Summary of Proposed Legislation
Department of Environmental Quality
Presentation to Environmental Quality Council
July 23, 2010

TMDL Watershed Approach
This bill would modify existing law by authorizing the department to employ a watershed-based approach for Total Maximum Daily Loads (TMDLs) development. The legislation would increase the overall efficiency of the TMDL effort and would allow for a schedule change currently being negotiated under a federal court order and subsequent settlement agreement.

Total Maximum Daily Loads are watershed plans developed to restore water quality. 75-5-703(5), MCA, establishes a deadline of 15 years for the development of TMDLs for all waters that were identified as threatened or impaired in the state's 1996 impaired waters list under Section 303(d) of the federal Clean Water Act. Waters listed after 1996 are to be addressed in a subsequent list once the first goal is achieved. In employing this existing approach the department would, in all instances, be addressing identified problems of a decade-and-a-half past. The department has successfully employed a "list-neutral watershed" approach since 2004. Using the watershed approach, the listings of 1996 are addressed simultaneously with post -1996 listings, which more completely addresses watershed-scale issues and achieves a higher overall rate of TMDL development through the efficiencies gained by economies-of-scale.

Updated Fiscal Requirements
This bill would address legislative audit findings to improve cash management and cost recovery controls under the Comprehensive Environmental Cleanup Responsibility Act, or state superfund law. The legislation would require liable persons to pay invoices within 30 days when the invoice covers a 30-day invoicing period. Current statute sets a variable timeframe for payment tied to the number of days in the invoicing period. The existing system does not provide for timely invoicing or payment.

There will be no increase or decrease in cost recovery efforts and monies as a result of this legislation. Rather, cost recovery will be accomplished in a more timely manner, increasing program solvency and reducing the cash reserve needed for day-to-day program support from a 60-day reserve to a 30-day reserve.

Municipal Wastewater Reuse Authorization
This bill would allow certain uses of treated municipal wastewater effluent once appropriate treatment has occurred. Effluent reuse has been used in other states as an alternative to conventional discharge that helps conserve water and reduce nutrient pollution. Possible uses for the treated wastewater include landscape irrigation, fire fighting sprinkler systems, construction water (e.g., cement plants, road material packing) and commercial toilet flushing.

The legislation would authorize the Board of Environmental Review to establish rules for municipal wastewater treatment systems to provide reuse options not currently available. Individual municipal systems then could determine whether to implement these options.

State Building Energy Conservation Program Revisions
This bill would address findings of a recent legislative audit on the State Building Energy Conservation bond program. The legislation would align the procedures for collection and use of energy savings from general obligation bond projects (the financing method prior to 2007) with those of the 2009 revolving fund program for energy conservation.

The program reduces energy and water use in state owned buildings through building renovations. Energy and water cost savings are used to repay the cost of the renovation. A legislative audit of the program in 2009 identified areas where the practice of collecting energy cost savings does not match statute for projects funded with bonds authorized prior to 2007. This legislation would align statute for old projects with the modifications made by the 2009 Legislature for a new revolving program; specifically, agencies would repay the cost of the project only until the project costs are repaid rather than for the useful life of the improvements.

Postmining Revegetation Period
This bill would amend the Montana Strip and Underground Mine Reclamation Act to make it consistent with the federal Surface Mining Control and Reclamation Act (SMCRA). Montana's regulatory program for coal mining is approved by the Office of Surface Mining (OSM) within the Department of Interior. Federal law requires that no change to laws or regulations governing an approved program may take effect until approved by OSM.

The 2009 Legislature passed HB 278, exempting water management and other support facilities from the revegetation responsibility period for coal mining reclamation. The exempted facilities included, but were not limited to, sedimentation ponds, diversions, other water management structures, soils stockpiles, access roads, segments of haul roads and electrical substations. OSM has notified the Department of Environmental Quality that the "not limited to" language and the exemption of segments of haul roads and electrical substations makes the provision less stringent than OSM's interpretation of SMCRA; as such, OSM cannot approve these changes.

The proposed legislation for 2011 would remove those unapprovable elements while retaining all other statutory changes from 2009.