

1 SENATE BILL NO. 358

2 INTRODUCED BY J. ESP, M. CUFFE

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING NUTRIENT CRITERIA FROM MONTANA WATER
 5 QUALITY STANDARDS; ELIMINATING VARIANCES AND COMPLIANCE SCHEDULES FOR NUTRIENTS;
 6 DIRECTING ADOPTION AND AMENDMENT OF ADMINISTRATIVE RULES; PROVIDING FOR A
 7 TRANSITION FOR NUTRIENT STANDARDS; PROVIDING RULEMAKING AUTHORITY; AMENDING
 8 SECTIONS 75-5-103, 75-5-105, ~~75-5-304~~, 75-5-317, AND 75-5-320, MCA; ~~AND~~ REPEALING SECTIONS 75-
 9 5-313, 75-5-314, AND 75-5-319, MCA; REPEALING ARM 17.30.660; AND PROVIDING AN IMMEDIATE
 10 EFFECTIVE DATE."

11

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

13

14 NEW SECTION. **Section 1. Transition for nutrient standards -- ~~board of environmental review.~~**

15 The board of environmental rule shall adopt rules related to nutrient standards in consultation with the
 16 department of environmental quality and the nutrient work group including:

17 ~~(1) defining the terms "undesirable aquatic life" and "harmful" in a manner consistent with 75-5-304 ;~~18 ~~(2) developing an adaptive management program that provides an incremental approach for
 19 restoration and preservation of water quality in streams impaired by nutrients;~~20 ~~(3) developing implementation guidance that:~~21 ~~(a) applies water quality effluent limitations for nutrients, either nitrogen or phosphorus;~~22 ~~(b) considers reasonable potential for total phosphorus and nitrogen after a full mixing of the
 23 discharge with the minimum 14-day average streamflow that occurs once every 5 years in the receiving water
 24 body;~~25 ~~(c) for existing dischargers, considers reasonable potential based on the algae level specified in 75-5-
 26 304;~~27 ~~(d) for new dischargers, including existing dischargers with an increased source, considers
 28 reasonable potential based on the following:~~

- 1 (i) ~~for discharges within the level III ecoregion as designated by the U.S. environmental protection~~
 2 ~~agency that includes the northern Rocky Mountains, Canadian Rocky Mountains, Idaho batholith, middle Rocky~~
 3 ~~Mountains, except for the level IV ecoregion of the Absaroka-Gallatin volcanic mountains:~~
- 4 (A) ~~total phosphorus concentrations of 0.03 milligrams per liter; and~~
 5 (B) ~~total nitrogen concentrations of 0.8 milligrams per liter;~~
- 6 (ii) ~~for discharges within the level III ecoregion as designated by the U.S. environmental protection~~
 7 ~~agency that includes the northwestern glaciated plains, northwestern great plains, and Wyoming basin,~~
 8 ~~excluding the level IV ecoregions of the sweetgrass uplands, Milk River pothole uplands, Rocky Mountain front~~
 9 ~~foothill potholes, foothill grasslands, river breaks, non-calcareous foothill grasslands, Shield-Smith River~~
 10 ~~valleys, limy foothill grasslands, Pryor-Bighorn foothills, and unglaciated Montana high plains:~~
- 11 (A) ~~total phosphorous concentrations of 0.15 milligrams per liter; and~~
 12 (B) ~~total nitrogen concentrations of 1.3 milligrams per liter;~~
- 13 (iii) ~~for discharges within the level IV ecoregion as designated by the U.S. environmental protection~~
 14 ~~agency of the Absaroka-Gallatin volcanic mountains:~~
- 15 (A) ~~total phosphorous concentrations of 0.105 milligrams per liter; and~~
 16 (B) ~~total nitrogen concentrations of 0.80 milligrams per liter;~~
- 17 (iv) ~~for discharges within the level IV ecoregions as designated by the U.S. environmental protection~~
 18 ~~agency excluded from subsection (3)(d)(ii) except for the river breaks for which no nutrient effluent limitations~~
 19 ~~apply:~~
- 20 (A) ~~total phosphorous concentrations of 0.80 milligrams per liter; and~~
 21 (B) ~~total nitrogen concentrations of 0.80 milligrams per liter;~~
- 22 (e) ~~allows the department to develop reasonable potential guidelines based on concentrations or total~~
 23 ~~phosphorous or total nitrogen greater than those provided in subsections (3)(c) and (3)(d) if:~~
- 24 (i) ~~data demonstrate that existing concentrations of total phosphorous or total nitrogen exceed the~~
 25 ~~concentrations provided in subsection (3)(a) through (3)(d) and that the discharge will not create conditions that~~
 26 ~~are toxic or harmful to human, animal, plant, or aquatic life;~~
- 27 (ii) ~~data demonstrate that existing algae levels exceed a monthly average of 150 milligrams of~~
 28 ~~chlorophyll-a per square meter and that the discharge will not create conditions that are toxic or harmful to~~

1 human, animal, plant, or aquatic life; or

2 ~~(iii) data demonstrate that the receiving waterbody can sustain algae levels greater than a monthly~~
 3 ~~average of 150 milligrams of chlorophyll-a per square meter without creating conditions that are toxic or harmful~~
 4 ~~to human, animal, plant, or aquatic life.~~

5 (1) BY MARCH 1, 2022, THE DEPARTMENT OF ENVIRONMENTAL QUALITY SHALL ADOPT RULES RELATED TO
 6 NARRATIVE NUTRIENT STANDARDS IN CONSULTATION WITH THE NUTRIENT WORK GROUP.

7 (2) THE RULES SHALL PROVIDE FOR THE DEVELOPMENT OF AN ADAPTIVE MANAGEMENT PROGRAM WHICH
 8 PROVIDES FOR AN INCREMENTAL WATERSHED APPROACH FOR PROTECTING AND MAINTAINING WATER QUALITY, AND
 9 THAT:

10 (A) REASONABLY BALANCES ALL FACTORS IMPACTING A WATER BODY;

11 (B) PRIORITIZES THE MINIMIZATION OF PHOSPHORUS, TAKING INTO ACCOUNT SITE-SPECIFIC CONDITIONS; AND

12 (C) IDENTIFIES THE APPROPRIATE RESPONSE VARIABLES AFFECTED BY NUTRIENTS AND ASSOCIATED IMPACT
 13 THRESHOLDS IN ACCORDANCE WITH THE BENEFICIAL USES OF THE WATERBODY.

14 (3) IN DEVELOPING THE RULES IN SUBSECTION (2), THE DEPARTMENT SHALL CONSIDER OPTIONS PERTAINING
 15 TO WHETHER THE POINT SOURCE IS NEW OR EXISTING AND WHETHER THE RECEIVING WATER BODY IS CONSIDERED
 16 IMPAIRED OR UNIMPAIRED.

17
 18 NEW SECTION. Section 2. Transition for nutrient standards -- department. ~~Subject to board of~~
 19 ~~environmental rulemaking pursuant to [section 1], the department of environmental quality shall implement~~
 20 ~~water quality standards in a manner consistent with [this act] and consistent with [section 1].~~ (1) UNTIL FINAL
 21 RULES ARE ADOPTED PURSUANT TO [SECTION 1], THE DEPARTMENT SHALL ADMINISTER THE DISCHARGE PERMITTING
 22 PROGRAM UNDER 75-5-402 IN A MANNER CONSISTENT WITH ARM 17.30.637 AND THE INTENT OF [THIS ACT].

23 (2) ANY NUTRIENT STANDARDS VARIANCES CURRENTLY AUTHORIZED AND EFFECTIVE ARE HEREBY
 24 AUTHORIZED AND EFFECTIVE UNDER 75-5-320 UNTIL OTHERWISE AMENDED OR REPEALED.

25
 26 NEW SECTION. Section 3. Board to amend rules. The board of environmental review shall amend
 27 ARM 17.30.201, 17.30.507, 17.30.516, 17.30.602, 17.30.619, 17.30.622, 17.30.623, 17.30.624, 17.30.625,
 28 17.30.626, 17.30.627, 17.30.628, 17.30.629, 17.30.635, 17.30.702, and 17.30.715 to delete all references to

1 department circular DEQ-12A, department circular DEQ-12B, base numeric nutrient standards, and nutrient
2 standards variances.

3
4 **NEW SECTION. Section 4. Department to amend rules.** The department of environmental quality
5 shall amend ARM 17.30.602 and ~~17.30.660~~ to delete all references to department circular DEQ-12A,
6 department circular DEQ-12B, base numeric nutrient standards, and nutrient standards variances.

7
8 **Section 5.** Section 75-5-103, MCA, is amended to read:

9 **"75-5-103. (Temporary) Definitions.** Unless the context requires otherwise, in this chapter, the
10 following definitions apply:

11 (1) "Associated supporting infrastructure" means:

12 (a) electric transmission and distribution facilities;

13 (b) pipeline facilities;

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

15 (d) rail transportation;

16 (e) aqueducts and diversion dams;

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

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

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

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

25 ~~(3) (2)~~ "Board" means the board of environmental review provided for in 2-15-3502.

26 ~~(4) (3)~~ "Contamination" means impairment of the quality of state waters by sewage, industrial wastes,
27 or other wastes, creating a hazard to human health.

28 ~~(5) (4)~~ "Council" means the water pollution control advisory council provided for in 2-15-2107.

1 ~~(6)~~ (5) (a) "Currently available data" means data that is readily available to the department at the time
2 a decision is made, including information supporting its previous lists of water bodies that are threatened or
3 impaired.

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

5 ~~(7)~~ (6) "Degradation" means a change in water quality that lowers the quality of high-quality waters for
6 a parameter. The term does not include those changes in water quality determined to be nonsignificant
7 pursuant to 75-5-301(5)(c).

8 ~~(8)~~ (7) "Department" means the department of environmental quality provided for in 2-15-3501.

9 ~~(9)~~ (8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and
10 includes sewage systems and treatment works.

11 ~~(10)~~ (9) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of
12 chemical, physical, biological, and other constituents that are discharged into state waters.

13 ~~(11)~~ (10) (a) "Energy development project" means each plant, unit, or other development and
14 associated developments, including any associated supporting infrastructure, designed for or capable of:

15 (i) generating electricity;

16 (ii) producing gas derived from coal;

17 (iii) producing liquid hydrocarbon products;

18 (iv) refining crude oil or natural gas;

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

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

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

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

26 ~~(12)~~ (11) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971,
27 whether or not those uses are included in the water quality standards.

28 ~~(13)~~ (12) "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)~~ (13) "Impaired water body" means a water body or stream segment for which sufficient credible
7 data shows that the water body or stream segment is failing to achieve compliance with applicable water quality
8 standards.

9 ~~(15)~~ (14) "Industrial waste" means a waste substance from the process of business or industry or from
10 the development of any natural resource, together with any sewage that may be present.

11 ~~(16)~~ (15) "Interested person" means a person who has a real property interest, a water right, or an
12 economic interest that is or may be directly and adversely affected by the department's preliminary decision
13 regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested
14 authorization to degrade high-quality waters.

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

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

21 ~~(19)~~ (18) "Local department of health" means the staff, including health officers, employed by a county,
22 city, city-county, or district board of health.

23 ~~(20)~~ (19) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium,
24 barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver,
25 thallium, and zinc.

26 ~~(21)~~ (20) "Mixing zone" means an area established in a permit or final decision on nondegradation
27 issued by the department where water quality standards may be exceeded, subject to conditions that are
28 imposed by the department and that are consistent with the rules adopted by the board.

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

5 ~~(23)~~ (21) "Nutrient work group" means an advisory work group, convened by the department,
 6 representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and
 7 other interested parties that will advise the department on ~~the base numeric nutrient standards, the~~
 8 ~~development of nutrient standards variances, and the implementation of those standards, and variances~~
 9 ~~together with~~ associated economic impacts.

10 ~~(24)~~ (22) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark,
 11 lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or
 12 discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

13 ~~(25)~~ (23) "Outstanding resource waters" means:

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

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

18 ~~(26)~~ (24) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a
 19 point source.

20 ~~(27)~~ (25) "Parameter" means a physical, biological, or chemical property of state water when a value of
 21 that property affects the quality of the state water.

22 ~~(28)~~ (26) "Person" means the state, a political subdivision of the state, institution, firm, corporation,
 23 partnership, individual, or other entity and includes persons resident in Canada.

24 ~~(29)~~ (27) "Point source" means a discernible, confined, and discrete conveyance, including but not
 25 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or
 26 other floating craft, from which pollutants are or may be discharged.

27 ~~(30)~~ (28) (a) "Pollution" means:

28 (i) contamination or other alteration of the physical, chemical, or biological properties of state waters

1 that exceeds that permitted by Montana water quality standards, including but not limited to standards relating
 2 to change in temperature, taste, color, turbidity, or odor; or

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

7 (b) The term does not include:

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

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

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

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

15 ~~(34)~~ (29) "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
 17 and surface water present.

18 ~~(32)~~ (30) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or
 19 other wastes to an ultimate disposal point.

20 ~~(33)~~ (31) "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 ~~(34)~~ (32) (a) "State waters" means a body of water, irrigation system, or drainage system, either
 25 surface 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

1 irrigation or land application disposal system and the waters are not returned to state waters.

2 ~~(35)~~ (33) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in
3 combination with narrative information, that supports a finding as to whether a water body is achieving
4 compliance with applicable water quality standards.

5 ~~(36)~~ (34) "Threatened water body" means a water body or stream segment for which sufficient credible
6 data and calculated increases in loads show that the water body or stream segment is fully supporting its
7 designated uses but threatened for a particular designated use because of:

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

10 (b) documented adverse pollution trends.

11 ~~(37)~~ (35) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations
12 for point sources and load allocations for both nonpoint sources and natural background sources established at
13 a level necessary to achieve compliance with applicable surface water quality standards.

14 ~~(38)~~ (36) "Treatment works" means works, including sewage lagoons, installed for treating or holding
15 sewage, industrial wastes, or other wastes.

16 ~~(39)~~ (37) "Waste load allocation" means the portion of a receiving water's loading capacity that is
17 allocated to one of its existing or future point sources.

18 ~~(40)~~ (38) "Water quality protection practices" means those activities, prohibitions, maintenance
19 procedures, or other management practices applied to point and nonpoint sources designed to protect,
20 maintain, and improve the quality of state waters. Water quality protection practices include but are not limited
21 to treatment requirements, standards of performance, effluent standards, and operating procedures and
22 practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

23 ~~(41)~~ (39) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or
24 otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

25 ~~(42)~~ (40) "Watershed advisory group" means a group of individuals who wish to participate in an
26 advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the
27 development of TMDLs under 75-5-703, including those groups or individuals requested by the department to
28 participate in an advisory capacity as provided in 75-5-704.

1 **75-5-103. (Effective on occurrence of contingency) Definitions.** Unless the context requires
 2 otherwise, in this chapter, the following definitions apply:

3 (1) "Associated supporting infrastructure" means:

4 (a) electric transmission and distribution facilities;

5 (b) pipeline facilities;

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

7 (d) rail transportation;

8 (e) aqueducts and diversion dams;

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

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

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

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

17 ~~(3) (2)~~ (2) "Board" means the board of environmental review provided for in 2-15-3502.

18 ~~(4) (3)~~ (3) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes,
 19 or other wastes, creating a hazard to human health.

20 ~~(5) (4)~~ (4) "Council" means the water pollution control advisory council provided for in 2-15-2107.

21 ~~(6) (5)~~ (5) (a) "Currently available data" means data that is readily available to the department at the time
 22 a decision is made, including information supporting its previous lists of water bodies that are threatened or
 23 impaired.

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

25 ~~(7) (6)~~ (6) "Degradation" means a change in water quality that lowers the quality of high-quality waters for
 26 a parameter. The term does not include those changes in water quality determined to be nonsignificant
 27 pursuant to 75-5-301(5)(c).

28 ~~(8) (7)~~ (7) "Department" means the department of environmental quality provided for in 2-15-3501.

1 ~~(9)~~ (8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and
2 includes sewage systems and treatment works.

3 ~~(10)~~ (9) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of
4 chemical, physical, biological, and other constituents that are discharged into state waters.

5 ~~(11)~~ (10) (a) "Energy development project" means each plant, unit, or other development and
6 associated developments, including any associated supporting infrastructure, designed for or capable of:

7 (i) generating electricity;

8 (ii) producing gas derived from coal;

9 (iii) producing liquid hydrocarbon products;

10 (iv) refining crude oil or natural gas;

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

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

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

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

18 ~~(12)~~ (11) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971,
19 whether or not those uses are included in the water quality standards.

20 ~~(13)~~ (12) "High-quality waters" means all state waters, except:

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

23 (b) surface waters that:

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

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

26 ~~(14)~~ (13) "Impaired water body" means a water body or stream segment for which sufficient credible
27 data shows that the water body or stream segment is failing to achieve compliance with applicable water quality
28 standards.

1 ~~(15)~~ (14) "Industrial waste" means a waste substance from the process of business or industry or from
2 the development of any natural resource, together with any sewage that may be present.

3 ~~(16)~~ (15) "Interested person" means a person who has a real property interest, a water right, or an
4 economic interest that is or may be directly and adversely affected by the department's preliminary decision
5 regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested
6 authorization to degrade high-quality waters.

7 ~~(17)~~ (16) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to
8 one of its existing or future nonpoint sources or to natural background sources.

9 ~~(18)~~ (17) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a
10 violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the
11 maximum change that can occur from the best practicable condition in a surface water without causing a
12 violation of the surface water quality standards.

13 ~~(19)~~ (18) "Local department of health" means the staff, including health officers, employed by a county,
14 city, city-county, or district board of health.

15 ~~(20)~~ (19) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium,
16 barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver,
17 thallium, and zinc.

18 ~~(21)~~ (20) "Mixing zone" means an area established in a permit or final decision on nondegradation
19 issued by the department where water quality standards may be exceeded, subject to conditions that are
20 imposed by the 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~~
23 ~~because of the limits of technology. The term includes individual, general, and alternative nutrient standards~~
24 ~~variances in accordance with 75-5-313.~~

25 ~~(23)~~ (21) "Nutrient work group" means an advisory work group, convened by the department,
26 representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and
27 other interested parties that will advise the department on ~~the base numeric nutrient standards, the~~
28 ~~development of nutrient standards variances, and the implementation of those standards, and variances~~

1 ~~together with~~ associated economic impacts.

2 ~~(24)~~ (22) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark,
3 lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or
4 discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

5 ~~(25)~~ (23) "Outstanding resource waters" means:

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

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

10 ~~(26)~~ (24) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a
11 point source.

12 ~~(27)~~ (25) "Parameter" means a physical, biological, or chemical property of state water when a value of
13 that property affects the quality of the state water.

14 ~~(28)~~ (26) "Person" means the state, a political subdivision of the state, institution, firm, corporation,
15 partnership, individual, or other entity and includes persons resident in Canada.

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

19 ~~(30)~~ (28) (a) "Pollution" means:

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

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

27 (b) The term does not include:

28 (i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge

1 permit rules adopted by the board under this chapter;

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

4 (iii) contamination of ground water within the boundaries of a geologic storage reservoir, as defined in
5 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter
6 11, part 1;

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

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

11 ~~(34)~~ (29) "Sewage" means water-carried waste products from residences, public buildings, institutions,
12 or other buildings, including discharge from human beings or animals, together with ground water infiltration
13 and surface water present.

14 ~~(32)~~ (30) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or
15 other wastes to an ultimate disposal point.

16 ~~(33)~~ (31) "Standard of performance" means a standard adopted by the board for the control of the
17 discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of
18 the best available demonstrated control technology, processes, operating methods, or other alternatives,
19 including, when practicable, a standard permitting no discharge of pollutants.

20 ~~(34)~~ (32) (a) "State waters" means a body of water, irrigation system, or drainage system, either
21 surface or underground.

22 (b) The term does not apply to:

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

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

26 ~~(35)~~ (33) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in
27 combination with narrative information, that supports a finding as to whether a water body is achieving
28 compliance with applicable water quality standards.

1 ~~(36)~~ (34) "Threatened water body" means a water body or stream segment for which sufficient credible
2 data and calculated increases in loads show that the water body or stream segment is fully supporting its
3 designated uses but threatened for a particular designated use because of:

- 4 (a) proposed sources that are not subject to pollution prevention or control actions required by a
5 discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or
6 (b) documented adverse pollution trends.

7 ~~(37)~~ (35) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations
8 for point sources and load allocations for both nonpoint sources and natural background sources established at
9 a level necessary to achieve compliance with applicable surface water quality standards.

10 ~~(38)~~ (36) "Treatment works" means works, including sewage lagoons, installed for treating or holding
11 sewage, industrial wastes, or other wastes.

12 ~~(39)~~ (37) "Waste load allocation" means the portion of a receiving water's loading capacity that is
13 allocated to one of its existing or future point sources.

14 ~~(40)~~ (38) "Water quality protection practices" means those activities, prohibitions, maintenance
15 procedures, or other management practices applied to point and nonpoint sources designed to protect,
16 maintain, and improve the quality of state waters. Water quality protection practices include but are not limited
17 to treatment requirements, standards of performance, effluent standards, and operating procedures and
18 practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

19 ~~(41)~~ (39) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or
20 otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

21 ~~(42)~~ (40) "Watershed advisory group" means a group of individuals who wish to participate in an
22 advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the
23 development of TMDLs under 75-5-703, including those groups or individuals requested by the department to
24 participate in an advisory capacity as provided in 75-5-704."

25

26 **Section 6.** Section 75-5-105, MCA, is amended to read:

27 **"75-5-105. Confidentiality of records.** Except as provided in 80-15-108, any information concerning
28 sources of pollution that is furnished to the board or department or that is obtained by either of them is a matter

1 of public record and open to public use. However, any information unique to the owner or operator of a source
 2 of pollution that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be
 3 maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file
 4 a declaratory judgment action to establish the existence of a trade secret if the owner or operator wishes the
 5 information to remain confidential. The department must be served in the action and may intervene as a party.
 6 Any information not intended to be public when submitted to the board or department must be submitted in
 7 writing and clearly marked as confidential. ~~Except as provided in 75-5-314, the~~The data describing physical
 8 and chemical characteristics of a waste discharged to state waters may not be considered confidential. The
 9 board may use any information in compiling or publishing analyses or summaries relating to water pollution if
 10 the analyses or summaries do not identify any owner or operator of a source of pollution or reveal any
 11 information that is otherwise made confidential by this section."

12

13 **Section 7.** Section 75-5-301, MCA, is amended to read:

14 ~~"75-5-301. Classification and standards for state waters. Consistent with the provisions of 80-15-~~
 15 ~~201 and this chapter, the board shall:~~

16 ~~(1) establish the classification of all state waters in accordance with their present and future most~~
 17 ~~beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an~~
 18 ~~aquatic ecosystem that includes salmonid or nonsalmonid fish;~~

19 ~~(2) formulate and adopt standards of water quality, giving consideration to the economics of waste~~
 20 ~~treatment and prevention. When rules are adopted regarding temporary standards, they must conform with the~~
 21 ~~requirements of 75-5-312. Standards adopted by the board must meet the following requirements:~~

22 ~~(a) for carcinogens, the water quality standard for protection of human health must be the value~~
 23 ~~associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed 1 x~~
 24 ~~10⁻³ in the case of arsenic and 1 x 10⁻⁵ for other carcinogens. However, if a standard established at a risk level~~
 25 ~~of 1 x 10⁻³ for arsenic or 1 x 10⁻⁵ for other carcinogens violates the maximum contaminant level obtained from~~
 26 ~~40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen.~~

27 ~~(b) standards for the protection of aquatic life do not apply to ground water.~~

28 ~~(c) nutrient water quality standards, whether numeric or narrative, apply only;~~

- 1 ~~(i) to streams, except for ephemeral streams, with algae levels greater than a monthly average of 150~~
 2 ~~milligrams of chlorophyll-a per square meter based on field values, or a calibrated water quality model if field~~
 3 ~~values are unavailable; and~~
- 4 ~~(ii) between July 1 and September 30 of each calendar year.~~
- 5 ~~(3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this~~
 6 ~~chapter, revise established classifications of waters and adopted standards of water quality;~~
- 7 ~~(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the~~
 8 ~~department be specifically identified and requiring that mixing zones have:~~
- 9 ~~(a) the smallest practicable size;~~
- 10 ~~(b) a minimum practicable effect on water uses; and~~
- 11 ~~(c) definable boundaries;~~
- 12 ~~(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not~~
 13 ~~limited to rules that:~~
- 14 ~~(a) provide a procedure for department review and authorization of degradation;~~
- 15 ~~(b) establish criteria for the following:~~
- 16 ~~(i) determining important economic or social development; and~~
- 17 ~~(ii) weighing the social and economic importance to the public of allowing the proposed project against~~
 18 ~~the cost to society associated with a loss of water quality;~~
- 19 ~~(c) establish criteria for determining whether a proposed activity or class of activities, in addition to~~
 20 ~~those activities identified in 75-5-317, will result in nonsignificant changes in water quality for any parameter in~~
 21 ~~order that those activities are not required to undergo review under 75-5-303 (3). These criteria must be~~
 22 ~~established in a manner that generally:~~
- 23 ~~(i) equates significance with the potential for harm to human health, a beneficial use, or the~~
 24 ~~environment;~~
- 25 ~~(ii) considers both the quantity and the strength of the pollutant;~~
- 26 ~~(iii) considers the length of time the degradation will occur;~~
- 27 ~~(iv) considers the character of the pollutant so that greater significance is associated with carcinogens~~
 28 ~~and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less~~

1 harmful or less persistent.

2 ~~(d) provide that changes of nitrate as nitrogen in ground water are nonsignificant if the discharge will~~
 3 ~~not cause degradation of surface water and the predicted concentration of nitrate as nitrogen at the boundary of~~
 4 ~~the ground water mixing zone does not exceed:~~

5 ~~(i) 7.5 milligrams per liter from sources other than sewage;~~

6 ~~(ii) 5.0 milligrams per liter from sewage discharged from a system that does not use level two~~
 7 ~~treatment in an area where the ground water nitrate as nitrogen is 5.0 milligrams per liter or less;~~

8 ~~(iii) 7.5 milligrams per liter from sewage discharged from a system using level two treatment, which~~
 9 ~~must be defined in the rules; or~~

10 ~~(iv) 7.5 milligrams per liter from sewage discharged from a system in areas where the ground water~~
 11 ~~nitrate as nitrogen level exceeds 5.0 milligrams per liter primarily from sources other than human waste.~~

12 ~~(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective~~
 13 ~~and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute~~
 14 ~~guidelines for granting or denying applications for authorization to degrade high quality waters under the policy~~
 15 ~~established in 75-5-303 (2) and (3).~~

16 ~~(7) adopt rules to implement this section."~~

17

18 **Section 7.** Section 75-5-317, MCA, is amended to read:

19 **"75-5-317. Nonsignificant activities.** (1) The categories or classes of activities identified in
 20 subsection (2) cause changes in water quality that are nonsignificant because of their low potential for harm to
 21 human health or the environment and their conformance with the guidance found in 75-5-301(5)(c).

22 (2) The following categories or classes of activities are not subject to the provisions of 75-5-303:

23 (a) existing activities that are nonpoint sources of pollution as of April 29, 1993;

24 (b) activities that are nonpoint sources of pollution initiated after April 29, 1993, when reasonable
 25 land, soil, and water conservation practices are applied and existing and anticipated beneficial uses will be fully
 26 protected;

27 (c) use of agricultural chemicals in accordance with a specific agricultural chemical ground water
 28 management plan promulgated under 80-15-212, if applicable, or in accordance with an environmental

1 protection agency-approved label and when existing and anticipated uses will be fully protected;

2 (d) changes in existing water quality resulting from an emergency or remedial activity that is designed
3 to protect public health or the environment and is approved, authorized, or required by the department;

4 (e) changes in existing ground water quality resulting from treatment of a public water supply system,
5 as defined in 75-6-102, or a public sewage system, as defined in 75-6-102, by chlorination or other similar
6 means that is designed to protect the public health or the environment and that is approved, authorized, or
7 required by the department;

8 (f) the use of drilling fluids, sealants, additives, disinfectants, and rehabilitation chemicals in water well
9 or monitoring well drilling, development, or abandonment, if used according to department-approved water
10 quality protection practices and if no discharge to surface water will occur;

11 (g) short-term changes in existing water quality resulting from activities authorized by the department
12 pursuant to 75-5-308;

13 (h) land application of animal waste, domestic septage, or waste from public sewage treatment
14 systems containing nutrients when the wastes are applied to the land in a beneficial manner, application rates
15 are based on agronomic uptake of applied nutrients, and other parameters will not cause degradation;

16 (i) use of gray water, as defined in 75-5-325, from nonpublic gray water reuse systems for irrigation
17 during the growing season in accordance with gray water reuse rules adopted pursuant to 75-5-305;

18 (j) incidental leakage of water from a public water supply system, as defined in 75-6-102, or from a
19 public sewage system, as defined in 75-6-102, utilizing best practicable control technology designed and
20 constructed in accordance with Title 75, chapter 6;

21 (k) discharges of water to ground water from water well or monitoring well tests, hydrostatic pressure
22 and leakage tests, or wastewater from the disinfection or flushing of water mains and storage reservoirs,
23 conducted in accordance with department-approved water quality protection practices;

24 (l) oil and gas drilling, production, abandonment, plugging, and restoration activities that do not result
25 in discharges to surface water and that are performed in accordance with Title 82, chapter 10, or Title 82,
26 chapter 11;

27 (m) short-term changes in existing water quality resulting from ordinary and everyday activities of
28 humans or domesticated animals, including but not limited to:

- 1 (i) such recreational activities as boating, hiking, hunting, fishing, wading, swimming, and camping;
- 2 (ii) fording of streams or other bodies of water by vehicular or other means; and
- 3 (iii) drinking from or fording of streams or other bodies of water by livestock and other domesticated
- 4 animals;
- 5 (n) coal and uranium prospecting that does not result in a discharge to surface water, that does not
- 6 involve a test pit located in surface water or that may affect surface water, and that is performed in accordance
- 7 with Title 82, chapter 4;
- 8 (o) solid waste management systems, motor vehicle wrecking facilities, and county motor vehicle
- 9 graveyards licensed and operating in accordance with Title 75, chapter 10, part 2, or Title 75, chapter 10, part
- 10 5;
- 11 (p) hazardous waste management facilities permitted and operated in accordance with Title 75,
- 12 chapter 10, part 4;
- 13 (q) metallic and nonmetallic mineral exploration that does not result in a discharge to surface water
- 14 and that is permitted under and performed in accordance with Title 82, chapter 4, parts 3 and 4;
- 15 (r) stream-related construction projects or stream enhancement projects that result in temporary
- 16 changes to water quality but do not result in long-term detrimental effects and that have been authorized
- 17 pursuant to 75-5-318;
- 18 (s) diversions or withdrawals of water established and recognized under Title 85, chapter 2;
- 19 (t) the maintenance, repair, or replacement of dams, diversions, weirs, or other constructed works that
- 20 are related to existing water rights and that are within wilderness areas so long as existing and anticipated
- 21 beneficial uses are protected and as long as the changes in existing water quality relative to the project are
- 22 short term; and
- 23 (U) DISCHARGES OF TOTAL PHOSPHORUS OR TOTAL NITROGEN THAT DO NOT:
- 24 (I) CREATE CONDITIONS THAT ARE TOXIC OR HARMFUL TO HUMAN, ANIMAL, PLANT, AND AQUATIC LIFE;
- 25 (II) CREATE CONDITIONS THAT PRODUCE UNDESIRABLE AQUATIC LIFE; OR
- 26 (III) CAUSE MEASURABLE CHANGES IN AQUATIC LIFE; AND
- 27 (u)(v) discharges that, after full mixing with the minimum 14-day average streamflow that occurs once
- 28 every 5 years, result in algae levels less than or equal to a monthly average of 150 milligrams of chlorophyll-a

1 ~~per square meter during the time period from July 1 through September 30~~ ANY OTHER ACTIVITY THAT IS
 2 NONSIGNIFICANT BECAUSE OF ITS LOW POTENTIAL FOR HARM TO HUMAN HEALTH OR TO THE ENVIRONMENT AND ITS
 3 ~~CONFORMANCE WITH THE GUIDANCE FOUND IN 75-5-301(5)(C); and~~

4 ~~(u) (v) — any other activity that is nonsignificant because of its low potential for harm to human health or~~
 5 ~~to the environment and its conformance with the guidance found in 75-5-301 (5)(c)."~~

6

7 **Section 8.** Section 75-5-320, MCA, is amended to read:

8 **"75-5-320. Temporary water quality standards variances.** (1) Except as provided in 75-5-222(2)
 9 ~~and 75-5-313~~, the department may adopt rules providing criteria and procedures for the department to issue a
 10 temporary variance to water quality standards if:

11 (a) a variance will not result in a lowering of currently attained, ambient water quality;

12 (b) the department rules are consistent, as necessary, with federal rules that authorize states to adopt
 13 variances from standards, including but not limited to 40 CFR 131.14; and

14 (c) (i) a permittee cannot reasonably expect to meet a water quality standard during the permit term
 15 for which the variance is approved; and

16 (ii) a permit compliance schedule is not feasible to preclude the need for a variance during the permit
 17 term for which the variance is approved.

18 (2) In order to receive a temporary variance, a permittee shall evaluate facility operations and
 19 infrastructure to maximize pollutant reduction through an optimization study. The variance must require the
 20 implementation of optimization study actions as terms and conditions of the discharge permit.

21 (3) The department shall review a temporary variance issued pursuant to this section at least once
 22 every 5 years and may continue, modify, or terminate the temporary variance as a result of the review."

23

24 **NEW SECTION. Section 9. Repealer.** The following sections of the Montana Code Annotated are
 25 repealed:

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

27 75-5-314. Confidentiality of base numeric standards and nutrient standards variances.

28 75-5-319. Compliance schedule for base numeric nutrient standards.

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NEW SECTION. SECTION 10. REPEALER. ARM 17.30.660 IS REPEALED.

NEW SECTION. Section 11. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 75, chapter 5, and the provisions of Title 75, chapter 5, apply to [sections 1 and 2].

NEW SECTION. SECTION 12. SAVING CLAUSE. [THIS ACT] DOES NOT AFFECT NUTRIENT STANDARDS VARIANCES GRANTED BEFORE [THE EFFECTIVE DATE OF THIS ACT], OR RIGHTS AND DUTIES THAT MATURED, PENALTIES THAT WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN BEFORE [THE EFFECTIVE DATE OF THIS ACT].

NEW SECTION. SECTION 13. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

- END -