75-5-203. State regulations no more stringent than federal regulations or guidelines.

(1) After April 14, 1995, except as provided in subsections (2) through (5) or unless required by state law, the board may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The board may incorporate by reference comparable federal regulations or guidelines.

(2) The board may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the board makes a written finding after a public hearing and public comment and based on evidence in the record that:

(a) the proposed state standard or requirement protects public health or the environment of the state; and

(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the board's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the board adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable federal regulations or guidelines may petition the board to review the rule. If the board determines that the rule is more stringent than comparable federal regulations or guidelines, the board shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The board may charge a petition filing fee in an amount not to exceed $250.

(b) A person may also petition the board for a rule review under subsection (4)(a) if the board adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted board rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1).

History: En. Sec. 1, Ch. 471, L. 1995.

SB 236 FACT SHEET

Background

In 1995 the Montana Legislature codified standards for carcinogens in water. Carcinogens are known or suspected cancer-causing elements. 75-5-301(2)(b)(i) says:

> "For carcinogens, the water quality standard for protection of human health must be the value associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed 1 x 10-3 in the case of arsenic and 1 x 10-5 for other carcinogens."

What this means is that DEQ must set a standard for arsenic and other carcinogens that results in the death of no more than 1 in 1,000 people given chronic lifetime exposure to arsenic and 1 in 100,000 people for other carcinogens. For arsenic, this risk level translates to a water quality standard of 18 micrograms per liter. For lead, the standard is 15 micrograms per liter and for cadmium 5 micrograms per liter.

Current law only allows these standards to be changed in order to bring them into compliance with federal standards.

SB 236 Provides Flexibility

SB 236 does not attempt to change the current carcinogen standards. Rather it provides the *Board of Environmental Review with the authority to adopt stricter standards* should the need arise. Stricter standards can only be adopted, however, after the rigorous process outlined in 75-5-203 is followed. (See other side of page)

There are two very good reasons the BER might decide to adopt stricter standards. First, treatment methods improve over time. As methods for removing arsenic and carcinogens from water improve, carcinogens can be removed more effectively and efficiently. For example, Dr. Gadgil of the Berkeley Laboratories has developed a method of arsenic removal that can decrease levels from 500 parts per billion to only 10 parts per billion in a 100 kg of arsenic-laced water with just 30 grams of media.[1] Another researcher, K.J. Reddy of University of Wyoming, has discovered a method of removal that also lowers arsenic levels to less than 10 parts per billion. Reddy's method has no harmful byproducts and is not affected by other chemical compounds in the water.[2]

The second reason the BER may decide to adopt stricter standards is that our knowledge of the harmful effects of carcinogens continues to improve along with our detection methods. New research may show that something is more or less dangerous than previously believed. New testing methods may allow for detection at smaller levels. Again, as technology improves, Montana's water quality standards ought to have the flexibility to improve with it.

SB 236 Returns Authority to the State

SB 236 brings power back to Montana that was given to the federal government in 1995. Montana is a headwaters state renowned for its blue-ribbon trout streams and clean water. Federal standards that are adequate for other states may not be adequate for Montana and its citizens. Montana needs the Board of Environmental Review to have the authority to set stricter standards if needed to protect Montana's water.

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[1] Lawrence Berkeley National Laboratory: http://www.lbl.gov/tt/techs/lbnl1742.html

[2] Hamende, Vicki. "UW Researcher Invents Way to Remove Arsenic From Water." Aug. 18, 2004: www.uwyo.edu/AgAdmin/news/Reddy.html