

SENATE BILL NO. 367

INTRODUCED BY C. VINCENT

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A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO USE INDIVIDUAL, GENERAL, AND ALTERNATIVE NUTRIENT STANDARDS VARIANCES TO ESTABLISH PERMIT LIMITS FOR POINT SOURCE DISCHARGES TO SURFACE WATER; ALLOWING INFORMATION RELATED TO BASE NUMERIC NUTRIENT STANDARDS OR NUTRIENT STANDARDS VARIANCES TO BE CONFIDENTIAL; AND AMENDING SECTIONS 75-5-103, 75-5-105, AND 75-5-313, MCA."

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

**Section 1.** Section 75-5-103, MCA, is amended to read:

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

- (1) "Associated supporting infrastructure" means:
  - (a) electric transmission and distribution facilities;
  - (b) pipeline facilities;
  - (c) aboveground ponds and reservoirs and underground storage reservoirs;
  - (d) rail transportation;
  - (e) aqueducts and diversion dams;
  - (f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or
  - (g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.
- (2) (a) "Base numeric nutrient standards" means numeric water quality ~~standards~~ criteria for nutrients in surface water that are adopted to protect the designated uses of a surface water body.
  - (b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that are adopted to protect human health.
- (3) "Board" means the board of environmental review provided for in 2-15-3502.
- (4) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or

1 other wastes, creating a hazard to human health.

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

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

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

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

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

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

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

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

17 (i) generating electricity;

18 (ii) producing gas derived from coal;

19 (iii) producing liquid hydrocarbon products;

20 (iv) refining crude oil or natural gas;

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

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

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

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

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

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

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

3 (b) surface waters that:

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

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

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

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

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

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

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

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

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

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

28 (22) "Nutrient standards variance" means numeric water quality criteria for nutrients based on a  
29 determination that base numeric nutrient standards cannot be achieved because of economic impacts or because  
30 of the limits of technology. The term includes individual, general, and alternative nutrient standards variances in

1 accordance with 75-5-313.

2 ~~(22)~~(23) "Nutrient work group" means an advisory work group, convened by the department, representing  
3 publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested  
4 parties that will advise the department on the base numeric nutrient standards, the development of ~~temporary~~  
5 ~~nutrient criteria~~ nutrient standards variances, and the implementation of those standards and ~~criteria~~ variances  
6 together with associated economic impacts.

7 ~~(23)~~(24) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime,  
8 sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded  
9 equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

10 ~~(24)~~(25) "Outstanding resource waters" means:

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

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

15 ~~(25)~~(26) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point  
16 source.

17 ~~(26)~~(27) "Parameter" means a physical, biological, or chemical property of state water when a value of  
18 that property affects the quality of the state water.

19 ~~(27)~~(28) "Person" means the state, a political subdivision of the state, institution, firm, corporation,  
20 partnership, individual, or other entity and includes persons resident in Canada.

21 ~~(28)~~(29) "Point source" means a discernible, confined, and discrete conveyance, including but not limited  
22 to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other  
23 floating craft, from which pollutants are or may be discharged.

24 ~~(29)~~(30) (a) "Pollution" means:

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

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

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

5 ~~(30)~~(31) "Sewage" means water-carried waste products from residences, public buildings, institutions,  
6 or other buildings, including discharge from human beings or animals, together with ground water infiltration and  
7 surface water present.

8 ~~(31)~~(32) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other  
9 wastes to an ultimate disposal point.

10 ~~(32)~~(33) "Standard of performance" means a standard adopted by the board for the control of the  
11 discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of  
12 the best available demonstrated control technology, processes, operating methods, or other alternatives,  
13 including, when practicable, a standard permitting no discharge of pollutants.

14 ~~(33)~~(34) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface  
15 or underground.

16 (b) The term does not apply to:

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

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

20 ~~(34)~~(35) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in  
21 combination with narrative information, that supports a finding as to whether a water body is achieving compliance  
22 with applicable water quality standards.

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

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

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

1 (b) documented adverse pollution trends.

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

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

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

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

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

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

20 **75-5-103. (Effective on occurrence of contingency) Definitions.** Unless the context requires  
21 otherwise, in this chapter, the following definitions apply:

22 (1) "Associated supporting infrastructure" means:

23 (a) electric transmission and distribution facilities;

24 (b) pipeline facilities;

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

26 (d) rail transportation;

27 (e) aqueducts and diversion dams;

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

30 (g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development

1 project.

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

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

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

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

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

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

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

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

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

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

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

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

24 (i) generating electricity;

25 (ii) producing gas derived from coal;

26 (iii) producing liquid hydrocarbon products;

27 (iv) refining crude oil or natural gas;

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

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

1 to 15-32-701; or

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

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

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

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

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

10 (b) surface waters that:

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

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

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

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

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

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

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

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

30 (20) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium,

1 cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

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

5 (22) "Nutrient standards variance" means numeric water quality criteria for nutrients based on a  
6 determination that base numeric nutrient standards cannot be achieved because of economic impacts or because  
7 of the limits of technology. The term includes individual, general, and alternative nutrient standards variances in  
8 accordance with 75-5-313.

9 ~~(22)~~(23) "Nutrient work group" means an advisory work group, convened by the department, representing  
10 publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested  
11 parties that will advise the department on the base numeric nutrient standards, the development of ~~temporary~~  
12 ~~nutrient criteria~~ nutrient standards variances, and the implementation of those standards and ~~criteria~~ variances  
13 together with associated economic impacts.

14 ~~(23)~~(24) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime,  
15 sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded  
16 equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

17 ~~(24)~~(25) "Outstanding resource waters" means:

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

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

22 ~~(25)~~(26) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point  
23 source.

24 ~~(26)~~(27) "Parameter" means a physical, biological, or chemical property of state water when a value of  
25 that property affects the quality of the state water.

26 ~~(27)~~(28) "Person" means the state, a political subdivision of the state, institution, firm, corporation,  
27 partnership, individual, or other entity and includes persons resident in Canada.

28 ~~(28)~~(29) "Point source" means a discernible, confined, and discrete conveyance, including but not limited  
29 to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other  
30 floating craft, from which pollutants are or may be discharged.

1 ~~(29)~~(30) (a) "Pollution" means:

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

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

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

12 (c) Contamination of ground water within the boundaries of a geologic storage reservoir, as defined in  
13 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter 11,  
14 part 1, is not pollution and does not require a mixing zone.

15 ~~(30)~~(31) "Sewage" means water-carried waste products from residences, public buildings, institutions,  
16 or other buildings, including discharge from human beings or animals, together with ground water infiltration and  
17 surface water present.

18 ~~(31)~~(32) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other  
19 wastes to an ultimate disposal point.

20 ~~(32)~~(33) "Standard of performance" means a standard adopted by the board for the control of the  
21 discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of  
22 the best available demonstrated control technology, processes, operating methods, or other alternatives,  
23 including, when practicable, a standard permitting no discharge of pollutants.

24 ~~(33)~~(34) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface  
25 or underground.

26 (b) The term does not apply to:

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

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

30 ~~(34)~~(35) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in

1 combination with narrative information, that supports a finding as to whether a water body is achieving compliance  
2 with applicable water quality standards.

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

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

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

11 (b) documented adverse pollution trends.

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

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

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

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

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

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

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1           **Section 2.** Section 75-5-105, MCA, is amended to read:

2           **"75-5-105. Confidentiality of records.** Except as provided in 80-15-108, any information concerning  
3 sources of pollution that is furnished to the board or department or that is obtained by either of them is a matter  
4 of public record and open to public use. However, any information unique to the owner or operator of a source  
5 of pollution that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be  
6 maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file  
7 a declaratory judgment action to establish the existence of a trade secret if the owner or operator wishes the  
8 information to remain confidential. The department must be served in the action and may intervene as a party.  
9 Any information not intended to be public when submitted to the board or department must be submitted in writing  
10 and clearly marked as confidential. ~~The Except as provided in [section 4], the data describing physical and~~  
11 ~~chemical characteristics of a waste discharged to state waters may not be considered confidential. The board~~  
12 ~~may use any information in compiling or publishing analyses or summaries relating to water pollution if the~~  
13 ~~analyses or summaries do not identify any owner or operator of a source of pollution or reveal any information~~  
14 ~~that is otherwise made confidential by this section."~~

15

16           **Section 3.** Section 75-5-313, MCA, is amended to read:

17           **"75-5-313. ~~Temporary nutrient criteria~~ Nutrient standards variances -- individual, general, and**  
18 **alternative.** (1) The department ~~may~~ shall, on a case-by-case basis, approve the use of ~~temporary nutrient~~  
19 ~~criteria~~ an individual nutrient standards variance in a discharge permit based upon adequate justification pursuant  
20 to subsection (2) that attainment of the base numeric nutrient standards is precluded due to economic impacts,  
21 ~~or the~~ limits of technology, or both.

22           (2) (a) The department, in consultation with the nutrient work group, shall develop guidelines for  
23 individual nutrient standards variances to ensure that the economic impacts from base numeric nutrient standards  
24 on public and private systems are equally and adequately addressed. In developing those guidelines, the  
25 department and the nutrient work group shall consider economic impacts appropriate for application within  
26 Montana, acknowledging that advanced treatment technologies for removing nutrients will result in significant and  
27 widespread economic impacts. ~~and may also consider relevant guidance of the United States environmental~~  
28 ~~protection agency pertaining to analysis of economic impacts from water quality standards.~~

29           (b) ~~In the event that economic impacts do not justify temporary nutrient criteria for a particular discharger,~~  
30 ~~the department may approve temporary nutrient criteria based upon a finding that the limits of technology~~

1 ~~preclude the attainment of the base numeric nutrient standards. The department's determination that the limits~~  
 2 ~~of technology justify temporary nutrient criteria must be based on available and proven treatment technologies~~  
 3 ~~at the time the temporary nutrient criteria are approved.~~

4 ~~(e)(b)~~ The department shall consult with the nutrient work group prior to recommending base numeric  
 5 nutrient standards ~~or criteria~~ to the board and shall continue to consult with the nutrient work group in  
 6 implementing ~~temporary nutrient criteria~~ individual nutrient standards variances.

7 (3) The department shall review each application for ~~temporary nutrient criteria~~ an individual nutrient  
 8 standards variance on a case-by-case basis to determine if there are reasonable alternatives, such as trading,  
 9 ~~or permit compliance schedules, or the alternatives provided in subsections (5), (10), and (11),~~ that preclude the  
 10 need for the ~~temporary criteria~~ individual nutrient standards variance.

11 (4) ~~(a) Temporary nutrient criteria~~ Individual nutrient standards variances approved by the department  
 12 become effective and may be incorporated into a permit only after a public hearing and adoption by the  
 13 department under the rulemaking procedures of Title 2, chapter 4, part 3.

14 ~~(b) Temporary nutrient criteria may be established for a period not to exceed 20 years and must be~~  
 15 ~~reviewed by the department every 5 years from the date of adoption to ensure that the justification for their~~  
 16 ~~adoption is still valid.~~

17 (5) (a) Because the treatment of wastewater to nutrient levels more stringent than those provided in  
 18 subsection (5)(b) would result in substantial and widespread economic impacts on a statewide basis, a permittee  
 19 who meets the requirements established in subsection (5)(b) may, subject to subsection (6), apply for a general  
 20 nutrient standards variance.

21 (b) A general nutrient standards variance is available to permittees with wastewater treatment facilities  
 22 that discharge to surface water:

23 (i) in an amount greater than or equal to 1 million gallons per day of effluent if the permittee treats the  
 24 discharge to, at a minimum, 1 milligram total phosphorus per liter and 10 milligrams total nitrogen per liter,  
 25 calculated as a monthly average during the period in which the base numeric nutrient standards apply;

26 (ii) in an amount less than 1 million gallons per day of effluent if the permittee treats the discharge to, at  
 27 a minimum, 2 milligrams total phosphorus per liter and 15 milligrams total nitrogen per liter, calculated as a  
 28 monthly average during the period in which the base numeric nutrient standards apply; or

29 (iii) from lagoons that were not designed to actively remove nutrients if the permittee maintains the  
 30 performance of the lagoon at a level equal to the performance of the lagoon on [the effective date of this act].

1 (6) (a) The monthly average concentrations for total nitrogen and total phosphorus in subsection (5)(b)  
2 are the highest concentrations allowed in each category and remain in effect until May 31, 2016.

3 (b) Categories and concentrations in subsection (5)(b) must be adopted by rule by May 31, 2016.

4 (7) (a) Immediately after May 31, 2016, and every 3 years thereafter, the department, in consultation with  
5 the nutrient work group, shall revisit and update the concentration levels provided in subsection (5)(b).

6 (b) If more cost-effective and efficient treatment technologies are available, the concentration levels  
7 provided in subsection (5)(b) must be updated pursuant to subsection (7)(c) to reflect those changes.

8 (c) The updates become effective and may be incorporated into a permit only after a public hearing and  
9 adoption by the department under the rulemaking procedures of Title 2, chapter 4, part 3.

10 (8) An individual, general, or alternative nutrient standards variance may be established for a period not  
11 to exceed 20 years and must be reviewed by the department every 3 years from the date of adoption to ensure  
12 that the justification for its adoption remains valid.

13 (9) (a) Permittees receiving an individual, general, or alternative nutrient standards variance shall  
14 evaluate current facility operations to optimize nutrient reduction with existing infrastructure and shall analyze  
15 cost-effective methods of reducing nutrient loading, including but not limited to nutrient trading without substantial  
16 investment in new infrastructure.

17 (b) The department may request that a permittee provide the results of an optimization study and nutrient  
18 reduction analysis to the department within 2 years of receiving an individual, general, or alternative nutrient  
19 variance.

20 (10) (a) A permittee may request that the department provide an alternative nutrient standards variance  
21 if the permittee demonstrates that achieving nutrient concentrations established for an individual or general  
22 nutrient standards variance would result in an insignificant reduction of instream nutrient loading.

23 (b) A permittee receiving an alternative nutrient standards variance shall comply with the requirements  
24 of subsections (8) and (9) and shall demonstrate that the permittee's contribution to nutrient concentrations in the  
25 watershed continues to remain insignificant.

26 (11) The department shall encourage the use of alternative effluent management methods to reduce  
27 instream nutrient loading, including reuse, recharge, land application, and trading.

28 ~~(e)(12)~~ On or before July 1 of each year, the department, in consultation with the nutrient work group,  
29 shall report to the environmental quality council by providing a summary of the status of the base numeric nutrient  
30 standards, ~~temporary nutrient criteria~~ the nutrient standards variances, and implementation of those criteria

1 standards and variances, including estimated economic impacts.

2 ~~(d)~~(13) On or before September 1 of each year preceding the convening of a regular session of the  
3 legislature, the department, in consultation with the nutrient work group, shall summarize the previous two reports  
4 provided in subsection ~~(4)~~(e) (12) to the environmental quality council in accordance with 5-11-210."  
5

6 **NEW SECTION. Section 4. Confidentiality of base numeric standards and nutrient standards**  
7 **variances.** (1) Except as provided in 80-15-108 and subsection (2) of this section, information concerning base  
8 numeric nutrient standards or nutrient standards variances that is furnished to the board or department or that  
9 is obtained by either of them is a matter of public record and open to public use.

10 (2) Information unique to the owner or operator of a source of a discharge related to base numeric  
11 nutrient standards or nutrient standards variances that would, if disclosed, reveal methods or processes entitled  
12 to protection as trade secrets as defined in 30-14-402 must be maintained as confidential if so determined by a  
13 court of competent jurisdiction.

14 (3) (a) The owner or operator shall file a declaratory judgment action to establish the existence of a trade  
15 secret if the owner or operator wishes the information to remain confidential.

16 (b) The department must be served in the action and may intervene as a party.

17 (c) Information not intended to be public when submitted to the board or department must be submitted  
18 in writing and clearly marked as confidential.  
19

20 **NEW SECTION. Section 5. Codification instruction.** [Section 4] is intended to be codified as an  
21 integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to [section 4].  
22

23 **NEW SECTION. Section 6. Saving clause.** [This act] does not affect rights and duties that matured,  
24 penalties that were incurred, or proceedings that were begun before [the effective date of this act].  
25

26 **NEW SECTION. Section 7. Severability.** If a part of [this act] is invalid, all valid parts that are severable  
27 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part  
28 remains in effect in all valid applications that are severable from the invalid applications.  
29

- END -