

1 SENATE BILL NO. 267

2 INTRODUCED BY C. VINCENT

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF
5 ENVIRONMENTAL QUALITY COMPLETE CERTAIN TOTAL MAXIMUM DAILY LOADS BY 2012 FOR
6 THREATENED OR IMPAIRED WATER BODIES; REQUIRING REPORTING OF TOTAL MAXIMUM DAILY
7 LOAD PROGRESS TO THE ENVIRONMENTAL QUALITY COUNCIL; AND AMENDING SECTION 75-5-703,
8 MCA."

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

11
12 **Section 1.** Section 75-5-703, MCA, is amended to read:

13 **"75-5-703. Development and implementation of total maximum daily loads.** (1) The department
14 shall, in consultation with local conservation districts and watershed advisory groups, develop total maximum daily
15 loads or TMDLs for threatened or impaired water bodies or segments of water bodies in order of the priority
16 ranking established by the department under 75-5-702. Each TMDL must be established at a level that will
17 achieve compliance with applicable water quality standards and must include a reasonable margin of safety that
18 takes into account any lack of knowledge concerning the relationship between the TMDL and water quality
19 standards. The department shall consider applicable guidance from the federal environmental protection agency,
20 as well as the environmental, economic, and social costs and benefits of developing and implementing a TMDL.

21 (2) In establishing TMDLs under subsection (1), the department may establish waste load allocations
22 for point sources and may establish load allocations for nonpoint sources, as set forth in subsection (8), and may
23 allow for effluent trading. The department shall, in consultation with local conservation districts and watershed
24 advisory groups, develop reasonable land, soil, and water conservation practices specifically recognizing
25 established practices and programs for nonpoint sources.

26 (3) ~~Within 15 years from May 5, 1997, the department shall develop TMDLs for all water bodies on the~~
27 ~~list of waters that are threatened or impaired, as that list read on May 5, 1997. This provision does not apply to~~
28 ~~water bodies that are subsequently added or removed from the list according to the provisions of 75-5-702. The~~
29 ~~department shall establish a schedule for completing the TMDLs within the 15-year period established by this~~
30 ~~subsection. The department shall establish a schedule must also provide that provides a reasonable timeframe~~

1 for TMDL development for impaired and threatened water bodies that are ~~listed subsequent to May 5, 1997, and~~
2 ~~are prioritized as set forth in 75-5-702~~ on the most recent list prepared pursuant to 75-5-702. On or before July
3 1 of each even-numbered year, the department shall report the progress in completing TMDLs and the current
4 schedule for completion of TMDLs for the water bodies that remain on the list to the environmental quality council.

5 (4) The department shall provide guidance for TMDL development on any threatened or impaired water
6 body, regardless of its priority ranking, if the necessary funding and resources from sources outside the
7 department are available to develop the TMDL and to monitor the effectiveness of implementation efforts. The
8 department shall review the TMDL and either approve or disapprove the TMDL. If the TMDL is approved by the
9 department, the department shall ensure implementation of the TMDL according to the provisions of subsections
10 (6) through (8).

11 (5) For water bodies listed under 75-5-702, the department shall provide assistance and support to
12 landowners, local conservation districts, and watershed advisory groups for interim measures that may restore
13 water quality and remove the need to establish a TMDL, such as informational programs regarding control of
14 nonpoint source pollution and voluntary measures designed to correct impairments. When a source implements
15 voluntary measures to reduce pollutants prior to development of a TMDL, those measures, whether or not
16 reflected in subsequently issued waste discharge permits, must be recognized in development of the TMDL in
17 a way that gives credit for the pollution reduction efforts.

18 (6) After development of a TMDL and upon approval of the TMDL, the department shall:

19 (a) incorporate the TMDL into its current continuing planning process;

20 (b) incorporate the waste load allocation developed for point sources during the TMDL process into
21 appropriate water discharge permits; and

22 (c) assist and inform landowners regarding the application of a voluntary program of reasonable land,
23 soil, and water conservation practices developed pursuant to subsection (2).

24 (7) Once the control measures identified in subsection (6) have been implemented, the department shall,
25 in consultation with the statewide TMDL advisory group, develop a monitoring program to assess the waters that
26 are subject to the TMDL to determine whether compliance with water quality standards has been attained for a
27 particular water body or whether the water body is no longer threatened. The monitoring program must be
28 designed based on the specific impairments or pollution sources. The department's monitoring program must
29 include long-term monitoring efforts for the analysis of the effectiveness of the control measures developed.

30 (8) The department shall support a voluntary program of reasonable land, soil, and water conservation

1 practices to achieve compliance with water quality standards for nonpoint source activities for water bodies that
2 are subject to a TMDL developed and implemented pursuant to this section.

3 (9) If the monitoring program provided under subsection (7) demonstrates that the TMDL is not achieving
4 compliance with applicable water quality standards within 5 years after approval of a TMDL, the department shall
5 conduct a formal evaluation of progress in restoring water quality and the status of reasonable land, soil, and
6 water conservation practice implementation to determine if:

7 (a) the implementation of a new or improved phase of voluntary reasonable land, soil, and water
8 conservation practice is necessary;

9 (b) water quality is improving but a specified time is needed for compliance with water quality standards;

10 or

11 (c) revisions to the TMDL are necessary to achieve applicable water quality standards.

12 (10) Pending completion of a TMDL on a water body listed pursuant to 75-5-702:

13 (a) point source discharges to a listed water body may commence or continue, provided that:

14 (i) the discharge is in conformance with a discharge permit that reflects, in the manner and to the extent
15 applicable for the particular discharge, the provisions of 75-5-303;

16 (ii) the discharge will not cause a decline in water quality for parameters by which the water body is
17 impaired; and

18 (iii) minimum treatment requirements adopted pursuant to 75-5-305 are met;

19 (b) the issuance of a discharge permit may not be precluded because a TMDL is pending;

20 (c) new or expanded nonpoint source activities affecting a listed water body may commence and
21 continue if those activities are conducted in accordance with reasonable land, soil, and water conservation
22 practices;

23 (d) for existing nonpoint source activities, the department shall continue to use educational nonpoint
24 source control programs and voluntary measures as provided in subsections (5) and (6).

25 (11) This section may not be construed to prevent a person from filing an application or petition under
26 75-5-302, 75-5-310, or 75-5-312."

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