

HOUSE BILL NO. 326

INTRODUCED BY D. KENNEDY

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A BILL FOR AN ACT ENTITLED: "AN ACT REPEALING THE LAWS AUTHORIZING THE PEOPLE OF THE STATE OF MONTANA THROUGH A STATEWIDE VOTE TO APPROVE OR REJECT A PROPOSED NUCLEAR POWER FACILITY CERTIFIED UNDER THE MONTANA MAJOR FACILITY SITING ACT; AMENDING SECTIONS 75-1-207, 75-2-103, 75-5-103, AND 75-20-201, MCA; REPEALING SECTIONS 75-20-1201, 75-20-1202, 75-20-1203, 75-20-1204, AND 75-20-1205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 75-1-207, MCA, is amended to read:

**"75-1-207. Major facility siting applications excepted.** (1) Except as provided in subsection (2), a fee as prescribed by this part may not be assessed against any person, corporation, partnership, firm, association, or other private entity filing an application for a certificate under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20.

(2) The department may require payment of costs under 75-1-205(1)(a) by a person who files a petition under ~~75-20-201(5)~~ 75-20-201(4)."

**Section 2.** Section 75-2-103, MCA, is amended to read:

**"75-2-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advisory council" means the air pollution control advisory council provided for in 2-15-2106.

(2) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(3) "Air pollutants" means one or more air contaminants that are present in the outdoor atmosphere, including those pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(4) "Air pollution" means the presence of air pollutants in a quantity and for a duration that are or tend

1 to be injurious to human health or welfare, animal or plant life, or property or that would unreasonably interfere  
2 with the enjoyment of life, property, or the conduct of business.

3 (5) "Associated supporting infrastructure" means:

4 (a) electric transmission and distribution facilities;

5 (b) pipeline facilities;

6 (c) aboveground ponds and reservoirs and underground storage reservoirs;

7 (d) rail transportation;

8 (e) aqueducts and diversion dams;

9 (f) devices or equipment associated with the delivery of an energy form or product produced at an energy  
10 development project; or

11 (g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development  
12 project.

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

14 (7) (a) "Commercial hazardous waste incinerator" means:

15 (i) an incinerator that burns hazardous waste; or

16 (ii) a boiler or industrial furnace subject to the provisions of 75-10-406.

17 (b) Commercial hazardous waste incinerator does not include a research and development facility that  
18 receives federal or state research funds and that burns hazardous waste primarily to test and evaluate waste  
19 treatment remediation technologies.

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

21 (9) "Emission" means a release into the outdoor atmosphere of air contaminants.

22 (10) ~~(a)~~ "Energy development project" means each plant, unit, or other development and associated  
23 developments, including any associated supporting infrastructure, designed for or capable of:

24 ~~(i)~~(a) generating electricity;

25 ~~(ii)~~(b) producing gas derived from coal;

26 ~~(iii)~~(c) producing liquid hydrocarbon products;

27 ~~(iv)~~(d) refining crude oil or natural gas;

28 ~~(v)~~(e) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax  
29 incentive pursuant to Title 15, chapter 70, part 5;

30 ~~(vi)~~(f) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant

1 to 15-32-701; or

2 ~~(vii)(g)~~ transmitting electricity through an electric transmission line with a design capacity of equal to or  
3 greater than 50 kilovolts.

4 ~~—— (b) The term does not include a nuclear facility as defined in 75-20-1202.~~

5 (11) "Environmental protection law" means a law contained in or an administrative rule adopted pursuant  
6 to Title 75, chapter 2, 5, 10, or 11.

7 (12) "Hazardous waste" means:

8 (a) a substance defined as hazardous under 75-10-403 or defined as hazardous in department  
9 administrative rules adopted pursuant to Title 75, chapter 10, part 4; or

10 (b) a waste containing 2 parts or more per million of polychlorinated biphenyl (PCB).

11 (13) (a) "Incinerator" means any single- or multiple-chambered combustion device that burns combustible  
12 material, alone or with a supplemental fuel or with catalytic combustion assistance, primarily for the purpose of  
13 removal, destruction, disposal, or volume reduction of any portion of the input material.

14 (b) Incinerator does not include:

15 (i) safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as  
16 refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;

17 (ii) space heaters that burn used oil;

18 (iii) wood-fired boilers; or

19 (iv) wood waste burners, such as tepee, wigwam, truncated cone, or silo burners.

20 (14) "Medical waste" means any waste that is generated in the diagnosis, treatment, or immunization of  
21 human beings or animals, in medical research on humans or animals, or in the production or testing of biologicals.

22 The term includes:

23 (a) cultures and stocks of infectious agents;

24 (b) human pathological wastes;

25 (c) waste human blood or products of human blood;

26 (d) sharps;

27 (e) contaminated animal carcasses, body parts, and bedding that were known to have been exposed  
28 to infectious agents during research;

29 (f) laboratory wastes and wastes from autopsy or surgery that were in contact with infectious agents; and

30 (g) biological waste and discarded material contaminated with blood, excretion, exudates, or secretions

1 from humans or animals.

2 (15) (a) "Oil or gas well facility" means a well that produces oil or natural gas. The term includes:

3 (i) equipment associated with the well and used for the purpose of producing, treating, separating, or  
4 storing oil, natural gas, or other liquids produced by the well; and

5 (ii) a group of wells under common ownership or control that produce oil or natural gas and that share  
6 common equipment used for the purpose of producing, treating, separating, or storing oil, natural gas, or other  
7 liquids produced by the wells.

8 (b) The equipment referred to in subsection (15)(a) includes but is not limited to wellhead assemblies,  
9 amine units, prime mover engines, phase separators, heater treater units, dehydrator units, tanks, and connecting  
10 tubing.

11 (c) The term does not include equipment such as compressor engines used for transmission of oil or  
12 natural gas.

13 (16) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or private  
14 corporation, the state or a subdivision or agency of the state, a trust, an estate, an interstate body, the federal  
15 government or an agency of the federal government, or any other legal entity and includes persons resident in  
16 Canada.

17 (17) "Principal" means a principal of a corporation, including but not limited to a partner, associate, officer,  
18 parent corporation, or subsidiary corporation.

19 (18) "Small business stationary source" means a stationary source that:

20 (a) is owned or operated by a person who employs 100 or fewer individuals;

21 (b) is a small business concern as defined in the Small Business Act, 15 U.S.C. 631, et seq.;

22 (c) is not a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C.  
23 7661, et seq.;

24 (d) emits less than 50 tons per year of an air pollutant;

25 (e) emits less than a total of 75 tons per year of all air pollutants combined; and

26 (f) is not excluded from this definition under 75-2-108(3).

27 (19) (a) "Solid waste" means all putrescible and nonputrescible solid, semisolid, liquid, or gaseous  
28 wastes, including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or industrial  
29 wastes; medical waste; sludge from sewage treatment plants, water supply treatment plants, or air pollution  
30 control facilities; construction, demolition, or salvage wastes; dead animals, dead animal parts, offal, animal

1 droppings, or litter; discarded home and industrial appliances; automobile bodies, tires, interiors, or parts thereof;  
2 wood products or wood byproducts and inert materials; styrofoam and other plastics; rubber materials; asphalt  
3 shingles; tarpaper; electrical equipment, transformers, or insulated wire; oil or petroleum products or oil or  
4 petroleum products and inert materials; treated lumber and timbers; and pathogenic or infectious waste.

5 (b) Solid waste does not include municipal sewage, industrial wastewater effluents, mining wastes  
6 regulated under the mining and reclamation laws administered by the department of environmental quality, or  
7 slash and forest debris regulated under laws administered by the department of natural resources and  
8 conservation."

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10 **Section 3.** Section 75-5-103, MCA, is amended to read:

11 **"75-5-103. (Temporary) Definitions.** Unless the context requires otherwise, in this chapter, the following  
12 definitions apply:

13 (1) "Associated supporting infrastructure" means:

14 (a) electric transmission and distribution facilities;

15 (b) pipeline facilities;

16 (c) aboveground ponds and reservoirs and underground storage reservoirs;

17 (d) rail transportation;

18 (e) aqueducts and diversion dams;

19 (f) devices or equipment associated with the delivery of an energy form or product produced at an energy  
20 development project; or

21 (g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development  
22 project.

23 (2) (a) "Base numeric nutrient standards" means numeric water quality standards for nutrients in surface  
24 water that are adopted to protect the designated uses of a surface water body.

25 (b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that  
26 are adopted to protect human health.

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

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

30 (5) "Council" means the water pollution control advisory council provided for in 2-15-2107.

1 (6) (a) "Currently available data" means data that is readily available to the department at the time a  
2 decision is made, including information supporting its previous lists of water bodies that are threatened or  
3 impaired.

4 (b) The term does not mean new data to be obtained as a result of department efforts.

5 (7) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a  
6 parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant  
7 to 75-5-301(5)(c).

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

9 (9) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes  
10 sewage systems and treatment works.

11 (10) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of  
12 chemical, physical, biological, and other constituents that are discharged into state waters.

13 (11) ~~(a)~~ "Energy development project" means each plant, unit, or other development and associated  
14 developments, including any associated supporting infrastructure, designed for or capable of:

15 ~~(i)~~(a) generating electricity;

16 ~~(ii)~~(b) producing gas derived from coal;

17 ~~(iii)~~(c) producing liquid hydrocarbon products;

18 ~~(iv)~~(d) refining crude oil or natural gas;

19 ~~(v)~~(e) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax  
20 incentive pursuant to Title 15, chapter 70, part 5;

21 ~~(vi)~~(f) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant  
22 to 15-32-701; or

23 ~~(vii)~~(g) transmitting electricity through an electric transmission line with a design capacity of equal to or  
24 greater than 50 kilovolts.

25 ~~———— (b) The term does not include a nuclear facility as defined in 75-20-1202.~~

26 (12) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether  
27 or not those uses are included in the water quality standards.

28 (13) "High-quality waters" means all state waters, except:

29 (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by  
30 the board's classification rules; and

1 (b) surface waters that:

2 (i) are not capable of supporting any one of the designated uses for their classification; or

3 (ii) have zero flow or surface expression for more than 270 days during most years.

4 (14) "Impaired water body" means a water body or stream segment for which sufficient credible data  
5 shows that the water body or stream segment is failing to achieve compliance with applicable water quality  
6 standards.

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

9 (16) "Interested person" means a person who has a real property interest, a water right, or an economic  
10 interest that is or may be directly and adversely affected by the department's preliminary decision regarding  
11 degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization  
12 to degrade high-quality waters.

13 (17) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one  
14 of its existing or future nonpoint sources or to natural background sources.

15 (18) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation  
16 of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum  
17 change that can occur from the best practicable condition in a surface water without causing a violation of the  
18 surface water quality standards.

19 (19) "Local department of health" means the staff, including health officers, employed by a county, city,  
20 city-county, or district board of health.

21 (20) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium,  
22 cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

23 (21) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by  
24 the department where water quality standards may be exceeded, subject to conditions that are imposed by the  
25 department and that are consistent with the rules adopted by the board.

26 (22) "Nutrient work group" means an advisory work group, convened by the department, representing  
27 publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested  
28 parties that will advise the department on the base numeric nutrient standards, the development of temporary  
29 nutrient criteria, and the implementation of those standards and criteria together with associated economic  
30 impacts.

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

4 (24) "Outstanding resource waters" means:

5 (a) state surface waters located wholly within the boundaries of areas designated as national parks or  
6 national wilderness areas as of October 1, 1995; or

7 (b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and  
8 approved by the legislature.

9 (25) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point  
10 source.

11 (26) "Parameter" means a physical, biological, or chemical property of state water when a value of that  
12 property affects the quality of the state water.

13 (27) "Person" means the state, a political subdivision of the state, institution, firm, corporation,  
14 partnership, individual, or other entity and includes persons resident in Canada.

15 (28) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to  
16 any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating  
17 craft, from which pollutants are or may be discharged.

18 (29) (a) "Pollution" means:

19 (i) contamination or other alteration of the physical, chemical, or biological properties of state waters that  
20 exceeds that permitted by Montana water quality standards, including but not limited to standards relating to  
21 change in temperature, taste, color, turbidity, or odor; or

22 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other  
23 substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or  
24 injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

25 (b) A discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge  
26 permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed  
27 by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this  
28 chapter.

29 (30) "Sewage" means water-carried waste products from residences, public buildings, institutions, or  
30 other buildings, including discharge from human beings or animals, together with ground water infiltration and



1 surface water present.

2 (31) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other  
3 wastes to an ultimate disposal point.

4 (32) "Standard of performance" means a standard adopted by the board for the control of the discharge  
5 of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best  
6 available demonstrated control technology, processes, operating methods, or other alternatives, including, when  
7 practicable, a standard permitting no discharge of pollutants.

8 (33) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or  
9 underground.

10 (b) The term does not apply to:

11 (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

12 (ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation  
13 or land application disposal system and the waters are not returned to state waters.

14 (34) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in  
15 combination with narrative information, that supports a finding as to whether a water body is achieving compliance  
16 with applicable water quality standards.

17 (35) "Temporary nutrient criteria" means numeric permit limits for nutrients that are based on a  
18 determination that the base numeric nutrient standards cannot be achieved by a particular point source  
19 discharger due to economic impacts or the limits of technology.

20 (36) "Threatened water body" means a water body or stream segment for which sufficient credible data  
21 and calculated increases in loads show that the water body or stream segment is fully supporting its designated  
22 uses but threatened for a particular designated use because of:

23 (a) proposed sources that are not subject to pollution prevention or control actions required by a  
24 discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

25 (b) documented adverse pollution trends.

26 (37) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for  
27 point sources and load allocations for both nonpoint sources and natural background sources established at a  
28 level necessary to achieve compliance with applicable surface water quality standards.

29 (38) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage,  
30 industrial wastes, or other wastes.

1 (39) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated  
2 to one of its existing or future point sources.

3 (40) "Water quality protection practices" means those activities, prohibitions, maintenance procedures,  
4 or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve  
5 the quality of state waters. Water quality protection practices include but are not limited to treatment requirements,  
6 standards of performance, effluent standards, and operating procedures and practices to control site runoff,  
7 spillage or leaks, sludge or water disposal, or drainage from material storage.

8 (41) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or  
9 otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

10 (42) "Watershed advisory group" means a group of individuals who wish to participate in an advisory  
11 capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development  
12 of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in  
13 an advisory capacity as provided in 75-5-704.

14 **75-5-103. (Effective on occurrence of contingency) Definitions.** Unless the context requires  
15 otherwise, in this chapter, the following definitions apply:

16 (1) "Associated supporting infrastructure" means:

17 (a) electric transmission and distribution facilities;

18 (b) pipeline facilities;

19 (c) aboveground ponds and reservoirs and underground storage reservoirs;

20 (d) rail transportation;

21 (e) aqueducts and diversion dams;

22 (f) devices or equipment associated with the delivery of an energy form or product produced at an energy  
23 development project; or

24 (g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development  
25 project.

26 (2) (a) "Base numeric nutrient standards" means numeric water quality standards for nutrients in surface  
27 water that are adopted to protect the designated uses of a surface water body.

28 (b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that  
29 are adopted to protect human health.

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

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

3 (5) "Council" means the water pollution control advisory council provided for in 2-15-2107.

4 (6) (a) "Currently available data" means data that is readily available to the department at the time a  
5 decision is made, including information supporting its previous lists of water bodies that are threatened or  
6 impaired.

7 (b) The term does not mean new data to be obtained as a result of department efforts.

8 (7) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a  
9 parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant  
10 to 75-5-301(5)(c).

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

12 (9) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes  
13 sewage systems and treatment works.

14 (10) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of  
15 chemical, physical, biological, and other constituents that are discharged into state waters.

16 (11) ~~(a)~~ "Energy development project" means each plant, unit, or other development and associated  
17 developments, including any associated supporting infrastructure, designed for or capable of:

18 ~~(i)~~(a) generating electricity;

19 ~~(ii)~~(b) producing gas derived from coal;

20 ~~(iii)~~(c) producing liquid hydrocarbon products;

21 ~~(iv)~~(d) refining crude oil or natural gas;

22 ~~(v)~~(e) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax  
23 incentive pursuant to Title 15, chapter 70, part 5;

24 ~~(vi)~~(f) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant  
25 to 15-32-701; or

26 ~~(vii)~~(g) transmitting electricity through an electric transmission line with a design capacity of equal to or  
27 greater than 50 kilovolts.

28 ~~———(b) The term does not include a nuclear facility as defined in 75-20-1202.~~

29 (12) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether  
30 or not those uses are included in the water quality standards.

1 (13) "High-quality waters" means all state waters, except:

2 (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by  
3 the board's classification rules; and

4 (b) surface waters that:

5 (i) are not capable of supporting any one of the designated uses for their classification; or

6 (ii) have zero flow or surface expression for more than 270 days during most years.

7 (14) "Impaired water body" means a water body or stream segment for which sufficient credible data  
8 shows that the water body or stream segment is failing to achieve compliance with applicable water quality  
9 standards.

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

12 (16) "Interested person" means a person who has a real property interest, a water right, or an economic  
13 interest that is or may be directly and adversely affected by the department's preliminary decision regarding  
14 degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization  
15 to degrade high-quality waters.

16 (17) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one  
17 of its existing or future nonpoint sources or to natural background sources.

18 (18) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation  
19 of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum  
20 change that can occur from the best practicable condition in a surface water without causing a violation of the  
21 surface water quality standards.

22 (19) "Local department of health" means the staff, including health officers, employed by a county, city,  
23 city-county, or district board of health.

24 (20) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium,  
25 cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

26 (21) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by  
27 the department where water quality standards may be exceeded, subject to conditions that are imposed by the  
28 department and that are consistent with the rules adopted by the board.

29 (22) "Nutrient work group" means an advisory work group, convened by the department, representing  
30 publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested

1 parties that will advise the department on the base numeric nutrient standards, the development of temporary  
2 nutrient criteria, and the implementation of those standards and criteria together with associated economic  
3 impacts.

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

7 (24) "Outstanding resource waters" means:

8 (a) state surface waters located wholly within the boundaries of areas designated as national parks or  
9 national wilderness areas as of October 1, 1995; or

10 (b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and  
11 approved by the legislature.

12 (25) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point  
13 source.

14 (26) "Parameter" means a physical, biological, or chemical property of state water when a value of that  
15 property affects the quality of the state water.

16 (27) "Person" means the state, a political subdivision of the state, institution, firm, corporation,  
17 partnership, individual, or other entity and includes persons resident in Canada.

18 (28) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to  
19 any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating  
20 craft, from which pollutants are or may be discharged.

21 (29) (a) "Pollution" means:

22 (i) contamination or other alteration of the physical, chemical, or biological properties of state waters that  
23 exceeds that permitted by Montana water quality standards, including but not limited to standards relating to  
24 change in temperature, taste, color, turbidity, or odor; or

25 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other  
26 substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or  
27 injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

28 (b) A discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge  
29 permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed  
30 by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this

1 chapter.

2 (c) Contamination of ground water within the boundaries of a geologic storage reservoir, as defined in  
3 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter 11,  
4 part 1, is not pollution and does not require a mixing zone.

5 (30) "Sewage" means water-carried waste products from residences, public buildings, institutions, or  
6 other buildings, including discharge from human beings or animals, together with ground water infiltration and  
7 surface water present.

8 (31) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other  
9 wastes to an ultimate disposal point.

10 (32) "Standard of performance" means a standard adopted by the board for the control of the discharge  
11 of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best  
12 available demonstrated control technology, processes, operating methods, or other alternatives, including, when  
13 practicable, a standard permitting no discharge of pollutants.

14 (33) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or  
15 underground.

16 (b) The term does not apply to:

17 (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

18 (ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation  
19 or land application disposal system and the waters are not returned to state waters.

20 (34) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in  
21 combination with narrative information, that supports a finding as to whether a water body is achieving compliance  
22 with applicable water quality standards.

23 (35) "Temporary nutrient criteria" means numeric permit limits for nutrients that are based on a  
24 determination that the base numeric nutrient standards cannot be achieved by a particular point source  
25 discharger due to economic impacts or the limits of technology.

26 (36) "Threatened water body" means a water body or stream segment for which sufficient credible data  
27 and calculated increases in loads show that the water body or stream segment is fully supporting its designated  
28 uses but threatened for a particular designated use because of:

29 (a) proposed sources that are not subject to pollution prevention or control actions required by a  
30 discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

1 (b) documented adverse pollution trends.

2 (37) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for  
3 point sources and load allocations for both nonpoint sources and natural background sources established at a  
4 level necessary to achieve compliance with applicable surface water quality standards.

5 (38) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage,  
6 industrial wastes, or other wastes.

7 (39) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated  
8 to one of its existing or future point sources.

9 (40) "Water quality protection practices" means those activities, prohibitions, maintenance procedures,  
10 or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve  
11 the quality of state waters. Water quality protection practices include but are not limited to treatment requirements,  
12 standards of performance, effluent standards, and operating procedures and practices to control site runoff,  
13 spillage or leaks, sludge or water disposal, or drainage from material storage.

14 (41) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or  
15 otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

16 (42) "Watershed advisory group" means a group of individuals who wish to participate in an advisory  
17 capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development  
18 of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in  
19 an advisory capacity as provided in 75-5-704."

20

21 **Section 4.** Section 75-20-201, MCA, is amended to read:

22 **"75-20-201. Certificate required -- operation in conformance -- ~~certificate for nuclear facility --~~**  
23 **applicability to federal facilities.** (1) Except for a facility under diligent onsite physical construction or in  
24 operation on January 1, 1973, a person may not commence to construct a facility in the state without first applying  
25 for and obtaining a certificate of compliance issued with respect to the facility by the department.

26 (2) A facility with respect to which a certificate is issued may not be constructed, operated, or maintained  
27 except in conformity with the certificate and any terms, conditions, and modifications contained within the  
28 certification.

29 (3) A certificate may only be issued pursuant to this chapter.

30 ~~(4) If the department decides to issue a certificate for a nuclear facility, it shall report the recommendation~~

1 ~~to the applicant and may not issue the certificate until the recommendation is approved by a majority of the voters~~  
 2 ~~in a statewide election called by initiative or referendum according to the laws of this state.~~

3 ~~(5)(4)~~ A person that proposes to construct an energy-related project that is not defined as a facility  
 4 pursuant to 75-20-104(8) may petition the department to review the energy-related project under the provisions  
 5 of this chapter.

6 ~~(6)(5)~~ This chapter applies, to the fullest extent allowed by federal law, to all federal facilities and to all  
 7 facilities over which an agency of the federal government has jurisdiction.

8 ~~(7)(6)~~ All judicial challenges of certificates for projects with a project cost, as determined by the court,  
 9 of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If  
 10 the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to  
 11 cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees  
 12 and costs incurred in defending the action."

13  
 14 **NEW SECTION. Section 5. Repealer.** The following sections of the Montana Code Annotated are  
 15 repealed:

16 75-20-1201. Purpose -- findings as to nuclear safety -- reservation of nuclear facility approval powers to the  
 17 people.

18 75-20-1202. Definitions.

19 75-20-1203. Additional requirements for issuance of a certificate for the siting of a nuclear facility.

20 75-20-1204. Annual review of evacuation and emergency medical aid plans.

21 75-20-1205. Emergency approval authority invalid for nuclear facilities.

22

23 **NEW SECTION. Section 6. Effective date.** [This act] is effective on passage and approval.

24

- END -