Department of Environmental Quality
Summary of Proposed Legislation
Prepared for Environmental Quality Council's
July, 2008 meeting

State Buildings Energy Conservation Program
This legislation would continue the State Building Energy Conservation Program. The program reduces energy use and utility costs in state facilities by financing cost-effective energy improvements. Under the program, the State sells general obligation bonds, uses the bond proceeds to pay for the improvements, then covers the debt service and program costs through the resulting utility cost savings. Net savings above debt service and program costs are transferred into the Long Range Building Program.

The program is structured so that each session the Legislature may review proposed projects and authorize bond authority for the coming biennium. This legislation would provide bond authority and appropriation authority for the bond proceeds and also would expressly authorize in statute that renewable energy measures are eligible for this program provided they meet cost-effectiveness tests. The current program focuses on energy efficiency and conservation; with current and rising energy costs, certain applications of renewable energy also are cost-effective under this approach.

Energy Performance Contracting for State Buildings
Performance contracting is a mechanism to allow for a third party, such as an energy service company, to analyze facilities for energy savings, to renovate the facility using third party financing, and to recover costs through the energy savings from the project. While Montana state government can likely enter into performance contracts, it was not explicitly included in the initial legislation that established a process and provided authority for this specific method of financing energy projects. This legislation would expressly add state government as an eligible entity; the existing energy performance contracting law, Title 90, Chapter 4, addresses schools and local governments .
By adding this financing method to the allowable options, it should be possible to complete more energy efficiency retrofits on state facilities each year, so energy cost savings would accrue faster.

Variance Procedure for Nutrient Standards Based on Affordability
The Department of Environmental Quality has been developing numeric nutrient water quality standards for nitrogen and phosphorus to protect recreation and fisheries uses in streams and rivers. These standards have been requested by EPA since 1998 and may be very difficult for some communities to meet without very costly upgrades to their wastewater treatment plants. This legislation would provide DEQ with authority to provide variances from nutrient standards and provide authority to establish specific procedures and criteria for these variances.

Improvements to State Superfund Program

- **Comprehensive Environmental Cleanup Responsibility Act (CECRA)**
  The Environmental Quality Council conducted an oversight study of the State Superfund Program last biennium and requested DEQ identify ways to simplify and clarify the process of administering cleanup requirements. In addition, a performance audit of the program by the Legislative Audit Division was recently completed. This legislation would effect statutory changes necessary to implement the dozen or so improvements recommended by EQC, the Legislative Audit Division and the Department. These improvements would increase efficiency and facilitate more timely cleanup and cost recovery. They include: facilitating timely closures by ensuring DEQ can require additional remediation at a closed site if after closure if it becomes apparent that a remedy has failed to achieve the required cleanup; including deed notices as a form of institutional control; increasing the efficiency of cost recovery by requiring payment of Department invoices within 30 days of receipt rather than 60 days as is allowed by current law; allowing delisting of sites when a federal agency assumes jurisdiction; and clarifying numerous other sections of statute.

- **Voluntary Cleanup and Redevelopment Act (VCRA)**
  Under the VCRA, the Legislature provides an incentive to conduct voluntary cleanup of state superfund sites. Department expenses under this program are funded by reimbursements from the applicant. Currently, the Department does not have authority to stop its work on voluntary cleanup applications when its expenses are not reimbursed, which has a negative effect on program cash flow and can delay cleanup. This legislation would require payment of outstanding invoices as a requirement for Department review and require payment prior to issuance of an approval action. Also, in some past voluntary cleanups the Department has encountered contaminants occurring above screening levels that were known but unreported by applicants in the course of an investigation. Late evaluation has significantly delayed development of remedial action plans and subsequent cleanup and site closure. Discretionary sanctions are proposed to address the impacts of failure to report additional contaminants in a timely fashion. Finally, the VCRA process is often seen as complex and cumbersome. By splitting it into phases, the process would be more manageable for applicants, especially those who are unfamiliar with cleanup processes.

Kalispell Pole and Timber / Reliance Refinery / Yale Oil (KRY)
The State of Montana, through the Department of Natural Resources and Conservation, is responsible for approximately $9,000,000 of the remediation costs for contamination associated with the KRY property near Kalispell, some of which is owned by DNRC. Under the Controlled Allocation of Liability Act, state agencies such as DNRC are authorized to utilize Orphan Share Account funds, administered by DEQ, for remediation of contaminated state properties. DEQ is doing the cleanup at Reliance and will bill DNRC. Under current law, DEQ would invoice DNRC's portion of the cost, DNRC would make a claim to DEQ for reimbursement from the Orphan Share fund, DEQ would transfer Orphan Share funds to DNRC, DNRC would reimburse DEQ, and DEQ would place the funds in the Environmental Quality Protection Fund. This legislation would authorize a direct, one-time transfer for the biennium of up to $9,000,000 from Orphan Share account to EQPF for DNRC's share of remediation costs, thus eliminating unnecessary and costly transactions. Any unexpended funds would remain in Orphan Share.

Additional Legislation Being Considered

Certification for Wastewater Collection System Operators
In existing statutes, operators of public water treatment plants, water distribution systems, and wastewater treatment plants are required to be trained and certified to perform the necessary functions. However, operators of wastewater collection systems are not certified. The proper operation of a collection system is as important to protecting public health as is proper operation of treatment plants.

This legislation would require the Department to provide certification for wastewater collection system operators and require that the approximately 30 community public wastewater systems in Montana serving over 3,300 people employ a certified wastewater collection operator, The bill would also allow for voluntary certification of operators of other systems. The bill also would add language and a definition of "industrial waste discharge system" to clarify certification requirements for industrial waste systems and ensure that the Department has authority to regulate them.

Revise Biodiesel Incentives
Montana has several tax incentives for biodiesel producers and distributors. This legislation would provide incentives to biodiesel consumers as a means of directly encouraging biodiesel use and indirectly facilitating further development of the biodiesel production and distribution industry in Montana. The legislation also would extend the current tax credit for alternative fuel motor vehicle conversion to include biodiesel.

Amend the Environmental Rehabilitation and Response Account (ERRA) to provide for cleanup of certain solid waste sites
Owners of illegal solid waste storage or disposal sites typically have little interest in compliance and usually do not have the resources for proper cleanup. DEQ spends significant time in litigation to compel compliance at these sites. If an owner fails to comply with a cleanup order, this legislation would allow DEQ to use ERRA to properly remove, recycle or dispose of the wastes. Expenditures would be limited to sites that are in violation of a DEQ administrative order or a court order. The legislation also would provide authority for cost recovery where feasible to restore expended funds.

Public Water Supply Significant Deficiencies
Current regulations cover the review and approval of new public water systems, but statutory language does not provide the clear authority to require the correction of deficiencies at existing facilities that have the potential to cause harm to public health or the environment. The Department's ability to require the repair of significant deficiencies will be necessary for the Department to properly implement the new federal Ground Water Rule and for the state to retain primacy from EPA in regulating public water supplies. This legislation would provide clear authority for the Department to require the correction of deficiencies at existing facilities that have the potential to cause harm to public health or the environment.

Damage Awards and Environmental Cleanup
Citizen lawsuits during the 2009 biennium resulted in a jury verdict and a settlement that provided significant awards of damages for restoration of contaminated sites. One of these sites is also subject to remediation under the Comprehensive Environmental Cleanup Responsibility Act.(CECRA). The purpose of this legislation is to ensure that restoration damage awards and settlements from citizen suits are used for restoration and that

restoration at sites that are undergoing remediation or are listed under CECRA is consistent with remediation under CECRA.