

SENATE BILL NO. 48

INTRODUCED BY T. RICHMOND

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING VARIANCES TO WATER QUALITY  
6 STANDARDS FOR POLLUTION DISCHARGERS; CONSOLIDATING EXISTING PROVISIONS FOR  
7 VARIANCES TO WATER QUALITY STANDARDS; CREATING ADDITIONAL PROVISIONS FOR VARIANCES  
8 TO WATER QUALITY STANDARDS; REQUIRING PERIODIC REVIEW OF VARIANCES; LIMITING THE  
9 LENGTH OF VARIANCES; CREATING CONDITIONS, CRITERIA, EVALUATIONS, AND OTHER  
10 REQUIREMENTS FOR WATER QUALITY STANDARDS VARIANCES; REQUIRING PUBLIC NOTICE  
11 PROVISIONS FOR VARIANCE APPLICATIONS; CREATING A STANDARDS VARIANCE WORK GROUP;  
12 REQUIRING REPORTS TO THE LEGISLATURE; REVISING CERTAIN WATER QUALITY DEFINITIONS;  
13 PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 75-5-103, 75-5-222, 75-5-305, 75-5-314,  
14 AND 75-5-319, MCA; AND REPEALING SECTION 75-5-313, MCA."

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

17  
18 NEW SECTION. **Section 1. Water quality standards variances.** (1) The department shall review and  
19 approve an individual or general variance to designated beneficial uses and criteria of state water quality  
20 standards if it determines that one or more of the following conditions is met:

- 21 (a) naturally occurring pollutant concentrations prevent the attainment of the designated beneficial use;
- 22 (b) natural, ephemeral, intermittent, or low-flow water conditions or levels prevent the attainment of the  
23 designated beneficial use, unless the conditions may be compensated for by the discharge of a sufficient volume  
24 of effluent without violating state water conservation requirements;
- 25 (c) human-caused conditions or sources of pollution prevent the attainment of the designated beneficial  
26 use, and either the pollution cannot be remedied or its remediation would cause additional environmental damage  
27 compared to the conditions if left undisturbed;
- 28 (d) dams, diversions, or other types of hydrologic modifications prevent the attainment of the designated  
29 beneficial use, and it is not feasible to restore the water body to its original condition or to modify the water body  
30 so that it would attain the designated beneficial use;

1 (e) physical conditions related to the natural features of the water body, such as a lack of proper  
2 substrate, cover, flow, depth, pools, riffles, and other conditions unrelated to water quality, prevent the attainment  
3 of a designated beneficial use for fish and aquatic life; or

4 (f) the imposition of controls more stringent than the technology-based treatment requirements adopted  
5 under 75-5-304 would result in substantial and widespread adverse economic and social impacts.

6 (2) (a) If the department finds that the treatment of wastewater to base numeric nutrient standards would  
7 result in substantial and widespread adverse economic impacts, the department shall establish concentrations  
8 for total nitrogen and total phosphorous for use in general water quality standards variances for nutrients. For  
9 permittees with wastewater treatment facilities that discharge to surface water, the department shall set total  
10 nitrogen and total phosphorous concentration limits based on the following categories:

11 (i) for an effluent amount greater than or equal to 1 million gallons a day;

12 (ii) for an effluent amount less than 1 million gallons a day; and

13 (iii) for lagoons that were not designed to actively remove nutrients.

14 (b) A permittee whose treatment and discharge of wastewater are categorized in subsection (2)(a) may  
15 apply for an individual or general water quality standards variance for nutrients.

16 (c) Immediately after July 1, 2020, and every 5 years thereafter, the department shall review and update  
17 the concentrations developed in subsection (2)(a). The department shall consult with the standards variance work  
18 group during this review process.

19 (d) The holder of a water quality standards variance for nutrients shall analyze cost-effective methods  
20 of reducing nutrient loading, including but not limited to nutrient trading. This analysis does not include a  
21 substantial investment in new infrastructure.

22 (e) The department shall encourage the use of alternative effluent management methods to reduce  
23 instream nutrient loading. These methods may include reuse, recharge, land application, or trading.

24 (3) (a) For water bodies for which the state water quality standard is more stringent than the condition  
25 of the water body and to which the standard for nonanthropogenic conditions under 75-5-222 does not apply, the  
26 department may issue a water quality standards variance if:

27 (i) the condition of the water body cannot reasonably be expected to be remediated during the term of  
28 the discharge permit associated with the variance application; and

29 (ii) the discharge under the terms of the permit and associated variance would not materially contribute  
30 to the condition of the water body.

1 (b) The department shall develop rules for water quality standards variances granted under this  
2 subsection (3).

3 (4) The department, in consultation with the standards variance work group, shall develop rules for water  
4 quality standards variances authorized by this section.

5 (5) A water quality standards variance issued pursuant to this section becomes effective and incorporated  
6 into a discharge permit only after:

7 (a) department approval;

8 (b) a public hearing;

9 (c) adoption of the variance by the department under the rulemaking procedures of Title 2, chapter 4, part  
10 3;

11 (d) any additional public notice required by law; and

12 (e) application of any other requirement for water quality standards provided by law.

13 (6) A water quality standards variance issued pursuant to this section must be consistent with comparable  
14 federal rules and regulations for water quality standards variances as required.

15 (7) (a) The holder of a water quality standards variance issued pursuant to this section shall evaluate  
16 facility operations and infrastructure to maximize reduction of the pollutant for which the variance applies.

17 (b) The department may require a variance holder to conduct an optimization study and a pollution  
18 reduction analysis within 2 years of issuance of a variance. The variance holder shall submit the results to the  
19 department.

20 (c) The department may require a variance holder to implement the recommendations of an optimization  
21 study as a term and condition of a discharge permit.

22 (d) The department may require a variance holder to develop and implement structured activities to  
23 improve processes and pollutant controls. These processes and controls must prevent and minimize pollutant  
24 loading.

25 (8) Except as provided under (2)(c), the department shall review water quality standards variances issued  
26 pursuant to this section every 5 years after the approval date, including the highest attainable water quality  
27 condition and any interim requirements.

28 (9) On or before July 1 of each year, the department, in consultation with the standards variance work  
29 group, shall report to the water policy committee established in 5-5-231 by providing a summary of:

30 (a) the status of water quality standards variances issued under this section; and

1 (b) the implementation of those variances, including estimated economic impacts.

2 (10) A water quality standards variance issued pursuant to this section may not exceed a period of 20  
3 years.

4

5 **Section 2.** Section 75-5-103, MCA, is amended to read:

6 **"75-5-103. (Temporary) Definitions.** Unless the context requires otherwise, in this chapter, the following  
7 definitions apply:

8 (1) "Associated supporting infrastructure" means:

9 (a) electric transmission and distribution facilities;

10 (b) pipeline facilities;

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

12 (d) rail transportation;

13 (e) aqueducts and diversion dams;

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

16 (g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development  
17 project.

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

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

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

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

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

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

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

30 (7) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a

1 parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant  
2 to 75-5-301(5)(c).

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

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

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

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

10 (i) generating electricity;

11 (ii) producing gas derived from coal;

12 (iii) producing liquid hydrocarbon products;

13 (iv) refining crude oil or natural gas;

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

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

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

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

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

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

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

26 (b) surface waters that:

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

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

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

1 standards.

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

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

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

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

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

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

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

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

25 ~~———(23) "Nutrient work group" means an advisory work group, convened by the department, representing~~  
26 ~~publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested~~  
27 ~~parties that will advise the department on the base numeric nutrient standards, the development of nutrient~~  
28 ~~standards variances, and the implementation of those standards and variances together with associated~~  
29 ~~economic impacts.~~

30 ~~(24)~~(22) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime,

1 sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded  
2 equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

3 ~~(25)~~(23) "Outstanding resource waters" means:

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

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

8 ~~(26)~~(24) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point  
9 source.

10 ~~(27)~~(25) "Parameter" means a physical, biological, or chemical property of state water when a value of  
11 that property affects the quality of the state water.

12 ~~(28)~~(26) "Person" means the state, a political subdivision of the state, institution, firm, corporation,  
13 partnership, individual, or other entity and includes persons resident in Canada.

14 ~~(29)~~(27) "Point source" means a discernible, confined, and discrete conveyance, including but not limited  
15 to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other  
16 floating craft, from which pollutants are or may be discharged.

17 ~~(30)~~(28) (a) "Pollution" means:

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

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

24 (b) The term does not include:

25 (i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge  
26 permit rules adopted by the board under this chapter;

27 (ii) activities conducted under this chapter that comply with the conditions imposed by the department  
28 in short-term authorizations pursuant to 75-5-308;

29 (iii) contamination of ground water within the boundaries of an underground mine using in situ coal  
30 gasification and operating in accordance with a permit issued under 82-4-221.

1 (c) Contamination referred to in subsection ~~(30)(b)(iii)~~ (28)(b)(iii) does not require a mixing zone.

2 ~~(34)(29)~~ "Sewage" means water-carried waste products from residences, public buildings, institutions,  
3 or other buildings, including discharge from human beings or animals, together with ground water infiltration and  
4 surface water present.

5 ~~(32)(30)~~ "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other  
6 wastes to an ultimate disposal point.

7 ~~(33)(31)~~ "Standard of performance" means a standard adopted by the board for the control of the  
8 discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of  
9 the best available demonstrated control technology, processes, operating methods, or other alternatives,  
10 including, when practicable, a standard permitting no discharge of pollutants.

11 (32) "Standards variance work group" means an advisory work group convened by the department to  
12 advise it on the development of water quality standards variances. The work group consists of representatives  
13 of publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other  
14 interested parties.

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

17 (b) The term does not apply to:

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

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

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

24 ~~(36)(35)~~ "Threatened water body" means a water body or stream segment for which sufficient credible  
25 data and calculated increases in loads show that the water body or stream segment is fully supporting its  
26 designated uses but threatened for a particular designated use because of:

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

29 (b) documented adverse pollution trends.

30 ~~(37)(36)~~ "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations



1 for point sources and load allocations for both nonpoint sources and natural background sources established at  
2 a level necessary to achieve compliance with applicable surface water quality standards.

3 ~~(38)~~(37) "Treatment works" means works, including sewage lagoons, installed for treating or holding  
4 sewage, industrial wastes, or other wastes.

5 ~~(39)~~(38) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated  
6 to one of its existing or future point sources.

7 ~~(40)~~(39) "Water quality protection practices" means those activities, prohibitions, maintenance  
8 procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain,  
9 and improve the quality of state waters. Water quality protection practices include but are not limited to treatment  
10 requirements, standards of performance, effluent standards, and operating procedures and practices to control  
11 site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

12 (40) "Water quality standards variance" means a variance to water quality standards that is a time-limited  
13 designated beneficial use and criterion for a specific pollutant or water quality parameter, both of which reflect  
14 the highest attainable water quality condition during the duration of the variance. The term includes individual and  
15 general water quality standards variances issued under [section 1].

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

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

22 **75-5-103. (Effective on occurrence of contingency) Definitions.** Unless the context requires  
23 otherwise, in this chapter, the following definitions apply:

24 (1) "Associated supporting infrastructure" means:

25 (a) electric transmission and distribution facilities;

26 (b) pipeline facilities;

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

28 (d) rail transportation;

29 (e) aqueducts and diversion dams;

30 (f) devices or equipment associated with the delivery of an energy form or product produced at an energy

1 development project; or

2 (g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development  
3 project.

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

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

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

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

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

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

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

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

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

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

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

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

26 (i) generating electricity;

27 (ii) producing gas derived from coal;

28 (iii) producing liquid hydrocarbon products;

29 (iv) refining crude oil or natural gas;

30 (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive

1 pursuant to Title 15, chapter 70, part 5;

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

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

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

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

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

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

12 (b) surface waters that:

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

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

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

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

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

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

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

30 (19) "Local department of health" means the staff, including health officers, employed by a county, city,

1 city-county, or district board of health.

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

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

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

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

16 ~~(24)~~(22) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime,  
17 sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded  
18 equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

19 ~~(25)~~(23) "Outstanding resource waters" means:

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

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

24 ~~(26)~~(24) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point  
25 source.

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

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

30 ~~(29)~~(27) "Point source" means a discernible, confined, and discrete conveyance, including but not limited

1 to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other  
 2 floating craft, from which pollutants are or may be discharged.

3 ~~(30)~~(28) (a) "Pollution" means:

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

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

10 (b) The term does not include:

11 (i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge  
 12 permit rules adopted by the board under this chapter;

13 (ii) activities conducted under this chapter that comply with the conditions imposed by the department  
 14 in short-term authorizations pursuant to 75-5-308;

15 (iii) contamination of ground water within the boundaries of a geologic storage reservoir, as defined in  
 16 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter 11,  
 17 part 1;

18 (iv) contamination of ground water within the boundaries of an underground mine using in situ coal  
 19 gasification and operating in accordance with a permit issued under 82-4-221;

20 (c) Contamination referred to in subsections ~~(30)(b)(iii) and (30)(b)(iv)~~ (28)(b)(iii) and (28)(b)(iv) does not  
 21 require a mixing zone.

22 ~~(31)~~(29) "Sewage" means water-carried waste products from residences, public buildings, institutions,  
 23 or other buildings, including discharge from human beings or animals, together with ground water infiltration and  
 24 surface water present.

25 ~~(32)~~(30) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other  
 26 wastes to an ultimate disposal point.

27 ~~(33)~~(31) "Standard of performance" means a standard adopted by the board for the control of the  
 28 discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of  
 29 the best available demonstrated control technology, processes, operating methods, or other alternatives,  
 30 including, when practicable, a standard permitting no discharge of pollutants.

1           ~~(32)~~ (32) "Standards variance work group" means an advisory work group convened by the department to  
2 advise it on the development of water quality standards variances. The work group consists of representatives  
3 of publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other  
4 interested parties.

5           ~~(34)~~(33) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface  
6 or underground.

7           (b) The term does not apply to:

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

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

11           ~~(35)~~(34) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in  
12 combination with narrative information, that supports a finding as to whether a water body is achieving compliance  
13 with applicable water quality standards.

14           ~~(36)~~(35) "Threatened water body" means a water body or stream segment for which sufficient credible  
15 data and calculated increases in loads show that the water body or stream segment is fully supporting its  
16 designated uses but threatened for a particular designated use because of:

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

19           (b) documented adverse pollution trends.

20           ~~(37)~~(36) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations  
21 for point sources and load allocations for both nonpoint sources and natural background sources established at  
22 a level necessary to achieve compliance with applicable surface water quality standards.

23           ~~(38)~~(37) "Treatment works" means works, including sewage lagoons, installed for treating or holding  
24 sewage, industrial wastes, or other wastes.

25           ~~(39)~~(38) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated  
26 to one of its existing or future point sources.

27           ~~(40)~~(39) "Water quality protection practices" means those activities, prohibitions, maintenance  
28 procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain,  
29 and improve the quality of state waters. Water quality protection practices include but are not limited to treatment  
30 requirements, standards of performance, effluent standards, and operating procedures and practices to control

1 site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

2 (40) "Water quality standards variance" means a variance to water quality standards that is a time-limited  
 3 designated beneficial use and criterion for a specific pollutant or water quality parameter, both of which reflect  
 4 the highest attainable water quality condition during the duration of the variance. The term includes individual and  
 5 general water quality standards variances issued under [section 1].

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

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

12

13 **Section 3.** Section 75-5-222, MCA, is amended to read:

14 **"75-5-222. State regulation for natural conditions.** (†) The department may not apply a standard to  
 15 a water body for water quality that is more stringent than the nonanthropogenic condition of the water body. For  
 16 the parameters for which the applicable standards are more stringent than the nonanthropogenic condition, the  
 17 standard is the nonanthropogenic condition of the parameter in the water body. The department shall implement  
 18 the standard in a manner that provides for the water quality standards for downstream waters to be attained and  
 19 maintained.

20 ~~(2) (a) For water bodies where the standard is more stringent than the condition of the water body but~~  
 21 ~~subsection (1) is not applicable, the board shall adopt rules consistent with comparable federal rules and~~  
 22 ~~guidelines providing criteria and procedures for the department to issue variances from standards if:~~

23 ~~—— (i) the condition cannot reasonably be expected to be remediated during the permit term for which the~~  
 24 ~~application for variance has been received; and~~

25 ~~—— (ii) the discharge to which the variance applies would not materially contribute to the condition.~~

26 ~~—— (b) A variance issued pursuant to subsection (2)(a) must be reviewed every 5 years and may be modified~~  
 27 ~~or terminated as a result of the review."~~

28

29 **Section 4.** Section 75-5-305, MCA, is amended to read:

30 **"75-5-305. Adoption of requirements for treatment of wastes -- variance procedure -- appeals.** (1)

1 The board may establish minimum requirements for the treatment of wastes. For cases in which the federal  
2 government has adopted technology-based treatment requirements for a particular industry or activity in 40 CFR,  
3 chapter I, subchapter N, the board shall adopt those requirements by reference. To the extent that the federal  
4 government has not adopted minimum treatment requirements for a particular industry or activity, the board may  
5 do so, through rulemaking, for parameters likely to affect beneficial uses, ensuring that the requirements are  
6 cost-effective and economically, environmentally, and technologically feasible. Except for the technology-based  
7 treatment requirements set forth in 40 CFR, chapter I, subchapter N, minimum treatment may not be required to  
8 address the discharge of a parameter when the discharge is considered nonsignificant under rules adopted  
9 pursuant to 75-5-301.

10 (2) (a) ~~The~~ Except as provided in [section 1], the board shall establish minimum requirements for the  
11 control and disposal of sewage from private and public buildings, including standards and procedures for  
12 variances from the requirements.

13 (b) For gray water reuse systems, the board shall establish rules that:

14 (i) allow the diversion of gray water from wastewater treatment systems and limit the amount of gray  
15 water flow allowed by permit;

16 (ii) address the uses of gray water, including when and how gray water may be applied to land; and

17 (iii) include any other provisions that the board considers necessary to ensure that gray water reuse  
18 systems comply with laws and regulations and protect public health and the environment.

19 (3) An applicant for a variance from minimum requirements adopted by a local board of health pursuant  
20 to 50-2-116 may appeal the local board of health's final decision to the department by submitting a written request  
21 for a hearing within 30 days after the decision. The written request must describe the activity for which the  
22 variance is requested, include copies of all documents submitted to the local board of health in support of the  
23 variance, and specify the reasons for the appeal of the local board of health's final decision.

24 (4) The department shall conduct a hearing on the request pursuant to Title 2, chapter 4, part 6. Within  
25 30 days after the hearing, the department shall grant, conditionally grant, or deny the variance. The department  
26 shall base its decision on the board's standards for a variance.

27 (5) A decision of the department pursuant to subsection (4) is appealable to district court under the  
28 provisions of Title 2, chapter 4, part 7."

29

30 **Section 5.** Section 75-5-314, MCA, is amended to read:



1           **"75-5-314. Confidentiality of base numeric nutrient standards and nutrient water quality standards**

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

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

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

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

12           (c) Information not intended to be public when submitted to the board or department must be submitted  
13 in writing and clearly marked as confidential."  
14

15           **Section 6.** Section 75-5-319, MCA, is amended to read:

16           **"75-5-319. Compliance schedule for base numeric nutrient standards.** If the United States  
17 environmental protection agency vetoes or objects to a discharge permit because of a ~~nutrient standards variance~~  
18 ~~provided for in 75-5-313~~ water quality standards variance to base numeric nutrient standards pursuant to [section  
19 1], and the environmental protection agency determines that no variance may be granted for the permit, the  
20 department shall modify the discharge permit to contain nutrient limits based on the base numeric nutrient  
21 standards and a compliance schedule for meeting these nutrient limits. The compliance schedule may not extend  
22 for more than 20 years. The department may review and modify the compliance schedule every ~~3~~ 5 years."  
23

24           NEW SECTION. **Section 7. Repealer.** The following section of the Montana Code Annotated is  
25 repealed:

26 75-5-313.       Nutrient standards variances -- individual, general, and alternative.  
27

28           NEW SECTION. **Section 8. Codification instruction.** [Section 1] is intended to be codified as an  
29 integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to [section 1].  
30

1            NEW SECTION. **Section 9. Saving clause.** [This act] does not affect rights and duties that matured,  
2 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

3  
4            NEW SECTION. **Section 10. Severability.** If a part of [this act] is invalid, all valid parts that are  
5 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
6 the part remains in effect in all valid applications that are severable from the invalid applications.

7    - END -