

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 MODIFY CLASSIFICATION OF STATE WATER BODIES; REMOVING RESTRICTIONS ON THE ADOPTION AND REVISION OF CLASSIFICATIONS; REMOVING THE EXCEPTION FOR TEMPORARY CLASSIFICATIONS; AND AMENDING SECTIONS SECTION 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 REVISING CLASSIFICATIONS IN ACCORDANCE WITH EXISTING, PRESENT, AND FUTURE MOST BENEFICIAL USES 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~~ NOT PROPERLY CLASSIFIED IN ACCORDANCE WITH ITS EXISTING, PRESENT, AND FUTURE MOST BENEFICIAL USES, the ~~board~~ department shall, within 90 days, evaluate the facts and advise the board whether the water body is ~~misclassified~~ NOT PROPERLY CLASSIFIED. If the board determines that the water body is ~~misclassified~~ NOT PROPERLY CLASSIFIED, the board shall initiate rulemaking to ~~correct the misclassification~~ PROPERLY CLASSIFY THE WATER BODY IN ACCORDANCE WITH ITS EXISTING, PRESENT, AND FUTURE MOST BENEFICIAL USES. BOARD ACTION PURSUANT TO THIS SECTION IS SUBJECT TO 75-5-307.

(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.~~

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

2 ~~"75-5-703. Development and implementation of total maximum daily loads.~~ (1) The department
3 shall, in consultation with local conservation districts and watershed advisory groups, develop total maximum daily
4 loads or TMDLs for threatened or impaired water bodies or segments of water bodies in order of the priority
5 ranking established by the department under 75-5-702. Each TMDL must be established at a level that will
6 achieve compliance with applicable water quality standards and must include a reasonable margin of safety that
7 takes into account any lack of knowledge concerning the relationship between the TMDL and water quality
8 standards. The department shall consider applicable guidance from the federal environmental protection agency,
9 as well as the environmental, economic, and social costs and benefits of developing and implementing a TMDL.

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

15 ~~(3) The department shall establish a schedule that provides a reasonable timeframe for TMDL~~
16 ~~development for impaired and threatened water bodies that are on the most recent list prepared pursuant to~~
17 ~~75-5-702. On or before July 1 of each even-numbered year, the department shall report the progress in~~
18 ~~completing TMDLs and the current schedule for completion of TMDLs for the water bodies that remain on the list~~
19 ~~to the environmental quality council.~~

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

26 ~~(5) For water bodies listed under 75-5-702, the department shall provide assistance and support to~~
27 ~~landowners, local conservation districts, and watershed advisory groups for interim measures that may restore~~
28 ~~water quality and remove the need to establish a TMDL, such as informational programs regarding control of~~
29 ~~nonpoint source pollution and voluntary measures designed to correct impairments. When a source implements~~
30 ~~voluntary measures to reduce pollutants prior to development of a TMDL, those measures, whether or not~~

1 reflected in subsequently issued waste discharge permits, must be recognized in development of the TMDL in
2 a way that gives credit for the pollution reduction efforts:

3 ~~———(6) After development of a TMDL and upon approval of the TMDL, the department shall:~~
4 ~~———(a) incorporate the TMDL into its current continuing planning process;~~
5 ~~———(b) incorporate the waste load allocation developed for point sources during the TMDL process into~~
6 ~~appropriate water discharge permits; and~~
7 ~~———(c) assist and inform landowners regarding the application of a voluntary program of reasonable land,~~
8 ~~soil, and water conservation practices developed pursuant to subsection (2).~~

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

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

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

22 ~~———(a) the implementation of a new or improved phase of voluntary reasonable land, soil, and water~~
23 ~~conservation practice is necessary;~~
24 ~~———(b) water quality is improving but a specified time is needed for compliance with water quality standards;~~
25 ~~or~~
26 ~~———(c) revisions to the TMDL are necessary to achieve applicable water quality standards.~~

27 ~~———(10) Pending completion of a TMDL on a water body listed pursuant to 75-5-702:~~
28 ~~———(a) point source discharges to a listed water body may commence or continue, provided that:~~
29 ~~———(i) the discharge is in conformance with a discharge permit that reflects, in the manner and to the extent~~
30 ~~applicable for the particular discharge, the provisions of 75-5-303;~~

1 ~~—— (ii) the discharge will not cause a decline in water quality for parameters by which the water body is~~
2 ~~impaired; and~~

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

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

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

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

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

12

- END -