

SENATE BILL NO. 97

INTRODUCED BY C. VINCENT

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PROCESS TO CORRECT MISCLASSIFICATION OF STATE WATER BODIES; REMOVING RESTRICTIONS ON THE ADOPTION AND REVISION OF CLASSIFICATIONS; REMOVING THE EXCEPTION FOR TEMPORARY CLASSIFICATIONS; AND AMENDING SECTIONS 75-5-302 AND 75-5-703, MCA."

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

Section 1. Section 75-5-302, MCA, is amended to read:

"75-5-302. ~~Revised classifications not to lower water quality standards -- exception~~ Correcting misclassification of water bodies. ~~(1) Except as provided in subsection (2), in revising classifications or standards or in adopting new classifications or standards, the board may not formulate standards of water quality or classify state water in a manner that lowers the water quality standard applicable to state water below the level applicable under the classifications and standards adopted unless the board finds that a particular state water has been classified under a standard or classification of water quality that is higher than the actual water quality that existed at the time of classification and only if the action is taken pursuant to 75-5-307. When the board or department is presented with facts indicating that a body of water is misclassified, the board department shall, within 90 days, evaluate the facts and advise the board whether the water body is misclassified. If the board determines that the water body is misclassified, the board shall initiate rulemaking to correct the misclassification.~~

~~(2) Establishment of a temporary water quality standard or classification does not require a finding that the affected state water was classified under a standard or classification that was higher than the actual water quality that existed at the time of the prior classification."~~

Section 2. Section 75-5-703, MCA, is amended to read:

"75-5-703. **Development and implementation of total maximum daily loads.** (1) The department shall, in consultation with local conservation districts and watershed advisory groups, develop total maximum daily loads or TMDLs for threatened or impaired water bodies or segments of water bodies in order of the priority



1 ranking established by the department under 75-5-702. Each TMDL must be established at a level that will  
2 achieve compliance with applicable water quality standards and must include a reasonable margin of safety that  
3 takes into account any lack of knowledge concerning the relationship between the TMDL and water quality  
4 standards. The department shall consider applicable guidance from the federal environmental protection agency,  
5 as well as the environmental, economic, and social costs and benefits of developing and implementing a TMDL.

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

11 (3) The department shall establish a schedule that provides a reasonable timeframe for TMDL  
12 development for impaired and threatened water bodies that are on the most recent list prepared pursuant to  
13 75-5-702. On or before July 1 of each even-numbered year, the department shall report the progress in  
14 completing TMDLs and the current schedule for completion of TMDLs for the water bodies that remain on the list  
15 to the environmental quality council.

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

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

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

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

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

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

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

11 (8) The department shall support a voluntary program of reasonable land, soil, and water conservation  
12 practices to achieve compliance with water quality standards for nonpoint source activities for water bodies that  
13 are subject to a TMDL developed and implemented pursuant to this section.

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

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

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

21 or

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

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

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

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

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

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

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

