



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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SENATE NATURAL RESOURCES

EXHIBIT NO. 2

DATE 3/9/11

BILL NO. HB 352

MAR 7 2011

Ref: 8P-W-DW

The Honorable Brian Schweitzer  
Governor of Montana  
Office of the Governor, State Capitol  
P.O. Box 200801  
Helena, MT 59620

Dear Governor Schweitzer:

I am writing to inform you of significant concerns that the U.S. Environmental Protection Agency (EPA) has with a bill pending in the 2011 Montana legislature, House Bill 352. While EPA is very reluctant to become involved with the actions of a State's legislature, this bill raises concerns about whether Montana's drinking water program could meet federal public health requirements if the proposed legislation were to become law.

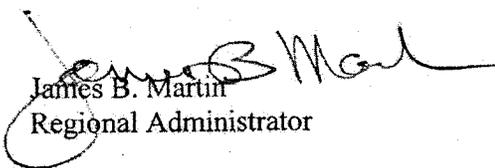
In addition to the programmatic and legal issues cited below, the most troubling aspect of House Bill 352 is that it could substantially decrease health protection for young children, some of our most vulnerable citizens. The Bill seeks to relieve systems from compliance with the nitrate maximum contaminant level (MCL) as established under the Safe Drinking Water Act (SDWA). This is of significant concern because of nitrate's toxicity to infants under six months of age. At concentrations over the federal standard of 10 parts per million in drinking water, nitrate can cause methemoglobinemia, or "blue baby syndrome," a potentially fatal condition caused by oxygen deprivation in infants. Because of the acute effect of nitrate, and because the standard has no margin of safety to protect sensitive infants, even several days of exposure to tap water contaminated over the federal standard of 10 parts per million presents a serious public health risk. Some studies have also linked exposure to high levels of nitrate with an increased risk of cancer.

I have been advised by EPA's attorneys and drinking water program experts that House Bill 352 may be inconsistent with the SDWA and its implementing regulations. The legislation appears to prevent the Montana Department of Environmental Quality (MDEQ) from being able to make decisions about variances and exemptions in accordance with the SDWA. In order to be granted a variance or exemption under the SDWA, public water systems must meet several conditions detailed in the SDWA and its implementing regulations, and provide public notice and opportunity for a hearing. In addition, the Bill appears to exempt certain public water systems that are granted a variance or exemption from the statutory requirement to comply with a State prescribed compliance schedule, which must be both implemented and fully enforceable.

Section 1413 of the SDWA, 42 U.S.C. § 300g-2, and its implementing regulations at 40 C.F.R. § 142.10(d), require state variance and exemption programs to be no less stringent than the requirements in Sections 1415 (42 U.S.C. § 300g-4) and 1416 (42 U.S.C. § 300g-5) of the SDWA. If our understanding of the proposed legislation is correct, and House Bill 352 removes MDEQ's ability to make individual determinations about variances and exemptions based on the factors set out in the statute and to prescribe enforceable compliance schedules, then it would have the effect of making Montana's Act less stringent than the federal SDWA. Such changes to the State's program may lead to withdrawal of the State's program pursuant to the process at 40 C.F.R. § 142.17. Additionally, State legislation that is less stringent than the SDWA cannot relieve anyone from the federal SDWA requirements; public water systems (PWSs) would still need to comply with the federal SDWA requirements. 42 U.S.C. §300g-3(e). As a result, enactment of House Bill 352 could cause regulatory confusion for PWSs and possibly expose them to liability under the SDWA.

EPA welcomes insight from the State as to whether our understanding of the legislation is accurate and the opportunity to work together to consider the ramifications of the proposed legislation. If you need more information, please contact me, or your staff may contact Stephen Tuber at (303) 312-6288 or Julie DalSoglio at (406) 457-5025.

Sincerely,

  
James B. Martin  
Regional Administrator

Cc: Richard Opper  
Judy Hanson  
Montana Department of Environmental Quality