

WATER QUALITY

LEGISLATOR NOTICE

The Legislative Services Division is required to offer a brief history on the subject matter of a bill draft request prior to drafting (5-4-105, MCA; [Chapter 309, Laws of 2017](#)). The history must include related legislation introduced over the last five sessions and hyperlinks to the bill, hearing information, and fiscal notes. The legislation links below open to the page showing the status and history of bills introduced on this topic in the past. The bill text and any related fiscal notes can be accessed through the link at the top of that page.

Legislation can be complex, and this history is not intended to be exhaustive. Please contact the drafter of the requested bill for more information.

Background Materials and Research

Topic Summary:

Water quality protection in Montana began in 1907, when the Legislature passed laws responding to typhoid outbreaks in the Milk River Basin. The law required treatment of all sewage discharged into public water supplies.¹ Other laws would follow, including at least three bills related to water quality in the 1967 session.

The 1967 Montana Legislature passed a measure stating Montana’s public policy was to protect, maintain, and improve quality of water and to “provide a comprehensive program for the prevention, abatement, and control of water pollution.”² It also passed broad public health laws, which created the foundation of today’s regulatory environment for drinking water and sanitation facilities.

Clean Water Act

In 1972, Congress passed the Clean Water Act, which seeks to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”³ The rewritten 1972 Montana Constitution further declared that all persons have inalienable rights, including to a clean and healthful environment and to life’s basic necessities,⁴ and that “[t]he state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.”⁵

¹ Montana Legislative Environmental Policy Office, *A Guide to Montana Water Quality Regulation* (2012), 5.

² Section 121, Ch. 197, Laws of Montana 1967.

³ 33 U.S.C. 1251.

⁴ Article II, sec. 3, 1972 Mont. Const.

⁵ Article IX, sec. 1, 1972 Mont. Const.

In 1974, the U.S. Environmental Protection Agency delegated authority to Montana to implement certain Clean Water Act programs, including development of water quality classifications and standards and issuance of discharge permits. These classifications and standards are used by the DEQ when issuing discharge permits, making assessment decisions, and developing plans to meet standards.⁶ The water quality standards must meet or exceed federal standards — or provide justification as to why Montana’s needs differ. Permittees must limit pollutants to standards developed by the DEQ. The EPA retains oversight authority and may administer individual cases.

Safe Drinking Water Act

Congress passed the Safe Drinking Water Act in 1974 to regulate the nation’s public drinking water supply by setting standards to control the level of contaminants. Congress amended the act in 1986 and 1996 to expand protections. The act allows the Environmental Protection Agency to set drinking water standards — and to ensure these standards are met. Regulations set either a maximum contaminant level or treatment technique rules.⁷ Regulated contaminants⁸ include the following:

- Microorganisms, such as coliform bacteria
- Disinfectants, such as chlorine and chloramine
- Disinfection byproducts, such as bromate
- Inorganic chemicals, such as copper, cyanide, fluoride, and mercury
- Organic chemicals, such as atrazine, benzene, and glyphosate
- Radionuclides, such as natural and human-made radioactive minerals

The EPA granted primacy to the DEQ in the 1990s to regulate what are now 2,174 public water systems in Montana.⁹ Administrative rule and DEQ “circulars” provide specific guidance and standards for the department’s activities. The DEQ Enforcement Division pursues violations of these laws, rules, permit conditions, or orders.¹⁰

Board of Environmental Review

The Board of Environmental Review retains a large role in Montana’s water quality regulations.

The board, consisting of seven members appointed by the governor, establishes classifications of state waters and standards of water quality. Although the board is composed of technical experts in hydrology, local government planning, environmental sciences, public health, and medicine, the board relies on the technical expertise of the Water Quality Planning Bureau to arrive at its classifications and standards.

The Board of Environmental Review may adopt rules related to permit applications and for the process for issuing, denying, modifying, or revoking permits. The Water Quality Discharge Permit Section issues, suspends, revokes, modifies, or denies discharge permits. The Compliance, Training, and Technical Assistance Section also ensures compliance with its permitting conditions. The board may grant a permit holder an appeals hearing if the bureau suspends, revokes, modifies, or denies a permit. Certain permit decisions may be appealed to a district court.

⁶ The Water Quality Discharge Permit Section of the DEQ’s Water Protection Bureau issues pollution discharge permits.

⁷ See www.epa.gov/sdwa.

⁸ A more explicit list is available at www.epa.gov/sites/production/files/2016-06/documents/npwdr_complete_table.pdf.

⁹ Montana’s 2017 Annual Public Water System Compliance Report, 3, http://deq.mt.gov/Portals/112/Water/PWSUB/Documents/MT%20ACR%202017_050918.pdf.

¹⁰ Section 75-6-110, MCA.

As allowed by state and federal law,¹¹ the Board of Environmental Review has general supervision of all public water supply systems in Montana — and of the Water Quality Planning Bureau. The board approves all rules and standards developed by the experts in the bureau. The board may consider appeals to bureau decisions and set certain application fees.¹²

In addition to its duties described earlier, the bureau may issue variances and exemptions for systems, depending on the circumstances.¹³ The bureau may also issue boil orders or emergency responses, if necessary.

Legislative Services Division Materials:

[A Guide to Montana Water Quality Regulations](#) (2015)

Introduced Legislation

*Chapter number assigned means bill was passed and approved.

2019

[House Bill 118](#)—(H) Died in process. REVISING PUBLIC WATER SUPPLY LAWS; CREATING A GRANT PROGRAM TO REDUCE LEAD IN DRINKING WATER AT PUBLIC SCHOOLS AND DAY-CARE CENTERS; INCREASING ANNUAL FEES TO A PUBLIC WATER SUPPLY SYSTEM; PROVIDING RULEMAKING AUTHORITY; GRANTING THE DEPARTMENT OF ENVIRONMENTAL QUALITY AUTHORITY TO IMPLEMENT THE GRANT PROGRAM; LIMITING THE BOARD OF ENVIRONMENTAL REVIEW POWERS.

[HB 625](#)—(S) Died in standing committee. ELIMINATING NUTRIENT CRITERIA FROM MONTANA WATER QUALITY STANDARDS; ELIMINATING VARIANCES AND COMPLIANCE SCHEDULES FOR NUTRIENTS

[SB 48](#)—Chapter number assigned. GENERALLY REVISING VARIANCES TO WATER QUALITY STANDARDS FOR POLLUTION DISCHARGERS; AND PROVIDING RULEMAKING AUTHORITY

2017

[HB 368](#)—Chapter number assigned. ESTABLISHING SETBACKS BETWEEN SEWAGE LAGOONS AND WATER WELLS; EXTENDING DEPARTMENT OF ENVIRONMENTAL QUALITY RULEMAKING AUTHORITY; PROVIDING A RULEMAKING EXCEPTION; ELIMINATING THE PROHIBITION ON LOCATING SEWAGE LAGOONS WITHIN 500 FEET OF A WATER WELL

[HB 455](#)—(S) Died in standing committee. REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO REVIEW WATER QUALITY RULES RELATED TO SUBDIVISIONS; REQUIRING THE BOARD OF ENVIRONMENTAL REVIEW TO ADOPT RULES

¹¹ Safe Drinking Water Act, 42 U.S.C. 300f; Title 75, ch. 6, part 1, MCA.

¹² Title 75, ch. 6, part 1, MCA.

¹³ Sections 75-5-203 and 75-6-107, MCA.

2015

[HB 476](#)—(H) Missed deadline for general bill transmittal. REQUIRING WATER REMOVED FROM A MINE TO BE RETURNED TO THE AQUIFER WITHOUT DEGRADING WATER QUALITY AND IN A MANNER THAT PREVENTS SURFACE WATER DEPLETIONS

[SB 97](#)—Chapter number assigned. REVISING THE PROCESS TO MODIFY CLASSIFICATION OF STATE WATER BODIES; REMOVING RESTRICTIONS ON THE ADOPTION AND REVISION OF CLASSIFICATIONS; REMOVING THE EXCEPTION FOR TEMPORARY CLASSIFICATIONS

[SB 159](#)—(S) Missed deadline for general bill transmittal. PROVIDING CERTAIN WATER QUALITY STANDARDS FOR TRIBUTARIES OF ROSEBUD CREEK, THE TONGUE RIVER, THE POWDER RIVER, AND THE LITTLE POWDER RIVER

[SB 160](#)—(S) Vetoed by governor. PROVIDING ADDITIONAL DEFINITIONS OF A NATURAL CONDITION OF A STREAM.

[SB 325](#)—Chapter number assigned. REVISING THE BOARD OF ENVIRONMENTAL REVIEW PROCESS FOR ADOPTING WATER QUALITY REGULATIONS MORE STRINGENT THAN FEDERAL REGULATIONS; REVISING IMPLEMENTATION OF WATER QUALITY STANDARDS THAT ARE PURER THAN A NATURAL CONDITION OF A WATERCOURSE OR WATER SOURCE; REVISING THE PROCESS FOR RECLASSIFYING WATER QUALITY STANDARDS; REVISING THE PROCESS FOR ADOPTING SITE-SPECIFIC WATER QUALITY STANDARDS; PROVIDING A DEFINITION

[SB 387](#)—Chapter number assigned. IMPLEMENTING MAXIMUM PENALTIES FOR WATER QUALITY VIOLATIONS THAT DO NOT HARM OR HAVE THE POTENTIAL TO HARM HUMAN HEALTH, THE ENVIRONMENT, OR THE DEPARTMENT OF ENVIRONMENTAL QUALITY'S ABILITY TO PROTECT HUMAN HEALTH OR THE ENVIRONMENT

2013

[SB 76](#)—Chapter number assigned. AMENDING THE MONTANA WATER QUALITY ACT TO CONFORM WITH FEDERAL STANDARDS FOR COOLING WATER INTAKE STRUCTURES; GRANTING RULEMAKING AUTHORITY

[SB 347](#)—(S) Veto override failed in Legislature. PROVIDING THAT A DIVERSION OR WITHDRAWAL OF WATER IS NOT DEGRADATION UNDER THE WATER QUALITY ACT

2011

[HB 155](#)—(H) Died in process. REQUIRING DISCHARGE PERMITS FOR THE ANTHROPOGENIC MANIPULATION OF WETLANDS USING A WATER CONVEYANCE STRUCTURE FOR THE PURPOSE OF HABITAT MANAGEMENT; PROVIDING RULEMAKING AUTHORITY; EXEMPTING HYDROPOWER FACILITIES

[HB 162](#)—(H) Died in standing committee. REQUIRING PUBLIC SEWAGE SYSTEMS TO OBTAIN DISCHARGE PERMITS WITHOUT USING A MIXING ZONE; PROVIDING RULEMAKING AUTHORITY

[HB 352](#)—Chapter number assigned. ALLOWING THE USE OF BOTTLED WATER FOR A PUBLIC WATER SYSTEM TO ACHIEVE COMPLIANCE WITH A MAXIMUM CONTAMINANT LEVEL FOR NITRATE

[SB 267](#)—Chapter number assigned. ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF ENVIRONMENTAL QUALITY COMPLETE CERTAIN TOTAL MAXIMUM DAILY LOADS BY 2012 FOR THREATENED OR IMPAIRED WATER BODIES; REQUIRING REPORTING OF TOTAL MAXIMUM DAILY LOAD PROGRESS TO THE ENVIRONMENTAL QUALITY COUNCIL

[SB 367](#)—Chapter number assigned. AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO USE INDIVIDUAL, GENERAL, AND ALTERNATIVE NUTRIENT STANDARDS VARIANCES TO ESTABLISH PERMIT LIMITS FOR POINT SOURCE DISCHARGES TO SURFACE WATER; ALLOWING INFORMATION RELATED TO BASE NUMERIC NUTRIENT STANDARDS OR NUTRIENT STANDARDS VARIANCES TO BE CONFIDENTIAL

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Dec. 8, 2020