

SENATE BILL NO. 446
INTRODUCED BY G. PERRY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO REVIEW OF PUBLIC WATER AND SEWAGE SYSTEMS BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY; REMOVING INDUSTRIAL WASTE DISCHARGE SYSTEMS FROM DEPARTMENT REVIEW; REMOVING THE EXEMPTION FROM DEPARTMENT REVIEW OF PUBLIC SEWAGE SYSTEMS THAT HAVE WATER QUALITY DISCHARGE PERMITS; EXPRESSLY AUTHORIZING ADOPTION OF MANAGERIAL AND TECHNICAL CAPACITY RULES; AUTHORIZING THE ADOPTION OF SOURCE WATER PROTECTION REQUIREMENTS; ELIMINATING PROVISIONS THAT DUPLICATE PROVISIONS CONTAINED IN THE WATER QUALITY STATUTES; AND AMENDING SECTIONS 37-42-102, 75-6-102, 75-6-103, 75-6-104, 75-6-112, AND 75-6-120, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 37-42-102, MCA, is amended to read:

"37-42-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Board" means the board of environmental review provided for in 2-15-3502.
- (2) "Certificate" means a certificate of competency issued by the department, stating that the operator holding the certificate has met the requirements for the specified operator classification of the certification program.
- (3) "Community water system" means a public water supply system that serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents.
- (4) "Council" means the water and wastewater operators' advisory council provided for in 2-15-2105.
- (5) "Department" means the department of environmental quality provided for in 2-15-3501.
- (6) "Industrial waste" means any waste substance from the processes of business or industry or from the development of a natural resource, together with any sewage that may be present.
- (7) "Industrial waste discharge system" means a system that discharges industrial waste into state waters.
- ~~(6)~~(8) "Nontransient noncommunity water system" means a public water system, as defined in 75-6-202,

that is not a community system and that regularly serves at least 25 of the same persons for at least 6 months a year.

(7)(9) "Operator" means the person in direct responsible charge of the operation of a water treatment plant, water distribution system, or wastewater treatment plant.

(8)(10) "State waters" means the term as defined in 75-6-102.

(9)(11) "Wastewater treatment plant" means a facility that:

(a) is designed to remove solids, bacteria, or other harmful constituents of sewage, industrial ~~wastes~~ waste, or other wastes; and

(b) is part of either an industrial waste discharge system or a public sewage system as defined in 75-6-102.

(10)(12) "Water distribution system" means that portion of the water supply system that conveys water from the water treatment plant or other supply source to the premises of the consumer and that is part of a community water system or a nontransient noncommunity water system.

(11)(13) "Water supply system" means a system of pipes, structures, and facilities through which water is obtained, treated, sold, distributed, or otherwise offered to the public for household use or use by humans and that is part of a community water system or a nontransient noncommunity water system.

(12)(14) "Water treatment plant" means that portion of the water supply system that alters either the physical, chemical, or bacteriological quality of the water and renders it safe and palatable for human use."

Section 2. Section 75-6-102, MCA, is amended to read:

"75-6-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Certified ~~wellhead~~ source water protection area" means an area certified by the department that ~~protects~~ identifies the surface and subsurface area surrounding a source of ~~ground~~ water for a public water supply system through which contaminants may move toward and reach the source of supply.

(3) "Community water system" means a public water supply system that serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents.

(4) "Contamination" means impairment of the quality of state waters by sewage, industrial ~~wastes~~ waste, or other ~~wastes~~ waste creating a hazard to human health.

(5) "Cross-connection" means a connection between a public water supply system and another water

supply system, either public or private, or a wastewater or sewerline or other potential source of contamination so that a flow of water into or contamination of the public water supply system from the other source of water or contamination is possible.

(6) "Department" means the department of environmental quality provided for in 2-15-3501.

(7) "Drainage" means rainfall, surface, and subsoil water.

(8) "Industrial waste" means any waste substance from the processes of business or industry or from the development of a natural resource, together with any sewage that may be present.

~~(9) "Industrial waste discharge system" means a system that discharges industrial waste into state waters.~~

~~(10)~~(9) "Maximum contaminant level" means the maximum permissible level of a contaminant in water that is delivered to a user of a public water supply system.

~~(11) "Montana wellhead protection program" means a program administered by the department to certify wellhead protection areas and review wellhead protection ordinances.~~

~~(12)~~(10) "Other waste" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(13)~~(11) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local government entity, federal agency, or any other governmental or private entity, whether organized for profit or not.

~~(14)~~(12) (a) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that which is permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor or the discharge or introduction of a liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) A discharge that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter.

~~(15)~~(13) "Public sewage system" means a system of collection, transportation, treatment, or disposal of sewage that serves 15 or more families or 25 or more persons daily for any 60 or more days in a calendar year.

~~(16)~~(14) "Public water supply system" means a system for the provision of water for human consumption from a community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that

has at least 15 service connections or that regularly serves at least 25 persons daily for any 60 or more days in a calendar year.

~~(17)~~(15) "Safe Drinking Water Act" means 42 U.S.C. 300f and regulations set forth in 40 CFR, parts 141 and 142.

~~(18)~~(16) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings, together with ground water infiltration and surface water present.

(17) "Source water protection program" means a program administered by the department to certify source water protection delineation and assessment reports and source water protection plans and to review source water protection ordinances.

~~(19)~~(18) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

~~(20)~~(19) "Transient noncommunity water system" means a public water supply system that is not a community water system and that does not regularly serve at least 25 of the same persons for at least 6 months a year."

Section 3. Section 75-6-103, MCA, is amended to read:

"75-6-103. Duties of board. (1) The board has general supervision over all state waters that are directly or indirectly being used by a person for a public water supply system or domestic purposes or as a source of ice.

(2) The board shall, subject to the provisions of 75-6-116, adopt rules and standards concerning:

- (a) maximum contaminant levels for waters that are or will be used for a public water supply system;
- (b) fees, as described in 75-6-108, for services rendered by the department;
- (c) monitoring, recordkeeping, and reporting by persons who own or operate public water supply systems;
- (d) requiring public notice to all users of a public water supply system when a person has been granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;
- (e) the siting, construction, operation, and modification of a public water supply system or public sewage system;
- (f) the review of the technical, managerial, and financial viability capacity of a proposed public water supply system or public sewage system, as necessary to ensure the capability of the system to meet the requirements of this part;

- (g) the collection and analysis of samples of water used for drinking or domestic purposes;
 - (h) the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act and this part;
 - (i) administrative enforcement procedures and administrative penalties authorized under this part;
 - (j) standards and requirements for the review and approval of programs that may be voluntarily submitted by suppliers of public water supply systems to prevent water supply contamination from a cross-connection, including provisions to exempt cross-connections from the standards and requirements if all connected systems are department-approved public water supply systems; and
 - (k) any other requirement necessary for the protection of public health as described in this part.
- (3) Board rules must provide for the following:
- (a) a water supply or water distribution facility reviewed and approved by the department is not subject to changes in department design and construction criteria for a period of 36 months after written approval of the facility is issued by the department;
 - (b) except for facilities subject to permit requirements under Title 75, chapter 5, part 4, a system of water supply, drainage, wastewater, or sewage reviewed and approved under this section is not subject to changes in department design or construction criteria for a period of 36 months after written approval is issued by the department;
 - (c) plans and specifications for a portion of a facility or system subject to a 36-month limit on criteria changes pursuant to subsections (3)(a) and (3)(b), but not constructed within the 36-month timeframe, must be resubmitted for department review and approval before construction of that portion of the facility;
 - (d) the provisions of this subsection (3) may not limit an applicant's ability to alter a proposed project that is otherwise in conformance with applicable laws, rules, standards, and criteria.
- (4) The board may issue orders necessary to fully implement the provisions of this part."

Section 4. Section 75-6-104, MCA, is amended to read:

"75-6-104. Duties of department. The department shall:

- (1) upon its own initiative or complaint to the department, to the mayor or health officer of a municipality, or to the managing board or officer of a public institution, make an investigation of alleged pollution of a water supply system and, if required, prohibit the continuance of the pollution by ordering removal of the cause of pollution;
- (2) have waters examined to determine their quality and the possibility that they may endanger public

health;

(3) consult and advise authorities of cities and towns and persons having or about to construct systems for water supply, drainage, wastewater, and sewage as to the most appropriate source of water supply and the best method of ~~assuring~~ ensuring its quality;

(4) advise 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;

(5) consult with persons engaged in or intending to engage in manufacturing or other business whose drainage or sewage may tend to pollute waters as to the best method of preventing pollution;

(6) collect fees, as described in 75-6-108, for services and deposit the fees collected in the public drinking water special revenue fund established in 75-6-115;

(7) establish and maintain experiment stations and conduct experiments to study the best methods of treating water, drainage, wastewater, and sewage, ~~and industrial waste~~ to prevent pollution, including investigation of methods used in other states;

(8) enter on premises at reasonable times to determine sources of pollution or danger to water supply systems and whether rules and standards of the board are being obeyed;

(9) enforce and administer the provisions of this part;

(10) establish a plan for the provision of safe drinking water under emergency circumstances;

(11) maintain an inventory of public water supply systems and establish a program for conducting sanitary surveys; and

(12) enter into agreements with local boards of health ~~wherever~~ whenever appropriate for the performance of surveys and inspections under the provisions of this part."

Section 5. Section 75-6-112, MCA, is amended to read:

"75-6-112. Prohibited acts. A person may not:

~~(1) discharge sewage, drainage, industrial waste, or other wastes that will cause pollution of state waters used by a person for domestic use or as a source for a public water supply system or water or ice company;~~

~~———(2) discharge sewage, drainage, industrial waste, or other waste into state waters or on the banks of state waters or into an abandoned or operating water well unless the sewage, drainage, industrial waste, or other waste is treated as prescribed by the board;~~

~~(3)~~(1) commence or continue construction, alteration, extension, or operation of a system of water supply or water distribution that is ~~designed~~ intended to be used as a public water supply system or a system of sewer;

~~drainage, waste, or sewage disposal that is designed intended to be used as a public sewage system or industrial waste discharge system before the person submits to the department necessary maps, plans, and specifications for its review and the department approves those maps, plans, and specifications. However, any facility reviewed by the department under Title 75, chapter 5, is not subject to the provisions of this section.~~

(4)(2) operate or maintain a public water supply system that exceeds a maximum contaminant level established by the board unless the person has been granted or has an application pending for a variance or exemption pursuant to this part;

(5)(3) violate any provision of this part or a rule adopted under this part; or

(6)(4) violate any condition or requirement of an approval issued pursuant to this part."

Section 6. Section 75-6-120, MCA, is amended to read:

"75-6-120. ~~Montana wellhead~~ Wellhead and source water protection program programs -- voluntary petitions. (1) The federal Safe Drinking Water Act, including 42 U.S.C. 300h-7 and 300j-13, enables the department to administer a wellhead protection program and source water assessment programs that ~~involves~~ involve delineation of the boundaries of the assessment areas from which a public water system receives supplies of drinking water, certification of local wellhead source water protection areas, assessment of source water susceptibility to regulated contaminants, and review of wellhead source water protection area ordinances. In administering ~~this program~~ these programs, the department may perform only those functions provided for by the federal Safe Drinking Water Act and this section.

(2) A supplier of a public water supply system may voluntarily submit for department review and approval a petition to establish a wellhead source water protection program for the system.

(3) The department may certify a wellhead source water protection area upon:

(a) receipt of a petition by a supplier for a public water supply system; and

(b) making a determination that the wellhead source water protection area meets criteria and thresholds for certification established by the Montana wellhead source water protection program.

(4) (a) The governing body of the county in which a wellhead source water protection area or areas exist may adopt an ordinance to regulate, control, and prohibit conditions that threaten the quality of water used within the wellhead source water protection area or areas.

(b) Prior to adopting a wellhead source water protection area ordinance, the governing body shall confer with the supplier of the public water supply system and shall then submit the ordinance to the department for review and verification that the ordinance is consistent with the requirements of this chapter.

(c) A ~~wellhead~~ source water protection area ordinance must be adopted using the procedures described in 7-5-103 through 7-5-107.

(5) (a) An ordinance adopted under subsection (4) is limited in applicability to the certified ~~wellhead~~ source water protection area or areas within the county.

(b) For a ~~wellhead~~ source water protection area that is located in two or more counties, the proposed ~~wellhead~~ source water protection area ordinance must be adopted by each county in order for the ordinance to be effective.

(6) A ~~wellhead~~ source water protection area ordinance adopted under this section may not conflict with and may not duplicate any other federal, state, or local law or regulation, including but not limited to zoning, fire codes, hazardous waste regulation under Title 75, chapter 10, part 4, or pesticide regulation under Title 80, chapter 8."

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