

Agency Budget Comparison

The following table summarizes the total budget requested by the Governor for the agency by year, type of expenditure, and source of funding.

Agency Budget Comparison								
Budget Item	Base Fiscal 2008	Approp. Fiscal 2009	Budget Fiscal 2010	Budget Fiscal 2011	Biennium Fiscal 08-09	Biennium Fiscal 10-11	Biennium Change	Biennium % Change
FTE	376.29	376.29	390.29	390.29	376.29	390.29	14.00	3.72%
Personal Services	21,024,452	23,309,232	26,729,633	26,814,954	44,333,684	53,544,587	9,210,903	20.78%
Operating Expenses	19,642,858	30,235,268	37,523,194	36,417,949	49,878,126	73,941,143	24,063,017	48.24%
Equipment & Intangible Assets	107,827	237,754	151,561	150,527	345,581	302,088	(43,493)	(12.59%)
Capital Outlay	441,304	0	141,304	141,304	441,304	282,608	(158,696)	(35.96%)
Grants	1,870,416	2,216,541	2,033,416	2,033,416	4,086,957	4,066,832	(20,125)	(0.49%)
Benefits & Claims	0	0	0	0	0	0	0	n/a
Transfers	0	0	0	0	0	0	0	n/a
Debt Service	0	1,807	0	0	1,807	0	(1,807)	(100.00%)
Total Costs	\$43,086,857	\$56,000,602	\$66,579,108	\$65,558,150	\$99,087,459	\$132,137,258	\$33,049,799	33.35%
General Fund	4,785,174	5,088,372	6,437,480	6,453,383	9,873,546	12,890,863	3,017,317	30.56%
State Special	18,943,357	24,069,733	36,714,516	35,639,796	43,013,090	72,354,312	29,341,222	68.21%
Federal Special	19,358,326	26,842,497	23,427,112	23,464,971	46,200,823	46,892,083	691,260	1.50%
Other	0	0	0	0	0	0	0	n/a
Total Funds	\$43,086,857	\$56,000,602	\$66,579,108	\$65,558,150	\$99,087,459	\$132,137,258	\$33,049,799	33.35%

Agency Description

Mission Statement: To protect, promote, and improve a clean and healthful environment to benefit present and future generations.

The Department of Environmental Quality is responsible for air, land, and water quality; hazardous waste facilities; underground storage tanks; solid waste management systems; drinking water and waste water treatment systems; and mining operations. The department is also responsible for siting and needs analyses of transmission lines and pipelines, and is the lead agency for energy efficiency, renewable energy, and reclamation and clean-up activities related to the federal and state superfund programs.

Agency Highlights

Department of Environmental Quality Major Budget Highlights
<ul style="list-style-type: none"> ◆ The executive budget would increase by \$33 million or 33 percent in the 2011 biennium from the previous biennium, of which \$9.9 million is statewide present law adjustments ◆ Major increases from the base include <ul style="list-style-type: none"> ● \$18.6 million for site remediation under the state Superfund program ● \$2.0 million for public water supply program staff ◆ One-time-only proposals total \$13.3 million over the biennium and include: <ul style="list-style-type: none"> ● \$10.0 million for various remediation projects ● \$150,000 for online reporting for regulated facilities ● \$50,000 for monitoring Whitefish lake ◆ The remaining \$3.0 million increase relates to base budget adjustments to account for increased rent, contracted services and employee travel and communication costs ◆ Two requests totaling \$10.7 million are contingent on the passage and approval of proposed legislation ◆ The executive is requesting \$26.2 million in resource indemnity funding

◆ Activities funded with air quality fees are increased by 54 percent in the executive budget
Major LFD Issues
<ul style="list-style-type: none"> ◆ Resource indemnity funding is limited and should be tracked closely ◆ Resource indemnity trust interest and related taxes can no longer support programs for which it has traditionally provided funding ◆ Increases in the air quality program may lead to increased fees charged to the regulated community ◆ Decision packages related to technical or site specific activities should contain additional detailed information to provide appropriate information for the legislature to consider appropriations policy ◆ In most programs, submitted goals do not include measurable objectives ◆ The agency did not provide program specific details related to vacancies and vacancy savings ◆ Base adjustments in the prevention, planning, and assistance and permitting and compliance divisions are not broken down by program for legislative review

Agency Discussion

Goals and Objectives:

State law requires agency and program goals and objectives to be specific and quantifiable to enable the legislature to establish appropriations policy. As part of its appropriations deliberations the Legislative Fiscal Division recommends that the legislature review the following:

- o Goals, objectives and year-to-date outcomes from the 2009 biennium
- o Goals and objectives and their correlation to the 2011 biennium budget request

Any issues related to goals and objectives raised by LFD staff are located in the program section.

Agency Personal Services Narrative

The following information is provided so that the legislature can consider various personal services issues when examining the agency budget. It was submitted by the agency and edited for brevity by the LFD.

- o **Agency Market** – DEQ has not established one target market ratio for the agency. The current pay rules establish a matrix of minimum market percentages, graduated according to years of job-related experience. They are as follows:
 - 80 percent for individuals with zero to two years experience at current occupation
 - 84 percent for individuals with two to four years experience at current occupation
 - 87 percent for individuals with four to six years experience at current occupation
 - 90 percent for individuals with six to eight years experience at current occupation
 - 94 percent for individuals with eight to ten years experience at current occupation
 - 97 percent for individuals with greater than ten years experience at current occupation
- o The approximate agency market ratio on June 30, 2008, relative to the 2006 market survey was 106.7 percent
- o The agency market ratio after the HB 13 adjustment on October 1, 2008, is 90.14 percent
- o The agency makes exceptions to the pay rules for the Environmental Science Specialist and Environmental Engineering Specialists occupations
- o **Obstacles** - Funding constraints remain the major challenge to achieving competitive pay levels. The department's major funding sources are federal and state special revenues. Federal revenues are generally flat and in some cases declining. State special revenues are primarily fees, many of which are capped in statute and also subject to practical limitations on what levels of increase would be realistic.

LFD ISSUE	Program level information not provided
	<p>The personal services questions were designed to provide information for the legislature to consider various personal services issues when contemplating changes to the executive requested budget. These areas include market rates, vacancies, vacancy savings, and retirement information applicable to those currently employed within each program. The department did not submit specific program level information on vacancies and vacancy savings within its budget request. Instead, the same answer was applied to all divisions. The agency was asked to provide the LFD with this detailed information for inclusion into the budget analysis. The agency did not comply.</p> <p>The absence of this information prevents the legislature from determining the degree of vacancies within the program, and the true amount of vacancy savings generated from those vacancies. The degree of vacant positions can be an indicator of performance shortfall. In the past, the department has had chronic vacancies in key positions. These vacancies have resulted in impacts on agency operations such as delays in remediation, permitting, and enforcement activities. During the 2009 biennium the agency took steps to increase retention and improve recruitment. However, without vacancy data, and the story behind that data, the legislature cannot discuss the successes or challenges facing with the agency. This directly impacts the legislature’s ability to assure the agency has adequate resources to meet the agency mission.</p> <p>A second issue relates to vacancy savings, and the utilization of those funds, as agencies can utilize the authority associated with vacant positions to increase wages in other positions. This increase is then captured in statewide present law adjustments as an annualized salary and funded fully in the next biennium. The legislature may wish to have this information to be able to determine the effect of vacant positions on the agency as it relates to work load and to providing pay adjustments outside the official pay plan.</p> <p>The legislature may wish to direct the agency to provide the program level information.</p>

Funding

The following table summarizes funding for the agency, by program and source, as recommended by the Governor. Funding for each program is discussed in detail in the individual program narratives that follow.

Total Agency Funding 2011 Biennium Budget					
Agency Program	General Fund	State Spec.	Fed Spec.	Grand Total	Total %
10 Central Management Program	\$ 875,168	\$ 3,040,841	\$ 1,016,204	\$ 4,932,213	3.73%
20 Plan.Prevent. & Assist.Div.	6,043,777	4,430,142	16,284,362	26,758,281	20.25%
30 Enforcement Division	1,244,347	1,001,442	649,387	2,895,176	2.19%
40 Remediation Division	-	25,300,651	15,164,554	40,465,205	30.62%
50 Permitting & Compliance Div.	4,727,571	37,095,781	13,777,576	55,600,928	42.08%
90 Petro Tank Release Comp. Board	-	1,485,455	-	1,485,455	1.12%
Grand Total	<u>\$ 12,890,863</u>	<u>\$ 72,354,312</u>	<u>\$ 46,892,083</u>	<u>\$ 132,137,258</u>	<u>100.00%</u>

The department’s largest source of funding at 54 percent is state special revenue. This revenue is derived from permitting fees, fines, and bonds proceeds utilized to support specific department functions such as permitting, enforcement, and remediation. The federal revenue is provided from the U.S. Environmental Protection Agency (EPA) performance partnership grant, the Superfund Program, and other federal grant resources. The partnership grant is a block grant to the state to provide funding the EPA had previously made through individual grants. Federal grants have varying match requirements. Wetland grants require 25 percent match, drinking water capital improvement requires 20 percent match, and non point source funding can require as much as a 40 percent match. General fund is utilized for personal services and related operating expenses such as travel, communications, and equipment.

Statutory Appropriations

The following table shows the total statutory appropriations associated with this agency. Because statutory appropriations do not require reauthorization each biennium, they do not appear in HB 2 and are not routinely examined by the legislature. The figure is provided so that the legislature can get a more complete picture of agency operations and associated policy.

Statutory Appropriations Department of Environmental Quality					
Purpose	MCA #	Fund Source	Fiscal 2008	Fiscal 2010	Fiscal 2011
<i>No Direct Bearing on Agency Operations</i>					
Petroleum Tank Compensation Board Claims	75-11-313	SSR	\$5,652,323	\$3,739,318	\$3,746,815

As appropriate, LFD staff has segregated the statutory appropriations into two general categories: 1) those where the agency primarily acts in an administrative capacity and the appropriations consequently do not relate directly to agency operations; and 2) those that have a more direct bearing on the mission and operations of the agency.

The Petroleum Tank Compensation Board is provided a statutory appropriation of the three quarters of a cent fee on distributed fuel to pay for site cleanup. This activity is further discussed in the Board’s program narrative.

Budget Summary by Category

The following summarizes the total budget by base, present law adjustments, and new proposals.

Budget Item	-----General Fund-----				-----Total Funds-----			
	Budget Fiscal 2010	Budget Fiscal 2011	Biennium Fiscal 10-11	Percent of Budget	Budget Fiscal 2010	Budget Fiscal 2011	Biennium Fiscal 10-11	Percent of Budget
Base Budget	4,785,174	4,785,174	9,570,348	74.24%	43,086,857	43,086,857	86,173,714	65.22%
Statewide PL Adjustments	445,784	454,892	900,676	6.99%	4,906,165	4,997,321	9,903,486	7.49%
Other PL Adjustments	1,131,522	1,138,317	2,269,839	17.61%	13,071,990	12,149,404	25,221,394	19.09%
New Proposals	75,000	75,000	150,000	1.16%	5,514,096	5,324,568	10,838,664	8.20%
Total Budget	\$6,437,480	\$6,453,383	\$12,890,863		\$66,579,108	\$65,558,150	\$132,137,258	

The executive is seeking a 33 percent increase, or \$33.0 million, in the 2011 proposed biennial budget compared with the 2009 biennial budget. The majority of the increase can be attributed to \$18.3 million in authority for the state Superfund Program, \$3.6 million for the Air Quality Program, \$2.0 million for the Public Water Supply Program, and \$2.0 million for hard rock reclamation. The remainder is attributable to biennial increases in junk vehicle grants, solid waste management, the major facility siting act, and general agency operations funded with natural resource RIT funds.

Language and Statutory Authority

“The department is authorized to decrease federal special revenue in the water pollution control and/or drinking water revolving loan programs and to increase state special revenue by a like amount within the special administration account when the amount of federal capitalization funds have been expended or when federal funds and bond proceeds will be used for other program purposes.”

**LFD
ISSUE**

“For other program purposes”

The phrase ‘for other program purposes’ may allow the agency greater discretion to use the funds than the legislature would like to allow. The legislature may wish to consider replacing that phrase with ‘used for other purposes as authorized in law providing for the distribution of funds’.

Agency Issues*Resource Indemnity Trust*

Article IX of the Montana Constitution provides for the protection and improvement of the Montana environment and requests that the legislature provide adequate remedies for environmental protection from degradation. It specifically requires “all lands disturbed by the taking of natural resources shall be reclaimed”, and requires the existence of a resource indemnity trust (RIT) fund for that purpose, to be funded by taxes on the extraction of natural resources.

The Constitution further states, “The principal of the resource indemnity trust shall forever remain inviolate in an amount of one hundred million dollars (\$100,000,000) guaranteed by the state against loss or diversion.” The state Constitution requires a trust, but does not require the trust to be funded. The legislature utilized certain natural resource extraction tax proceeds as a revenue source for the trust. In February of 2002, the Governor certified that the balance of the trust had exceeded the \$100 million threshold. Tax proceeds previously directed to the RIT have been re-directed by the legislature ever since.

Accounts Receiving RIT Related Revenue

The biennial executive budget contains \$26.2 million in RIT related funding to support a number of natural resource related activities from a number of related accounts. The department is the largest recipient of these funds.

The following discusses the accounts and the current uses. From those accounts appropriations are made by the legislature to support natural resource agencies and activities. The major accounts of importance are as follows:

- o Oil & Gas Production Mitigation Account – funds utilized by the Montana Board of Oil and Gas for properly plugging a well and either reclaiming or restoring, or both, a drill site or other drilling or producing area damaged by oil and gas operations
- o Future Fisheries – funds provided to the Department of Fish, Wildlife and Parks to reclaim habitat and spawning areas of the bull and cutthroat trout
- o Hazardous Waste/CERCLA - funds provided to the Remediation Division of the department for the implementation of the Montana Hazardous Waste Act and state expenses for overseeing the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)
- o Environmental Contingency Account (ECA)- an account controlled by the Governor for the purpose of responding to emergent or imminent threats to the environment
- o Environmental Quality Protection Fund (EQPF)- utilized by the Remediation Division to identify, investigate, negotiate, and prosecute individuals/entities to achieve remedial action or recover costs and damages. This fund is also referred to as the state Superfund
- o Water Storage Account – fund provided to the Water Resources Division of the Department of Natural Resources and Conservation for rehabilitation and major maintenance on state owned water projects
- o Ground water assessment account - funds groundwater monitoring and characterization studies completed by the Montana Bureau of Mines and Geology at Montana Tech in Butte
- o Orphan Share Account-used by the Department of Environmental Quality to fund the percent of remediation activities at a contaminated site that is attributable to a bankrupt or otherwise insolvent entity
- o Natural Resource Projects - provides grants and loans to enhance Montana’s renewable resources through projects that measurably conserve, develop, manage or preserve resources or to repair, reclaim, and mitigate environmental damage to public resources. These funds are managed by the Conservation and Development Division of the Department of Natural Resources and Conservation

- o Natural Resources Operations – funds operating costs of Montana’s natural resource agencies, including this department and the Department of Natural Resources and Conservation

RIT Distributions and Tax Proceeds

Prior to when the RIT trust met the constitutionally set \$100 million threshold, natural resources taxes were deposited to the trust. Since the threshold was met, the legislature has statutorily allocated those taxes: resource indemnity and ground water assessment, the metalliferous mine tax, and applicable portions of the oil & gas tax.

- o Resource Indemnity and Ground Water Assessment (RIGWA) are taxes paid by person(s) who engages in or carries on the business of mining, extracting, or producing a mineral from any quartz vein or lode, placer claim, dump or tailings, or other place or source. These taxes are distributed to a number of natural resource accounts. The first \$460,630 is deposited into the Superfund debt service account and the second \$366,000 is deposited into the ground water assessment account. The remaining funds are distributed 50 percent into the reclamation and development grant program account and any remaining funds to the orphan share account.
- o The metalliferous mine tax is paid by persons engage in mining of gold, silver, copper, lead and other metals or precious or semiprecious stones. Seven percent of this tax is deposited to the natural resources operations fund.
- o A portion of oil and gas production taxes are used for natural resource activities. This portion is distributed 2.99 percent to the orphan share account and 1.45 percent each to the natural resources operations and the natural resources project funds.

RIT Distributions –Interest Allocations

Allocations of RIT interest earnings are not restricted by the constitution. The legislature has chosen to directly and indirectly allocate interest for a number of purposes.

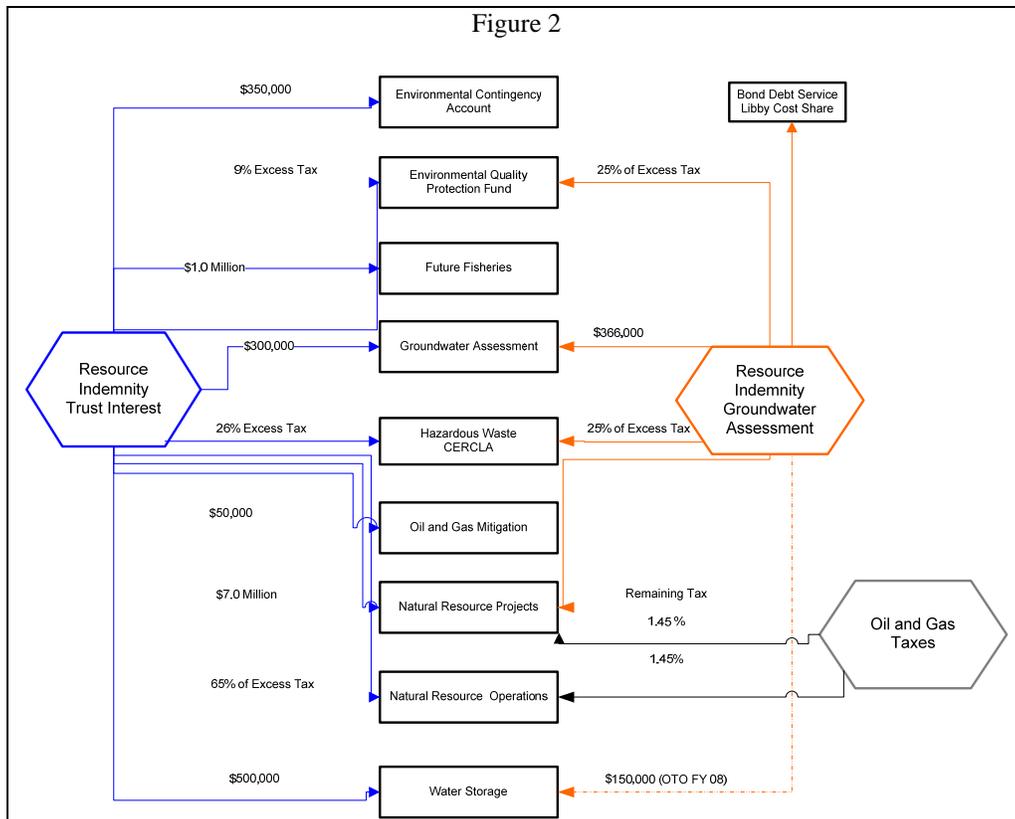
Direct Allocations: 15-38-202 MCA directs where the interest from the RIT is allocated. Direct allocations are made to a number of sources. Allocations to the oil and gas production mitigation account (\$50,000) and the water storage account (\$500,000) are made at the beginning of the biennium. Allocations to the natural resources projects fund (\$3.5 million), ground water assessment account (\$0.3 million), future fisheries fund (\$0.5 million) and the environmental contingency account (\$175,000) are made on an annual basis.

Indirect Allocations: After direct interest allocations are made, 15-38-202, MCA directs the remaining interest on a formula basis. The formula provides for 65 percent to the natural resources operations fund, 26 percent to the hazardous waste/CERCLA fund, and the remaining nine percent to the environmental quality protection fund.

The flow of taxes and interest into the related accounts is illustrated in figure 1.

Figure 1 Resource Indemnity Funding										
Related Funds	02010 Oil & Gas	02022 Future Fish	02070 HazWas	02107 ECA	02162 EQPF	02216 Wa Sto	02289 GRW	02472 Orphan Share	02576 Operations	02577 Projects
Beginning FY2009 Fund Balance	\$312,433	\$1,113,055	\$429,779	639,501	\$2,987,113	\$1,420,433	\$0	\$10,632,358	\$4,192,776	5,757,663
RIT Interest		\$500,000	\$287,820	175,000	\$99,630	\$0	\$300,000		\$719,550	\$3,500,000
Excess coal tax proceeds from debt service and STIP	10,000		10,000	15,000						
RIGWA			293,711		293,711	150,000	366,000			587,422
Metal Mines Tax									1,210,000	
Oil and Gas Tax								3,869,509	1,876,518	1,876,518
Other Income	<u>67,000</u>				<u>3,750,000</u>					
FY 2009 Total Revenues & Fund Balance	\$389,433	\$1,613,008	\$1,021,310	\$829,501	\$7,130,454	\$1,570,433	\$666,000	\$14,501,867	\$7,998,844	\$11,721,603
FY 2009 Appropriations	(174,194)	(1,613,008)	(494,755)	0	(3,008,135)	(520,628)		(2,747,882)	(5,324,833)	(10,986,009)
Transfers	25,000									
Reserved for Capital Appropriations										
Grant Reversion										
Projected Fund Balance Ending FY 2009	<u>\$240,239</u>	<u>\$0</u>	<u>\$526,555</u>	<u>\$829,501</u>	<u>\$4,122,319</u>	<u>\$1,049,805</u>	<u>\$666,000</u>	<u>\$11,753,985</u>	<u>\$2,674,011</u>	<u>\$735,594</u>
Revenues for 2011 Biennium										
RIT Interest - Direct	50,000	1,000,000	436,280	350,000	151,020	500,000	600,000	-	1,090,700	7,000,000
RIGWA			820,422		820,422		732,000			1,640,844
Excess coal tax proceeds from debt service and Short Term Investment Pool - Interest	20,000		20,000		70,000	35,000				
Admin Fees						120,000			6,000	
Metal Mines Tax									1,984,000	
Oil and Gas Tax								6,801,250	3,298,265	3,298,265
Agency Generated Revenues	100,000				7,500,000					
Transfers -LC294					8,965,020			(8,965,200)		
Projected Fund Balance Beginning FY 2010	<u>\$410,239</u>	<u>\$1,000,000</u>	<u>\$1,803,257</u>	<u>\$1,179,501</u>	<u>\$21,628,781</u>	<u>\$1,704,805</u>	<u>\$1,998,000</u>	<u>\$9,590,035</u>	<u>\$9,052,976</u>	<u>\$12,674,703</u>
Appropriations for 2011 Biennium										
RRGL and RDGP Programs										(12,100,000)
UM-Bureau of Mines							(1,332,000)		(351,772)	
DNRC - Centralized Services									-	
DNRC - Conservation and Resource Devel.									(1,400,387)	
DNRC-Water Resources Division						(535,000)			(260,841)	
DNRC-Flathead Basin Commission									(195,803)	
DNRC - Board of Oil & Gas	(200,000)									
DNRC - Forestry/Trust Lands									(200,000)	
DEQ-Central Management									(119,292)	
DEQ-Planning, Prevention & Assistance			(184,893)							
DEQ-Enforcement									(10,422)	
DEQ-Remediation			(43,463)		(20,641,305)			(29,339)		
DEQ-Permitting & Compliance			(886,383)						(4,159,286)	
Future Fisheries		(1,000,000)								
Judiciary-Water Court									(2,100,569)	
Library Commission-State Library									-	
Governor's Office - Emergency Authority				(1,179,501)						
HB 13 Pay Plan			(45,706)		(76,285)			(2,132)	(324,733)	
Total Appropriations	<u>(\$200,000)</u>	<u>(\$1,000,000)</u>	<u>(\$1,160,445)</u>	<u>(\$1,179,501)</u>	<u>(\$20,717,590)</u>	<u>(\$535,000)</u>	<u>(\$1,332,000)</u>	<u>(\$31,471)</u>	<u>(\$9,123,105)</u>	<u>(\$12,100,000)</u>
Ending Fund Balance	<u>\$210,239</u>	<u>\$0</u>	<u>\$642,812</u>	<u>\$0</u>	<u>\$911,191</u>	<u>\$1,169,805</u>	<u>\$666,000</u>	<u>\$9,558,564</u>	<u>(\$70,129)</u>	<u>\$574,703</u>

Figure 2 represents the executive’s requested use of the RIT interest and related funds. The figure provides the balance at the end of FY 2008, projected revenues and appropriations for FY 2009, and the biennial affect of revenues and the executive request for the 2011 biennium. The impact of a pay plan similar to the one granted by the passage and approval of HB 13 of the 2007 legislature has been considered also.



From examining the chart, the priorities for funding are clear. The largest appropriation of RIT related funds is \$20.6 million from the Environmental Quality Protection Fund (EQPF) for the purpose of the state Superfund Program. Other priorities are the Reclamation and Development (RDGP) and the Renewable Resources (RRGL) Grant and Loan Programs at \$6.7 million from the natural resources projects fund. The support of the Permitting and Compliance Division is also a priority at \$4.9 million in natural resources operations and the hazardous waste funds.

The figure also points out a projected ending fund balance of negative \$70,129 in the natural resources operations fund. This negative balance is after the removal of appropriations from this fund to the Centralized Services Division of the Department of Natural Resources and Conservation and the State Library. This condition of this fund represents some key issues related to RIT funding.

Natural Resources Operations Fund

The natural resources operation fund was created by HB 116 of the 2007 Legislature. The fund was created because agency operational costs were previously appropriated from other RIT funds that were established for other purposes. The utilization of other funds made it difficult for the legislature to track what was appropriated for on-the-ground work versus general agency operations. However, while the legislature can appropriate from one fund, the fund may not be healthy enough to meet the needs of natural resource agencies. This is demonstrated by two issues within this fund; 1) static funding; and 2) structural balance.

Static Funding

Revenues received from interest and applicable taxes are fairly constant and have little fluctuation. When the economy falters the interest earned on the trust will be less than previous years. This affects the funding stream going to the related funds. The programs that receive revenues from the RIT related funds are also supported by other funding sources such as coal severance funds, operating fees, and the general fund. As the cost of providing services rises, the RIT related funds will not rise at the same rate, if they rise at all.

The executive budget contains two funding switches from the operations fund to adjust for the decreased revenues. In the Department of Natural Resources and Conservation the executive is requesting a switch of \$1.4 million with coal tax severance funds. The other funding switch is for the Natural Resources Information System (NRIS) in the State Library, which replaces \$502,802 with general fund. The impacts of the funding switches are included in the summary table.

Structural Balance

A structurally balanced account expends resources at a level equal to revenues. The natural resources operations fund is not structurally balanced. The beginning FY 2010 fund balance is estimated at \$9.0 million and requested appropriations, with an estimated impact of the pay plan, are \$9.1 million. This results in an ending fund balance of a negative \$70,129. This balance does reflect the funding switches addressed earlier. As stated, as of the time of this writing the Governor had not proposed a specific pay plan. If the proposed plan is lower than estimated, the negative ending fund balance could be eliminated.

Options:

The natural resources operations fund is over appropriated and not structurally balanced. The legislature has the following options to address these issues:

- o Adjust appropriation levels to reflect the estimated revenues
- o Direct the executive to apply pay plan increases to non-RIT funding sources
- o Require agencies utilizing fee revenue to justify the need for RIT funds over raising fees
- o Request legislation to transfer in sufficient resources from another RIT funding source to cover the shortfall for this biennium

Direct Operational Issues

In addition to the issue related to the natural resources operations fund, there are additional issues relating to program operations. These include the revenue distribution to the environmental contingency account (ECA), the utilization of orphan share funds, and the status of the environmental quality protection fund (EQPF).

1. Figure 1 includes a distribution of \$350,000 of RIT interest to the ECA. The passage of HB 116 by the 2007 Legislature included language to terminate this allocation and restore a biennial allocation of \$175,000. After passage and approval, an error in the termination date was discovered. LC 607 has been requested to fix the error. If this legislation passes, the ECA will have approximately \$1.0 million available to respond to emergent or imminent threats to the environment, rather than the \$1.17 million allocated in the executive budget.
2. The Orphan Share Program was established to provide a means for determining the share of remediation costs of a defunct party. The fund pays for the costs of the allocation process and then pays for the defunct party's share of the remediation as established by that process. The executive is not seeking any authority for this purpose, even though there are sites that have been approved for orphan share funding. Instead, the executive is seeking to transfer \$8.9 million of funds from the orphan share to the EQPF as the state share of the responsibility for clean up costs at the KRY remediation site. This transfer is contingent on the passage and approval of LC 294.
3. The executive is seeking \$20.6 million in authority from the environmental quality protection fund (EQPF) for the purpose of accelerating site clean up in Montana, of which \$12.1 million is for one-time only activity. The EQPF (state Superfund) is a revolving fund where the expenditures at these sites are cost recoverable. Those recoveries are deposited back to the EQPF for further cleanup activities. The agency estimates that \$3.5 million per year will be

recovered from responsible parties. If these revenues do not materialize, the department will have to adjust expenditures accordingly, as the department will have authority but will lack the necessary cash to complete activities on the ground.

Legislative Options

The operational issues raised can be addressed by implementing or increasing legislative oversight of department activities. The legislature may wish to consider one or more of the following:

To address the orphan share issues the legislature may wish to:

- o Inquire about the status of the projects that have already been approved for orphan share funding, including when funding will be required
- o Request the agency determine the potential impact of state costs of remediation of the KRY site on the orphan share

To address the EQPF issue the legislature may wish to:

- o Inquire about how the department will prioritize activities if the cost recovery revenues are not obtained
- o Request the agency provide performance reporting to Legislative Finance Committee regarding cost recovery and the potential impact to on-the-ground activities

The operational and structural issues associated with the RIT will change at each step of the appropriations process due to the complex funding structure. To assure that more issues do not arise, the legislature may wish to review the status of RIT funds after executive action throughout the process. If this is not completed, the final funding plan may not be feasible.

The Clean Air Act

The federal Clean Air Act provides for the amount of pollutants that can be emitted from various sources and the consequences for entities that are unable to meet the emission requirements. To manage the amount of pollution emissions the act provides that a permitting program be controlled by the states, because at the time of the passage of the act in 1990, 35 states already had permitting programs. The act also directs the state to utilize fees from permits to fund the program. If a state is unable to meet the requirements of the act, the Environmental Protection Agency (EPA) can take over the management of the program.

The department contends that there are not sufficient resources to ensure compliance with the state and federal clean air acts. A number of adjustments are being requested to potentially remedy this situation. These adjustments have a significant cost.

Division	Acutal	Appropriated	Executive Request	
	FY 2008	FY 2009	FY 2010	FY 2011
Central Management	\$48,240	\$56,438	\$68,467	\$69,177
Planning, Prevention & Assistance	94,296	121,404	122,948	123,108
Enforcement	48,902	52,087	144,140	145,379
Permitting & Compliance	<u>3,304,418</u>	<u>3,487,645</u>	<u>4,889,037</u>	<u>4,937,947</u>
Total	<u>\$3,495,856</u>	<u>\$3,717,574</u>	<u>\$5,224,592</u>	<u>\$5,275,611</u>

During FY 2008, the department expended \$3.5 million in air quality permit fees; the Governor proposes spending \$5.2 million in FY 2010. This represents an increase in expenditures of 53 percent. The breakdown of this change is summarized in Figure 3.

The adjustments creating this increase are summarized in Figure 4.

Decision Package	FY 2010	FY 2011	Biennial Total
Statewide Present Law Adjustments - All Programs	\$861,099	\$896,392	\$1,757,491
DP 1001 Attorney Pool	5,018	5,484	10,502
DP 2005 Planning, Prevention & Assistance Base Adjustment	2,614	2,778	5,392
DP 3002 Enforcement Base Adjustment	9,639	10,580	20,219
DP 5002 Air On-line Permit & Compliance Reporting - OTO	75,000	75,000	150,000
DP 5003 Air Regulatory Assistance	250,000	250,000	500,000
DP 5004 Area Source MACT Registration	130,820	129,895	260,715
DP 5006 Air Resources Management Bureau Student Intern Funding	94,946	94,946	189,892
DP 5008 Air Program - Field Office Vehicles	11,029	12,041	23,070
DP 5018 Permitting & Compliance Base Adjustment	<u>288,607</u>	<u>302,705</u>	<u>591,312</u>
Total	<u>\$1,728,772</u>	<u>\$1,779,821</u>	<u>\$3,508,593</u>

The legislature does not directly establish fees for the program but the level of appropriation is the driving force in setting the fees. The higher the level of appropriation, the greater the possibility of fee increases. Department staff calculates the air quality permit fees based on anticipated workload and the amount of fee revenue appropriated by the legislature. Those fees are adopted through the rule making process and require final approval by the Board of Environmental Review (BER) prior to implementation.

The issue for the legislature is to determine what adjustments are necessary to encourage the program to operate within state and federal guidelines keeping in consideration the potential impact on fees. Each decision package discussed in the Permitting and Compliance section provides options for legislative consideration. The common element in those discussions is the need for clear performance measures and the potential use of a reporting requirement to assure progress is being made toward meeting statutory and federal requirements.

Background Information for Decision Packages

The decision packages contained in the executive request are often related to a particular regulatory issue, court decree, or site remediation. In order for the legislature to contemplate the appropriate level of resources, background information may need to be acquired. For example, in the Remediation Division, the executive requests funds for at least four specific clean up sites that are at different points of the remediation process. If the legislature is not provided with the information to delineate where a project is at, where it should be in the next biennium, it is difficult to assure that the appropriate level of resources are being asked for and adjusted as necessary.

This is also true in the executive's requests for base adjustments in the Planning, Permitting and Assistance, and Permitting and Compliance Divisions. The decision packages (DP 2005 and DP 5018) contain \$6.1 million in biennial adjustments but lack detail to determine which programs will receive what funds for what purpose. These requests essentially ask the legislature to provide funding without determining purpose or need. The department was asked to provide the information for inclusion in the budget analysis but they did not comply. This issue is further discussed in the corresponding program narrative.

There are also instances in the executive budget where technical terms and jargon are used that only those with intimate knowledge of the programs would understand. This includes the total maximum daily load process, maximum available control technology for the air program, and atmospheric loading for impaired waters are raised in the budget. Descriptive information was provided where readily available; however, a portion of this information may still need to be acquired from the agency during the committee's review of its budget.

The legislature may wish to direct the agency to explain scientific concepts in plain English as well as provide an appropriate level of information to properly align resources with program goals and objectives. Without clear

information, the legislature runs the risk of not providing the appropriate level or kind of resources to the department, hampering the department's mission.

Program Budget Comparison

The following table summarizes the total budget requested by the Governor for the agency by year, type of expenditure, and source of funding.

Program Budget Comparison								
Budget Item	Base Fiscal 2008	Approp. Fiscal 2009	Budget Fiscal 2010	Budget Fiscal 2011	Biennium Fiscal 08-09	Biennium Fiscal 10-11	Biennium Change	Biennium % Change
FTE	10.00	10.00	10.00	10.00	10.00	10.00	0.00	0.00%
Personal Services	733,384	797,259	877,272	879,902	1,530,643	1,757,174	226,531	14.80%
Operating Expenses	1,182,701	1,221,781	1,583,182	1,591,857	2,404,482	3,175,039	770,557	32.05%
Equipment & Intangible Assets	0	0	0	0	0	0	0	n/a
Transfers	0	0	0	0	0	0	0	n/a
Total Costs	\$1,916,085	\$2,019,040	\$2,460,454	\$2,471,759	\$3,935,125	\$4,932,213	\$997,088	25.34%
General Fund	373,992	411,306	436,468	438,700	785,298	875,168	89,870	11.44%
State Special	1,202,096	1,362,540	1,517,832	1,523,009	2,564,636	3,040,841	476,205	18.57%
Federal Special	339,997	245,194	506,154	510,050	585,191	1,016,204	431,013	73.65%
Other	0	0	0	0	0	0	0	n/a
Total Funds	\$1,916,085	\$2,019,040	\$2,460,454	\$2,471,759	\$3,935,125	\$4,932,213	\$997,088	25.34%

Program Description

The Central Management Program consists of the Director's Office, a Financial Services Office, and an Information Technology Office. It is the organizational component of DEQ responsible and accountable for the administration, management, planning, and evaluation of agency performance in carrying out department mission and statutory responsibilities. The Director's Office includes the director's staff, the deputy director, an administrative officer, a public information officer, a centralized legal services unit, and a centralized personnel office. The Financial Services Office provides budgeting, accounting, payroll, procurement, and contract management support to other divisions. The Information Technology Office provides information technology services support to other divisions.

Program Highlights

Central Management Division Major Program Highlights
<ul style="list-style-type: none"> ◆ The proposed biennial budget is 25 percent higher than the 2009 biennial budget, primarily due to statewide present law adjustments and restoration of authority for the Montana Environmental Policy Act (MEPA) ◆ The executive requests an increase in the agency indirect rate ◆ The division provided program goals and objectives
Major LFD Issues
<ul style="list-style-type: none"> ◆ The employee recruitment and retention goals are not measurable due to a lack of specific criteria and time frames

Program Narrative

2009 Biennium Monitored Goals and Objectives

The Legislative Finance Committee selected the following goal to monitor during the 2009 interim

- o Consolidate multiple revenue/accounts receivable/billing/cash processes (RAR) into one uniform system with standardized and more efficient processes administered by the department's Office of Financial Services. Optimize the subdivision review process for efficiency, quality of service, and timeliness by utilizing on-line, web-based technology while maintaining environmental protection standards
 - Identify "as is" processes and establish a timeline for completion of work flow documentation for each process within project scope. Provide project owners with monthly reports comparing work progress to scheduled timeline
 - Schedule conversion, testing and implementation of standard processes for identified systems
 - Compare average processing time for billing, fee collection, cost recovery, and revenue recognition before and after new system implementation
 - Evaluate and report effectiveness of online fee collection and cost recovery process
 - Assess project cost-effectiveness by documenting achieved benefits and improvements compared to development costs

Success: The division was able to procure the accounts receivable module for SABHRS for this project. This produced two unanticipated results: 1) the module will be available for any state agency to utilize; and 2) the on-going support and maintenance costs will be covered through ITSD assessments to all units.

Challenges: The success of fee collection will not be known until the system is up and operating.

2011 Biennium Major Goals

The agency is required by law to submit goals and measurable objectives as part of the budgeting process. The Legislative Fiscal Division recommends that the legislature adopt specific program goals and corresponding objectives for monitoring during the interim.

- o Enhance recruitment and retention of department staff
 - Develop, implement, and maintain a pay system competitive with relevant markets, including other state agencies. Develop and implement performance and competency components within the pay system
 - Develop and implement career ladder progressions within at least four high priority areas with specific recruitment and retention challenges
 - Develop education, training, and other workforce development policies and implement within at least four high priority areas with specific recruitment and retention challenges
 - Continue to develop and implement non-monetary work environment enhancements such as flexible work schedules, tele-work opportunities, and employee recognition

LFD ISSUE	<p>Recruitment and Retention</p> <p>This goal addresses the long-standing issue of department workforce recruitment and retention. This issue is often the primary reason for the department's other performance issues, such as meeting deadlines for permits, water quality plans and enforcement actions. In FY 2009 the department implemented new strategies to improve recruitment and retention. The provided objectives are not specific and measurable, and the four high priority areas have not been identified. Consequently, the legislature cannot discuss resource needs in relation to retention and recruitment of DEQ employees. In addition, the reader is left assuming that all of these will be completed within the biennium. In knowing when the objectives are to be complete, there is a greater chance to measure whether the department has been successful at recruitment and retention.</p>
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Funding

The following table shows program funding, by source, for the base year and for the 2011 biennium as recommended by the Governor.

Central Management Program							
Program Funding		Base FY 2008	% of Base FY 2008	Budget FY 2010	% of Budget FY 2010	Budget FY 2011	% of Budget FY 2011
01000	Total General Fund	\$ 373,992	19.5%	\$ 436,468	17.7%	\$ 438,700	17.7%
	01100 General Fund	373,992	19.5%	436,468	17.7%	438,700	17.7%
02000	Total State Special Funds	1,202,096	62.7%	1,517,832	61.7%	1,523,009	61.6%
	02075 Ust Leak Prevention Program	62,697	3.3%	57,056	2.3%	57,648	2.3%
	02097 Environmental Rehab & Response	5,587	0.3%	104,000	4.2%	104,000	4.2%
	02157 Solid Waste Management Fee	33,632	1.8%	45,645	1.9%	46,118	1.9%
	02201 Air Quality-Operating Fees	48,204	2.5%	68,467	2.8%	69,177	2.8%
	02202 Asbestos Control	8,682	0.5%	18,258	0.7%	18,447	0.7%
	02204 Public Drinking Water	6,729	0.4%	9,129	0.4%	9,224	0.4%
	02278 Mpdcs Permit Program	34,661	1.8%	47,927	1.9%	48,424	2.0%
	02418 Subdivision Plat Review	23,996	1.3%	36,516	1.5%	36,895	1.5%
	02542 Mt Environ Policy Act Fee	903,526	47.2%	1,030,416	41.9%	1,031,615	41.7%
	02576 Natural Resources Operations Ssr Fu	44,623	2.3%	59,338	2.4%	59,954	2.4%
	02845 Junk Vehicle Disposal	27,804	1.5%	38,798	1.6%	39,201	1.6%
	02954 Septage Fees	1,955	0.1%	2,282	0.1%	2,306	0.1%
03000	Total Federal Special Funds	339,997	17.7%	506,154	20.6%	510,050	20.6%
	03046 05 Exchange Network Grant	-	-	-	-	-	-
	03067 Dsl Federal Reclamation Grant	13,434	0.7%	-	-	-	-
	03155 2004 Network Exchange Grant	172	0.0%	-	-	-	-
	03228 L.U.S.T./Trust	55,161	2.9%	63,902	2.6%	64,566	2.6%
	03232 Fy08 Exchange Network Grant	-	-	100,000	4.1%	-	-
	03262 Epa Ppg	133,173	7.0%	-	-	-	-
	03385 Epa/One-Stop Grant	15,602	0.8%	-	-	-	-
	03433 Epa Ppg Fy10-11	-	-	180,296	7.3%	182,167	7.4%
	03436 Nps 04 Staffing & Support	-	-	-	-	13,835	0.6%
	03437 Sep Base 2004	8,661	0.5%	11,411	0.5%	11,530	0.5%
	03442 Fy09 Exchange Network Grant	-	-	33,612	1.4%	159,238	6.4%
	03691 Nps Staffing/Support	11,860	0.6%	13,693	0.6%	-	-
	03812 Epa 106 Water Grant	14,475	0.8%	-	-	-	-
	03815 Dw Srf 09 Grant	-	-	22,822	0.9%	-	-
	03816 Doi Osm A&E Grant	-	-	22,822	0.9%	23,059	0.9%
	03818 Dw Srf 10 Grant	-	-	-	-	23,059	0.9%
	03952 2006 Implementation Grant	87,459	4.6%	57,596	2.3%	32,596	1.3%
06000	Total Proprietary Funds	-	-	-	-	-	-
	06509 Deq Indirects	-	-	-	-	-	-
Grand	Total	\$ 1,916,085	100.0%	\$ 2,460,454	100.0%	\$ 2,471,759	100.0%

The majority of the functions in the division are funded with non-budgeted proprietary funds, that are not appropriated through HB 2. The proprietary funding is based upon a negotiated indirect rate with the federal Environmental Protection Agency (EPA). The indirect rate is assessed against funding for all personal services, temporary services, and work-study projects and contract services within each division, and transferred to the Central Management Program to fund operating costs. A further discussion is included in the proprietary rate section.

Appropriated funds consist of:

- o General fund for support of the Board of Environmental Review and general operating costs
- o State special revenue, predominantly Montana Environmental Protection Act fees
- o Numerous small federal grants

Budget Summary by Category

The following summarizes the total budget by base, present law adjustments, and new proposals.

Budget Item	-----General Fund-----				-----Total Funds-----			
	Budget Fiscal 2010	Budget Fiscal 2011	Biennium Fiscal 10-11	Percent of Budget	Budget Fiscal 2010	Budget Fiscal 2011	Biennium Fiscal 10-11	Percent of Budget
Base Budget	373,992	373,992	747,984	85.47%	1,916,085	1,916,085	3,832,170	77.70%
Statewide PL Adjustments	45,429	46,142	91,571	10.46%	144,582	147,492	292,074	5.92%
Other PL Adjustments	17,047	18,566	35,613	4.07%	399,787	408,182	807,969	16.38%
New Proposals	0	0	0	0.00%	0	0	0	0.00%
Total Budget	\$436,468	\$438,700	\$875,168		\$2,460,454	\$2,471,759	\$4,932,213	

Present Law Adjustments

The "Present Law Adjustments" table shows the primary changes to the adjusted base budget proposed by the Governor. "Statewide Present Law" adjustments are standard categories of adjustments made to all agencies. Decisions on these items were applied globally to all agencies. The other numbered adjustments in the table correspond to the narrative descriptions.

Present Law Adjustments	-----Fiscal 2010-----				-----Fiscal 2011-----					
	FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds
Personal Services					180,440					183,181
Vacancy Savings					(36,552)					(36,663)
Inflation/Deflation					694					974
Total Statewide Present Law Adjustments					\$144,582					\$147,492
DP 1001 - Non Proprietary Operations Adjustments	0.00	17,047	199,475	183,265	399,787	0.00	18,566	203,433	186,183	408,182
Total Other Present Law Adjustments	0.00	\$17,047	\$199,475	\$183,265	\$399,787	0.00	\$18,566	\$203,433	\$186,183	\$408,182
Grand Total All Present Law Adjustments					\$544,369					\$555,674

Program Personal Services Narrative

The following information is provided so that the legislature can consider various personal services issues when examining the agency budget. It was submitted by the agency and edited for brevity by the LFD.

- **Market Rate** – Relative to the 2008 market survey, the current market rate is 94.22 percent, a reduction from the 2006 market survey of 106 percent
- **Vacancy** – The agency did not provide program specific information
- **Legislatively applied vacancy savings** – The agency did not provide program specific information
- **Pay Changes** –16 employees, 25 percent of the division, are eligible for full retirement with an estimated payout of \$188,231

DP 1001 - Non Proprietary Operations Adjustments - This operations adjustment request is for \$399,787 in FY 2010 and \$408,182 in FY 2011 in general, state special, and federal special revenue. In addition adjustments are requested for agency indirect cost rates, staffing costs related to vacant positions, and replacement of personal computers in accordance with standard replacement schedules over the course of the biennium.

LFD COMMENT	<p>The adjustments include:</p> <ul style="list-style-type: none"> o \$715 per year for the per diem associated with the Board of Environmental Review (general fund) o \$71,480 in FY 2010 and \$78,123 in FY 2011 for legal fees, staffing costs and indirects for the attorney pool (23 percent general fund, 43 percent state special revenue and 34 percent federal special revenue) o \$168,980 in FY 2010 and \$170,106 in FY 2011 for contracted services, computer equipment, staffing costs and indirects for Montana Environmental Protection and Environmental Rehabilitation and Response activities (state special revenue) o \$158,612 in FY 2010 and \$159,238 in FY 2011 for contract services and indirects for management of federal grant activities (federal special revenue)
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Proprietary Program Description

Agency Indirect Rate

Program Proposed Budget

The following summarizes the total executive budget proposal for this program by year.

Department of Environmental Quality					
Agency Indirects - Proposed Budget					
	Base	FY2010 Adjustments	FY2010 Total	FY2011 Adjustments	FY2011 Total
FTE	55.50	0.00	55.50	0.00	55.50
61000 Personal Services	3,240,091	489,227	3,729,318	500,269	3,740,360
62000 Operating Expenses	2,356,892	480,517	2,837,409	366,528	2,723,420
6300 Equipment	<u>12,673</u>	<u>0</u>	12,673	<u>0</u>	<u>12,673</u>
Total Costs	<u>\$5,609,656</u>	<u>\$969,744</u>	<u>\$6,579,400</u>	<u>\$866,797</u>	<u>\$6,476,453</u>

Program Description

The department has one proprietary fund, which is an internal service fund used to account for the department's indirect cost activity.

The customers of this program are all divisions and employees of the department. Use of these services is mandated by agency policies and procedures. There are no alternative sources for the Central Management Program as a whole. The department contracts for legal services whenever it is cost effective to do so, to obtain specific expertise for a case, or when legal jurisdiction of the case requires an attorney licensed in that state. The department contracts for information technology database development and for hosting of the department's enterprise database.

The centralized legal services unit has 3.00 FTE that are funded by the internal service fund, two attorneys and one paralegal. This staff provides the administration, management and planning for the legal services unit, and specific duties for department programs, including legislation, rule making, enforcement actions and contract review. The remainder of this unit is funded by direct charges to the programs and projects requiring the legal work.

Funding

The funding comes from the budgets of all other divisions. The sources are in proportion to that division's budget.

Agency Indirects - Estimated Funding			
Payment Funding	Base	FY 2010*	FY 2011*
General Fund	\$677,448	\$855,322	\$841,939
State Special Revenue	2,453,902	2,960,730	2,914,404
Federal Special Revenue	<u>2,268,592</u>	<u>2,763,348</u>	<u>2,720,110</u>
Total Payments	<u>\$5,399,942</u>	<u>\$6,579,400</u>	<u>\$6,476,453</u>
* estimated based on funding percentages			

Program Narrative

Revenues

Funding is collected from all non-proprietary sources expended within the department. The department anticipates negotiating an indirect cost rate with the U.S. Environmental Protection Agency (EPA) of approximately 24 percent on personal services and 4 percent on operating expenses in FY 2010 and FY 2011.

Expenses

The major cost drivers within this program are personal services costs and fixed costs. Additional costs for overtime are incurred when workload changes, such as upgrades to the state accounting system (SABHRS), a special legislative session, and increased monitoring and oversight of budgets due to revenue shortfalls. Fixed costs continue to be a significant cost increase to the proprietary fund. The cost of providing support services is directly related to the number of staff served and the number of contracts and payments processed. Non-typical and one-time expenses are backed out of the cost of providing services before calculating the indirect rate. Salaries are constant throughout the fiscal year, except during fiscal year end, executive budget preparation, and legislative session. Supplies are purchased on an as needed basis, except during peak times noted above.

2011 Biennium Report on Internal Services Funds				
	Actual 2008	Budgeted 2009	Projected 2010	Projected 2011
Beginning Working Capital Balance	\$900,759	\$367,541	\$195,257	\$997,183
Operating Expenses	5,775,499	5,753,729	6,750,118	6,647,273
Operating Revenues				
Revenue from Fees	3,273,141	3,170,563	4,297,825	4,319,223
Revenue from Federal Recovery	2,014,879	2,398,882	3,242,219	3,258,362
Other Revenues	<u>23,773</u>	<u>12,000</u>	<u>12,000</u>	<u>12,000</u>
Total Operating Revenues	<u>5,311,793</u>	<u>5,581,445</u>	<u>7,552,044</u>	<u>7,589,585</u>
Adjustments	(69,512)	0	0	0
Operating Gain (Loss)	(533,218)	(172,284)	801,926	942,312
Ending Working Capital Balance	<u>\$367,541</u>	<u>\$195,257</u>	<u>\$997,183</u>	<u>\$1,939,495</u>

Present Law Adjustments

The “Present Law Adjustments” table shows the primary changes to the adjusted base budget approved by the legislature. “Statewide Present Law” adjustments are standard categories of adjustments made to all agencies. Decisions on these items were applied globally to all agencies. The other numbered adjustments in the table correspond to the narrative descriptions.

	FY 2010		FY 2011	
	FTE	Costs	FTE	Costs
PL 000 Statewide Adjust.	0.00	\$792,491	0.00	\$691,352
PL 1003 Operations Adjustments	0.00	163,649	0.00	163,649
	0.00	\$956,140	0.00	\$855,001

DP 1004 Proprietary Operations Adjustment -. The operating adjustments requested are to pay for increases in non-state rent, and to replace personal computers over the course of the biennium and communications, travel and training budgets due to vacancies.

LFD COMMENT	<p>The adjustments can be attributed to the following units:</p> <ul style="list-style-type: none"> o \$4,900 each year for computers in the director’s office o \$3,264 each for computers and in-state travel for the personnel office o \$3,360 each year for computers and education in the legal services unit o \$121,482 each year for increased rents, education and computers for the fiscal bureau o \$30,643 each year for travel, communications, education and computers for the office of information technology
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New Proposals

	FY 2010		FY 2011	
	FTE	Costs	FTE	Costs
DP 6101 Fixed Costs WC	0.00	\$13,604	0.00	\$11,796

DP 6101 - Fixed Cost Workers Comp Management Program Allocation - The Workers’ Compensation Management program at the Department of Administration was funded by the 2007 Legislature with a one-time-only general fund appropriation. For the 2011 biennium and beyond, the executive proposes the program be funded via a fixed cost allocation. The allocation is based upon the average number of payroll warrants issued per pay period. Because the program was approved as an OTO for the current biennium, it must be presented as a new proposal for the next biennium. Therefore, the allocation cannot be included as part of the standard present law fixed cost process.

Proprietary Rates

For the 2011 biennium the following rates would generate revenue commensurate with costs as presented in the executive budget proposal. These rates are upper limits and will be negotiated with the U.S. Environmental Protection Agency.

Charge in Percentage	Actual 2008	Actual 2009	Proposed 2010	Proposed 2011
Personal Services	22.50	21.00	24.00	24.00
Operating Expenditures	3.00	4.00	4.00	4.00

Program Budget Comparison

The following table summarizes the total budget requested by the Governor for the agency by year, type of expenditure, and source of funding.

Program Budget Comparison								
Budget Item	Base Fiscal 2008	Approp. Fiscal 2009	Budget Fiscal 2010	Budget Fiscal 2011	Biennium Fiscal 08-09	Biennium Fiscal 10-11	Biennium Change	Biennium % Change
FTE	83.50	83.50	84.50	84.50	83.50	84.50	1.00	1.20%
Personal Services	4,852,495	5,182,638	5,902,348	5,926,940	10,035,133	11,829,288	1,794,155	17.88%
Operating Expenses	5,193,729	7,581,246	7,501,258	7,326,761	12,774,975	14,828,019	2,053,044	16.07%
Equipment & Intangible Assets	9,970	52,326	51,004	49,970	62,296	100,974	38,678	62.09%
Total Costs	\$10,056,194	\$12,816,210	\$13,454,610	\$13,303,671	\$22,872,404	\$26,758,281	\$3,885,877	16.99%
General Fund	2,873,851	2,954,048	3,019,170	3,024,607	5,827,899	6,043,777	215,878	3.70%
State Special	1,131,114	1,024,756	2,303,048	2,127,094	2,155,870	4,430,142	2,274,272	105.49%
Federal Special	6,051,229	8,837,406	8,132,392	8,151,970	14,888,635	16,284,362	1,395,727	9.37%
Total Funds	\$10,056,194	\$12,816,210	\$13,454,610	\$13,303,671	\$22,872,404	\$26,758,281	\$3,885,877	16.99%

Program Description

The Planning, Prevention, and Assistance Division consists of three bureaus: Technical and Financial Assistance; Water Quality Planning; and Air, Energy and Pollution Prevention. The division:

1. Finances construction and improvement of community drinking water and wastewater systems, and provides engineering review and technical assistance to Montana communities water infrastructure planners;
2. Assists small businesses in reducing emissions and complying with environmental regulations;
3. Monitors air and water quality conditions, assesses potential pollution problems, and aids industry to achieve cost effective compliance;
4. Assists communities to plan for energy, watershed, airshed, and solid and hazardous waste management;
5. Aids in development of water Total Maximum Daily Loads (TMDL);
6. Proposes rules and policy and develops environmental protection criteria;
7. Provides analysis to assess the cost effectiveness of environmental programs;
8. Finances energy saving retrofits of public buildings and renewable energy systems for homeowners and small businesses; and
9. Provides technical assistance and education to builders, homeowners and businesses on energy efficiency and renewable energy, indoor air quality, radon, recycling and solid waste reduction.

Program Highlights

Planning, Prevention & Assistance Major Budget Highlights
<ul style="list-style-type: none"> ◆ The proposed biennial budget is 17 percent higher than the 2009 biennial budget, primarily due to statewide present law and base budget adjustments ◆ The executive requests 1.00 FTE to assist in providing technical assistance to waste water treatment facilities
Major LFD Issues
<ul style="list-style-type: none"> ◆ The base adjustment of \$3.0 million over the biennium is not broken down by program ◆ The division submitted program goals without objectives

Program Narrative

2009 Biennium Monitored Goals and Objectives

The Legislative Finance Committee selected the following goal to monitor during the 2009 interim

- Provide technical and financial assistance, including grants to local air quality agencies, watershed groups, and conservation districts, to develop and implement air quality and watershed management plans that enhance air and water quality
 - Complete approximately 450 wastewater and public drinking water technical assistance efforts
 - Close 10-15 drinking water, wastewater, and non-point source state revolving fund loans
 - Complete approximately 100 source water assessments and water quality protection technical assistance efforts
 - Provide technical assistance to 450 small businesses on pollution prevention, pollution control, and environmental management
 - Complete assessments to determine support of beneficial uses on 165 stream segments in FY 2008 and on 180 segments in FY 2009
 - Complete 184 water quality restoration plans/TMDLs (total maximum daily loads) in FY 2008 and 194 in FY 2009
 - Compile and submit the biannual Water Quality Integrated Report for federal review in FY 2009

Success: The program was able to meet the objectives in FY 2008 in wastewater and public drinking water technical assistance efforts to close 31 drinking water, wastewater, and non-point source state revolving fund loans, complete 190 source water assessments, and provide technical assistance to 398 businesses.

Challenges: There were 115 TMDLs completed and submitted to the EPA in FY 2008. The program reports they are on track to meet FY 2009 TMDL targets of 170 TMDLs, lowered from a previous target of 194. The TMDL schedule needs to remain at pace to meet the terms of the consent decree.

2011 Biennium Major Goals

The agency is required by law to submit goals and measurable objectives as part of the budgeting process. The Legislative Fiscal Division recommends that the legislature adopt specific program goals and corresponding objectives for monitoring during the interim.

- Manage wastewater system construction and improvement projects funded through the State and Tribal Agreement Grant
- Assist consumers and small businesses to reduce energy use and costs through technical assistance and education.
- Assist local stakeholders with the implementation of Total Maximum Daily Loads (TMDLs).

LFD ISSUE	<p>The program submitted goals without corresponding objectives.</p> <p>The legislature is unable to formulate appropriations policy or make future determinations about success based on the goals provided by this program. For example, if the division is not able to assist consumers with reduction in energy costs, how is the program going to know that? Is the program successful because of the work with consumers or because they reduce energy consumption across the state? The legislature may wish discuss with the program appropriate goals and objectives to assure that program resources are appropriately aligned with agency objectives.</p>
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Funding

The following table shows program funding, by source, for the base year and for the 2011 biennium as recommended by the Governor.

Program Funding Table						
Plan.Prevent. & Assist.Div.						
Program Funding	Base FY 2008	% of Base FY 2008	Budget FY 2010	% of Budget FY 2010	Budget FY 2011	% of Budget FY 2011
01000 Total General Fund	\$ 2,873,851	28.6%	\$ 3,019,170	22.4%	\$ 3,024,607	22.7%
01100 General Fund	2,873,851	28.6%	3,019,170	22.4%	3,024,607	22.7%
02000 Total State Special Funds	1,131,114	11.2%	2,303,048	17.1%	2,127,094	16.0%
02070 Hazardous Waste-Cercla	88,908	0.9%	92,448	0.7%	92,445	0.7%
02157 Solid Waste Management Fee	129,308	1.3%	134,908	1.0%	134,913	1.0%
02174 Go Fy06 Spb Bond Proceeds	-	-	808,842	6.0%	612,749	4.6%
02201 Air Quality-Operating Fees	94,296	0.9%	122,948	0.9%	123,108	0.9%
02203 Arco	8,137	0.1%	8,132	0.1%	8,132	0.1%
02206 Agriculture Monitoring	4,890	0.0%	8,685	0.1%	8,685	0.1%
02223 Wastewater Srf Special Admin	408,853	4.1%	527,123	3.9%	530,436	4.0%
02278 Mpdcs Permit Program	68,230	0.7%	97,873	0.7%	97,954	0.7%
02316 Go94B/Ban 93D Admin	4,941	0.0%	12,459	0.1%	12,459	0.1%
02388 Misc. State Special Revenue	22,440	0.2%	23,848	0.2%	23,848	0.2%
02491 Drinking Water Spec Admin Cost	258,210	2.6%	258,242	1.9%	269,734	2.0%
02555 Alternative Energy Rev Loan	40,328	0.4%	65,046	0.5%	70,143	0.5%
02973 Univ System Benefits Program	2,573	0.0%	142,494	1.1%	142,488	1.1%
03000 Total Federal Special Funds	6,051,229	60.2%	8,132,392	60.4%	8,151,970	61.3%
03003 Tribal Air Quality Fund	1,486	0.0%	14,153	0.1%	14,153	0.1%
03007 Doe Special Projects	2,769	0.0%	133,090	1.0%	132,654	1.0%
03010 Nps 04 Projects	5,299	0.1%	-	-	-	-
03014 Dw Srf Ffy05 Grant	33,579	0.3%	-	-	-	-
03033 Energy/Fsd	12,303	0.1%	12,298	0.1%	12,298	0.1%
03070 106 Monitoring Initiative	110,680	1.1%	209,023	1.6%	209,014	1.6%
03091 106 National Lakes Survey	92,343	0.9%	97,941	0.7%	97,935	0.7%
03106 Nps 05 Projects	51,993	0.5%	-	-	-	-
03149 Wpc Srf Fy06 Grant	-	-	209,613	1.6%	147,010	1.1%
03161 Warner Amendment	3	0.0%	-	-	-	-
03190 Amoco Oil Overcharge	4	0.0%	-	-	-	-
03211 Exxon-Sepc	3,497	0.0%	-	-	-	-
03212 Stripper-Sepc	5,409	0.1%	-	-	-	-
03213 Stripper-Sbp	1,373	0.0%	-	-	-	-
03216 Exxon-Icp	294	0.0%	-	-	-	-
03217 Exxon Ees	44	0.0%	-	-	-	-
03218 Diamond Shamrock-Admin.	2,889	0.0%	69,601	0.5%	69,600	0.5%
03227 Fy06 Wetlands Grant	153,560	1.5%	437,832	3.3%	444,137	3.3%
03229 Fy07 Wetlands Grant	(6)	0.0%	-	-	-	-
03243 Dw Srf 06 Grant	85,650	0.9%	-	-	-	-
03245 Wastewater Treatment Grant	24,460	0.2%	5,383	0.0%	67,742	0.5%
03249 Nps Implementation Grant	349	0.0%	-	-	-	-
03262 Epa Ppg	1,732,954	17.2%	-	-	-	-
03289 Wastewater Operator Training	17,904	0.2%	17,899	0.1%	17,898	0.1%
03307 Fy08 Wetlands Grant #15	-	-	-	-	-	-
03311 Doe - Codes And Standards	14,505	0.1%	14,499	0.1%	14,499	0.1%
03312 Doe-Rebuild America	22,139	0.2%	22,130	0.2%	22,129	0.2%
03318 Mt School Lab Clean Up	15,450	0.2%	15,444	0.1%	15,443	0.1%
03364 Fy06 Nps 319 Projects Grant	40,074	0.4%	-	-	-	-
03433 Epa Ppg Fy10-11	-	-	1,904,540	14.2%	1,910,965	14.4%
03436 Nps 04 Staffing & Support	-	-	-	-	1,390,984	10.5%
03437 Sep Base 2004	318,333	3.2%	576,347	4.3%	576,550	4.3%
03449 Npdcs Epa Grant	1,138,150	11.3%	1,749,094	13.0%	1,749,002	13.1%
03459 Doe Competitive Special Proj	17,275	0.2%	17,269	0.1%	17,268	0.1%
03465 Doe Washington State Univ	10,700	0.1%	10,698	0.1%	10,697	0.1%
03608 Nutrient Criteria Pilot Project	254,203	2.5%	-	-	-	-
03676 Bureau Of Land Management	50,000	0.5%	49,970	0.4%	49,967	0.4%
03691 Nps Staffing/Support	1,116,445	11.1%	1,384,812	10.3%	-	-
03695 Srf St Tribal Rel Agrmt Grant	107,158	1.1%	298,121	2.2%	298,115	2.2%
03704 Doe - Mt Wind Powering	6,786	0.1%	6,783	0.1%	6,783	0.1%
03716 Doe - Omnibu	25,000	0.2%	24,990	0.2%	24,989	0.2%
03812 Epa 106 Water Grant	470,937	4.7%	-	-	-	-
03813 Dw Srf 08 Grant	-	-	745,687	5.5%	-	-
03814 Epa Water Quality 205J	100,000	1.0%	99,940	0.7%	99,933	0.8%
03815 Dw Srf 09 Grant	-	-	-	-	746,970	5.6%
03817 Emap	5,238	0.1%	5,235	0.0%	5,235	0.0%
Grand Total	\$ 10,056,194	100.0%	\$ 13,454,610	100.0%	\$ 13,303,671	100.0%

The division is funded with general fund and a variety of state special and federal revenue sources. The division's

primary state special revenue funds are the fees collected for air quality permits and the interest from the investments made in community drinking water projects. The largest portion of federal funds is provided through the Environmental Protection Agency (EPA) programs, including the performance partnership grant and funds for non-point source water projects under the federal Clean Water Act. General fund is utilized for the TMDL program and for matching of federal grants.

Budget Summary by Category

The following summarizes the total budget by base, present law adjustments, and new proposals.

Budget Item	-----General Fund-----				-----Total Funds-----			
	Budget Fiscal 2010	Budget Fiscal 2011	Biennium Fiscal 10-11	Percent of Budget	Budget Fiscal 2010	Budget Fiscal 2011	Biennium Fiscal 10-11	Percent of Budget
Base Budget	2,873,851	2,873,851	5,747,702	95.10%	10,056,194	10,056,194	20,112,388	75.16%
Statewide PL Adjustments	182,438	186,557	368,995	6.11%	997,781	1,021,795	2,019,576	7.55%
Other PL Adjustments	(37,119)	(35,801)	(72,920)	(1.21%)	1,492,896	1,511,683	3,004,579	11.23%
New Proposals	0	0	0	0.00%	907,739	713,999	1,621,738	6.06%
Total Budget	\$3,019,170	\$3,024,607	\$6,043,777		\$13,454,610	\$13,303,671	\$26,758,281	

Present Law Adjustments

The “Present Law Adjustments” table shows the primary changes to the adjusted base budget proposed by the Governor. “Statewide Present Law” adjustments are standard categories of adjustments made to all agencies. Decisions on these items were applied globally to all agencies. The other numbered adjustments in the table correspond to the narrative descriptions.

Present Law Adjustments	-----Fiscal 2010-----					-----Fiscal 2011-----				
	FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds
Personal Services					1,229,062					1,252,667
Vacancy Savings					(243,264)					(244,210)
Inflation/Deflation					11,983					13,338
Total Statewide Present Law Adjustments					\$997,781					\$1,021,795
DP 2005 - Planning Division Operations Adjustments	0.00	(37,119)	73,646	1,456,369	1,492,896	0.00	(35,801)	88,581	1,458,903	1,511,683
Total Other Present Law Adjustments	0.00	(\$37,119)	\$73,646	\$1,456,369	\$1,492,896	0.00	(\$35,801)	\$88,581	\$1,458,903	\$1,511,683
Grand Total All Present Law Adjustments					\$2,490,677					\$2,533,478

Program Personal Services Narrative

The following information is provided so that the legislature can consider various personal services issues when examining the agency budget. It was submitted by the agency and edited for brevity by the LFD.

- o **Market Rate** – Relative to the 2008 market survey, the current market rate is 89.8 percent, a reduction from the 2006 market survey of 105 percent
- o **Vacancy** – The agency did not provide program specific information
- o **Legislatively applied vacancy savings** – The agency did not provide program specific information
- o **Pay Changes** –Nine employees, 11 percent of the division, are eligible for full retirement with an estimated payout of \$116,907

DP 2005 - Planning Division Operations Adjustments - This operations adjustment is for \$1,492,896 in FY 2010 and \$1,511,683 in FY 2011 in general, state special, and federal special revenue. The operating adjustment is requested to adjust for the receipt of federal grants, and related vacancy costs such as unspent travel, lab analysis work, supplies, and indirect costs.

**LFD
ISSUE**

Proposal Lacks sufficient detail

This proposal represents base adjustments to the three bureaus: Technical and Financial Assistance, Water Quality Planning, and Energy and Pollution Prevention; and one unit, the Financial Management and Budgeting Unit. The detail of the decision package is provided in the figure. From this information it is not possible to determine what bureau or unit is receiving what authority and for what purpose. The package also includes a request to switch general fund for a state special or federal special revenue source. However, the specific source is undeterminable.

The decision package, as written, provides a lump sum adjustment to the division to allocate as they determine necessary. It does not allow for the legislature to discuss with the agency the plan to implement the adjustment or why the adjustments are necessary. The LFD staff requested this information and the agency did not comply.

The legislature may wish to require that the agency segregate this base adjustment by bureau and work unit prior to taking any action on the package.

Summary of Expenditures and Funding for DP 2005			
Planning, Prevention and Assistance Division Base Budget Adjustment			
Category	FY 2010	FY 2011	Biennial
Expenditures			
62102 Consult & Prof Services	\$250,000	\$250,000	\$500,000
62106 Laboratory Testing	135,000	145,000	280,000
62136 It Consult & Prof Services	25,000	25,000	50,000
62165 Temporary Services	12,000	14,000	26,000
62169 Contracts With Non-Profits	426,561	432,241	858,802
62191 Printing/Other Provider	13,000	13,000	26,000
62236 Office Supplies/Central Stores	6,300	6,300	12,600
62241 Office Sup/Minor Equip-Non state	6,235	6,235	12,470
62245 Minor Equip - Comp Hardware	10,000	10,000	20,000
62249 Minor Software.	4,000	400	4,400
62370 Telephone Equip Chrg/D Of A	6,780	6,780	13,560
62385 Long Distance Chrg/D Of A	6,000	6,000	12,000
62401 In-State Personal Car Mileage	15,000	15,000	30,000
62404 In-State State Motor Pool	10,000	10,000	20,000
62407 In-State Meals	12,000	12,000	24,000
62408 In-State Lodging	20,959	20,959	41,918
62410 In-State Meals Overnight	1,000	1,000	2,000
62412 Out-Of-State Commercial Trans	10,000	10,000	20,000
62418 Out-Of-State Lodging	3,000	3,000	6,000
62809 Education/Training Costs	10,000	10,000	20,000
62817 Meetings/Conference Costs	8,000	8,000	16,000
62827O Deq Indirects - Operating	93,054	93,130	186,184
62827P Deq Indirects - Personal Serv	367,973	373,638	741,611
63100 Equipment	41,034	40,000	81,034
Total Expenditures	<u>\$1,492,896</u>	<u>\$1,511,683</u>	<u>\$2,504,579</u>
Funding			
01100 General Fund	(\$37,119)	(\$35,801)	(\$72,920)
02070 Hazardous Waste-Cercla	980	980	1,960
02157 Solid Waste Management Fee	2,984	2,994	5,978
02201 Air Quality-Operating Fees	2,614	2,778	5,392
02206 Agriculture Monitoring	1,987	1,987	3,974
02223 Wastewater Srf Special Admin	12,188	13,161	25,349
02278 Mpdes Permit Program	2,781	2,868	5,649
02316 Go94B/Ban 93D Admin	3,693	3,693	7,386
02388 Misc. State Special Revenue	1,419	1,420	2,839
02491 Drinking Water Spec Admin Cost	0	11,500	11,500
02555 Alternative Energy Rev Loan	40,000	42,200	82,200
02973 Univ System Benefits Program	5,000	5,000	10,000
03003 Tribal Air Quality Fund	14,153	14,153	28,306
03007 Doe Special Projects	130,322	129,886	260,208
03070 106 Monitoring Initiative	49,220	49,220	98,440
03149 Wpc Srf Fy06 Grant	62,598	0	62,598
03218 Diamond Shamrock-Admin.	56,467	56,467	112,934
03227 Fy06 Wetlands Grant	239,000	239,000	478,000
03245 Wastewater Treatment Grant	0	62,359	62,359
03433 Epa Ppg Fy10-11	115,498	116,480	231,978
03436 Nps 04 Staffing & Support	0	278,882	278,882
03437 Sep Base 2004	14,719	14,945	29,664
03449 Npdes Epa Grant	250,000	250,000	500,000
03691 Nps Staffing/Support	278,182	0	278,182
03695 Srf St Tribal Rel Agrmt Grant	95,511	95,511	191,022
03813 Dw Srf 08 Grant	150,699	0	150,699
03815 Dw Srf 09 Grant	0	152,000	152,000
Total Funding	<u>\$1,492,896</u>	<u>\$1,511,683</u>	<u>\$3,004,579</u>

New Proposals

Program	-----Fiscal 2010-----					-----Fiscal 2011-----				
	FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds
DP 2004 - Technical Assistance for Waste Water Treatment Sys										
20	1.00	0	98,897	0	98,897	1.00	0	101,250	0	101,250
DP 2051 - State Buildings Energy Conservation Program - BIEN (Requires Legislation)										
20	0.00	0	808,842	0	808,842	0.00	0	612,749	0	612,749
Total	1.00	\$0	\$907,739	\$0	\$907,739	1.00	\$0	\$713,999	\$0	\$713,999

DP 2004 - Technical Assistance for Waste Water Treatment Sys - The executive requests 1.00 FTE and \$98,897 in FY 2010 and \$101,250 in FY 2011 of state special revenue to provide on-site technical assistance and classroom training to help individuals, communities, and subdivisions to reduce pollution from wastewater treatment facilities.

LFD COMMENT	The funding is from the administration portion of the wastewater revolving fund.
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DP 2051 - State Buildings Energy Conservation Program - BIEN (Requires Legislation) - The executive requests \$808,842 for FY 2010 and \$612,749 for FY 2011 in state special revenue to operate the State Buildings Energy Conservation Program. This would provide for private contractors to analyze energy efficiency in state facilities and establish projects to reduce energy and water consumption.

LFD ISSUE	<p>Required Legislation Canceled</p> <p>This decision package required passage and approval of legislation to establish a revolving loan account and appropriate funds to that account as a long-term funding mechanism for the State Buildings Energy Conservation Program. The draft of the proposed legislation has been canceled. As a consequence, there is not a need for the legislature to take action on this package.</p>
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Program Budget Comparison

The following table summarizes the total budget requested by the Governor for the agency by year, type of expenditure, and source of funding.

Program Budget Comparison								
Budget Item	Base Fiscal 2008	Approp. Fiscal 2009	Budget Fiscal 2010	Budget Fiscal 2011	Biennium Fiscal 08-09	Biennium Fiscal 10-11	Biennium Change	Biennium % Change
FTE	15.00	15.00	15.00	15.00	15.00	15.00	0.00	0.00%
Personal Services	873,315	912,383	1,032,647	1,035,291	1,785,698	2,067,938	282,240	15.81%
Operating Expenses	309,306	322,587	408,750	418,488	631,893	827,238	195,345	30.91%
Total Costs	\$1,182,621	\$1,234,970	\$1,441,397	\$1,453,779	\$2,417,591	\$2,895,176	\$477,585	19.75%
General Fund	520,386	530,452	619,511	624,836	1,050,838	1,244,347	193,509	18.41%
State Special	348,850	371,162	498,581	502,861	720,012	1,001,442	281,430	39.09%
Federal Special	313,385	333,356	323,305	326,082	646,741	649,387	2,646	0.41%
Total Funds	\$1,182,621	\$1,234,970	\$1,441,397	\$1,453,779	\$2,417,591	\$2,895,176	\$477,585	19.75%

Program Description

The Enforcement Division is responsible for formal enforcement of the public health and environmental protection laws and rules administered by the department. Division staff works with department attorneys and regulatory programs to draft administrative orders, calculate penalties, negotiate settlements, and monitor compliance with orders issued by the department. The division also manages a complaint clearinghouse that responds to and tracks citizen complaints and reports of spills or releases of materials.

Program Highlights

Enforcement Division Major Program Highlights	
◆	The proposed biennial budget is 20 percent higher than the 2009 biennial budget, primarily due to statewide present law adjustments
◆	The executive requests a base adjustment for general program operations
Major LFD Issues	
◆	Objectives to the submitted goals could be improved by adding in baseline and target information

Program Narrative

2009 Biennium Monitored Goals and Objectives

The Legislative Finance Committee did not select a goal to monitor during the 2009 interim

2011 Biennium Major Goals

The agency is required by law to submit goals and measurable objectives as part of the budgeting process. The Legislative Fiscal Division recommends that the legislature adopt specific program goals and corresponding objectives for monitoring during the interim.

- Ensure that the public and the regulated community maintain compliance with Montana laws and regulations through effective enforcement

- Investigate spills and citizen complaints that allege a violation of laws and regulations administered by DEQ to determine if a violation has occurred
- Respond to citizen complaints and spill reports within 30 days of receipt and resolve within 90 days
- Implement timely, consistent, and appropriate enforcement for laws and regulations administered by the department
- Issue administrative orders or file judicial complaints within 120 days of an approved enforcement request
- Manage enforcement cases and monitor compliance with department orders

**LFD
COMMENT**

The objectives do a good job at describing what needs to be accomplished by the bureau. The time portion of a few of the objectives needs to be established in order to determine success. Since this unit is responsible for addressing consumer complaints and filing orders, the related data would be an indicator of the amount of resources necessary to continue to do an adequate job versus a superb job.

Funding

The following table shows program funding, by source, for the base year and for the 2011 biennium as recommended by the Governor.

Program Funding	Base FY 2008	% of Base FY 2008	Budget FY 2010	% of Budget FY 2010	Budget FY 2011	% of Budget FY 2011
01000 Total General Fund	\$ 520,386	44.0%	\$ 619,511	43.0%	\$ 624,836	43.0%
01100 General Fund	520,386	44.0%	619,511	43.0%	624,836	43.0%
02000 Total State Special Funds	348,850	29.5%	498,581	34.6%	502,861	34.6%
02075 Ust Leak Prevention Program	53,815	4.6%	43,242	3.0%	43,613	3.0%
02201 Air Quality-Operating Fees	48,902	4.1%	144,140	10.0%	145,379	10.0%
02202 Asbestos Control	36,093	3.1%	50,449	3.5%	50,882	3.5%
02204 Public Drinking Water	107,211	9.1%	115,312	8.0%	116,302	8.0%
02278 Mpdcs Permit Program	40,106	3.4%	39,639	2.8%	39,978	2.7%
02418 Subdivision Plat Review	31,753	2.7%	43,242	3.0%	43,613	3.0%
02576 Natural Resources Operations Ssr Fu	4,215	0.4%	5,189	0.4%	5,233	0.4%
02845 Junk Vehicle Disposal	26,755	2.3%	57,368	4.0%	57,861	4.0%
03000 Total Federal Special Funds	313,385	26.5%	323,305	22.4%	326,082	22.4%
03067 Dsl Federal Reclamation Grant	10,452	0.9%	-	-	-	-
03228 L.U.S.T./Trust	34,371	2.9%	30,557	2.1%	30,820	2.1%
03262 Epa Ppg	219,144	18.5%	-	-	-	-
03433 Epa Ppg Fy10-11	-	-	223,849	15.5%	225,772	15.5%
03436 Nps 04 Staffing & Support	-	-	-	-	56,697	3.9%
03691 Nps Staffing/Support	49,418	4.2%	56,215	3.9%	-	-
03816 Doi Osm A&E Grant	-	-	12,684	0.9%	12,793	0.9%
Grand Total	\$ 1,182,621	100.0%	\$ 1,441,397	100.0%	\$ 1,453,779	100.0%

The division is funded with general fund and a variety of state special and federal revenue sources. The division's primary state special revenue funds are the fees collected for air, asbestos control, and discharge permits, as well as subdivision review fees. The largest percentage of federal funds is provided through the Environmental Protection Agency (EPA) programs, predominantly the performance partnership grant.

Budget Summary by Category

The following summarizes the total budget by base, present law adjustments, and new proposals.

Budget Item	-----General Fund-----				-----Total Funds-----			
	Budget Fiscal 2010	Budget Fiscal 2011	Biennium Fiscal 10-11	Percent of Budget	Budget Fiscal 2010	Budget Fiscal 2011	Biennium Fiscal 10-11	Percent of Budget
Base Budget	520,386	520,386	1,040,772	83.64%	1,182,621	1,182,621	2,365,242	81.70%
Statewide PL Adjustments	57,700	58,981	116,681	9.38%	162,391	165,363	327,754	11.32%
Other PL Adjustments	41,425	45,469	86,894	6.98%	96,385	105,795	202,180	6.98%
New Proposals	0	0	0	0.00%	0	0	0	0.00%
Total Budget	\$619,511	\$624,836	\$1,244,347		\$1,441,397	\$1,453,779	\$2,895,176	

Present Law Adjustments

The "Present Law Adjustments" table shows the primary changes to the adjusted base budget proposed by the Governor. "Statewide Present Law" adjustments are standard categories of adjustments made to all agencies. Decisions on these items were applied globally to all agencies. The other numbered adjustments in the table correspond to the narrative descriptions.

Present Law Adjustments	-----Fiscal 2010-----					-----Fiscal 2011-----				
	FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds
Personal Services					202,357					205,112
Vacancy Savings					(43,025)					(43,136)
Inflation/Deflation					3,059					3,387
Total Statewide Present Law Adjustments					\$162,391					\$165,363
DP 3002 - Enforcement Operations Adjustments	0.00	41,425	33,341	21,619	96,385	0.00	45,469	36,596	23,730	105,795
Total Other Present Law Adjustments	0.00	\$41,425	\$33,341	\$21,619	\$96,385	0.00	\$45,469	\$36,596	\$23,730	\$105,795
Grand Total All Present Law Adjustments					\$258,776					\$271,158

Program Personal Services Narrative

The following information is provided so that the legislature can consider various personal services issues when examining the agency budget. It was submitted by the agency and edited for brevity by the LFD.

- **Market Rate** – Relative to the 2008 market survey, the current market rate is 87.9 percent, a reduction from the 2006 market survey of 108 percent
- **Vacancy** – The agency did not provide program specific information
- **Legislatively applied vacancy savings** – The agency did not provide program specific information
- **Pay Changes** – Two employees, 13 percent of the division, are eligible for full retirement with an estimated payout of \$42,666

DP 3002 - Enforcement Operations Adjustments - The executive requests an operations adjustment for \$96,385 in FY 2010 and \$105,795 in FY 2011 in general fund, state, and federal special revenue. Adjustments are requested to restore FY 2008 authorized amounts for contracted services (lab analysis, paper service, temp services, publications and graphics), central stores, field equipment, postage and mailing, in-state travel, education and training, and indirect charges.

**LFD
COMMENT**

The allocation of the decision package is provided below.

Summary of Expenditures and Funding for DP 3002			
Enforcement Division Base Budget Adjustment			
Category	FY 2010	FY 2011	Biennial
<u>Expenditures</u>			
62106 Laboratory Testing	8,024	8,024	16,048
62127 Other Legal Costs	589	589	1,178
62165 Temporary Services	896	896	1,792
62190 Printing/Publications & Graphics	911	911	1,822
62236 Office Supplies/Central Stores	1,422	1,422	2,844
62240 Inspection - Field Equipment/Supplies	3,615	3,615	7,230
62304 Postage & Mailing	3,369	3,369	6,738
62401 In-State Personal Car Mileage	128	128	256
62407 In-State Meals	396	396	792
62408 In-State Lodging	1,271	1,271	2,542
62410 In-State Meals Overnight	462	462	924
62809 Education/Training Costs	1,479	1,479	2,958
62827O Deq Indirects - Operating	1,974	1,974	3,948
62827P Deq Indirects - Personal Serv	<u>71,849</u>	<u>81,259</u>	<u>153,108</u>
Total Expenditures	<u>\$96,385</u>	<u>\$105,795</u>	<u>\$202,180</u>
<u>Funding</u>			
01100 General Fund	\$41,425	\$45,469	\$86,894
02075 UST Leak Prevention Program	2,892	3,174	6,066
02201 Air Quality-Operating Fees	9,639	10,580	20,219
02202 Asbestos Control	3,373	3,703	7,076
02204 Public Drinking Water	7,711	8,464	16,175
02278 MPDES Permit Progma	2,651	2,909	5,560
02418 Subdivision Plat Review	2,892	3,174	6,066
02576 Natural Resources	347	381	728
02845 Junk Vehicle Disposal	3,836	4,211	8,047
03228 LUST Trust	2,043	2,243	4,286
03433 Epa Ppg Fy10-11	14,969	16,430	31,399
03436 Nps 04 Staffing & Support	0	4,126	4,126
03691 Nps Staffing/Support	3,759	0	3,759
03816 DOI - Office of Surface Mining - A& E	848	931	1,779
Total Funding	<u>\$96,385</u>	<u>\$105,795</u>	<u>\$202,180</u>

Program Budget Comparison

The following table summarizes the total budget requested by the Governor for the agency by year, type of expenditure, and source of funding.

Program Budget Comparison								
Budget Item	Base Fiscal 2008	Approp. Fiscal 2009	Budget Fiscal 2010	Budget Fiscal 2011	Biennium Fiscal 08-09	Biennium Fiscal 10-11	Biennium Change	Biennium % Change
FTE	62.76	62.76	62.76	62.76	62.76	62.76	0.00	0.00%
Personal Services	3,339,092	3,753,584	4,164,819	4,177,801	7,092,676	8,342,620	1,249,944	17.62%
Operating Expenses	5,579,929	8,617,870	16,404,479	15,435,498	14,197,799	31,839,977	17,642,178	124.26%
Equipment & Intangible Assets	0	0	0	0	0	0	0	n/a
Capital Outlay	441,304	0	141,304	141,304	441,304	282,608	(158,696)	(35.96%)
Grants	0	20,000	0	0	20,000	0	(20,000)	(100.00%)
Benefits & Claims	0	0	0	0	0	0	0	n/a
Transfers	0	0	0	0	0	0	0	n/a
Debt Service	0	1,807	0	0	1,807	0	(1,807)	(100.00%)
Total Costs	\$9,360,325	\$12,393,261	\$20,710,602	\$19,754,603	\$21,753,586	\$40,465,205	\$18,711,619	86.02%
General Fund	0	0	0	0	0	0	0	n/a
State Special	2,473,360	3,300,952	13,145,259	12,155,392	5,774,312	25,300,651	19,526,339	338.16%
Federal Special	6,886,965	9,092,309	7,565,343	7,599,211	15,979,274	15,164,554	(814,720)	(5.10%)
Total Funds	\$9,360,325	\$12,393,261	\$20,710,602	\$19,754,603	\$21,753,586	\$40,465,205	\$18,711,619	86.02%

Program Description

The Remediation Division protects human health and the environment by preventing exposure to hazardous substances that have been released to soil, sediment, surface water, or groundwater. The division also ensures compliance with state and federal regulations. The division's responsibilities include: oversight, investigation, and cleanup activities at state and federal Superfund sites, and voluntary cleanup activities; reclamation of abandoned mine lands; implementation of corrective actions at sites with leaking underground storage tanks; and oversight of groundwater remediation at sites where improper placement of wastes has caused groundwater contamination. This division is divided into two bureaus:

1. The Hazardous Waste Site Cleanup Bureau (HWSCB) oversees or conducts the investigation and cleanup of sites contaminated by chemical spills, hazardous substances, and petroleum released by industrial and commercial operations other than mining. The bureau works with the Petroleum Tank Release Compensation Board for eligibility and reimbursement determinations and provides grants to local governments for compliance assistance.
2. The Mine Waste Cleanup Bureau (MWCB) is responsible for administering and overseeing remedial actions at historical mine sites, abandoned mines, ore-transport, and processing facilities. It also oversees the provisions of the federal Comprehensive Environmental Response and Liability Act (CERCLA or federal Superfund Program).

Program Highlights

Remediation Division Major Program Highlights
<ul style="list-style-type: none"> ◆ The proposed biennial budget is 86 percent higher than the 2009 biennial budget, primarily due to a \$18.6 million increase in authority for the state superfund program ◆ The executive is requesting \$13.1 million in one-time-only authority for: <ul style="list-style-type: none"> ● \$9.0 million for remediation of the Reliance Refinery site ● \$2.4 million for oversight to the cleanup of the Kalispell Pole & Timber, Reliance Refinery, and Yale Oil (KRY) combined site

<ul style="list-style-type: none"> • \$750,000 for closure activities related to the Basin Creek project • \$728,000 to accelerate remediation at various state superfund sites • \$260,000 for closure activities related to the Beal Mountain Site ◆ Base adjustments total \$929,000 primarily for contract services and travel costs
Major LFD Issues
<ul style="list-style-type: none"> ◆ The program submitted goals without any corresponding objectives for which to measure progress toward the goal ◆ The requests for site specific authority should be accompanied with information regarding the stage of the process ◆ The long term costs of managing the KRY site are not addressed

Program Narrative

2009 Biennium Monitored Goals and Objectives

The Legislative Finance Committee selected the following goal to monitor during the 2009 interim

- Conduct remedial action activities at the Kalispell Pole and Timber / Reliance Refinery / Yale Oil state superfund sites.
 - Complete proposed plan, solicit public comment, and complete record of decision with response to comments for the above facilities.

Successes: The record of decision was released in June 2008.

- To conduct the remedial investigations needed to fill previously identified data gaps so that the nature and extent of the contamination at the facility can be determined.
 - At the Upper Blackfoot Mining Complex, progress will be measured by the completion of the remedial investigation work plan, fieldwork, and remedial investigation report.
 - Contract task orders include specific reporting and financial requirements that will be overseen by department staff.
 - Department staff will also review draft contractor work products and provide necessary additional guidance for completion.

Successes: The department entered into a contract with Tetra Tech on August 7, 2007 for the completion of the remedial investigation.

LFD ISSUE	An assumption can be made that the remedial investigation was completed, as the executive is seeking funding for the next step in the process. See DP 4011.
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2011 Biennium Major Goals

The agency is required by law to submit goals and measurable objectives as part of the budgeting process. The Legislative Fiscal Division recommends that the legislature adopt specific program goals and corresponding objectives for monitoring during the interim.

- Prioritize sites for cleanup actions by conducting initial sampling, field studies, or research and by evaluating potential impacts to public health and safety and the environment
- Recover costs for investigation and cleanup at sites with viable responsible parties by maintaining detailed records of work completed and costs incurred for that work, and billing the responsible parties for those costs
- Provide for public participation in the evaluation and selection of cleanup alternatives for sites with hazardous or deleterious substance releases by holding public meetings and soliciting comments on remedial plans and reports

**LFD
ISSUE**

The program submitted goals without corresponding objectives.

The legislature is unable to formulate appropriations policy or make future determinations about success based on the goals provided by this program. For example, if the division is not successful in recovering costs, future remediation work may be at risk as some programs, such as the state Superfund, are revolving funds and require continued receivables in order to maintain funding. If this occurs the legislature may not be able to provide the adequate remedies for the protection of the environment as required by the state constitution. The legislature may wish to discuss with the program appropriate goals and objectives to assure that program resources are appropriately aligned with agency objectives.

Funding

The following table shows program funding, by source, for the base year and for the 2011 biennium as recommended by the Governor.

Program Funding	Base FY 2008	% of Base FY 2008	Budget FY 2010	% of Budget FY 2010	Budget FY 2011	% of Budget FY 2011
01000 Total General Fund	\$ -	-	\$ -	-	\$ -	-
01100 General Fund	-	-	-	-	-	-
02000 Total State Special Funds	2,473,360	26.4%	13,145,259	63.5%	12,155,392	61.5%
02058 Petroleum Storage Tank Cleanup	1,095,158	11.7%	1,378,801	6.7%	1,388,258	7.0%
02070 Hazardous Waste-Cercla	18,325	0.2%	21,675	0.1%	21,788	0.1%
02162 Environmental Quality Protecti	1,013,963	10.8%	10,316,299	49.8%	10,325,006	52.3%
02206 Agriculture Monitoring	5,251	0.1%	27,192	0.1%	27,237	0.1%
02438 Pegasus - Beal Mountain	1	0.0%	260,000	1.3%	-	-
02472 Orphan Share Fund	12,003	0.1%	14,618	0.1%	14,721	0.1%
02520 Fy06 Cercla Bond Proceeds	139,183	1.5%	902,985	4.4%	153,407	0.8%
02565 Lust Cost Recovery	130,007	1.4%	158,331	0.8%	159,438	0.8%
02577 Natural Resources Projects Ssr Fund	-	-	-	-	-	-
02676 Reclamation - Osm Trust Fund	-	-	-	-	-	-
02940 Pegasus - Basin	59,469	0.6%	65,358	0.3%	65,537	0.3%
03000 Total Federal Special Funds	6,886,965	73.6%	7,565,343	36.5%	7,599,211	38.5%
03036 Deq Federal Aml Grant	-	-	3,780,821	18.3%	3,795,302	19.2%
03158 Blm Interagency Agreement	21,173	0.2%	23,273	0.1%	23,338	0.1%
03221 Osm Coal Outcrop Fires	-	-	-	-	-	-
03228 L.U.S.T./Trust	575,813	6.2%	605,003	2.9%	609,953	3.1%
03257 Superfund Multi-Site	-	-	-	-	-	-
03259 Superfund Multi Site	1,270,236	13.6%	1,425,511	6.9%	1,429,643	7.2%
03260 Lust Special Project	-	-	-	-	-	-
03261 Ronan Lust Special Project	-	-	-	-	-	-
03262 Epa Ppg	164,700	1.8%	-	-	-	-
03433 Epa Ppg Fy10-11	-	-	124,901	0.6%	125,192	0.6%
03438 Brownsfield State Response	897,873	9.6%	882,957	4.3%	890,640	4.5%
03447 Deq-Federal Aml03 Grant	3,382,338	36.1%	-	-	-	-
03463 Mine Lease/Reclamation	415	0.0%	455	0.0%	456	0.0%
03468 Core Cooperative Grant-Fy05	164,905	1.8%	195,060	0.9%	196,084	1.0%
03663 Aml Special Projects	-	-	72,800	0.4%	72,800	0.4%
03721 Libby Asbestos/Troy	409,512	4.4%	454,562	2.2%	455,803	2.3%
Grand Total	<u>\$ 9,360,325</u>	100.0%	<u>\$ 20,710,602</u>	100.0%	<u>\$ 19,754,603</u>	100.0%

The Remediation Division is funded with a mix of state special and federal revenue sources. State special revenue comes from the \$0.0075 gas tax for petroleum tank cleanup, registration fees for underground storage tanks, and interest proceeds from the Resource Indemnity Trust deposited to the environmental quality protection, orphan share, and hazardous waste funds. Federal special revenue is derived from the federal Environmental Protection Agency (EPA) for Superfund oversight and various other activities, and the federal Office of Surface Mining for the Abandoned Mine Lands (AML) program.

Program Issue

Remediation Process

The process of remediating a site under state or federal cleanup guidelines requires many steps. An example is the state superfund or Environmental Cleanup Responsibility Act (CECRA) process. A remedial investigation is performed to determine the full nature and extent of the contamination. A risk assessment evaluates the threats posed to human health and the environment and allows for the development of site-specific cleanup levels. Then, a feasibility study evaluates the various options for cleaning up the site.

Following those actions a proposed plan to outline the preferred cleanup option for the site is developed. The public has the opportunity to comment on the preferred cleanup option. The determination of the final cleanup for a site is documented in its record of decision after the public comment period has ended.

The department and the responsible parties negotiate a consent decree to implement the cleanup. Engineering design documents are completed and the project is bid. Cleanup continues until contamination no longer poses an unacceptable risk to human health and the environment and compliance with all environmental laws is achieved.

The costs of cleanup are determined at each part of the process. As the project enters the bid stage, the on-the-ground costs of cleanup begins to be known. However, as actual dirt moving begins, the costs can change, as sometimes the on-the-ground situation is far worse or much better than anticipated. This is demonstrated in DP 4011.

The executive is seeking one time authority of \$13.1 million and a base adjustment of \$3.0 million for various cleanup activities. In contemplating the individual requests, the legislature may wish to inquire where a project is currently at in the remediation process, what accomplishments are expected, and the future costs to complete the clean up. Without this information the legislature would be unable to determine progress to site closure.

Budget Summary by Category

The following summarizes the total budget by base, present law adjustments, and new proposals.

Budget Item	-----General Fund-----				-----Total Funds-----			
	Budget Fiscal 2010	Budget Fiscal 2011	Biennium Fiscal 10-11	Percent of Budget	Budget Fiscal 2010	Budget Fiscal 2011	Biennium Fiscal 10-11	Percent of Budget
Base Budget	0	0	0	0.00%	9,360,325	9,360,325	18,720,650	46.26%
Statewide PL Adjustments	0	0	0	0.00%	814,660	829,057	1,643,717	4.06%
Other PL Adjustments	0	0	0	0.00%	6,020,803	5,047,714	11,068,517	27.35%
New Proposals	0	0	0	0.00%	4,514,814	4,517,507	9,032,321	22.32%
Total Budget	\$0	\$0	\$0		\$20,710,602	\$19,754,603	\$40,465,205	

Present Law Adjustments

The “Present Law Adjustments” table shows the primary changes to the adjusted base budget proposed by the Governor. “Statewide Present Law” adjustments are standard categories of adjustments made to all agencies. Decisions on these items were applied globally to all agencies. The other numbered adjustments in the table correspond to the narrative descriptions.

	-----Fiscal 2010-----					-----Fiscal 2011-----				
	FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds
Present Law Adjustments										
Personal Services					975,034					988,564
Vacancy Savings					(172,561)					(173,109)
Inflation/Deflation					12,187					13,602
Total Statewide Present Law Adjustments					\$814,660					\$829,057
DP 4002 - Remediation Operations Adjustments	0.00	0	277,717	169,086	446,803	0.00	0	292,349	191,365	483,714
DP 4005 - Basin Creek Mine Closure Plan BIEN - OTO	0.00	0	750,000	0	750,000	0.00	0	0	0	0
DP 4006 - Beal Mountain Mine Closure BIEN-OTO	0.00	0	260,000	0	260,000	0.00	0	0	0	0
DP 4009 - KRY Remediation Oversight - BIEN - RST - OTO	0.00	0	1,200,000	0	1,200,000	0.00	0	1,200,000	0	1,200,000
DP 4011 - Accelerated Remediation CECRA Sites BIEN/RST/OTO	0.00	0	364,000	0	364,000	0.00	0	364,000	0	364,000
DP 4012 - CECRA Accelerated Remediation Base Adjustment	0.00	0	3,000,000	0	3,000,000	0.00	0	3,000,000	0	3,000,000
Total Other Present Law Adjustments	0.00	\$0	\$5,851,717	\$169,086	\$6,020,803	0.00	\$0	\$4,856,349	\$191,365	\$5,047,714
Grand Total All Present Law Adjustments					\$6,835,463					\$5,876,771

Program Personal Services Narrative

The following information is provided so that the legislature can consider various personal services issues when examining the agency budget. It was submitted by the agency and edited for brevity by the LFD.

- **Market Rate** – Relative to the 2008 market survey, the current market rate is 89.84 percent, a reduction from the 2006 market survey of 109 percent
- **Vacancy** – The agency did not provide program specific information
- **Legislatively applied vacancy savings** – The agency did not provide program specific information
- **Pay Changes** – Eight employees, 13 percent of the division, are eligible for full retirement with an estimated payout of \$83,544

DP 4002 - Remediation Operations Adjustments - The executive requests \$446,803 in FY 2010 and \$483,714 in FY 2011 of state and federal special revenue authority. This is a net adjustment of decreased contract services and increased travel, training, and communication expenditures due to vacancies, use of student interns, and indirect cost adjustments.

LFD ISSUE	Multi-Unit Adjustment
	This operating adjustment applies to three work units. The following table breaks the adjustment down by those units. While the adjustment was broken down by unit, the reasons for the adjustment were not provided. The legislature may wish to require that the agency segregate this base adjustment by unit and provide reasons for the adjustment prior to taking action on the package.

Summary of Expenditures and Funding for DP 2005			
Remdiation Division Base Budget Adjustment			
Category	FY 2010	FY 2011	Biennial
Adminstration & Finance Section			
<u>Expenditure</u>			
61133 Termination Pay - Sick Leave	\$7,751	\$7,751	\$15,502
61134 Termination Pay - Vacation	15,503	15,503	31,006
62165 Temporary Services	2,717	2,717	5,434
62245 Minor Equip - Comp Hardware	11,725	11,725	23,450
62370 Telephone Equip Chrg/D Of A	1,007	1,007	2,014
62404 In-State State Motor Pool	425	425	850
62809 Education/Training Costs	47	47	94
62827O Deq Indirects - Operating	808	808	1,616
62827P Deq Indirects - Personal Serv	58,859	64,274	123,133
Total Expenditures	<u>\$98,842</u>	<u>\$104,257</u>	<u>\$203,099</u>
<u>Funding</u>			
02058 Petroleum Storage Tank Cleanup	\$21,740	\$22,783	\$44,523
02070 Hazardous Waste-Cercla	1,281	1,354	2,635
02162 Environmental Quality Protecti	14,384	15,200	29,584
03036 Deq Federal Aml Grant	34,370	36,319	70,689
03228 L.U.S.T./Trust	6,798	7,183	13,981
03433 Epa Ppg Fy10-11	3,216	3,398	6,614
03438 Brownsfield State Response	5,525	5,838	11,363
03468 Core Cooperative Grant-Fy05	<u>11,528</u>	<u>12,182</u>	<u>23,710</u>
Total Funding	<u>\$98,842</u>	<u>\$104,257</u>	<u>\$203,099</u>
Hazardous Waste Cleanup Bureau			
<u>Expenditure</u>			
62102 Consult & Prof Services	(\$398,920)	(\$400,012)	(\$798,932)
62116 Medical Services	5,666	5,666	11,332
62165 Temporary Services	76,733	76,733	153,466
62245 Minor Equip - Comp Hardware	28,800	28,800	57,600
62370 Telephone Equip Chrg/D Of A	4,167	4,167	8,334
62404 In-State State Motor Pool	4,500	4,500	9,000
62407 In-State Meals	750	750	1,500
62408 In-State Lodging	1,055	1,055	2,110
62809 Education/Training Costs	10,283	10,283	20,566
62827O Deq Indirects - Operating	21,785	21,741	43,526
62827P Deq Indirects - Personal Serv	211,198	233,031	444,229
Total Expenditures	<u>(\$33,983)</u>	<u>(\$13,286)</u>	<u>(\$47,269)</u>
<u>Funding</u>			
02058 Petroleum Storage Tank Cleanup	\$111,548	\$117,408	\$228,956
02070 Hazardous Waste-Cercla	8	8	16
02162 Environmental Quality Protecti	84,757	90,252	175,009
02206 Agriculture Monitoring	21,261	21,247	42,508
02472 Orphan Share Fund	950	1,023	1,973
02565 Lust Cost Recovery	10,291	11,077	21,368
03228 L.U.S.T./Trust	(56,899)	(53,699)	(110,598)
03259 Superfund Multi Site	4,169	4,488	8,657
03433 Epa Ppg Fy10-11	(65,590)	(65,864)	(131,454)
03438 Brownsfield State Response	(144,502)	(139,302)	(283,804)
03468 Core Cooperative Grant-Fy05	<u>70</u>	<u>70</u>	<u>140</u>
Total Funding	<u>(\$33,937)</u>	<u>(\$13,292)</u>	<u>(\$47,229)</u>

Continued			
Summary of Expenditures and Funding for DP 2005			
Remediation Division Base Budget Adjustment			
Category	FY 2010	FY 2011	Biennial
Mine Waste Cleanup Bureau			
<u>Expenditures</u>			
62102 Consult & Prof Services	\$300,000	\$300,000	\$600,000
62116 Medical Services	2,591	2,591	5,182
62165 Temporary Services	28,181	28,181	56,362
62169 Contracts With Non-Profits	70,000	70,000	140,000
62245 Minor Equip - Comp Hardware	12,600	12,600	25,200
62370 Telephone Equip Chrg/D Of A	2,725	2,725	5,450
62404 In-State State Motor Pool	7,500	7,500	15,000
62407 In-State Meals	1,113	1,113	2,226
62408 In-State Lodging	1,500	1,500	3,000
62809 Education/Training Costs	919	919	1,838
62827O Deq Indirects - Operating	157,255	157,255	314,510
62827P Deq Indirects - Personal Serv	97,560	108,359	205,919
64101 Land	(300,000)	(300,000)	(600,000)
Total Expenditures	<u>\$381,944</u>	<u>\$392,743</u>	<u>\$774,687</u>
<u>Funding</u>			
02070 Hazardous Waste-Cercla	\$507	\$527	\$1,034
02162 Environmental Quality Protecti	350	364	714
02520 Fy06 Cercla Bond Proceeds	7,492	7,787	15,279
02940 Pegasus - Basin	3,194	3,319	6,513
03036 Deq Federal Aml Grant	176,797	183,467	360,264
03158 Blm Interagency Agreement	1,140	1,185	2,325
03259 Superfund Multi Site	88,592	91,173	179,765
03463 Mine Lease/Reclamation	22	23	45
03468 Core Cooperative Grant-Fy05	4,561	4,741	9,302
03663 Aml Special Projects	72,800	72,800	145,600
03721 Libby Asbestos/Troy	26,489	27,357	53,846
Total Funding	<u>\$381,944</u>	<u>\$392,743</u>	<u>\$774,687</u>

DP 4005 - Basin Creek Mine Closure Plan BIEN - OTO - The executive is requesting one-time-only biennial state special revenue authority of \$750,000 to complete the closure at Basin Creek Mine. This property was acquired as part of the Pegasus bankruptcy. The project is using a combination of existing reclamation bond monies forfeited by Pegasus and general obligation (GO) bond monies to complete closure. The additional activities will qualify as match for Environmental Protection Agency (EPA) cleanup at the Basin/Upper Ten-mile federal superfund site.

**LFD
ISSUE**
Final Closure

The Environmental Protection Agency (EPA) listed the Basin Mining Area to the Superfund National Priorities List on October 22, 1999, due to mining-waste problems in the watershed and mining waste in the town of Basin. The mining area includes the watersheds of Basin and Cataract Creek and portions of the Boulder River below the confluence with these heavily impacted streams. The EPA is the lead agency on this project. Working in partnership with the U.S. Forest Service, the EPA conducted cleanup of the mining wastes at the Buckeye/Enterprise, Crystal, and Bullion Mines located in the Basin and Cataract creek Watersheds. The clean-ups were completed in 2002.

The legislature may wish to inquire if this site will require monitoring, such a water monitoring, and at what cost to the state.

**LFD
COMMENT**

The state issues bonds to match funding received from Comprehensive Environmental Response and Liability Act (CERCLA or federal Superfund Program). This decision package would be funded with the bond proceeds.

DP 4006 - Beal Mountain Mine Closure BIEN-OTO - The executive is requesting one-time-only biennial state special revenue authority of \$260,000 to implement the Beal Mountain Mine closure plan. These activities will be completed using reclamation bond monies remaining in the site account as well as the monies generated from the auction of equipment at the site during FY 2009.

**LFD
ISSUE**

Final Closure

The legislature may wish to inquire if this site will require monitoring, such a water monitoring, and at what cost to the state.

**LFD
COMMENT**

This would be funded with Beal Mountain reclamation bonds that were provided as part of the mine's permitting and development process.

DP 4009 - KRY Remediation Oversight - BIEN - RST - OTO - The executive is requesting one-time-only, biennial, restricted appropriation authority of \$2.4 million in order to implement remedial actions plans at Kalispell Pole & Timber, Reliance Refinery, and Yale Oil (KRY) state Superfund sites. This would be funded with state special revenue from the environmental quality protection fund. This package would cover contracted services to prepare and review engineering plans as well as oversee activities associated with cleaning up the site.

**LFD
COMMENT**

Long Term Costs

The Kalispell Pole and Timber (KPT) Facility, Reliance Refinery Company (Reliance) Facility, and the Yale Oil Corporation (Yale Oil) Facility are located in Kalispell, Montana, and are in relatively close proximity to each other. The KPT Facility is adjacent to the Reliance Facility and the Yale Oil Facility is to the southeast and down gradient of the other two facilities. These three facilities are close to the Stillwater River and nearby residential areas. Groundwater contamination from each of the facilities is commingled in the shallow aquifer. The 2005 Legislature provided the funding to conduct a remedial investigation and feasibility study (evaluation of remedial alternatives), including evaluation of risks to human health and the environment, on the three facilities in combination. The state owns a portion of the land that was Reliance Refinery.

The division developed a cost estimate based on the best available information regarding the anticipated scope of the remedy and cost information presented in the feasibility study and the proposed plan. The estimated cost of site remediation is \$32 million. Changes in the cost elements are likely to occur as a result of new information and data collected during the engineering design of the selected remedy. This is a feasibility-level engineering cost estimate expected to be within plus fifty to minus thirty percent of the actual project cost. This means the projected actual cost is between \$22.4 million and \$48.1 million.

The legislature may wish to inquire what accomplishments are expected in the 2011 biennium and what the future costs to the state may be in the next biennium.

**LFD
COMMENT (CONT.)**

These costs are recoverable under the Comprehensive Environmental Cleanup Responsibility Act (CECRA or state superfund). Funds recovered under the act would be deposited into the environmental quality protection fund for future clean up activities. The funding for a portion of the state's responsibility is requested in DP 4009.

DP 4011 - Accelerated Remediation CECRA Sites BIEN/RST/OTO - The executive is requesting a one-time only biennial restricted appropriation authority of \$728,000 in order to implement remedial action plans at the Upper Blackfoot Mining Complex CECRA site. This would be funded with state special revenue from the environmental quality protection fund. Funding would be used for contract services to complete baseline human health and ecological risk assessments as well as a feasibility study to identify the appropriate methods to clean up contaminants at the site.

**LFD
COMMENT**

Site Description and future costs

The Upper Blackfoot Mining Complex 15 miles east of Lincoln is an inactive mining district, greater than 50 acres in size, which was mined intermittently from 1889 to the 1950s and explored intermittently through the 1980s. Tailings and waste rock dumps and acid mine drainage from old adits have contaminated surface water, sediments, soils and groundwater. The main workings in the district are the Mike Horse Mine, which was a major contributor to surface water contamination; the Anaconda, Carbonate, Edith, Mary P, and Paymaster mines; and a tailings impoundment on Beartrap Creek. In 1975, the impoundment failed during heavy rains and washed metal-laden tailings down the drainage into the upper Blackfoot River.

The mining district is located in a fairly remote area on and near national forest land which is used by hunters and other recreationists. One residence with a domestic well is located on Beartrap Creek above the tailings impoundment. No other residences are present within several miles. The mines are located in the headwaters of the Blackfoot River. The town of Lincoln, about 15 miles downstream, uses the Blackfoot River as a drinking water source.

The executive is requesting funding for the human health and ecological risk assessments and feasibility study. The legislature may wish to inquire about the reasonableness of completing both activities in the biennium and at what stage the process should be in prior to the 2011 legislative session.

**LFD
COMMENT**

Cost Recovery

Under CECRA, the expenditures at these sites will be cost recovered when the payout for unsecured claims under the Asarco Bankruptcy occurs. Funds recovered under the act would be deposited into the environmental quality protection fund for future clean up activities.

DP 4012 - CECRA Accelerated Remediation Base Adjustment - This budget request is for \$3 million per year in state special revenue spending authority for operating expenses in order to continue successful implementation of remedial action plans at state Superfund CECRA sites. This request reflects the budget amendments that were made in FY 2008 that are not captured in the program base. Funding would be used for remedial actions to address contaminants affecting human health and the environment using contracted services.

**LFD
COMMENT**

Under CECRA, the expenditures at these sites are cost recoverable. Funds recovered under the act would be deposited into the environmental quality protection fund for future clean up activities.

New Proposals

Program	-----Fiscal 2010-----					-----Fiscal 2011-----					
	FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds	
DP 4015 - Joint DEQ-DNRC Reliance Refinery - BIEN-OTO-RST (Requires Legislation)	40	0.00	0	4,500,000	0	4,500,000	0.00	0	4,500,000	0	4,500,000
DP 4016 - Remediation New Leased Vehicles	40	0.00	0	14,814	14,814	0.00	0	0	17,507	17,507	
Total	0.00	\$0	\$4,500,000	\$14,814	\$4,514,814	0.00	\$0	\$4,500,000	\$17,507	\$4,517,507	

DP 4015 - Joint DEQ-DNRC Reliance Refinery - BIEN-OTO-RST (Requires Legislation) - The executive recommends a \$9 million one-time-only, biennial, restricted state special revenue appropriation for the cleanup of the state owned Reliance Refinery property, which has been contaminated by refinery wastes and wood treating contaminants. This request is contingent on passage and approval of LC 294, which would provide the funding via a transfer from the orphan share fund to the environmental quality protection fund.

LFD COMMENT State Share
 The state share was originally established at 27.5 percent of clean up costs. The total liability to the state would range between \$6.2 million and \$13.1 million given the uncertainty of the estimates. If the costs come in at the lower end, only a portion of the appropriation authority will be used. If it comes in at the higher end, the legislature will be requested to fund additional activities at a later date.

LFD ISSUE Orphan Share Activities
 The orphan share program was established to provide a means for determining the share of remediation costs of a defunct party. The fund pays for the allocation process and the allocated share of remediation. HB 116 of the 2007 Legislature adjusted the statute to allow for state agencies that were liable for clean up to access the fund. This is the basis for the request for the state’s portion of Reliance Refinery cleanup. However, the executive is seeking only authority for this purpose, even though there are other non-state sites that have been approved for orphan share funding.
 Given the lack of authority for non-state orphan share activities, the legislature may wish to inquire about the status of the projects that have already been approved for orphan share funding, including when funding will be required.

DP 4016 - Remediation New Leased Vehicles - The executive requests \$14,814 in FY 2010 and \$17,507 in FY 2011 in federal special revenue for additional motor pool leases of a hybrid sedan and a hybrid small utility vehicle. These vehicles will be utilized by the Abandoned Mine Lands (AML) program in the Remediation Division. This program is expanding due to increased federal awards from the U.S. Office of Surface Mining (OSM). Hybrid vehicles are requested to conform with the Governor's 20x10 initiative.

Program Budget Comparison

The following table summarizes the total budget requested by the Governor for the agency by year, type of expenditure, and source of funding.

Program Budget Comparison								
Budget Item	Base Fiscal 2008	Approp. Fiscal 2009	Budget Fiscal 2010	Budget Fiscal 2011	Biennium Fiscal 08-09	Biennium Fiscal 10-11	Biennium Change	Biennium % Change
FTE	199.03	199.03	212.03	212.03	199.03	212.03	13.00	6.53%
Personal Services	10,897,631	12,301,649	14,394,362	14,436,000	23,199,280	28,830,362	5,631,082	24.27%
Operating Expenses	7,163,107	12,154,977	11,243,108	11,259,512	19,318,084	22,502,620	3,184,536	16.48%
Equipment & Intangible Assets	97,857	185,428	100,557	100,557	283,285	201,114	(82,171)	(29.01%)
Grants	1,870,416	2,196,541	2,033,416	2,033,416	4,066,957	4,066,832	(125)	0.00%
Transfers	0	0	0	0	0	0	0	n/a
Total Costs	\$20,029,011	\$26,838,595	\$27,771,443	\$27,829,485	\$46,867,606	\$55,600,928	\$8,733,322	18.63%
General Fund	1,016,945	1,192,566	2,362,331	2,365,240	2,209,511	4,727,571	2,518,060	113.96%
State Special	13,245,316	17,311,797	18,509,194	18,586,587	30,557,113	37,095,781	6,538,668	21.40%
Federal Special	5,766,750	8,334,232	6,899,918	6,877,658	14,100,982	13,777,576	(323,406)	(2.29%)
Total Funds	\$20,029,011	\$26,838,595	\$27,771,443	\$27,829,485	\$46,867,606	\$55,600,928	\$8,733,322	18.63%

Program Description

The Permitting and Compliance Division administers all DEQ permitting and compliance activities based on 25 state regulatory and 5 related federal authorities. The division:

1. Reviews and assesses environmental permit applications (coordinating with other state, local, and federal agencies) to determine control measures needed to ensure compliance with the law and to prevent land, water, and air conditions detrimental to public health welfare, safety and the environment;
2. Prepares supporting environmental documents under the Montana Environmental Policy Act and provides training and technical assistance when needed;
3. Inspects to determine compliance with permit conditions, laws, and rules; and
4. Provides assistance to resolve the facility's compliance issues, and when necessary recommends formal enforcement actions to the Enforcement Division.

Activities are organized into the Air Resources Management Bureau (air); Industrial and Energy Minerals Bureau (coal, uranium, opencut); Environmental Management Bureau (hard rock, facility siting); Public Water and Subdivision Bureau (public water supply and subdivision); Water Protection Bureau (water discharge); and Waste and Underground Tank Management Bureau (solid waste, junk vehicles, septage pumpers, hazardous waste, asbestos, underground storage tanks).

Program Highlights

Permitting and Compliance Division	
Major Program Highlights	
◆	The proposed biennial budget is 18 percent higher than the 2009 biennial budget primarily due to statewide present law, base program adjustments, and increases to the public water supply and air quality programs
◆	The executive is seeking approval for \$2.0 million general fund to support 12.00 FTE in the public water supply program
◆	Increases to the air quality program total \$3.0 million over the biennium for contracted services, student interns, and monitoring
◆	One-time-only requests for air reporting and water monitoring total \$200,000 for the biennium

Major LFD Issues
<ul style="list-style-type: none"> ◆ The program submitted goals without any corresponding objectives for which to measure progress toward the goal ◆ The executive uses general fund in the public water supply program where state special revenue may be an option ◆ Increases in the air quality program may lead to an increase in air quality fees ◆ The base adjustment of \$3.0 million over the biennium is not broken down by program ◆ The use of general fund for monitoring impaired waters may set a precedent

Program Narrative

2009 Biennium Monitored Goals and Objectives

The Legislative Finance Committee selected the following goal to monitor during the 2009 interim

- Conduct effective water quality permit programs designed to issue complete, accurate, environmentally sound and legally defensible permits within statutory time frames
 - Issue 100 percent of required boil orders and health advisories
 - Address 100 percent of violations related to treatment technique requirements, maximum contaminant level violations and Significant Non-Compliers that are identified through quarterly compliance evaluations
 - Conduct up to 520 compliance evaluations

Successes: All boil orders were released as required by law.

Challenges: The second performance measure of addressing 100 percent of violations related to treatment technique violations, MSCL's (Maximum Contaminant Levels), and SNC's (Significant Non-Compliers) identified through quarterly compliances evaluations is being addressed. The cooperation of technical staff, rule specialists, and dedicated staff has worked to address the backlog and current work load to achieve this level. Historically, there has not been enough staff to implement new rules or look at trends in data to assess water quality data over a period of time. Adequate staffing would help to prevent possible disease outbreaks and help systems plan for future needs.

The third performance measure was to conduct the full number of sanitary surveys/compliance determinations required based on number of water systems that are due for review during that year. It was determined that 520 sanitary surveys would be required in FY 2008.

The number of surveys required for FY 2008 did not take into full account the backlog of surveys from previous years. The department has a cooperative agreement with the DEQ Technical and Financial Assistance Bureau staff to perform evaluations in conjunction with its source water protection work at water supplies. There are several county contracts for performing compliance evaluations at water supplies for which the department does not have an accounting until the county finalizes its report and submits it to the department. One county has dropped the sanitary survey contract with the Department as of May 2008. In addition, more of these contracts are at risk of being canceled by the County Health Departments because the rising cost of conducting the inspections is not completely covered by the contracted payments. If these contracted services are lost, attainment of the goal may be in jeopardy as the department's backlog increases.

**LFD
ISSUE**

The executive budget contains a \$2.0 million general fund request to address the above challenges (DP 5021 – Public Water Supply Staff). The legislature may wish to use this information as a starting point to align program goals with needed resources.

- To issue currently required permits or registrations, provide compliance assistance, ensure compliance with all applicable air quality requirements, and protect public health through reduction of emissions of hazardous air pollutants
 - The department will issue 25 percent of the backlogged permits or registrations each fiscal year
 - The department will conduct compliance determinations on 15 percent of the permitted or registered facilities each fiscal year

Successes: The department hired three new engineers and two student interns, and opened an office in Butte that is focusing on these goals. As of the October 2008 performance workgroup meeting, the department had processed 36 percent of the backlogged registration applications and conducted compliance inspections at 12 percent (75 facilities) of the registered facilities.

Challenges: The department adjusted the compliance inspections from 15 percent to 12 percent in order to have a balanced regulatory program of permitting, compliance, and assistance. The legislature may wish to discuss this change with the agency.

**LFD
COMMENT**

Continued funding for the intern program is being requested in DP 5006 - ARMB Student Intern Funding.

2011 Biennium Major Goals

The agency is required by law to submit goals and measurable objectives as part of the budgeting process. The Legislative Fiscal Division recommends that the legislature adopt specific program goals and corresponding objectives for monitoring during the interim.

The agency submitted goals by program, a sampling of what is provided as reference:

- Issue timely and complete permit and permit modification decisions for mining and reclamation of opencut minerals which ensure that mineral development which occurs does so with adequate protection of environmental resources
- Conduct compliance evaluations to assess compliance with applicable public water supply requirements and to offer compliance assistance to the regulated community
- Effectively manage, through permitting, the discharge of materials into state waters in order to ensure appropriate protection of public health and the environment
- Issue timely and complete permits for sources to provide appropriate protection of public health through compliance with applicable requirements of the Clean Air Act

**LFD
ISSUE**

The program submitted goals without corresponding objectives

The legislature is unable to formulate appropriations policy or make future determinations about success based on the goals provided by this program. For example, the terms issue, conduct, and manage are terms that indicate something will be happening, but does not describe the anticipated result. If pollutant discharge into state waters is an issue, the measure to determine if the state is doing better or worse is not described. Without this description there is not a way to determine progress. The legislature may wish to discuss with the program appropriate goals and objectives to assure that program resources are appropriately aligned with agency objectives.

Funding

The following table shows program funding, by source, for the base year and for the 2011 biennium as recommended by the Governor.

Program Funding Table Permitting & Compliance Div.						
Program Funding	Base FY 2008	% of Base FY 2008	Budget FY 2010	% of Budget FY 2010	Budget FY 2011	% of Budget FY 2011
01000 Total General Fund	\$ 1,016,945	5.1%	\$ 2,362,331	8.5%	\$ 2,365,240	8.5%
01100 General Fund	1,016,945	5.1%	2,362,331	8.5%	2,365,240	8.5%
02000 Total State Special Funds	13,245,316	66.1%	18,509,194	66.6%	18,586,587	66.8%
02054 Ust-Installer Lic & Permit Acc	50,108	0.3%	32,823	0.1%	32,873	0.1%
02070 Hazardous Waste-Cercla	341,327	1.7%	442,579	1.6%	443,804	1.6%
02075 Ust Leak Prevention Program	323,585	1.6%	253,772	0.9%	254,241	0.9%
02096 Reclamation - Bond Forfeitures	-	-	10,000	0.0%	10,000	0.0%
02157 Solid Waste Management Fee	517,077	2.6%	665,691	2.4%	666,614	2.4%
02201 Air Quality-Operating Fees	3,304,418	16.5%	4,889,037	17.6%	4,937,947	17.7%
02202 Asbestos Control	194,948	1.0%	253,819	0.9%	254,693	0.9%
02204 Public Drinking Water	765,327	3.8%	1,005,204	3.6%	1,006,561	3.6%
02278 Mpdcs Permit Program	1,369,159	6.8%	1,855,059	6.7%	1,861,131	6.7%
02418 Subdivision Plat Review	1,537,974	7.7%	1,756,393	6.3%	1,760,651	6.3%
02420 Bd Of Cert For W&Ww Op	96,793	0.5%	116,460	0.4%	116,510	0.4%
02421 Hazardous Waste Fees	36,163	0.2%	130,519	0.5%	133,927	0.5%
02428 Major Facility Siting	146,268	0.7%	562,159	2.0%	562,152	2.0%
02521 Pegasus Bankruptcy/Operations	726,188	3.6%	750,292	2.7%	750,200	2.7%
02576 Natural Resources Operations Ssr Fu	1,613,163	8.1%	2,076,044	7.5%	2,083,242	7.5%
02579 Coal & Uranium Mine Account	214,251	1.1%	249,898	0.9%	249,887	0.9%
02845 Junk Vehicle Disposal	1,974,237	9.9%	2,273,757	8.2%	2,276,423	8.2%
02947 Zortman/Landusky Nitrate System	1,601	0.0%	1,599	0.0%	1,599	0.0%
02952 Zortman Recl-Last (1,500.000)	-	-	190,000	0.7%	190,000	0.7%
02954 Septage Fees	32,729	0.2%	19,089	0.1%	19,132	0.1%
02988 Hard Rock Mining Reclamation	-	-	975,000	3.5%	975,000	3.5%
03000 Total Federal Special Funds	5,766,750	28.8%	6,899,918	24.8%	6,877,658	24.7%
03014 Dw Srf Ffy05 Grant	24,495	0.1%	-	-	-	-
03040 Operator Training Reimbursemnt	258,151	1.3%	304,713	1.1%	305,068	1.1%
03067 Dsl Federal Reclamation Grant	944,350	4.7%	-	-	-	-
03107 National Park Service - Yellowstone	38,191	0.2%	19,975	0.1%	(7,764)	0.0%
03243 Dw Srf 06 Grant	345,531	1.7%	-	-	-	-
03262 Epa Ppg	2,567,374	12.8%	-	-	-	-
03309 Ust Leak Prevention Grant	-	-	35,554	0.1%	35,588	0.1%
03325 Pm 2.5 To 3/31/09	43,472	0.2%	365,951	1.3%	363,391	1.3%
03326 Blm For Zortman & Landusky	454,759	2.3%	521,416	1.9%	521,359	1.9%
03433 Epa Ppg Fy10-11	-	-	3,012,502	10.8%	3,017,157	10.8%
03435 Pm 2.5 Fiscal Year 2004	249,107	1.2%	-	-	-	-
03438 Brownsfield State Response	62,286	0.3%	24,940	0.1%	25,029	0.1%
03480 Blm Cbm Agreement	196,264	1.0%	358,866	1.3%	359,458	1.3%
03691 Nps Staffing/Support	98,286	0.5%	101,902	0.4%	101,929	0.4%
03798 Homeland Water System Security	52,227	0.3%	60,544	0.2%	60,573	0.2%
03812 Epa 106 Water Grant	432,257	2.2%	-	-	-	-
03815 Dw Srf 09 Grant	-	-	940,078	3.4%	940,661	3.4%
03816 Doi Osm A&E Grant	-	-	1,153,477	4.2%	1,155,209	4.2%
Grand Total	\$ 20,029,011	100.0%	\$ 27,771,443	100.0%	\$ 27,829,485	100.0%

The division is funded with general fund and a variety of state and federal special revenue sources. The general fund provides 8.5 percent of the total funding and supports operating expenses.

State special revenue consists of forfeited hard rock reclamation bonds, and fees collected for various activities such as air permits, junk vehicle fines, public water supply connections, and subdivision reviews. These funds are used to administer related permits and compliance operations in the division. The division also receives Resource Indemnity Trust (RIT) interest via the hazardous waste and natural resources operations fund.

Federal special revenue sources include the Environmental Protection Agency (EPA) and the Bureau of Land Management (BLM). Federal funds are directed toward specific sites or for primary costs of the permitting programs.

Budget Summary by Category

The following summarizes the total budget by base, present law adjustments, and new proposals.

Budget Item	-----General Fund-----				-----Total Funds-----			
	Budget Fiscal 2010	Budget Fiscal 2011	Biennium Fiscal 10-11	Percent of Budget	Budget Fiscal 2010	Budget Fiscal 2011	Biennium Fiscal 10-11	Percent of Budget
Base Budget	1,016,945	1,016,945	2,033,890	43.02%	20,029,011	20,029,011	40,058,022	72.05%
Statewide PL Adjustments	160,217	163,212	323,429	6.84%	2,767,050	2,813,059	5,580,109	10.04%
Other PL Adjustments	1,110,169	1,110,083	2,220,252	46.96%	4,883,839	4,894,353	9,778,192	17.59%
New Proposals	75,000	75,000	150,000	3.17%	91,543	93,062	184,605	0.33%
Total Budget	\$2,362,331	\$2,365,240	\$4,727,571		\$27,771,443	\$27,829,485	\$55,600,928	

Present Law Adjustments

The "Present Law Adjustments" table shows the primary changes to the adjusted base budget proposed by the Governor. "Statewide Present Law" adjustments are standard categories of adjustments made to all agencies. Decisions on these items were applied globally to all agencies. The other numbered adjustments in the table correspond to the narrative descriptions.

Present Law Adjustments	-----Fiscal 2010-----				-----Fiscal 2011-----					
	FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds
Personal Services					3,299,017					3,342,161
Vacancy Savings					(567,858)					(569,598)
Inflation/Deflation					35,891					40,496
Total Statewide Present Law Adjustments					\$2,767,050					\$2,813,059
DP 5002 - Air Online Permit & Compliance Reporting BIEN/OTO	0.00	0	75,000	0	75,000	0.00	0	75,000	0	75,000
DP 5003 - Air Regulatory Assistance BIEN	0.00	0	250,000	0	250,000	0.00	0	250,000	0	250,000
DP 5004 - Area Source MACT Registration	1.00	0	130,820	0	130,820	1.00	0	129,895	0	129,895
DP 5006 - ARMB Student Intern Funding	0.00	0	94,946	0	94,946	0.00	0	94,946	0	94,946
DP 5018 - Permitting & Compliance Operations Adjustments	0.00	110,169	939,411	533,493	1,583,073	0.00	110,083	959,025	525,404	1,594,512
DP 5019 - Hard Rock-Major Facility Siting Act Projs-BIEN-RST	0.00	0	1,700,000	50,000	1,750,000	0.00	0	1,700,000	50,000	1,750,000
DP 5021 - Public Water Supply Staff	12.00	1,000,000	0	0	1,000,000	12.00	1,000,000	0	0	1,000,000
Total Other Present Law Adjustments	13.00	\$1,110,169	\$3,190,177	\$583,493	\$4,883,839	13.00	\$1,110,083	\$3,208,866	\$575,404	\$4,894,353
Grand Total All Present Law Adjustments					\$7,650,889					\$7,707,412

Program Personal Services Narrative

The following information is provided so that the legislature can consider various personal services issues when examining the agency budget. It was submitted by the agency and edited for brevity by the LFD.

- **Market Rate** – Relative to the 2008 market survey, the current market rate is 90.1 percent, a reduction from the 2006 market survey of 105 percent
- **Vacancy** – The agency did not provide program specific information
- **Legislatively applied vacancy savings** – The agency did not provide program specific information
- **Pay Changes** – Thirty three employees, 16 percent of the division, are eligible for full retirement with an estimated payout of \$341,000
 - The division has been working on succession planning. The goal is a seamless transition of employees, minimizing loss of institutional knowledge and disruption of customer service. The program will include such items as informal mentoring, on-the-job training, formal on-the-clock seminar courses, formal traditional training, and staff coaching to help them desire to make the agency successful and creating a sense of responsibility for experienced staff to pass information back to programs for the program's use

DP 5002 - Air Online Permit & Compliance Reporting BIEN/OTO - The executive requests biennial one-time-only state special revenue authority of \$150,000 to contract for enhancements to the CEDARS (Consolidated Environmental Database and Retrieval System) database. This enhancement would allow regulated facilities to submit required reports and information online. The funding would come from air quality fees.

DP 5003 - Air Regulatory Assistance BIEN - This \$500,000 biennial appropriation using state special revenue is to contract for consulting services for regulatory assistance in the Air Quality Program. Contract consultants would assist with air quality permitting, registration, environmental reviews required under the Montana Environmental Policy Act, and compliance activities to assure permit conditions and other applicable requirements are met. The funds would also be used for baseline monitoring of ambient nitrogen oxide and ozone levels in areas of Montana potentially subject to increased emissions of volatile organic compounds from increased oil and gas development.

The following information is provided so that the legislature can consider various performance measurement principles when examining this proposal. It is submitted by the agency, with editing by LFD staff as necessary for brevity and/or clarity.

Justification

The additional funding is needed to contract for consulting services for regulatory assistance in the Air Quality Program. The need for this assistance has been generated by the recent increase in the number of oil and gas well facilities, fossil fuel-fired power plants, and other energy production facilities subject to the Montana and Federal Clean Air Act. With this assistance the department would be able to assure compliance with the Montana and Federal Clean Air Acts without compromising economic development in the state.

Outcome

The goal is to obtain funding so the department can contract for consulting services for regulatory assistance in the Air Quality Program. The consultant services could include assisting the department with air quality permitting, registration, environment reviews required under the Montana Environmental Policy Act, and compliance activities to assure permit conditions and other applicable requirements are met. In addition, this assistance could be used to contract for baseline monitoring of ambient nitrogen oxide and ozone levels in those areas of Montana that are potentially subject to increased emissions of volatile organic compounds from increased oil and gas development. This monitoring will also assure that public health is protected and that the development will occur in compliance with applicable requirements.

Performance Criteria

This appropriation for consulting services would be used to assure that the expanded demand for air regulatory services, without a commensurate increase in FTE, does not result in a programmatic bottleneck. Performance criteria would be

the ability of the Air Program to meet statutory deadlines. Progress will be measured by the percent of air permitting and registration actions completed within statutory deadlines.

Milestones

The department is proposing to enter into contractual agreements for the air quality permitting, registration, compliance, environmental review, or monitoring activities at the beginning of the fiscal year.

FTE

No additional FTE are being requested in this proposal. Any workload generated in the managing and oversight of the contracts will be absorbed by the agency.

Funding

The department would use air quality permit fees to fund this proposal. This is an appropriate use of air quality permit fees because oil and gas well facilities are subject to the permitting requirements of the Federal and Montana Clean Air Acts and contribute to air pollution in the state.

The department believes that, for the foreseeable future, energy development will continue at its current pace. Therefore, the air regulatory funding will need to continue at the proposed level of \$500,000 for the 2013 biennium. Air quality permit fees would be used for the 2013 biennium as well.

Obstacles

The main challenge will be getting the contracting for consultant services completed in a timely manner as there are not a large number of consultants that have expertise in the field of air quality.

Risk

Economic development associated with oil and gas well facilities may be stifled because the department would be unable to complete the environmental analyses necessary to ensure that these facilities operate in compliance with all of the applicable federal and state requirements in a timely manner.

LFD ISSUE	<p>Outcome of proposal and on-going activities</p> <p>There are two issues with this proposal. First, the outcome statement does not address how this will aid in assuring that the State and Federal Clean Air Acts are met. Instead it focuses on the short term to secure resources from the legislature to use a contractor. It also does not address any outcome of the monitoring process. Is it to assure compliance with the clean air acts or is it to isolate problem areas within the state to focus resources?</p> <p>Second, the executive is seeking a one-time-only request, but this is not a one-time project. The executive requested and the legislature approved contract assistance for the air program for the 2009 biennium. In addition, the agency describes a future need for funding in the 2013 biennium to support the activities.</p> <p>The legislature may wish to discuss with the division both the short-term, (2011 biennium) and the long-term operating plans for the Air Regulatory Program to determine if this is an on-going function that requires on-going resources or if one-time-only resources are necessary for some purpose such as assuring results from the activities.</p>
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LFD COMMENT	<p>This proposal is funded with air quality fees. See Agency Issue for additional information.</p>
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DP 5004 - Area Source MACT Registration - The executive requests state special revenue authority for 1.00 FTE and

\$130,820 in FY 2010 and \$129,895 in FY 2011 to create and administer a Maximum Achievable Control Technology (MACT) registration system and to provide regulatory assistance to area sources. Under federal program delegation for the Title V Air Quality Operating Permit Program, Montana has the responsibility to regulate those sources.

LFD COMMENT Area sources typically do not generate enough pollutants to require an air quality permit. However, such sources do generate enough hazardous air pollutants (HAPs) to be subject to the MACT regulations. This proposal would allow for the monitoring of those pollutants. This proposal is funded with air quality fees. See Agency Issue for additional information.

DP 5006 - ARMB Student Intern Funding - This request is for \$94,946 per year in state special revenue in order to hire student interns in the Air Resources Management Bureau (ARMB). These funds are for up to four student interns who would provide assistance with air quality permitting and compliance activities and increase program efficiency.

LFD COMMENT The department has had long-term issues with recruiting qualified personnel in this area. By utilizing student interns, college students are provided real work experience and may be future employees of the department. The legislature may wish to ask at a later date if this approach enhances department staff recruiting. This proposal is funded with air quality fees. See Agency Issue for additional information.

DP 5018 - Permitting & Compliance Operations Adjustments - The executive requests a base operating adjustment of \$1,583,073 in FY 2010 and \$1,594,512 in FY 2011 of general fund and state and federal special revenue. Base expenditures were low in junk vehicle grants to counties, reimbursements for abandoned vehicles, contracts not put into place due to vacancies, and underground storage tank funding.

LFD ISSUE Proposal Lacks sufficient detail

This proposal represents base adjustments to the six bureaus: 1) the Air Resources Management Bureau (air); 2) Industrial and Energy Minerals Bureau; 3) Environmental Management Bureau; 4) Public Water and Subdivision Bureau; 5) Water Protection Bureau; and 6) the Waste and Underground Tank Management Bureau. The detail to the decision package is provided in the figure. From this information it is not possible to determine what bureau is receiving what authority and for what purpose. This package includes biennial increases of \$220,252 general fund and \$359,012 of natural resources operating funds; however, the programs that will receive these funds are indeterminable. The LFD staff requested this information and the agency did not provide sufficient detail to answer the questions raised.

The decision package, as written, provides a lump sum adjustment to the division to allocate as they determine necessary. It does not allow for the legislature to discuss with the agency the plan to implement the adjustment or why the adjustments are necessary. The legislature may wish to request that the agency segregate this base adjustment by bureau prior to taking any action on the package.

Summary of Expenditures and Funding for DP 5018			
Permitting and Compliance Division Base Budget Adjustment			
Category	FY 2010	FY 2011	Biennial
Expenditures			
62102 Consult & Prof Services	\$207,482	\$205,053	\$412,535
62169 Contracts With Non-Profits	69,161	68,351	137,512
62240 Inspection-Field Equip/Supp	47,730	50,968	98,698
62304 Postage & Mailing	23,000	23,000	46,000
62319 Cellular Phones	4,000	4,000	8,000
62404 In-State State Motor Pool	38,002	38,000	76,002
62408 In-State Lodging	35,000	35,000	70,000
62410 In-State Meals Overnight	10,000	10,000	20,000
62498 Non-Employee Travel	22,300	22,300	44,600
62510 Motor Pool Leased Vehicles	33,066	33,893	66,959
62601 Electricity	2,000	2,000	4,000
62713 Laboratory Equipment	6,695	6,695	13,390
62809 Education/Training Costs	17,000	17,000	34,000
62827O Deq Indirects - Operating	8,121	8,398	16,519
62827P Deq Indirects - Personal Serv	893,816	904,154	1,797,970
63000 Equipment & Intangible Assets	2,700	2,700	5,400
66000 Grants	163,000	163,000	326,000
Total Expenditures	<u>\$1,583,073</u>	<u>\$1,594,512</u>	<u>\$3,177,585</u>
Funding			
01100 General Fund	\$110,169	\$110,083	\$220,252
02054 Ust-Installer Lic & Permit Acc	(2,697)	(2,693)	(5,390)
02070 Hazardous Waste-Cercla	25,394	25,595	50,989
02075 Ust Leak Prevention Program	(5,983)	(5,902)	(11,885)
02157 Solid Waste Management Fee	38,288	38,471	76,759
02201 Air Quality-Operating Fees	288,607	302,705	591,312
02202 Asbestos Control	23,307	23,457	46,764
02204 Public Drinking Water	(77,012)	(76,809)	(153,821)
02278 Mpdcs Permit Program	143,466	144,324	287,790
02418 Subdivision Plat Review	33,637	34,460	68,097
02420 Bd Of Cert For W&Ww Op	14,640	14,646	29,286
02421 Hazardous Waste Fees	20,738	21,414	42,152
02428 Major Facility Siting	2,562	2,562	5,124
02576 Natural Resources Operations Ssr Fu	178,606	180,406	359,012
02845 Junk Vehicle Disposal	252,737	253,266	506,003
02954 Septage Fees	3,121	3,123	6,244
03040 Operator Training Reimbursemnt	19,711	19,754	39,465
03107 National Park Service - Yellowstone	(3,086)	(7,764)	(10,850)
03325 Pm 2.5 To 3/31/09	29,895	24,131	54,026
03326 Blm For Zortman & Landusky	17,218	17,218	34,436
03433 Epa Ppg Fy10-11	115,253	116,781	232,034
03438 Brownsfield State Response	(1,959)	(1,954)	(3,913)
03480 Blm Cbm Agreement	46,806	46,825	93,631
03691 Nps Staffing/Support	2,791	2,823	5,614
03798 Homeland Water System Security	2,273	2,276	4,549
03815 Dw Srf 09 Grant	237,657	238,085	475,742
03816 Doi Osm A&E Grant	\$66,934	\$67,229	\$134,163
Total Funding	<u>\$1,583,073</u>	<u>\$1,594,512</u>	<u>\$3,177,585</u>

DP 5019 - Hard Rock-Major Facility Siting Act Projs-BIEN-RST - This restricted biennial request is for \$3.5 million in state and federal special revenue for hard rock reclamation and Major Facility Siting Act (MFSA) projects. Project spending authority would be used for reclamation of mine sites that would be funded by various bond forfeitures, settlement agreements, or funds raised through the sale of general obligation bonds authorized by 82-4-314, MCA. The authority for MFSA projects is based on past projects and the potential for future projects.

**LFD
COMMENT****MFSA**

The Major Facility Siting Act (MFSA) requires the department to review applications for the siting of major electric transmission, pipeline, or geothermal facilities to assure the location, construction, and operations of such facilities conform with state law. The types of facilities are summarized in 75-20-201, MCA. The legislature established the fees for this process to cover the costs.

DP 5021 - Public Water Supply Staff - The executive requests 12.00 FTE and \$1.0 million general fund in FY 2010 and FY 2011 to address the deficiencies in the 2007 EPA Primacy Report on the status of Montana's Public Water Supply Program. Deficiencies cited include insufficient resources to adequately implement the required elements of the Safe Drinking Water Act, continued EPA roll-out of federal regulations, and protect public health.

**LFD
COMMENT**

In August of 2008, the executive approved 9.00 modified FTE across 13 positions for this purpose utilizing carry forward authority and funding from the natural resources operations fund. This decision package would make permanent those 9.00 FTE and add 3.00 FTE.

The following information is provided so that the legislature can consider various performance measurement principles when examining this proposal. It is submitted by the agency, with editing by LFD staff as necessary for brevity and/or clarity.

Justification

The department is the approved (primacy) agency to implement federal drinking water regulations in the state. The department must adopt and implement each new requirement, which often requires resources and ongoing technical assistance. Despite department efforts to increase efficiency and improve resources, it has not been possible to keep pace with the increasing demands and workload.

With two new regulations needing to be implemented now, one more in the very near future (2009), and more on the horizon, the situation has now reached the critical point and has become an unquestionable threat to the public health.

Project Outcome(s)

The overall goal of the project is to reduce the number of public water systems (PWSs) that become significant non-compliers (SNCs) and eliminate the backlog of PWS sanitary surveys (inspections) and keep current on all required surveys. This will provide a higher level of assurance to the public that their water is safe to drink.

Performance Criteria

With the added staff the PWS Program should be able to:

- o Adopt and implement new federal regulations; Long Term 2 Surface Water Treatment Rules (LT2), Stage 2 Disinfection and Disinfection By-Product Rules (Stage 2), and the Groundwater Rule
- o Provide additional technical assistance to public water systems and eliminate the backlog of sanitary surveys needed
- o Reduce the number of systems becoming SNCs

Milestones

- o Adopt and begin implementation of LT2 and Stage 2 regulations by June 2010
- o Adopt and begin implementation of the Groundwater Rule by December 2011
- o Eliminate backlog of sanitary surveys (approx. 400) by June 2011
- o Reduce number of SNCs by 20 percent by the end of the biennium

**LFD
COMMENT**

The last milestone should be listed under performance criteria.

FTE

During FY09 the Governor's Office authorized 9.00 modified FTE across 13 positions to begin the process of improving the state's ability to implement the regulations and increase assurance the drinking water provided to the public is safe.

Those positions include:

- o Nine environmental science specialists whose duties include rule implementation, compliance determination, technical assistance, sanitary surveys, and operator training
- o One data control technician who would be responsible for inputting data generated by the new FTEs into the database, verifying data accuracy, and preparing reports from the database
- o Two administrative support positions to provide assistance to the new FTEs

**LFD
COMMENT**

The nine environmental science specialist positions were expected to be filled by the first half of November 2008 and the remaining positions would be filled 2 to 4 weeks after.

The legislature may wish to inquire about the status of these positions.

Funding

General fund is requested because existing funding sources consisting of fees and federal grants are inadequate. No additional federal grant funding is available. The fees are statutorily set and would require more than a 300 percent increase to fund the proposal. The program will require ongoing support of \$1.1 to \$1.2 million per year after the 2011 biennium.

Obstacles

New environmental science specialists will need training and guidance on the regulations that they will be working with. Depending on the experience level of a new employee and the regulations they will be responsible for, it could take six months to a year before an employee is fully proficient. EPA Region 8 has committed to providing access to EPA's rule management staff to assist in training the new staff.

Risk

If the modified positions are not approved and retained, the remaining staff will have the task of trying to implement all existing and new federal regulations for public drinking water. Since it has already been documented that current staffing levels are inadequate, it is highly likely that staff will only be able to partially implement the regulations and will be unable to provide much technical assistance to the water systems. The number of water systems with violations will increase and sanitary surveys will become further backlogged. Assurances that public drinking water is safe will decline.

In the worst case, the Environmental Protection Agency (EPA) could determine that DEQ cannot adequately implement the requirements of the federal regulations in Montana. The EPA could withdraw the state's "primacy", meaning that the EPA could withdraw the authority they have granted us to be the primary agency to implement the federal rules, resulting in a loss of approximately \$1.2 million in federal revenue.

**LFD
COMMENT****Public Water Supply Defined**

The department has contended that the request is to satisfy a public health need. In order to determine that need, the scope of a public water system should be defined. A public water supply is defined in 75-5-102(14) MCA, as a “system for the provision of water for human consumption from a community well, water hauler for cisterns, water bottling plant, water dispensers or other water supply that has at least 15 service connections or that regularly serves at least 25 person per day for at least 60 days.” Any issues raised with these systems could affect the health of a community.

In addition, this program serves transient water systems defined in 75-5-102 (19) MCA, as a “public water supply system that is a non-community water system and that does not regularly serve at least 25 of the same persons for at least six months of the year.” These systems are usually found associated with campgrounds, resorts, and restaurants. Any issues raised with these systems could affect the health of the patrons who consume water at a certain point in time. This population is in transit and could be difficult to locate, which may create a wider public health problem.

**LFD
ISSUE****Lack of measurable performance Criteria, Use of General Fund, Loss of Primacy**

Under the state’s primacy agreement with the federal government, the department is responsible for implementing the conditions of the Safe Drinking Water Act, including an assurance that the state has sufficient resources. The department contends that this has been a resource issue. The legislature was previously asked during the 2007 legislative session for 1.00 FTE to complete public water supply surveys, and it was not approved. The urgency to obtain resources to protect human health was not provided at that time, as it is now. The issues that the legislature may wish to consider include lack of measureable performance criteria, use of general fund, and the loss of primacy.

Lack of measurable performance criteria

The executive is seeking \$2.0 million general fund authority for the biennium for 12.00 FTE to establish the personal services resources required to reduce the number of public water systems (PWSs) that become significant non-compliers (SNCs), eliminate the backlog of PWS sanitary surveys (inspections), and keep current on all required surveys. The executive contends that the 12.00 FTE would be sufficient to address all issues. These activities would potentially improve the quality of public water, but the performance criteria provided lacks specific measurable criteria in which to determine success toward that goal. The department has access to historical data for both SNCs and PWS surveys that could be used in this manner to demonstrate improvement to the public and the EPA.

The legislature may wish to discuss with the agency and establish performance criteria that will assist in determining success. The legislature also has the option for requesting interim monitoring by the Legislative Finance Committee on this project to assure that resources are deployed as planned and the safety of Montana’s public water supply is improved.

Use of General Fund

The executive’s request for general fund indicates his determination that the public health impacts of inadequate public water supply affect all Montanans and the financial burden should therefore be undertaken by the general fund rather than increasing fees. This request represents a major change in the funding of this program and the decision to utilize general fund in this manner is a policy decision of the legislature. There are other sources of revenue dedicated to this program and these should be considered prior to appropriating general fund.

**LFD
ISSUE (CONT.)**

The public drinking water special revenue fund was created in 1995 to fund department costs in implementing the public drinking water supply program. The fees that feed this fund are statutorily set at \$2.00 per service connection to the public water supply with a minimum of \$100. The same is true for transient water supply system, except the minimum is \$50. The historical revenues and expenses from this fund are summarized in the figure below. Note that in FY 2004, FY 2005 and FY 2008 the agency expended more than the annual revenues, thus the fund was not structurally balanced.

The funds raised by the fee are inadequate to support the drinking water supply program. Because of this, the hazardous/waste CERCLA fund, a resource indemnity fund, is utilized to provide funding to assist with increasing costs. This fund is available for hazardous waste activities per 75-10-621 (3), MCA. However, the PWS program is not one of those activities.

Federal funding for the public water supply program is provided from a portion of the waste water and dinking water state revolving funds where a portion can be utilized for source water protection, capacity development, and operator certification. Federal funds are also available through the Environmental Protection Agency’s performance partnership grants. At this point, the state has exhausted these funding sources.

Department of Environmental Quality Public Water Supply Fees Historical Revenues and Expenditures					
	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
<u>Expenditures</u>					
Personal Services	\$321,707	\$377,730	\$390,031	\$421,468	\$622,515
Operating Expenses	379,856	377,980	322,560	339,610	255,457
Transfers	0	0	325	0	0
Total Expenditures	<u>\$701,563</u>	<u>\$755,710</u>	<u>\$712,916</u>	<u>\$761,078</u>	<u>\$877,972</u>
<u>Revenues</u>					
Licenses & Permits	\$613,352	\$644,213	\$747,073	\$805,688	\$866,462
Taxes	44	34	47	54	71
Grants/Transfers/Misc	0	0	6,418	0	37
Total Revenues	<u>\$613,396</u>	<u>\$644,248</u>	<u>\$753,538</u>	<u>\$805,742</u>	<u>\$866,570</u>
Structural Balance	(\$88,167)	(\$111,462)	\$40,622	\$44,664	(\$11,402)

The executive request is one option for the legislature to consider. Since the policy decision of funding this program is that of the legislature, other options could be considered, including:

- o Raise the public water supply connection fee to cover the entire request. This change would require the committee to request legislation to change the fee in statute and replace the funding in the decision package with state special revenue fees. This budgetary action would be contingent on passage and approval of the legislation. For every \$1.00 increase to the fee, the revenues would increase approximately \$400,000. It would take a \$3.00 increase per connection fee, or an increase per private user from \$24 per year to \$60 per year to cover the cost of this decision package.
- o Raise the public water supply connection fee to cover a portion of there request. This change would require the committee to determine what portion of this program benefits the entire population of Montana and fund that percentage with general fund. The remainder would come from the state special revenue fees. The committee would need to request legislation to change the fee in statute and change the funding of this package to reflect the decision. Again, this budgetary action would be contingent on passage and approval of the legislation.
- o The legislature also has the option of funding the entire program with general fund. If the legislature agrees with the executive’s use of general fund due to public health concerns, then the program could be funded in whole as such. This would require the legislature to request legislation to de-earmark the public water supply fees and deposit the proceeds to the general fund. The legislature would also need to a add decision package to the program to replace \$765,327 of public water supply fees each year of the biennium with a like amount from the general fund.

As stated earlier, this program utilizes a portion of hazardous waste funding. However, use of the funds for this purpose is not included in statute. Therefore, the legislature may want to consider addressing the inappropriate use of this funding source in this program. To do this, the legislature would need to either raise fees to cover the \$141,629 per year or appropriate an equal amount of general fund. This change could be done in conjunction with the other changes.

LFD ISSUE (CONT.)	Loss of Primacy
	<p>The justification states that a risk to the program would be a loss of \$1.2 million in federal funds due to the loss of EPA primacy. States and Indian Tribes are given primary enforcement responsibility (e.g. primacy) for public water systems if they meet certain requirements. The state must:</p> <ul style="list-style-type: none"> o Have regulations for contaminants regulated by the national primary drinking water regulations (NPDWRs) that are no less stringent than the regulations promulgated by EPA. States have up to 2 years to develop regulations after new regulations are released by EPA o Have adopted and be implementing procedures for the enforcement of state regulations o Maintain an inventory of public water systems in the state o Have a program to conduct sanitary surveys of the systems in the state o Have a program to certify laboratories that will analyze water samples required by the regulations o Have a laboratory that will serve as the state's "principal" laboratory, that is certified by EPA o Have a program to ensure that new, or modified, systems will be capable of complying with state primary drinking water regulations o Have adequate enforcement authority to compel water systems to comply with NPDWRs, including: <ul style="list-style-type: none"> • the authority to sue in court • right to enter and inspect water system facilities • authority to require systems to keep records and release them to the state • authority to require systems to notify the public of any system violation of the state requirements o Have adequate recordkeeping and reporting requirements o Have adequate variance and exemption requirements as stringent as EPA's, if the state chooses to allow variances or exemptions o Have an adequate plan to provide for safe drinking water in emergencies like a natural disaster o Have adopted authority to assess administrative penalties for violations of their approved primacy program <p>If the state loses primacy, the EPA would be the primary agency for implementing the Safe Water Drinking Act. If this would occur, the state would lose the federal funds, but no longer be required to meet the conditions listed above. Without primacy, the implementation of the Safe Water Drinking Act falls solely to the EPA.</p>

New Proposals

Program	-----Fiscal 2010-----					-----Fiscal 2011-----					
	FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds	
DP 5008 - Air Program - Field Office Vehicles	50	0.00	0	11,029	5,514	16,543	0.00	0	12,041	6,021	18,062
DP 5010 - Swift Gulch Treatment System Operating Expenses	50	0.00	50,000	0	0	50,000	0.00	50,000	0	0	50,000
DP 5011 - Whitefish Lake Monitoring - Bien/OTO	50	0.00	25,000	0	0	25,000	0.00	25,000	0	0	25,000
Total	0.00	\$75,000	\$11,029	\$5,514	\$91,543	0.00	\$75,000	\$12,041	\$6,021	\$93,062	

DP 5008 - Air Program - Field Office Vehicles - The executive requests \$16,543 in FY 2010 and \$18,062 in FY 2011 of state and federal special revenue for two vehicles for air program field offices. Additional staff has been hired in the Billings and Butte field offices where there are no motor pool vehicles available. This would be funded with air quality operating fees and funding from the Bureau of Land Management.

DP 5010 - Swift Gulch Treatment System Operating Expenses - This general fund request is for \$50,000 per year in the 2011 biennium for operating expenses for the Swift Gulch treatment system at the Zortman-Landusky mine site.

**LFD
ISSUE**

Request is 34 percent higher than estimate

The 2007 Legislature approved the construction of the semi-passive treatment system; however, long-term operating costs were not requested by the executive. The design engineers estimated the operating costs for the facility, once constructed, would be \$33,000 per year, based primarily on an assumed volume of water requiring treatment and an assumed level of acidity. The legislature may wish to consider requiring the department to demonstrate the need for the additionally \$17,000 per year.

DP 5011 - Whitefish Lake Monitoring - Bien/OTO - The executive requests a \$50,000 biennial one-time-only general fund appropriation to support a peer reviewed sampling program for Whitefish Lake. This lake is an urban interface lake listed as impaired and that also serves as the city's drinking water source. The sampling program would analyze tributary and atmospheric loading on the lake and its internal dynamics.

**LFD
ISSUE**

Impaired waters and general fund

The legislature may set a precedent by funding monitoring of impaired waters with general fund if this decision package is approved. This decision package does not provide any information on why Whitefish Lake sampling is a priority and qualifies for utilizing general fund. There are many other water bodies on the impaired waters list that have a beneficial use as drinking water. The legislature may wish to inquire why this project was chosen, what other projects may have as high of a priority need and why general fund is being requested.

Program Issue*Open Cut Mining Resources*

The Opencut Mining Act (82-4-401 et seq., MCA) applies to the mining of bentonite, clay, scoria, soil materials, peat, sand, or gravel. The act requires the department to review and act on applications for permits, enforce the terms of the permit and manage the associated reclamation bonds. During the 2009 biennium, the department experienced a series of lawsuits directed toward the efficiency of these requirements and the performance of the department. Due to programmatic delays by the department, twice they were court ordered to release open cut mining permits. Throughout the process the agency claimed that the reason for the delay was the discrepancy between the workload and the assigned staff.

The executive budget does not provide new resources to the open cut program. The issue for legislative consideration is how the department plans to achieve statutory deadlines with current staff. The legislature may wish to discuss this with the agency.

Program Budget Comparison

The following table summarizes the total budget requested by the Governor for the agency by year, type of expenditure, and source of funding.

Program Budget Comparison								
Budget Item	Base Fiscal 2008	Approp. Fiscal 2009	Budget Fiscal 2010	Budget Fiscal 2011	Biennium Fiscal 08-09	Biennium Fiscal 10-11	Biennium Change	Biennium % Change
FTE	6.00	6.00	6.00	6.00	6.00	6.00	0.00	0.00%
Personal Services	328,535	361,719	358,185	359,020	690,254	717,205	26,951	3.90%
Operating Expenses	214,086	336,807	382,417	385,833	550,893	768,250	217,357	39.46%
Total Costs	\$542,621	\$698,526	\$740,602	\$744,853	\$1,241,147	\$1,485,455	\$244,308	19.68%
State Special	542,621	698,526	740,602	744,853	1,241,147	1,485,455	244,308	19.68%
Total Funds	\$542,621	\$698,526	\$740,602	\$744,853	\$1,241,147	\$1,485,455	\$244,308	19.68%

Program Description

The Petroleum Tank Release Compensation Board is attached to the department for administrative purposes. The purpose of the board is to administer the petroleum tank release cleanup fund. This includes reimbursement to petroleum storage tank owners and operators for corrective action costs and compensation paid to third parties for bodily injury and property damage resulting from a release of petroleum from a petroleum storage tank. The board has a staff of 6.00 FTE. The board is attached to the Department of Environmental Quality (DEQ) for administrative purposes only.

Program Highlights

Petroleum Tank Compensation Board Major Program Highlights	
<ul style="list-style-type: none"> ◆ The proposed biennial budget is 20 percent higher than the 2009 biennial budget primarily due to statewide present law adjustments ◆ The executive is requesting base operational increases including \$270,000 for legal costs ◆ Language authority is requested to cover costs associated with the subrogation program 	
Major LFD Issues	
<ul style="list-style-type: none"> ◆ The program submitted goals without any corresponding objectives for which to measure progress toward the goal ◆ Findings from a joint Legislative Finance Committee and Environmental Quality Council subcommittee should be reviewed ◆ The costs associated with the subrogation program should be evaluated in conjunction with potential recoveries 	

Program Narrative

2009 Biennium Monitored Goals and Objectives

The Legislative Finance Committee (LFC) did not select any goals to monitor during the 2009 interim.

LFD COMMENT	The LFC joined the Environmental Quality Council (EQC) to examine the issues surrounding the solvency of the fund. The subcommittee learned of disagreements between the board, the Remediation
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Division of the department, and the petroleum community regarding the use of funds and the degree of cleanup necessary. The committee examined the differences, reviewed funding issues, and did not recommend any specific changes to the program. The detailed report of this activity is available for review. However the summary findings are provided as an overview of that report. They are as follows:

1. Petroleum tank owners and operators rely on the fund as the default payor for cleanups, instead of the payor of last resort as envisioned by the legislature. Therefore, there is increasing pressure on the fund.
2. Payments are limited to available fund revenue, generated by a \$0.0075 per gallon fuel tax. The tax does not generate enough revenue to cover all existing cleanup plans.
3. Revenue from the existing fuel tax is likely to remain flat or decline as motorists reduce their consumption in response to rising fuel prices. For that same reason, it's unlikely that the legislature would pass a fuel tax increase, as proposed by the board.
4. The backlog is caused by the lengthy amount of time that it takes for a cleanup and ground water monitoring to be completed, in accordance with water quality standards followed by the DEQ. These standards are defined in documents known as "Circular DEQ-7" and "Technical Guidance Document #7".
5. The fund is using a prioritization system to pay for cleanups at the most hazardous sites first; lower priority sites languish, unable to be closed.
6. There is disagreement between industry, the board, and the DEQ as to the extent that cleanups should occur in order to facilitate more site closures.
7. The EPA encourages states to use a "risk-based" approach in cleaning up petroleum releases, allowing contaminants to remain in the soil or ground water if they pose no risk of spreading or causing harm.
8. Montana uses a "risk-based" approach to develop site cleanup plans. But if contaminants exceed water quality standards followed by the DEQ, a risk-based approach isn't used to close the site. Contaminants can't remain as long as the water quality standards aren't met.
9. Montana is not ready to transition to a system that requires tank owners and operators to obtain private insurance to pay for petroleum cleanups. Experience with private insurance has been mixed in other states, where some insurers are declining to cover petroleum releases or are taking long periods of time to pay claims.
10. Increasing the deductibles that are applied to cleanups paid by the fund, as proposed by the board, would result in higher out-of-pocket costs or insurance premiums for tank owners and operators.

2011 Biennium Major Goals

The agency is required by law to submit goals and measurable objectives as part of the budgeting process. The Legislative Fiscal Division recommends that the legislature adopt specific program goals and corresponding objectives for monitoring during the interim.

- Ensure that funding is available to obligate to the highest priority eligible environmental cleanup
- Reimburse for high priority environmental clean up within usual and customary business timeframes

LFD ISSUE

Funding availability

The availability of funding to the program is within the scope of the legislature. The program is provided a statutory appropriation for claims cleanup and that appropriation can only be adjusted by changing the statutorily defined per gallon fuel fee dedicated to this program (see findings 2 and 3). The board and its staff can only control the size of the claim with policy established in rule and statute. The legislature may wish to have the board re-write this goal (and provide measureable objectives) to clearly define the board role in the resource management process.

Funding

The following table shows program funding, by source, for the base year and for the 2011 biennium as recommended by the Governor.

Program Funding	Base	% of Base	Budget	% of Budget	Budget	% of Budget
	FY 2008	FY 2008	FY 2010	FY 2010	FY 2011	FY 2011
02000 Total State Special Funds	\$ 542,621	100.0%	\$ 740,602	100.0%	\$ 744,853	100.0%
02058 Petroleum Storage Tank Cleanup	542,621	100.0%	740,602	100.0%	744,853	100.0%
Grand Total	\$ 542,621	100.0%	\$ 740,602	100.0%	\$ 744,853	100.0%

The program is funded solely through a portion of the \$0.0075 fee on gasoline, diesel, heating oil, and aviation fuel distributed in Montana.

Budget Summary by Category

The following summarizes the total budget by base, present law adjustments, and new proposals.

Budget Item	-----General Fund-----				-----Total Funds-----			
	Budget Fiscal 2010	Budget Fiscal 2011	Biennium Fiscal 10-11	Percent of Budget	Budget Fiscal 2010	Budget Fiscal 2011	Biennium Fiscal 10-11	Percent of Budget
Base Budget	0	0	0	0.00%	542,621	542,621	1,085,242	73.06%
Statewide PL Adjustments	0	0	0	0.00%	19,701	20,555	40,256	2.71%
Other PL Adjustments	0	0	0	0.00%	178,280	181,677	359,957	24.23%
New Proposals	0	0	0	0.00%	0	0	0	0.00%
Total Budget	\$0	\$0	\$0		\$740,602	\$744,853	\$1,485,455	

Present Law Adjustments

The "Present Law Adjustments" table shows the primary changes to the adjusted base budget proposed by the Governor. "Statewide Present Law" adjustments are standard categories of adjustments made to all agencies. Decisions on these items were applied globally to all agencies. The other numbered adjustments in the table correspond to the narrative descriptions.

	-----Fiscal 2010-----					-----Fiscal 2011-----				
	FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds
Personal Services					34,157					35,029
Vacancy Savings					(14,507)					(14,544)
Inflation/Deflation					51					70
Total Statewide Present Law Adjustments					\$19,701					\$20,555
DP 9001 - Petroleum Board Subrogation Operation Adjustments	0.00	0	178,280	0	178,280	0.00	0	181,677	0	181,677
Total Other Present Law Adjustments	0.00	\$0	\$178,280	\$0	\$178,280	0.00	\$0	\$181,677	\$0	\$181,677
Grand Total All Present Law Adjustments					\$197,981					\$202,232

Program Personal Services Narrative

The following information is provided so that the legislature can consider various personal services issues when examining the agency budget. It was submitted by the agency and edited for brevity by the LFD.

- **Market Rate** – Relative to the 2008 market survey, the current market rate is 98.21 percent, a reduction from the 2006 market survey of 112 percent
- **Vacancy** – The agency did not provide program specific information

- **Legislatively applied vacancy savings** – The program required an operating plan change to transfer \$15,000 from operations to personal services to cover legislatively applied vacancy savings
- **Pay Changes** – Three employees, 50 percent of the program, are eligible for full retirement with an estimated payout of \$24,685

DP 9001 - Petroleum Board Subrogation Operation Adjustments - This request is to restore base expenditures for the Petroleum Tank Release Compensation Board. The biennial request includes \$20,000 for retirement costs, \$5,987 for communications, \$63,983 for agency indirects, and \$270,000 for legal fees related to subrogation.

**LFD
ISSUE****Subrogation Issues Found by the Petroleum Tank Subcommittee**

The Petroleum Tank Release Fund Subcommittee Report to LFC/EQC released in October 2008 describes the subrogation situation as follows:

Collecting payment from private insurance can be complicated, given that a property owner may have purchased policies from multiple insurers over the years or that a historically contaminated property may have changed hands one or several times before the release is discovered. The fund uses a third party to ferret out these channels of payment, a process known as subrogation. Depending on how the money is recovered (by settlement, through trial, etc), the third party is paid 22 to 25 percent of the recovered amount for its services, plus a \$70 an hour fee.

Since 2004, the board has recovered \$1.2 million through subrogation and has paid \$250,000 in fees to the third party. The board has also paid an additional \$829,000 in other legal fees and court costs. In FY 2004, these expenditures amounted to 38 percent of the Board's staff budget. In FY 2006, they amounted to 48 percent of the Board's staff budget. In FY 2008, they amounted to 23.5 percent of the Board's staff budget.

It appears that the board did not actively seek to recover cleanup costs from insurance companies for any release until about six years ago. Several of those attempts have since gone to litigation. In 2006, the Montana Supreme Court ruled that the statute of limitations that applies to these cases is eight years and that the clock starts running at the time that the release is discovered. In the 2006 case, the Board was seeking to recover \$254,842 in cleanup costs from the insurer of a gas station in Butte. The release was discovered in 1989. The board did not submit a claim to the insurer until 2001. The court ruled that that was well after the statute of limitations had expired and the insurer did not have to pay. The board sought to have the ruling overturned. On June 3, 2008, the Montana Supreme Court affirmed its 2006 ruling, again stating that the eight year statute of limitations applies and the clock begins at the time that a release is discovered.

Given these rulings, it appears that the board may no longer seek insurance payments on any of the top 21 most expensive releases (to date), among others. The subrogation attorney for the board evaluated releases from July 2000 to ensure that the board files any necessary claims before the statute of limitations runs out on those cases this month. The board didn't take similar action after the first ruling in 2006, choosing instead to try to have the ruling overturned. In the time between the court's 2006 and 2008 rulings, \$11.8 million in costs surpassed the eight year statute of limitations.

Option: The legislature is being asked to restore funding for court costs and legal fees as well as provide language (see below) for the payment of a portion of recovery costs. The legislature may wish to discuss with the board the claims amount that could potentially be recovered with the requested appropriation authority of \$270,000 for legal costs and \$0.5 million for contract expenses. The discussion should provide the legislature with an anticipated return on investment rate. If the rate is close to 1:1 (or one dollar expended to one dollar returned) the legislature may wish to address whether the performance of this program warrants continual funding.

Language and Statutory Authority

"The department is appropriated up to \$500,000 of the funds recovered under the petroleum tank compensation board subrogation program in the 2011 biennium for the purpose of paying contract expenses related to the recovery of funds."

LFD COMMENT	See discussion above.
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