

A Guide to
**MONTANA WATER
QUALITY
REGULATION**

Revised – 2015
by Jason Mohr

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DEDICATION

In memory of Robert J. Thompson . . .

a former Environmental Quality Council staff member,
for his immeasurable effort and commitment
to Montana's water resources.

FOREWORD

A primer for the citizen, this manual addresses commonly asked policy questions regarding water quality. Explanations attempt to relay principles in understandable terms, which means some technical legal nuances may be lost. A Guide to Montana Water Quality Regulation should not be used as a legal reference. When in doubt, always refer to the **Montana Code Annotated (MCA)** or **Administrative Rules of Montana (ARM)**. When making legal judgements on the adequacy or completeness of procedure, always consult your own legal counsel.

Except for a reference to enforcement of state laws on tribal lands, this manual does not specifically address water quality regulation with regard to tribal lands and reservations.

The manual contains terms that are in bold print and underlined. These terms are defined in the glossary.

This publication was first published in 1996, as a joint effort of the Environmental Quality Council and the Montana Water Center. It was the result of the dedicated work of Michael Kakuk, an Environmental Quality Council staff member, and Michelle Bryan, a Montana Water Center intern. Since the original publication, many of Montana's laws and rules have been changed. These changes are reflected in this revised publication.

MONTANA'S WATER

Whether fishing in hip-deep mountain streams, diverting lowland creeks over alfalfa crops, or simply drinking a glass of water, each Montanan has a unique view of water quality. Consensus emerges, nonetheless, in the belief that Montana's waters are integral to our economic and environmental well-being. To protect our state waters, for the present and the future, a framework of water quality laws exists.

The Montana Constitution recognizes the significant role environmental quality plays in our human activities:

The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.¹

In other words, just as each person holds the fundamental right to seek a livelihood, each person also possesses a right and responsibility to safeguard state waters from degradation.

This balance between human activity and water quality is reiterated in the Montana Code Annotated, where public policy² strives to:

- conserve water by protecting, maintaining, and improving the quality and potability of water for public water supplies, wildlife, fish and aquatic life, agriculture, industry, recreation, and other beneficial uses
- provide a comprehensive program for the prevention, abatement, and control of water pollution
- balance the inalienable rights to pursue life's basic necessities and possess and use property in lawful ways with the policy of preventing, abating, and controlling water pollution in implementing a water pollution program.

Thus, the state promotes the protection of water quality, while also accommodating human uses, through laws that guide our water-related activities.

THE WATER QUALITY ACT

The Montana Legislature passed its first water quality law in 1907, responding to typhoid outbreaks in the Milk River Basin. The law required treatment of all sewage discharged into public water supplies. This legislation became the first in a series leading to our current water quality statutes, collectively known as the Montana Water Quality Act.

The Water Quality Act incorporates both national and state policy by integrating the directives of the federal Clean Water Act while also codifying the priorities of the Montana Constitution's environmental quality clauses.

When the Environmental Protection Agency delegated Montana authority to implement certain Clean Water Act programs, the federal agency's role shifted from direct administration to support and oversight. However, the EPA retains ultimate authority to administer aspects of the Clean Water Act on a case-by-case basis if needed.

The Water Quality Act provides guidelines to prevent, abate, and control the pollution of Montana waters in a manner consistent with national standards.³

Where do Montana's water quality laws originate?

Today's Montana water quality protection laws reflect the federal legislation in 1972 that later became known as the Clean Water Act. The act regulates the discharge of pollutants into waters by establishing national standards and **permit** guidelines. The federal Environmental Protection Agency (EPA) oversees the act's implementation.

In 1974, the EPA delegated Montana authority to implement many Clean Water Act programs within the state. Through its agencies and

laws, Montana executes federal water quality guidelines, updating its delegated programs to reflect changes at the federal level.

The Clean Water Act and the Montana Constitution merge in Montana's primary source of water quality law, commonly known as the Montana Water Quality Act, Title 75, chapter 5, MCA. Other sources of water quality laws are discussed later in this guide.

Which state waters are protected by the Water Quality Act?

Water quality laws govern only certain state waters.⁴ Specifically regulated are surface or underground:

- bodies of water
- irrigation systems
- drainage systems.

Outside this regulatory realm are:

- ponds or lagoons used solely for treating, transporting, or impounding pollutants; or
- irrigation or land application disposal waters used up within the system and not returned to state waters.

Who is regulated?

Montana water quality laws regulate every entity in the state, including individuals, businesses, organizations, and units of government.

What water uses are regulated?

It is difficult to imagine a use of water that does not alter that water somehow. Whether utilized in industrial processes, irrigation, or even in the home, water changes. Chemicals may be added or removed, or the temperature, color, or turbidity may vary. Although any water use may cause an alteration, water quality laws regulate only certain uses.

Regulated uses are those entailing potential **pollution** (either **point source pollution** or **nonpoint source pollution**) to state waters; that is, activities that threaten water quality, human or wildlife health, or established beneficial uses.⁵

Who administers the Water Quality Act?

Department of Environmental Quality

The Department of Environmental Quality (DEQ) is the state agency primarily responsible for implementing the Water Quality Act. The Governor appoints its director.⁶ In administering these water quality laws,⁷ the DEQ:

- collects and furnishes information relating to water pollution prevention and control
- conducts and encourages research relating to water pollution
- advises, consults, and cooperates with other states, other state and federal agencies, affected groups, political subdivisions, and industries in formulating pollution prevention and control plans
- issues, suspends, revokes, modifies, or denies permits to discharge sewage or waste into state waters
- monitors, inspects, and otherwise enforces water quality laws
- monitors state waters to assess quality and develop maximum pollutant loads for certain waters.

Board of Environmental Review

The Board of Environmental Review is a **quasi-judicial**, seven-member body appointed by the Governor to provide policy guidance to the DEQ. Members represent the geographic areas of the state, have backgrounds in hydrology, local government planning, and environmental sciences, and include a member who is a county health officer or a medical doctor.⁸

To enable DEQ implementation of water quality laws⁹, the board:

- adopts administrative rules related to the administration of discharge permits

- establishes classifications of state waters, and formulates standards of water quality
- adopts rules related to the state's nondegradation policy.

The board also holds hearings, delegates certain functions, and assesses administrative penalties for water quality violations.¹⁰

How are pollution limits set for the Water Quality Act?

The board classifies each body of water based on its beneficial uses. The board then creates standards to meet that classification. In all cases, the board must not allow further degradation of state waters, which is reflected in the nondegradation policy.

How and why are waters classified?

The board classifies all state surface water and ground water according to the beneficial uses supported by each water body or segment.¹¹

Surface Water

Surface water classification uses four basic categories based primarily on beneficial uses. For example, classifications are based on whether is water is suitable for:

- drinking, culinary and food processing purposes
- swimming and recreation
- growth and propagation of fishes (salmonid or nonsalmonid) and associated aquatic life, waterfowl, and furbearers
- agricultural and industrial water supply.¹²

Ground Water

Ground water classification involves four classes based on natural specific conductance.¹³

Class	Beneficial Use
I	Suitable for public and private water supplies, food processing, irrigation, etc., with little or no treatment required.
II	May be used for public and private water supplies where better quality water is not available. The primary use is for irrigation, stock water, and industrial purposes.
III	Used primarily for stock water and industrial purposes.
IV	Used primarily for industrial purposes.

The board is obligated to review these classifications at least every 3 years and to revise them as needed.¹⁴ Water classifications cannot be lowered unless the board finds that a body of water is not properly classified in accordance with its existing, present, and future beneficial uses.¹⁵

How are standards developed for water bodies?

Based on these classifications, the board formulates and adopts water quality standards specifying maximum allowable levels of alteration during use of state waters.

Water quality standards are either numeric or narrative. An example of a numeric value is the state arsenic standard for human health, which equals 10 parts per billion (ppb).¹⁶ An example of a narrative standard is:

No increases are allowed above naturally occurring concentrations of sediment or suspended sediment (except as permitted in 75-5-318, MCA), settleable solids, oils, or floating solids, which will or are likely to create a nuisance or render the waters harmful, detrimental, or injurious . . .¹⁷

In 2014, the board approved numeric nutrient standards, which limit concentrations of phosphorous and nitrogen in Montana’s lakes, rivers, streams, and reservoirs.

Exceptions

Temporary Standards. The board may temporarily modify a water quality standard for a specific water body or segment on a **parameter**-by-parameter basis when substantive information indicates the water body or segment is not supporting its designated uses.

Short-Term Authorizations. The DEQ may authorize short-term water quality **exemptions** to allow:

- emergency **remediation** activities that have been approved, authorized, or required by DEQ
- pesticide application when it is used to control nuisance aquatic organisms or to eliminate undesirable and nonnative aquatic species.¹⁸

The DEQ may also allow short-term water quality standards for turbidity resulting from stream-related construction activities or stream enhancement activities. The Department of Fish, Wildlife, and Parks may authorize short-term water quality standards for sediment and turbidity for stream construction projects.¹⁹

Site-Specific Standards for Aquatic Life. The board may raise specific standards pertaining to aquatic life without finding the water “misclassified” if the increase is site-specific and there is no adverse impact to established beneficial uses.²⁰

Mixing Zones. Both the federal Clean Water Act and the Montana Water Quality Act allow surface water **mixing zones**, with the Water Quality Act permitting ground water mixing zones as well. Board rules require these areas to have the smallest practicable size, a minimum effect on established beneficial uses, and definable boundaries.²¹

What is the nondegradation policy?

To protect and maintain existing quality of state waters, the Legislature adopted the nondegradation policy that applies to all new or increased discharges after April 1993.

This policy outlines three levels of water protection and stipulates what degradation, if any, is allowable in each level. Rules have been developed and are provided in the Administrative Rules of Montana (ARM).

Outstanding Resource Waters. The highest level of protection pertains to **outstanding resource waters**. Apart from nonsignificant activities (mentioned below), the state may not authorize any degradation of outstanding resource waters.²²

Identified outstanding resource waters include those surface waters within a national park or wilderness area designated prior to 1995, and any waters designated by the Legislature. The Legislature has not made such a designation.

High-Quality Waters. A middle tier of protection applies to **high-quality waters**. The state may authorize degradation of high-quality waters, but must fully protect existing and anticipated uses.²³

Other Waters. The lowest level of protection is for waters classified as neither outstanding resource waters nor high-quality waters. There is no nondegradation review requirement to discharge into these waters, but water quality standards and discharge permit conditions still apply.

What are exceptions to the nondegradation rule?

Nonsignificant Activities. The board establishes criteria for determining if a proposed activity or class of activities will result in nonsignificant changes to water quality for any parameter. Once an activity is designated “**nonsignificant**,” it is exempt from future nondegradation review provided no changes are made.

The Water Quality Act identifies specific activities as nonsignificant, including (please see the statute and associated rules²⁴ for a complete list):

- certain forms of nonpoint source pollution
- emergency or remedial activity
- recreational activities
- dam maintenance
- mineral exploration that does not result in discharge to surface water and is permitted and performed according to state law.

Authorizations to Degrade. Under the nondegradation policy, dischargers of pollutants are required to:

- apply for an authorization to degrade
- undergo a nondegradation review to evaluate the nature of the discharge in relation to the quality of the receiving waters.²⁵

The DEQ, in accordance with board rules and statutes,²⁶ may authorize degradation if a discharger demonstrates by a preponderance of evidence that:

- there are no economically, environmentally, and technologically feasible modifications to the proposed project that would result in no degradation;
- the proposed project will result in important economic or social benefits that exceed societal costs of allowing degradation;
- existing and anticipated uses of state waters will be fully protected; and
- the least degrading water quality protection practices will be used.

Only **interested persons** can **appeal** a nondegradation decision. The DEQ may review and revise—but not revoke—authorizations to degrade once every 5 years.

What role does the nondegradation policy play in the permitting process?

Before a permit is issued, consideration is given to the nondegradation policy. An applicant must complete an Application for Determination of Significance. The DEQ determines if the proposed degradation is significant. If the discharge is considered significant, the applicant must complete an application to degrade state waters. The DEQ coordinates a review of these applications with the permitting process to the maximum extent possible.

THE DISCHARGE PERMIT PROCESS

Anyone proposing to discharge sewage, industrial waste, or other pollutants into regulated state waters (i.e., surface, ground, or storm waters) must apply for a discharge permit. The two main permits issued pursuant to the Water Quality Act are:

- **Montana pollutant discharge elimination system (MPDES)** permit—for surface water discharge and stormwater discharges
- **Montana ground water pollution control system (MGWPCS)** permit—for ground water discharge.

Who is in charge of the permit process?

Board of Environmental Review

The board adopts rules governing the application process for the permits. These rules direct how the DEQ issues, denies, revises, or revokes a permit.

Department of Environmental Quality

The DEQ, according to board guidelines, processes permit applications, dictates permit conditions and limitations, and reviews permit renewals.

How does the permit process work?

Surface water discharge permits include two types – individual and general. An individual permit is site specific to that permit. These include major dischargers like city wastewater treatment plants and large industrial dischargers. General permits are “preexisting” permits for common activities, such as feedlots, fish farms, suction dredges, sand and gravel pits, domestic sewage treatment lagoons, oil and gas operations, and industrial operations. In 2015, the DEQ had 155 individual permit holders and 1,634 general permit holders.²⁷

A subset of surface water discharge permits are storm water permits. Storm water discharge permits are mostly issued for construction sites. Storm water permits comprise more than 75 percent of all general permits issued. Operators of these sites must create a storm water pollution prevention plan to protect state waters from pollutants, especially sediment.

Ground water permittees include custom metal ore milling companies, petroleum distribution companies, soil remediation facilities, and agricultural producers. Discharges may occur from tailings ponds, waste treatment and storage ponds, spill cleanup systems, and soil treatment cells. Permits include stipulations how a discharge source is managed to prevent degradation of state waters. As of 2015, the DEQ had 89 ground water discharge permit holders.

A water quality permit is valid for up to 5 years and may be renewed. This reapplication requirement also functions as a form of permit review.

What activities don't require a discharge permit?

Certain discharges are exempt from permit requirements, although other state and federal agencies may regulate these activities²⁸:

- discharge or activities at wells injecting fluids associated with oil and gas exploration/production and regulated by federal law
- disposal by **solid waste** management systems that are licensed under Montana law;
- agricultural irrigation facilities
- disposal of normal household wastes on private property
- storm water disposal or storm water detention facilities
- subsurface disposal systems for **sanitary** wastes serving individual residences
- certain mining operations subject to operating permits/exploration licenses
- projects reviewed under the Montana Major Facility Siting Act
- a carbon dioxide injection well permitted pursuant to Title 82, chapter 11, part 1.

What are other exemptions from or variances to permits?

Exempt Discharges to Surface Water

A permit is not required for a water conveyance structure or for a natural spring if the water discharged to state waters does not contain industrial waste, sewage, or other wastes.²⁹

Exempt Discharges of Ground Water to Surface Water

A permit is not required for the discharge to surface water of ground water that is not altered from its ambient quality if:

- the discharge does not contain industrial waste, sewage, or other wastes;
- the water that is discharged doesn't cause the receiving surface water to exceed water quality standards; and
- in the event the receiving water already exceeds standards for any parameter, the discharge does not increase the concentration of the parameter.³⁰

Although such discharges are exempt from the permit process, the DEQ may still require monitoring information and the development of mixing zones.³¹

Variances from numeric nutrient standards

State law allows for variances from the base numeric nutrient standards based on a determination that the standards cannot be achieved because of economic impacts or because of the limits of technology.³²

Permit Suspension or Revocation

The DEQ may suspend or revoke a permit if the permit holder violates provisions of the Water Quality Act.³³

If the permit holder **petitions** against a DEQ suspension or revocation, the board shall grant a hearing and issue a decision affirming, modifying, or reversing the DEQ action. The order of the board is effective immediately unless the board directs otherwise.

ENFORCEMENT AND COMPLIANCE

Who enforces water quality laws?

Environmental Protection Agency

The 2013-15 Montana Environmental Performance Agreement acknowledges the longstanding relationship between the DEQ and the EPA to protect the environment in Montana. While the DEQ enforces most water quality laws in Montana, the EPA retains final authority to implement or enforce any aspect under the auspices of the Clean Water Act.

Department of Environmental Quality

The DEQ responds to suspected or identified water quality violations by monitoring and inspecting discharges to ensure **compliance** with permits and laws.

How are water quality laws enforced?

Monitoring Power. To effectively monitor discharges, the DEQ can require a discharger to:

- establish and maintain records
- make reports
- install, use, and maintain monitoring equipment or methods, including biological monitoring techniques
- sample **effluents** at assigned locations and intervals
- provide other information as required by the DEQ.³⁴

Inspection Power. The DEQ, at reasonable times, may enter any public or private property to:

- investigate conditions relating to pollution of state waters or permit violations
- access and copy relevant records

- inspect monitoring equipment or methods
- sample effluents that the owner or operator is required to sample as a term of a permit.³⁵

The department inspected 564 facilities from 2010-2015.³⁶

Board of Environmental Review — State

The board establishes the procedures that the DEQ follows in its enforcement actions. The board presides over enforcement hearings and hands down decisions.

Who is considered a violator?

A violator is anyone who causes pollution of any state water. Legally permitted or exempted discharges do not constitute pollution under the Water Quality Act.

Except for the permit exclusions identified in 75-5-401(5), MCA, it is unlawful to carry on any of the following activities without a current permit from the department:

- construct, modify, or operate a disposal system that discharges into any state waters
- construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes into any state waters
- discharge sewage, industrial wastes, or other wastes into any state waters.³⁷

What about irrigation activity?

Activities associated with the operation or maintenance of irrigation water conveyance systems are allowed if water quality standards for receiving waters outside the systems do not exceed standards.³⁸

What happens when a violation is suspected?

Any person, association, corporation, or government agency may notify the DEQ of an alleged violation. When the DEQ suspects that a person has violated water quality law, it conducts an investigation to determine the validity of the complaint.³⁹

When there is an alleged violation, the DEQ may do one of two things⁴⁰:

- issue a notice letter (outlined below in the notice of violation section)
- issue an administrative notice and order in lieu of the notice letter if the DEQ's action does not involve assessment of an administrative penalty or seeks an administrative penalty only for an activity that it believes and alleges has violated a prohibited activity as outlined in state law (outlined previously).

What happens when a violation is determined?

When the DEQ determines that a person has violated a water quality law or a condition or limitation in a permit, authorization, or order issued under the Water Quality Act and an informal response is either unsuccessful or unsuitable to the nature of the violation, the DEQ initiates an enforcement response. The enforcement response may include:

- issuing a letter notifying the person of the violation and requiring compliance
- issuing an order requiring the person to correct the violation pursuant to the Water Quality Act
- bringing a judicial action as authorized in the Water Quality Act
- seeking administrative or judicial penalties.⁴¹

These enforcement responses are generally broken into two categories:

- administrative action—addressed through the DEQ and the board
- judicial action—addressed through the state or federal court system.

How does the DEQ correct water quality violations?

Administrative actions may consist of:

- notices of violation
- compliance orders
- public hearings.

Notice of Violation

Unless a violation represents an immediate threat to human health, safety, or welfare or to the environment, the DEQ must first issue a letter notifying the person of the violation and requiring compliance.⁴²

Compliance Orders

In conjunction with or following the violation notice, the DEQ may serve the violator with a compliance order, stipulating:

- the amount of the administrative penalty that will be assessed if corrective action is not completed within the timeframe provided
- a timetable for reaching compliance.⁴³

In establishing the compliance timetable, the DEQ considers the seriousness of the violation and any good faith efforts made to abate or control pollution.⁴⁴

Cleanup Orders. The DEQ may order cleanup when a person dumps, spills, or otherwise deposits waste in or near state waters, creating potential pollution.⁴⁵

Emergency Orders. If the DEQ finds that substantial human or environmental injury will result from a violation, the DEQ may order the action stopped immediately. Upon issuing an emergency order, the DEQ must set a place and time for a hearing before the board that is not later than 5 days after the issuance of the order unless a later date is requested by the alleged violator.⁴⁶

Public Hearings

As a part of the notice and order, the DEQ may require the violator to appear before the board at a public hearing to answer the charges. After a hearing, the board delivers a finding and explanation of its decision. If the DEQ does not require an alleged violator to appear before the board for a hearing, the alleged violator may request that the board conduct a hearing.⁴⁷

Board Orders and Penalties. If the board finds that a violation occurred, it:

- issues an order for the abatement or control of pollution, with a date or dates by which the violation must cease and any corrective action must take place, and/or
- assesses administrative penalties.⁴⁸

How do the courts handle water quality violations?

Upon receipt of evidence that a pollution discharge is endangering the health, welfare, or livelihood of a person, the DEQ may sue in a district court of the county where the alleged violator resides or conducts business.⁴⁹

Injunctions

Once the court finds reasonable cause to believe the DEQ allegations, it may issue a permanent or temporary **injunction** to stop the activity causing the violation and to require compliance.⁵⁰

Penalties

Besides an injunction, a person may be subject to civil, criminal, or administrative penalties.

Civil Penalties. Civil penalties do not include potential imprisonment. The violator is subject to a fine of up to \$25,000 for each violation. Each day of violation constitutes a separate violation.⁵¹

Criminal Penalties. When a violation is willful or negligent, the court may impose criminal penalties, including imprisonment.⁵²

Administrative Penalties. The DEQ may request the court to make assessments against a violator for: (1) the cost of the investigation, and (2) any other expense incurred by the state in correcting the adverse water quality effects resulting from the violation.⁵³

Can enforcement decisions be challenged?

Notices and Orders

If the DEQ does not schedule a hearing when issuing a notice and order, the violator may request the board to do so. Additionally, the violator may petition the board for a rehearing based on new evidence.⁵⁴

Board Orders

If the court upholds an order, it may issue a temporary restraining order or, at the request of the board, enforce compliance by issuing an injunction.⁵⁵

Court Injunctions and Penalties

An appeal of a district court injunction or penalty or both follows the traditional path through the court system, with a superior court reviewing the decision of the district court.

How is the Water Quality Act administered on tribal lands?

Federal

The Clean Water Act authorizes the EPA to treat Indian tribes in a manner similar to the states for implementing Clean Water Act programs, including water quality standards. Under this provision, a tribal government must first apply for "treatment-as-a-state" authority to administer a water quality standards program for its reservation. Upon

receiving treatment-as-a-state program authority, tribes may submit water quality standards for EPA approval. Once approved, tribal water quality standards are used to implement regulatory controls, such as discharge permits. These standards apply to both tribal and nontribal members within reservation boundaries. As of 2012, Montana tribes with this status include the Assiniboine and Sioux Tribes of the Fort Peck Reservation, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, and the Northern Cheyenne Tribe.

State

The EPA's approval language for Montana water quality standards states that Montana water quality laws do not apply on tribal reservations. State officials and tribes are discussing ways to ensure that waters in Montana are properly protected under the Clean Water Act.

Ultimately, the implementation of water quality standards on tribal lands is a blend of federal, state, and tribal cooperation that varies depending on the water use, type of water source, and region of the state.

WATER QUALITY ASSESSMENT

To provide a comprehensive program for the prevention, abatement, and control of water pollution, the DEQ conducts water quality assessments. The department identifies waters at or below water quality standards and calculates pollutant loads for these waters.

What is the water quality assessment listing?

The DEQ is required to monitor state waters to assess the quality of those waters and to identify surface water bodies or segments of surface water bodies that are **threatened** or **impaired** waters at or below water quality standards. The result of this review is the **303(d) list**, which must be submitted to the EPA every other year.⁵⁶ The list can be found at deq.mt.gov/wqinfo/cwaic/reports.mcp.

How is the 303(d) list revised?

The DEQ is required by the federal Clean Water Act to assess the list and make revisions as monitoring data is collected and as necessary at least every 2 years. In revising the list, the DEQ uses all currently available data, including information or data obtained from federal, state, and local agencies, private entities, or individuals with an interest in water quality protection.

Anyone can formally petition the DEQ to add or remove a water body from the list. The DEQ must determine whether the data provided by the petitioner is sufficient and credible and, if so, the DEQ will provide for a public comment period before taking action on the request.⁵⁷

Removing a Water Body from the List

The department may remove a water body from the list under three scenarios⁵⁸:

- **sufficient credible data** shows that the water body is neither threatened nor impaired⁵⁹
- there is lack of sufficient credible data to support the water body's listing⁶⁰
- the natural condition of the water body exceeds water quality standards. The water body must meet the natural condition criteria that are outlined in state law.⁶¹

Adding a Water Body to the List

A water body may be added to the list if sufficient credible data shows that the water body is threatened or impaired.⁶²

What happens once a water body is on the 303(d) list?

Once the DEQ has determined that a water body belongs on the 303(d) list, the DEQ must develop a **total maximum daily load** (TMDL) for that water body. Because there are numerous water bodies in Montana that are on the 303(d) list, the DEQ must prioritize and rank the water bodies with regard to TMDL development.

Section 303(d) of the federal Clean Water Act also requires states to prioritize and target water bodies on their list for development of water quality improvement strategies (i.e., TMDLs) and to develop such strategies for impaired and threatened waters. State law requires a department schedule that provides a reasonable timeframe for the TMDL development for impaired or threatened water bodies.⁶³

How are water bodies prioritized for TMDL development?

In prioritizing water bodies for TMDL development⁶⁴, the DEQ considers many factors, including beneficial uses, natural factors, human

health and aquatic life, public interest and support, the character of the pollutant, the availability of technology and resources, and the recreational, economic, and aesthetic importance of a particular water body. The department must prioritize development of a TMDL for a surface water body if the department receives an application for a new individual permit to discharge.

The Montana Legislature established a TMDL advisory group to advise the DEQ on TMDL prioritization. The advisory group includes members from each of the following interests:

- livestock-oriented agriculture;
- farming-oriented agriculture;
- conservation or environmental interests;
- water-based recreationists;
- forestry industry;
- municipalities;
- point source dischargers;
- mining;
- federal land management agencies;
- state trust land management agencies;
- supervisors of soil and water **conservation districts** for counties east of the continental divide;
- supervisors of soil and water conservation districts for counties west of the continental divide;
- hydroelectric industry; and
- fishing-related businesses.

The DEQ must provide guidance for TMDL development on any threatened or impaired water body, regardless of its priority ranking, if the necessary funding and resources from sources outside the DEQ are available.⁶⁵

How are TMDLs developed?

General Guidance

The DEQ must develop TMDLs for threatened or impaired water bodies or segments of water bodies in order of the priority ranking established by the department. The DEQ must consult with local conservation districts and **watershed** advisory groups in the development of TMDLs in their areas.

Waste Load Allocations

In establishing TMDLs, the DEQ may establish **waste load allocations** for point sources as well as for nonpoint sources. The DEQ may also allow for effluent trading, which allows facilities facing higher pollution control costs to meet regulatory obligations by purchasing environmentally equivalent (or superior) pollution reductions from another source at lower cost. The DEQ must then, in consultation with local conservation districts and watershed advisory groups, develop reasonable land, soil, and water conservation practices specifically recognizing established practices and programs for the control of pollution resulting from nonpoint sources.⁶⁶

What happens once a TMDL is developed for a water body?

Once the DEQ completes a TMDL, it must send it on to the EPA regional office for review and approval. Upon approval of the TMDL, the DEQ must:

- incorporate the TMDL into its current continuing planning process;
- incorporate the waste load allocation developed for point sources during the TMDL process into appropriate water discharge permits; and
- assist and inform landowners regarding the application of a voluntary program of reasonable land, soil, and water conservation practices.⁶⁷

After these measures have been implemented, the DEQ, in consultation with the statewide TMDL advisory group, must develop a monitoring program to assess the waters that are subject to the TMDL. The department must then determine whether compliance with water quality standards has been attained for a particular water body or whether the water body is no longer threatened.⁶⁸

PUBLIC AND COMMUNITY INVOLVEMENT

How can citizens participate in water quality protection?

Citizens play a vital role in the success of sustaining Montana's water quality. Citizens can contribute through:

- petitions
- public hearings/notices
- lawsuits
- citizen oversight
- volunteer activities.

When and how can citizens petition to the board?

Certain water quality statutes allow citizens to petition the board for action on a matter. Petitions, which may lead to a public hearing, relate to:

- administrative rulemaking
- temporary standards
- water classifications
- permitting.

Administrative Rulemaking

A person affected by a board rule may petition for review of the rule if:

- the rule may be more stringent than comparable federal regulations
- during adoption of the rule, no comparable federal regulation existed, but the federal government has subsequently established a comparable, less stringent rule.

A petition does not relieve the petitioner of the duty to comply with the challenged rule, and the petition rights do not apply to a rule adopted under emergency rulemaking provisions.⁶⁹

Temporary Standards

Upon petition by any person, the board may temporarily modify a water quality standard for a specific water body or segment of a water body on a parameter-by-parameter basis. Modification can occur only when substantive information shows that the water body or segment of a water body is not supporting its designated use.⁷⁰

Classifications

Any person may petition the board to classify state waters as outstanding resource waters. In considering the petition, the board examines:

- whether the waters have been designated as wild and scenic
- the presence of endangered or threatened species in the waters
- the presence of an outstanding recreational fishery in the waters
- whether the waters provide the only source of suitable water for **municipal**, industrial, or domestic water supply
- other factors that indicate outstanding environmental or economic values not specifically mentioned in state law.⁷¹

After board acceptance, the DEQ must prepare an **environmental impact statement (EIS)**. The petitioner must pay costs of the EIS.

Permitting

If the DEQ denies, modifies, suspends, or revokes a permit, the applicant or permittee may petition the board. This leads to a hearing during which the board affirms, revises, or reverses the DEQ's action.⁷²

What provisions are made for public hearings and public notices?

Public hearings and public notices are an integral component of water quality decisionmaking, particularly:

- administrative rulemaking
- water classifications and standards
- permitting
- environmental review
- administrative actions and penalties.

Administrative Rulemaking

If the board proposes to modify, revoke, or adopt a new water quality rule or if it proposes the adoption of any rule that is more stringent than federal guidelines, it must first hold a hearing to gather public comment.⁷³ This rule must also be reviewed by the Water Policy Interim Committee.

Classifications and Standards

When the board creates or modifies water classifications or standards, a public hearing must be held, giving all interested persons an opportunity to submit data or arguments.⁷⁴ It is during this time that the public may present evidence of water misclassification.

Before such a hearing, the board must post a notice in a daily newspaper of general circulation in the area affected. The notice must specify the waters concerned, and the board must mail additional notices directly to all persons potentially affected by the proposed action.

Permitting

Within 30 days of receiving a permit application, the DEQ must issue a tentative determination, which is available to the public upon request. The agency must also publish a legal notice once weekly for 2 consecutive weeks in a newspaper of general circulation that is circulated in the county in which the activity is proposed. Additional notice may include posting in public places near the proposed activity or near the premises of the applicant or any other reasonable procedure to encourage public participation. If there is significant public interest in a proposed action, the department must hold a public hearing.⁷⁵

If the DEQ denies an application for a permit or modifies a permit, the DEQ must give written notice of the action to the permit applicant or holder. The permit applicant or holder may then request a hearing before the board.⁷⁶

Environmental Review

A decision to classify or reclassify waters or grant a permit may trigger implementation of the Montana Environmental Policy Act (MEPA). This act requires some form of environmental review (e.g., an EIS or an **environmental assessment (EA)**) before decisionmaking occurs. All environmental reviews under MEPA stipulate public involvement.⁷⁷ The board has the option of combining the environmental review process with the public hearing process.

Administrative Actions and Penalties

All board hearings concerning DEQ actions or penalties against a violator must be public and held in the county where the alleged violation occurred or in Lewis and Clark County.⁷⁸

When is legal action an option?

In specific instances, citizens may choose litigation to promote water quality. Often, such cases are a method of recourse limited to interested persons directly impacted by a regulation or action. Other times any citizen may sue to compel government to enforce a law.

Recourse

A person may sue to recover damages for contamination, **diminution**, or interruption of a water supply⁷⁹ resulting from:

- the operation of a geothermal facility or certain electric transmission lines or certain pipelines
- mining exploration or mining operation.

Restoration damages may be sought for damage to property caused by a release from a petroleum storage tank.⁸⁰

Enforcement

The federal Clean Water Act allows citizens to sue the federal government to compel enforcement of the act, including adherence to

specific federal water quality standards.⁸¹ No corresponding citizen suit provision exists in the state Water Quality Act.

Who should be contacted if a violation is suspected?

Any person may notify the DEQ of an alleged water quality violation. Based upon submitted information, the DEQ will investigate the validity of the complaint. If a violation is determined to have occurred, enforcement action will result. However, if the investigation proves that a protest is lacking in reasonable cause, the DEQ may recover investigative costs from the notifying party.⁸²

What water quality organizations accept volunteers?

Citizens may volunteer for:

Montana Watershed Coordination Council - Local volunteers participate directly in decisionmaking and problem solving, as well as initiating local cleanup, conservation, data-gathering, and ecosystem research projects. mtwatersheds.org

Water quality monitoring - Volunteers gather information for educational purposes and to establish baseline data for streams and rivers. mtwatercourse.org/monitoring

Conservation districts - Conservation districts are the local contact for the control of nonpoint source pollution. Districts conduct projects that demonstrate nonpoint source pollution control practices, preferring voluntary, educational, and incentive-based approaches over regulatory approaches. District boards work with state and federal agencies to identify problems and prioritize treatment. macdnet.org

How can communities participate in water quality protection?

Local water quality districts

Montana law provides for local water quality districts to manage community waters.⁸³

A board of county commissioners (or governing body of a city-county) may initiate the creation of a local water quality district.

Local water quality districts have been established in:

- Helena, East Helena
- Missoula
- Butte, Walkerville
- Bozeman, Belgrade, Manhattan.

Once a county (or city-county) establishes a district, it consults with the DEQ to undertake planning and information-gathering activities for implementing a local water quality program.⁸⁴ A county (or city-county) takes its program plan before the board for approval.

After program approval, the district may adopt local water quality ordinances that are consistent with state law, and gain board validation.

Ordinances may regulate such items as:

- onsite wastewater disposal facilities
- storm water runoff from paved surfaces
- service connections between buildings and publicly owned sewer mains
- facilities that use or store halogenated and nonhalogenated solvents, including hazardous substances that are identified by the EPA in federal law
- internal combustion engine lubricants.

The DEQ monitors these local programs to ensure consistency with the Water Quality Act and DEQ policies and reports all inconsistencies to the Board for further action.

Source water protection programs

Montana, with EPA approval, has developed the **Montana Source Water Protection Program** to help public ground water systems protect their supplies from contamination. Public water supply systems are required to submit source water protection plans for DEQ review and certification.

Required information includes:

- a description of the characteristics of the community, public water supply, and water source
- a list of key individuals and groups who will implement the source water protection plan
- certain well or surface water information
- a contaminant source inventory
- an emergency response plan.

Watershed protection

Despite its common aims, watershed protection varies in form from one community to the next. It may be informal and flexible, involving only a handful of people, or formal and structured, with thousands of participants. Most frequently, the process consists of a diversity of citizens collaborating in response to identifiable water quality issues.

Common components of community action are:

- watershed identification and mapping
- development of local management strategies
- stream monitoring
- educational workshops and classes.

Local conservation districts often serve as the catalyst in organizing watershed planning efforts, ensuring that all interested parties have an opportunity to play an active role. Water and sewer districts may also play a part. The Montana Watercourse, a statewide water education program, provides information on watershed decisionmaking. The Montana Watershed Coordination Council coordinates Montana's natural resource agencies and private organizations and provides a forum for local watershed groups.

RELATED LAWS

While the focus of this guide is the Water Quality Act, many other statutes concern water quality:

Clean Water Act (federal)

(33 U.S.C. 1251, et seq.)

The Clean Water Act, administered by the U.S. Environmental Protection Agency (EPA), ensures national uniformity in water quality standards and serves as an umbrella law over all state-level water quality laws.

In its oversight role, the EPA provides technical support, training, interpretation of federal regulations, and related assistance to Montana. Ultimately, the EPA retains final authority to implement or enforce any aspect of the Clean Water Act on a case-by-case basis if needed.

Local Boards of Health

(Title 50, chapter 2, MCA)

Each Montana community has a local board of health. Depending on population size, the board may be at the city, county, city-county, or district level. A local board of health can help its community maintain a sanitary drinking water supply. Local boards safeguard public health by monitoring:

- communicable diseases
- waste disposal
- sewage treatment systems.

Local boards may also regulate local water quality by adopting rules, regulations, and fees consistent with state laws.

Montana Environmental Policy Act

(Title 75, chapter 1, parts 1 through 3, MCA, and Title 17, chapter 4, subchapters 6 and 7, ARM)

The Montana Environmental Policy Act (MEPA) generally requires state agencies taking actions that may impact the human environment to conduct environmental reviews. Those environmental reviews (either an environmental assessment or an environmental impact statement) evaluate impacts of the proposed action on the biological, physical, social, economic, cultural, and aesthetic factors that interrelate to form the human environment. Water quality impacts are typically evaluated in these environmental reviews.

Public Water Supply Systems

(Title 75, chapter 6, part 1, MCA, and Title 17, chapter 38, ARM)

The Board of Environmental Review holds general supervision over all public water supply systems in the state. A few examples of the types of rules and standards adopted by the board:

- maximum contaminant levels for waters that are or will be used for a public water supply system
- monitoring, recordkeeping, and reporting
- the siting, construction, operation, and modification of a public water supply system or public sewage system
- the collection and analysis of samples of water used for drinking or domestic purposes
- the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act and state law.

Examples of the DEQ's responsibilities include:

- examining waters to determine their quality and the possibility that they may endanger public health
- advising 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

- establishing and maintaining experiment stations and conducting experiments to study the best methods of treating water, drainage, wastewater, and sewage to prevent pollution, including investigation of methods used in other states
- enforcing and administering the provisions of the public drinking water laws
- establishing a plan for the provision of safe drinking water under emergency circumstances
- maintaining an inventory of public water supply systems and establishing a program for conducting sanitary surveys
- entering into agreements with local boards of health whenever appropriate for the performance of surveys and inspections.

Waste and Litter Control Laws

(Title 75, chapter 10, MCA, and Title 17, chapters 50, 53, and 55, ARM)

Hazardous waste facilities, solid waste landfills, motor vehicle wrecking facilities, the disposal of septage, and the remediation of hazardous substance releases are all subject to state laws administered by the DEQ in direct response to concerns about water quality. These laws address the land disposal of (nonnuclear) solid and liquid waste materials. The siting and operation of facilities that involve the storage or land disposal storage of waste materials are regulated in order to prevent contamination of state waters and ground water in particular. Landfill liners, soil testing, ground water monitoring wells, the "cradle to grave" tracking of hazardous wastes, and requirements for the proper handling, treatment, storage, and disposal of wastes are just a small part of the waste management efforts designed to maintain ground water quality. If wastes are handled improperly, state laws that address the cleanup of hazardous substances are again focused on those steps necessary to prevent water pollution or to attempt the remediation or control of contaminated water. These laws include the Comprehensive Environmental Cleanup and Responsibility Act (state Superfund

program); Comprehensive Environmental Response, Compensation, and Liability Act; Hazardous Waste Act; Voluntary Cleanup and Redevelopment Act; and Solid Waste Management Act.

Underground Storage Tank Laws

(Title 75, chapter 11, MCA, and Title 17, chapters 56 and 58, ARM)

The storage of petroleum products and other chemicals in underground tanks for fire safety results in an obvious potential source of significant ground water contamination. Serious contamination of aquifers and drinking water supplies has occurred in the past due to poor installation, inadequate tank design, and inattentive operation. Laws are now in place to prevent leaks and spills from occurring by requiring the licensing of properly trained tank installers and by requiring tank design changes and improved quality of tanks and piping. Laws also require proper tank operation in order to detect the inevitable releases as early as possible before significant ground water contamination can occur. Detection methods include improved inventory control, electronic monitoring systems, ground water monitoring, vapor detection, periodic system testing, and others. Tank owners and operators also must be financially responsible for the remediation of underground storage tank releases. Financial responsibility is partially covered by a state fund available to reimburse the remediation expenses of owners and operators who are in compliance with the law. These laws are administered by the DEQ or by the EPA.

Montana Major Facility Siting Act

(Title 75, chapter 20, MCA, and Title 17, chapter 20, ARM)

The construction, location, and operation of certain electrical transmission facilities, pipeline facilities, and geothermal facilities may not produce unacceptable adverse effects on the environment and upon

the citizens of this state. A person must obtain a certificate of compliance from the DEQ prior to commencing construction of a statutorily defined major facility.

As part of the certificate, a person must demonstrate that facility construction and operation will not adversely impact water quality. The DEQ monitors all certified facilities for continued compliance.

Montana Subdivision and Platting Act

(Title 76, chapter 3, MCA)

Counties, cities, and towns are required to regulate subdivisions. With some exceptions, an EA must be prepared for each subdivision. The EA must include:

- a description of every surface water body that may be affected by the proposed subdivision;
- available ground water information; and
- a community impact report that addresses the need for water and sewage facilities.

The local governing body must evaluate the subdivision's effect on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety. The governing body may require the subdivider to reasonably minimize potentially significant adverse impacts identified through this evaluation.

Sanitation in Subdivisions

(Title 76, chapter 4, part 1, MCA, and Title 17, chapter 36, ARM)

The DEQ establishes standards for review and approval of subdivisions for public and private water supplies, sewage disposal facilities, storm water drainageways, and solid waste disposal. Review of subdivisions and enforcement of these requirements may be delegated to a local department or board of health.

Streamside Management Zone Laws

(Title 77, chapter 5, part 3, MCA, and Title 36, chapter 11, part 3, ARM)

A **streamside management zone** is crucial to water quality because it sustains the physical and biological integrity of the stream. With exceptions, a streamside management zone is defined in Montana as that area 50 feet from the high-water mark of a stream, lake, or other body of water. To safeguard such zones, the Department of Natural Resources and Conservation (DNRC) regulates timber harvests in these areas. Forest practices that are prohibited within a streamside management zone include:

- operation of wheeled vehicles
- clearcutting of timber
- disposal of hazardous or toxic materials
- broadcast burning
- road construction
- **slash** deposits
- side casting of deposit of road construction materials.

Persons found responsible for causing damage to these zones must undertake site rehabilitation and may be assessed a penalty.

Montana Agricultural Chemical Ground Water Protection Act

(Title 80, chapter 15, MCA, and Title 4, chapter 11, ARM)

The DEQ and the Montana Department of Agriculture work cooperatively through this act to:

- protect Montana's ground water from contamination as the result of agricultural chemical use;
- allow for the proper and correct use of agricultural chemicals;
- provide for the management of agricultural chemicals to prevent, minimize, and **mitigate** their presence in ground water; and

- provide for education and training of agricultural chemical applicators and the general public on ground water protection, agricultural chemical use, and the use of alternative agricultural methods.

The DEQ is responsible for the establishment and enforcement of agricultural chemical ground water standards and interim numerical standards, as well as ground water monitoring.

The Department of Agriculture is responsible for the preparation, implementation, and enforcement of agricultural chemical ground water management plans, public education programs, and ground water monitoring.

Strip and Underground Mine Acts

(Title 82, chapter 4, parts 1 and 2, MCA, and Title 17, chapter 24, ARM)

All proposed **strip-mining** and **underground-mining** sites are subject to DEQ approval. The DEQ examines both site location and reclamation plans before granting the operator a permit to explore or mine. Plans must identify and describe all water resources in the area of the project, address any potential impacts to surface and ground water resources, provide for monitoring of ground and surface water, and control any adverse mine drainage. The mining project must pose minimal danger to the quality of impacted water, provide adequate remedies for any degradation to natural resources, and prevent unreasonable degradation of natural resources. Mine operators must pay to replace any damaged or diminished drinking water supply, and the owners of all water supplies damaged by coal or uranium mining may sue the operator for damages. Coal and uranium mining operations are required to provide a surety bond to cover the costs of reclamation, including proper control of water and erosion at the mine site.

Metal Mine Reclamation Laws

(Title 82, chapter 4, part 3, MCA, and Title 17, chapter 24, ARM)

Mineral exploration and metal mine development disturbs the surface and subsurface of the earth and produces waste materials. Mine operations usually impact surface water and ground water resources. Placer and dredge operations are often in or near flowing surface waters and can contribute to turbidity. Subsurface mines can contact ground water, and mine waste materials and exposed rock may contribute contaminants to water resources. Thus, proper mine operation and reclamation is necessary to maintain water quality in regions of metal extraction.

The DEQ regulates mineral exploration and metal mining through the issuance of exploration licenses and mine operating permits.

Reclamation of disturbances is required by law and by the Montana Constitution. Mine operation plans must include information about water resources and must include plans for monitoring for and mitigating any discharges of materials to ground water or surface water. Operating permits are not granted until reclamation plans are provided that address how water quality will be maintained at the site. Bonding is required. An amended reclamation plan and a higher bond may be required after the issuance of a permit if the DEQ finds that there is a reasonable probability that water quality standards will be violated.

Opencut Mining Act

(Title 82, chapter 4, part 4, MCA, and Title 17, chapter 24, ARM)

The DEQ issues permits for the development and operation of opencut mines, which are surface pit mines for minerals such as sand, gravel, clay, and peat. Excavation of these mines can impact surface water quality and especially ground water quality given the materials and their geologic locations. Turbidity and sedimentation of surface waters from mineral

washing and sorting operations or erosion and runoff and contamination of ground water following removal of the overburden are key issues. Concerns about maintaining water quality play a significant role in the permitting and reclamation of these mines.

Mine operating permits will not be granted until an acceptable operating plan, reclamation plan, and reclamation bond are submitted to the DEQ. Included in the plans must be assurances that surface water and ground water are given appropriate protection from water quality deterioration, that sedimentation or acid drainage to streams is prevented, that water drainage is controlled and does not contribute to water pollution, and that waste materials are not buried in areas likely to cause water pollution. Opencut mine permits may not be approved in any river or flowing stream or floodway where they are likely to cause erosion.

Water Use Laws

(Title 85, chapter 2, MCA, and Title 36, chapter 12, ARM)

The DNRC issues water use permits for beneficial uses of water. The DNRC must consider impacts on water quality in considering whether or not to issue a permit. The applicant must prove that:

- the water quality of a prior appropriator will not be adversely affected
- the proposed use will be substantially in accordance with the classification of the water source
- the proposed use will not adversely affect the ability of a discharger to comply with effluent limitations.

In closed basins—areas where water appropriations are limited by law—the DNRC may allow an appropriation if there is a plan to recharge the aquifer to offset the effects of the appropriation. Aquifer recharge plans must meet the requirements of the Water Quality Act.

In addition, the following laws require consideration of water quality impacts in relation to:

- Floodplain and Floodway Management Act
- lakeshores
- Natural Streambed and Land Preservation Act
- Pesticide Act
- conservation districts
- phosphorous compounds
- protection of forest resources
- tourist campgrounds and trailer courts
- Ground Water Assessment Act
- water treatment plant operators.

GLOSSARY OF TERMS

303(d) list — Section 303(d) of the federal Clean Water Act (and related regulations) requires states to assess the condition of their waters to determine where water quality is impaired (does not fully meet standards) or threatened (is likely to violate standards in the near future). The result of this review is the 303(d) list, which must be submitted to the EPA every other year. Section 303(d) also requires states to prioritize and target water bodies on their list for development of water quality improvement strategies (i.e., TMDLs) and to develop such strategies for impaired and threatened waters.

abatement — the reduction, lessening, or ending.

Administrative Rules of Montana (ARM) — a collection of state agency rules used in the implementation of federal and state codes.

appeal — to transfer a case from a lower to a higher court for a new hearing.

beneficial use — public use of water, including but not limited to agricultural, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, water leasing, and recreation.

city-county — a city and a county consolidated into one government unit.

compliance — obeying and achieving the conditions of a rule, permit, order, or law.

conservation district — a political subdivision of state government that conducts research and projects related to soil, water resources, and other natural resource issues.

degradation — a lowering of water quality.

diminution — a decrease in quantity.

effluent — an outflow or discharge of waste.

environmental assessment (EA) — a document required by federal and state law that discloses likely *minor* environmental impacts of a proposed use.

environmental impact statement (EIS) — a document required by federal and state law that discloses likely *major* environmental impacts of a proposed use.

exemption — freedom from a rule or obligation that applies to others.

ground water — any water beneath the land surface, bed of a stream, lake, or reservoir.

high-quality waters — all state waters except ground water classified as "III" or "IV" or surface waters incapable of supporting the designated uses of their classification or consistently having a zero flow for more than 270 days a year.

impaired water body — a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

injunction — a court order prohibiting a specific act or commanding the undoing of some wrong or injury.

interested persons — persons with a real property interest, water right, or other economic interest that may be directly affected.

local water quality district — a defined community area established for protecting water quality.

mitigate — to alleviate or improve upon the conditions of the violation.

mixing zones — established areas where water quality standards may be exceeded while a discharge is mixed with receiving water.

Montana Code Annotated (MCA) — the laws of Montana classified by subject.

Montana ground water pollution control system (MGWPCS) — a system developed by the state for issuing permits for discharge into ground water.

Montana pollutant discharge elimination system (MPDES) — a system developed by the state for issuing permits for point source pollution discharge into surface waters.

municipal — relating to a local political unit (e.g., city or town) having self-governing powers.

nonpoint source pollution — pollution from various indefinable points (versus one specific location) discharged over a wide area.

nonsignificant — minimal; low potential for harm to human health or the environment.

outstanding resource waters — waters located wholly within the boundaries of areas designated as national parks or national wilderness areas or other designated waters approved by the Legislature.

parameter — a specific characteristic, element boundary, or limit.

permit — an authorization from the DEQ that specifies all limitations imposed on volume, concentration, and other significant characteristics of a discharged waste.

petition — a formal, written request to a government body to take action on a specific matter under its jurisdiction.

point source pollution — pollution discharged from any identifiable point, including pipes, ditches, channels, sewers, and tunnels.

pollution — contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards.

potability — suitability for human consumption.

quasi-judicial — a term applied to public administrative officers or bodies who exercise discretion of a judicial nature (e.g., investigations, hearings, and conclusions).

remediation — to provide a remedy or correct a deficiency or wrong.

restoration damages — the amount of compensation determined by a court to restore a contaminated special use property to its function and use prior to the contamination. The term includes reasonable attorney fees and costs incurred by the plaintiff.

sanitary — relating to public health and cleanliness; free from waterborne disease or waste.

slash — branches and other residue left after the cutting of timber.

solid waste — all rotting and nonrotting waste created by human activity (e.g., garbage, ashes, sewage sludge, construction byproducts, discarded home appliances, and wood debris).

source water — untreated water from streams, rivers, lakes, or aquifers used to supply public drinking water.

specific conductance — the amount of dissolved solids in the water; the higher the total dissolved solids, the higher the specific conductance.

state waters – surface or underground waters, irrigation system, or drainage system. Does not include wastewater treatment ponds or lagoons, or irrigation waters or land application of disposal waters that are not returned to state waters.

streamside management zone — a stream, lake, or other body of water and its adjacent area (at least 50 feet on each side) where habitat and water quality are easily affected by timber management practices.

strip mining — removing the upper surface of the earth to recover mineral deposits.

sufficient credible data — chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

surface water — water above the land surface, including lakes, rivers, streams, wetlands, wastewater, flood water, and ponds.

threatened water body — a water body or stream segment for which sufficient credible data and calculated increases in loads show that it is fully supporting its designated uses but is threatened for a particular designated use.

total maximum daily load (TMDL) — the sum of pollution load allocations for individual point sources, nonpoint sources, and natural background sources that is established at a level necessary to achieve compliance with applicable surface water quality standards.

turbidity — cloudiness caused by suspended particles in water.

underground mining — recovering a mineral deposit through an incline or shaft that penetrates the upper surface of the earth.

waste load allocation — the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

water quality — chemical, physical, and biological characteristics of water that determine its suitability for a particular use.

watershed — a geographic area that includes all land and water in a drainage system; size can range from as small as a backyard stream to as large as the Mississippi River.

INFORMATION RESOURCES

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Federal Building, 10 West 15th St., Suite
3200, Helena, MT 59626
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Department of Agriculture
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agr.mt.gov

Department of Environmental Quality
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ContactUsForm.asp](http://svc.mt.gov/deq/mail/ContactUsForm.asp)
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Montana Watercourse
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mtwatercourse.org

Montana State Law Library
Reference Desk, Box 203004,
Helena, MT 59620-3004
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E-mail: mtlawlibrary@mt.gov
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CITATIONS

- ¹ Article IX, section 1
- ² MCA § 75-5-101
- ³ MCA § 75-5-102(1)
- ⁴ MCA § 75-5-103(34)
- ⁵ MCA §§ 75-5-103(4), (30), and (31) and 80-15-102(11)
- ⁶ MCA § 2-15-3501
- ⁷ MCA § 75-5-212, 75-5-213, 75-5-402, 75-5-602, 75-5-603, and 75-5-701
- ⁸ MCA § 2-15-3502
- ⁹ MCA § 75-5-301, 75-5-303, and 75-5-401
- ¹⁰ MCA §§ 75-5-201 and 75-5-202
- ¹¹ MCA § 75-5-301(1)
- ¹² ARM 17.30.621 through 17.30.629
- ¹³ ARM 17.30.1006
- ¹⁴ MCA § 75-5-301(3)
- ¹⁵ MCA § 75-5-302
- ¹⁶ DEQ Circular 7
- ¹⁷ ARM 17.30.621
- ¹⁸ MCA § 75-5-308
- ¹⁹ MCA § 75-5-318
- ²⁰ MCA § 75-5-310
- ²¹ MCA § 75-5-301(4)
- ²² MCA § 75-5-316(2)
- ²³ MCA § 75-5-303(2) and (3)(c)
- ²⁴ MCA § 75-5-317(2) and ARM 17.30.715
- ²⁵ MCA § 75-5-303 and Title 17, chapter 30, subchapter 7, ARM
- ²⁶ MCA § 75-5-317(2) and ARM 17.30.715
- ²⁷ Water Policy Interim Committee program review of DEQ Water Protection Bureau, Sept. 2015
- ²⁸ MCA § 75-5-401 and ARM 17.30.1310
- ²⁹ MCA § 75-5-401(1)(b) and ARM 17.30.1310
- ³⁰ MCA § 75-5-401(1)(b)
- ³¹ MCA § 75-5-301(4) and 75-5-602
- ³² Department Circular DEQ-12B
- ³³ MCA § 75-5-404
- ³⁴ MCA § 75-5-602
- ³⁵ MCA § 75-5-603
- ³⁶ Water Policy Interim Committee program review of DEQ Water Protection Bureau, Sept. 2015
- ³⁷ MCA 75-5-605(2)
- ³⁸ MCA § 75-5-605(3)
- ³⁹ MCA § 75-5-636
- ⁴⁰ MCA §§ 75-5-611
- ⁴¹ MCA § 75-5-617
- ⁴² MCA §§ 75-5-611 and 75-5-617(2)
- ⁴³ MCA § 75-5-611(1)(d) and (1)(e)

44 MCA § 75-5-613
45 MCA § 75-5-601(1)
46 MCA § 75-5-621
47 MCA § 75-5-611(3) and (4)
48 MCA § 75-5-611(6)(b) through (6)(d)
49 MCA § 75-5-622
50 MCA § 75-5-614
51 MCA § 75-1-1001
52 MCA § 75-5-632
53 MCA § 75-5-635
54 MCA § 75-5-611(4) and (7))
55 MCA § 75-5-641(5)
56 33 U.S.C. 1313
57 MCA § 75-5-702(3)
58 MCA §§ 75-5-306 and 75-5-702
59 MCA § 75-5-702
60 MCA § 75-5-702(6)
61 MCA § 75-5-306
62 MCA § 75-5-702(2)
63 MCA § 75-5-703(3)
64 MCA § 75-5-702
65 MCA § 75-5-703(4)
66 MCA § 75-5-703(2)
67 MCA § 75-5-703(6)
68 MCA § 75-5-703(7)
69 MCA § 75-5-203(4) and (5)
70 MCA § 75-5-312
71 MCA § 75-5-316(4)
72 MCA §§ 75-5-403(2) and 75-5-404
73 MCA §§ 75-5-203(2) and (3) and 75-5-307
74 MCA § 75-5-307
75 ARM 17.30.106 and 17.30.108
76 MCA § 75-5-403
77 MCA § 75-1-201
78 MCA § 75-5-611(5)
79 MCA §§ 75-20-405 and 82-4-355(1)
80 Title 75, chapter 11, part 6, MCA
81 33 U.S.C. 1365
82 MCA § 75-5-636
83 Title 7, chapter 13, part 45, MCA
84 MCA § 75-5-311(1)