pose minimal danger to the quality of impacted water, provide adequate remedies for any degradation to natural resources, and prevent unreasonable degradation of natural resources. Mine operators must pay to replace any damaged or diminished drinking



water supply, and the owners of all water supplies damaged by coal or uranium mining may sue the operator for damages. Coal and uranium mining operations are required to provide a surety bond to cover the costs of reclamation, including proper control of water and erosion at the mine site.

### **Metal Mine Reclamation Laws**

(Title 82, chapter 4, part 3, MCA, and Title 17, chapter 24, ARM)

Mineral exploration and metal mine development disturbs the surface and subsurface of the earth and produces waste materials. Mine operations usually impact surface and ground water resources. Placer and dredge operations are often in or near flowing surface waters and can contribute to turbidity. Subsurface mines can contact ground water, and mine waste materials and exposed rock may contribute contaminants to water resources. Thus, proper mine operation and reclamation is necessary to maintain water quality in regions of metal extraction.

The DEQ regulates mineral exploration and metal mining through the issuance of exploration licenses and mine operating permits. Reclamation of disturbances is required by law and by the Montana Constitution. Mine operation plans must include information about water resources and must include plans for monitoring for and mitigating any discharges of materials to ground or surface waters. Operating permits are not granted until reclamation plans are provided that address how water quality will be maintained at the site. Bonding is required. An amended reclamation plan and a higher bond may be required after the issuance of a permit if the DEQ finds that there is a reasonable probability that water quality standards will be violated.

## **Opencut Mining Act**

(Title 82, chapter 4, part 4, MCA, and Title 17, chapter 24, ARM)

The DEQ issues permits for the development and operation of opencut mines, which are surface pit mines for minerals such as sand, gravel, clay, and peat. Excavation of these mines can impact surface and especially ground water quality given the materials and their geologic locations. Turbidity and sedimentation of surface waters from mineral washing and sorting operations or erosion and runoff and contamination of ground water following removal of the overburden are key issues. Concerns about maintaining water quality play a significant role in the permitting and reclamation of these mines.

Mine operating permits will not be granted until an acceptable operating plan, reclamation plan, and reclamation bond are submitted to the DEQ. Included in the plans must be assurances that surface water and ground water are given appropriate protection from water quality deterioration, that sedimentation or acid drainage to streams is prevented, that water drainage is controlled and does not contribute to water pollution, and that waste materials are not buried in areas likely to cause water pollution. Opencut mine permits may not be approved in any river or flowing stream or floodway where they are likely to cause erosion.

## **Water Use Laws**

(Title 85, chapter 2, MCA, and Title 36, chapter 12, ARM)

The DNRC issues water use permits for beneficial uses of water. The DNRC must consider impacts on water quality in considering whether or not to issue a permit. The applicant must prove that:

- the water quality of a prior appropriator will not be adversely affected;
- the proposed use will be substantially in accordance with the classification of the water source; and
- the proposed use will not adversely affect the ability of a discharger to comply with effluent limitations.

In closed basins—areas where water appropriations are limited by law—the DNRC may allow an appropriation if there is a plan to recharge the aquifer to offset the effects of the appropriation. Aquifer recharge plans must meet the requirements of the Water Quality Act.

# GLOSSARY OF TERMS

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**303(d) list** — Section 303(d) of the federal Clean Water Act (and related regulations) requires states to assess the condition of their waters to determine where water quality is impaired (does not fully meet standards) or threatened (is likely to violate standards in the near future). The result of this review is the 303(d) list, which must be submitted to the EPA every other year. Section 303(d) also requires states to prioritize and target water bodies on their list for development of water quality improvement strategies (i.e., TMDLs) and to develop such strategies for impaired and threatened waters.

**abatement** — the reduction, lessening, or ending.

**Administrative Rules of Montana (ARM)** — a collection of state agency rules used in the implementation of federal and state codes.

**adverse** — unfavorable.

**appeal** — to transfer a case from a lower to a higher court for a new hearing.

**beneficial use** — public use of water, including but not limited to agricultural, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, water leasing, and recreation.

**bioaccumulate** — to retain or continue building up a substance; to persist in the environment, transferring from one organism to the next along the food chain.

**city-county** — a city and county consolidated into one government unit.

**compliance** — obeying and achieving the conditions of a rule, permit, order, or law.

**conservation district** — a political subdivision of state government that conducts research and projects related to soil, water resources, and other natural resource issues.

**degradation** — a lowering of water quality.

**diminution** — a decrease in quantity.

**effluent** — an outflow or discharge of waste.

**environmental assessment (EA)** — a document required by federal and state law that discloses likely **minor** environmental impacts of a proposed use.

**environmental impact statement (EIS)** — a document required by federal and state law that discloses likely **major** environmental impacts of a proposed use.

**exemption** — freedom from a rule or obligation that applies to others.

**ground water** — any water beneath the land surface, bed of a stream, lake, or reservoir.

**high-quality waters** — all state waters except ground water classified as "III" or "IV" or surface waters incapable of supporting the designated uses of their classification or consistently having a zero flow for more than 270 days/year.

**impaired water body** — a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

**injunction** — a court order prohibiting a specific act or commanding the undoing of some wrong or injury.

**interested persons** — persons with a real property interest, water right, or other economic interest that may be directly affected.

**local water quality district** — a defined community area established for protecting water quality.

**mitigate** — to alleviate or improve upon the conditions of the violation.

**mixing zones** — established areas where water quality standards may be exceeded while a discharge is mixed with receiving water.

**Montana Code Annotated (MCA)** — a collection of Montana laws classified by subject.

**Montana ground water pollution control system (MGWPCS)** — a system developed by the state for issuing permits for discharge into ground water.

**Montana pollutant discharge elimination system (MPDES)** — a system developed by the state for issuing permits for point source pollution discharge into surface waters.

**municipal** — relating to a local political unit (e.g., city or town) having self-governing powers.

**nonpoint source pollution** — pollution from various indefinable points (versus one specific location) discharged over a wide area.

**nonsignificant** — minimal; low potential for harm to human health or the environment.

**ordinance** — a local law governing municipal matters not covered by state or federal law.

**outstanding resource waters (ORW)** — waters located wholly within the boundaries of areas designated as national parks or national wilderness areas or other designated waters approved by the legislature.

**oversight** — watchful care, management, or supervision.

**parameter** — a specific characteristic, element boundary, or limit.

**parts per million (ppm)** — the number of parts of a substance (by weight) per million parts of water.

**permit** — an authorization from the DEQ that specifies all limitations imposed on volume, concentration, and other significant characteristics of a discharged waste.

**petition** — a formal, written request to a government body to take action on a specific matter under its jurisdiction.

**point source pollution** — pollution discharged from any identifiable point, including pipes, ditches, channels, sewers, and tunnels.

**pollution** — contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards.

**potability** — suitability for human consumption.

**quasi-judicial** — a term applied to public administrative officers or bodies who exercise discretion of a judicial nature (e.g., investigations, hearings, and conclusions).

**recourse** — the right to recover a loss or liability.

**remand** — to send back to a lower court with instructions for further proceedings.

**remediation** — to provide a remedy or correct a deficiency or wrong.

**restoration damages** — the amount of compensation determined by a court to restore a contaminated special use property to its function and use prior to the contamination. The term includes reasonable attorney fees and costs incurred by the plaintiff.

**sanitary** — relating to public health and cleanliness; free from waterborne disease or waste.

**slash** — branches and other residue left after the cutting of timber.

**solid waste** — all rotting and nonrotting waste created by human activity (e.g., garbage, ashes, sewage sludge, construction byproducts, discarded home appliances, and wood debris).

**source water** — untreated water from streams, rivers, lakes, or aquifers used to supply public drinking water.

**specific conductance** — the amount of dissolved solids in the water; the higher the total dissolved solids, the higher the specific conductance.

**statutes** — formal, legislatively created laws.

**streamside management zone (SMZ)** — a stream, lake, or other body of water and its adjacent area (at least 50 feet on each side) where habitat and water quality are easily affected by timber management practices.

**stringent** — strict, severe.



**strip mining** — removing the upper surface of the earth to recover mineral deposits.

**sufficient credible data** — chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

**surface water** — water above the land surface, including lakes, rivers, streams, wetlands, wastewater, flood water, and ponds.

**threatened water body** — a water body or stream segment for which sufficient credible data and calculated increases in loads show that it is fully supporting its designated uses but is threatened for a particular designated use.

**total maximum daily load (TMDL)** — the sum of pollution load allocations for individual point sources, nonpoint sources, and natural background sources that is established at a level necessary to achieve compliance with applicable surface water quality standards.

**turbidity** — cloudiness caused by suspended particles in water.

**underground mining** — recovering a mineral deposit through an incline or shaft that penetrates the upper surface of the earth.

**waste load allocation** — the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

**water quality** — chemical, physical, and biological characteristics of water that determine its suitability for a particular use.

**watershed** — a geographic area that includes all land and water in a drainage system; size can range from as small as a backyard stream to as large as the Mississippi River.

# INFORMATION RESOURCES

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## ●● Federal ●●

### ❖ Environmental Protection Agency (EPA)

Federal Building, 10 West 15th St., Suite 3200, Helena, MT 59626  
Ph: 406/457-5000  
<http://epa.gov>

## ●● State ●●

### ❖ Department of Agriculture (DOAg)

P.O. Box 200201  
Helena, MT 59620-0201  
Ph: 406/444-3144, F: 406/444-5409  
E-mail: [agr@mt.gov](mailto:agr@mt.gov)  
<http://agr.mt.gov>

### ❖ Department of Environmental Quality (DEQ)

P.O. Box 200901  
Helena, MT 59620-0901  
Ph: 406/444-2544, F: 406/444-4386  
E-mail: <http://svc.mt.gov/deq/mail/ContactUsForm.asp>  
<http://deq.mt.gov>

### ❖ Department of Natural Resources and Conservation (DNRC)

P.O. Box 201601  
Helena, MT 59620-1601  
Ph: 406/444-2074, F: 406/444-2684  
[dnrc.publicinfo@mt.gov](mailto:dnrc.publicinfo@mt.gov)  
<http://dnrc.mt.gov>

### ❖ Legislative Environmental Policy Office (LEPO)

Environmental Quality Council  
P.O. Box 201704  
Helena, MT 59620-1704  
Ph: 406/444-9280, F: 406/444-3971  
E-mail: [jkolman@mt.gov](mailto:jkolman@mt.gov)  
<http://leg.mt.gov/css/lepo/default.asp>

### ❖ Montana Watercourse

332 Culbertson Hall, Montana State University, Bozeman, MT 59717  
P.O. Box 170575  
Ph: 406/994-1910, F: 406/994-6889  
<http://mtwatercourse.org/>

### ❖ Montana State Law Library

Justice/State Library Bldg., Box 203004, Helena, MT 59620-3004  
Ph: 406/444-3660, F: 406/444-3603  
E-mail: [mtlawlibrary@mt.gov](mailto:mtlawlibrary@mt.gov)  
<http://courts.mt.gov/library>

### ❖ Montana University System Water Center

101 Huffman Bldg., Montana State University, Bozeman, MT 59717-2690  
Ph: 406/994-6690, F: 406/994-1774  
E-mail: [water@montana.edu](mailto:water@montana.edu)  
<http://watercenter.montana.edu>

### ❖ Montana Watershed Coordination Council

<http://mwcc.montana.edu/>

