

1. Repeal 75-5-302 to allow updates to the stream classification system

Under the rules adopted to implement the Water Quality Act, water bodies are classified according to their uses and standards are adopted for each class to protect those uses. Considering the current science, the existing classification system is not sufficiently precise because it contains only a few broad classifications. It needs to be replaced or modified to include more classes that more closely tailor the classifications and standards to the characteristics of the water bodies.

This reclassification will result in lowering the standards applicable to some water bodies because the current more stringent standards are not necessary to protect the uses of the water bodies. However, Section 75-5-302 provides that, when classifications are revised or new classifications are created, the standards applicable to a particular water body may not be lowered unless the water body was originally misclassified. This statute would therefore prohibit implementation of this more precise classification where implementation would lower standards because the lowering of standards would not be due to misclassification under the existing system, but rather reclassification under a more extensive and precise system.

2. Amend Controlled Allocation of Liability Act (CALA)

CALA, which is codified as part of the state superfund law, creates the orphan share account. Under current law, that account can be used to provide funding to cover a portion of the costs of cleaning up contaminated sites for parties that no longer exist due to bankruptcy or insolvency (“orphans”) and to pay cleanup cost for which state agencies are liable.

This bill would expand the uses of the orphan share fund to include the following situations:

- a. There are sites where DEQ must conduct historical research and notice potentially liable persons before DEQ can conduct remedial actions. Even when potentially liable persons are identified and required to conduct remedial actions, some of them are not viable and are unable to conduct work. In some instances, local governments are potentially liable persons.
- b. There are also sites where interim actions are needed to address an immediate risk to public health or the environment in the short-term until final cleanup can occur. These interim actions may include residential yard removals, installation of vapor mitigation systems, provision of alternate drinking water, and spill response. DEQ often refers such sites to the EPA. However, EPA resources are limited and prioritized across all the EPA Region 8 states, and EPA cannot always address Montana’s requests for assistance. This proposal would allow DEQ to use orphan share funding to conduct interim actions to reduce an immediate risk to public health and the environment until final cleanup occurs.
- c. There are a number of low priority State Superfund (CECRA) sites that could be delisted if data were collected to demonstrate they do not pose a risk to human health and the environment. This proposal would allow DEQ to use orphan share funding to collect data to assist in analyzing low priority sites. This will increase protection of public health and the environment, decrease the backlog of sites on the CECRA priority list, and encourage development at sites where there is currently a perception that contamination exists.

3. Expand Uses of Petroleum Mixing Zones (PMZs)

Section 75-11-309, adopted in 2011, allows for use of a PMZ in a corrective action plan for a petroleum release. Petroleum mixing zones allow for issuance of no further action letters at certain sites where cleanup has occurred but water quality standards cannot be met. PMZ use has been limited because of two requirements contained in 75-11-309. The first is that the current statute requires a “recorded easement” as the only method of allowing a PMZ to be approved on an adjoining property. There are some public lands, such as highway rights-of-way, where an easement may be difficult due to unknown or clouded ownership. This bill expands the documents available to create a PMZ. The second problematic requirement is that a PMZ may be approved for contamination only in an “unconfined aquifer.” PMZs cannot be approved where contamination is present in semi-confined and confined aquifers. The type of aquifer does not, in itself, affect the risks posed to human health and the environment. The bill would eliminate this requirement.

4. Amend Air Quality Fee Structure

Currently, the department has the authority to assess air permit fees but 75-2-220, MCA only allows two types of fees to be collected: permit application fees and annual fees. There are two problems with this structure. First, limiting fee assessments to application and annual fees doesn’t accurately reflect the regulatory activities that need to be funded by air fees. For example, some regulated entities are required to submit registrations rather than apply for permits. Second, the statute specifies that both fees must be based on emissions, either actual or estimated. Again, using emissions as the sole basis for air fees doesn’t accurately reflect the amount of department staff time expended on a regulated entity or the environmental and health impact of a source of air pollution. Fees based on this structure are therefore inequitable. Some companies subsidize the operation of others, potentially even their competitors.

This bill would allow assessment of fees based on the department’s costs attributable to various sources. Also, the bill would amend 75-5-220 to incorporate federal requirements regarding recovery of costs.

5. Creation of Brownfields Fund

Brownfields are contaminated sites where the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a contamination. In 2001, Congress adopted the Brownfields Revitalization and Environmental Restoration Act under which states and local governments can obtain federal grants for redevelopment of brownfields sites.

Currently, brownfields grantees in Montana include the Cities of Kalispell, Missoula, and Great Falls, and 31 counties in the north, central, and eastern parts of Montana. This leaves 25 counties and many cities without the ability to apply for and receive low or no-interest loans for the cleanup of contaminated sites. The counties not currently covered by a brownfields grant are Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Ravalli, Granite, Powell, Deer Lodge, Silver Bow, Jefferson, Beaverhead, Madison, Glacier, Toole, Pondera, Teton, Cascade, Yellowstone, Sweet Grass, Stillwater, Carbon, and Big Horn Counties.

This bill would create the legal mechanism for DEQ to apply for federal grants to establish and administer a brownfield grant and loan program for local governments and private entities, allowing for financing in areas not currently served.