

Presented below are water quality standards that are in effect for Clean Water Act purposes.

EPA is posting these standards as a convenience to users and has made a reasonable effort to assure their accuracy. Additionally, EPA has made a reasonable effort to identify parts of the standards that are not approved, disapproved, or are otherwise not in effect for Clean Water Act purposes.

Montana Code Annotated 2019

TITLE 75. ENVIRONMENTAL PROTECTION

CHAPTER 5. WATER QUALITY

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Part 1. General Provisions

Policy

75-5-101. Policy. It is the public policy of this state to:

(1) conserve water by protecting, maintaining, and improving the quality and potability of water for public water supplies, wildlife, fish and aquatic life, agriculture, industry, recreation, and other beneficial uses;

(2) provide a comprehensive program for the prevention, abatement, and control of water pollution; and

(3) balance the inalienable rights to pursue life's basic necessities and possess and use property in lawful ways with the policy of preventing, abating, and controlling water pollution in implementing the program referred to in subsection (2).

History: En. Sec. 121, Ch. 197, L. 1967; amd. Sec. 1, Ch. 21, L. 1971; amd. Sec. 1, Ch. 455, L. 1975; R.C.M. 1947, 69-4801(1); amd. Sec. 9, Ch. 361, L. 2003.

Intent -- Purpose -- Rights Of Action Not Abridged

75-5-102. Intent -- purpose -- rights of action not abridged. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted this chapter. It is the legislature's intent that the requirements of this chapter provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources. A purpose of this chapter is to provide additional and cumulative remedies to prevent, abate, and control the pollution of state waters.

(2) This chapter does not abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor does this chapter or an act done under it estop the state or a municipality or person, as owner of water rights or otherwise, in the exercise of the person's rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.

History: En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973; amd. Sec. 67, Ch. 349, L. 1974; amd. Sec. 11, Ch. 455, L. 1975; R.C.M. 1947, 69-4823(4); amd. Sec. 10, Ch. 361, L. 2003.

Definitions

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

- (1) "Associated supporting infrastructure" means:
 - (a) electric transmission and distribution facilities;
 - (b) pipeline facilities;
 - (c) aboveground ponds and reservoirs and underground storage reservoirs;
 - (d) rail transportation;

- (e) aqueducts and diversion dams;
 - (f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or
 - (g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.
- (2) (a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface water that are adopted to protect the designated uses of a surface water body.
- (b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that are adopted to protect human health.
- (3) "Board" means the board of environmental review provided for in **2-15-3502**.
- (4) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.
- (5) "Council" means the water pollution control advisory council provided for in **2-15-2107**.
- (6) (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.
- (b) The term does not mean new data to be obtained as a result of department efforts.
- (7) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to **75-5-301(5)(c)**.
- (8) "Department" means the department of environmental quality provided for in **2-15-3501**.
- (9) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.
- (10) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.
- (11) (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:
- (i) generating electricity;
 - (ii) producing gas derived from coal;
 - (iii) producing liquid hydrocarbon products;
 - (iv) refining crude oil or natural gas;
 - (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;
 - (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to **15-32-701**; or
 - (vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.
- (b) The term does not include a nuclear facility as defined in **75-20-1202**.
- (12) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.
- (13) "High-quality waters" means all state waters, except:
- (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the board's classification rules; and
 - (b) surface waters that:
 - (i) are not capable of supporting any one of the designated uses for their classification; or
 - (ii) have zero flow or surface expression for more than 270 days during most years.
- (14) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.
- (15) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

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

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

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

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

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

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

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

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

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

(25) "Outstanding resource waters" means:

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

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

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

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

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

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

(30) (a) "Pollution" means:

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

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

(b) The term does not include:

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

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

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

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

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

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

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

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

(b) The term does not apply to:

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

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

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

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

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

(b) documented adverse pollution trends.

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

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

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

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

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

(42) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under **75-5-702** and in the

development of TMDLs under **75-5-703**, including those groups or individuals requested by the department to participate in an advisory capacity as provided in **75-5-704**.

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

- (1) "Associated supporting infrastructure" means:
 - (a) electric transmission and distribution facilities;
 - (b) pipeline facilities;
 - (c) aboveground ponds and reservoirs and underground storage reservoirs;
 - (d) rail transportation;
 - (e) aqueducts and diversion dams;
 - (f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project;
 - (g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.
- (2) (a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface water that are adopted to protect the designated uses of a surface water body.
 - (b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that are adopted to protect human health.
- (3) "Board" means the board of environmental review provided for in **2-15-3502**.
- (4) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.
- (5) "Council" means the water pollution control advisory council provided for in **2-15-2107**.
- (6) (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.
 - (b) The term does not mean new data to be obtained as a result of department efforts.
- (7) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to **75-5-301(5)(c)**.
- (8) "Department" means the department of environmental quality provided for in **2-15-3501**.
- (9) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.
- (10) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.
- (11) (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:
 - (i) generating electricity;
 - (ii) producing gas derived from coal;
 - (iii) producing liquid hydrocarbon products;
 - (iv) refining crude oil or natural gas;
 - (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;
 - (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to **15-32-701**; or
 - (vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.
 - (b) The term does not include a nuclear facility as defined in **75-20-1202**.
- (12) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.
- (13) "High-quality waters" means all state waters, except:
 - (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the board's classification rules; and

(b) surface waters that:

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

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

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

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

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

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

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

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

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

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

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

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

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

(25) "Outstanding resource waters" means:

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

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

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

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

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

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

(30) (a) "Pollution" means:

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

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

(b) The term does not include:

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

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

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

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

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

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

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

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

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

(b) The term does not apply to:

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

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

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

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

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

(b) documented adverse pollution trends.

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

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

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

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

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

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

History: En. Sec. 122, Ch. 197, L. 1967; amd. Sec. 2, Ch. 21, L. 1971; amd. Sec. 1, Ch. 506, L. 1973; amd. Sec. 59, Ch. 349, L. 1974; amd. Sec. 2, Ch. 455, L. 1975; amd. Sec. 3, Ch. 308, L. 1977; amd. Sec. 1, Ch. 444, L. 1977; R.C.M. 1947, 69-4802; amd. Sec. 1, Ch. 337, L. 1993; amd. Sec. 1, Ch. 340, L. 1993; amd. Sec. 1, Ch. 595, L. 1993; amd. Sec. 184, Ch. 418, L. 1995; amd. Sec. 1, Ch. 495, L. 1995; amd. Sec. 3, Ch. 497, L. 1995; amd. Sec. 1, Ch. 501, L. 1995; amd. Secs. 524, 568, Ch. 546, L. 1995; amd. Sec. 1, Ch. 541, L. 1997; amd. Sec. 1, Ch. 267, L. 2009; amd. Sec. 6, Ch. 445, L. 2009; amd. Sec. 8, Ch. 474, L. 2009; amd. Sec. 1, Ch. 267, L. 2011; amd. Sec. 2, Ch. 398, L. 2011.

Special Applicability

75-5-104. Special applicability. This chapter applies to drainage or seepage from all sources, including that from artificial, privately owned ponds or lagoons, if such drainage or seepage may reach other state waters in a condition which may pollute the other state waters.

History: En. Sec. 124, Ch. 197, L. 1967; amd. Sec. 3, Ch. 21, L. 1971; R.C.M. 1947, 69-4804.

Confidentiality Of Records

75-5-105. Confidentiality of records. Except as provided in **80-15-108**, any information concerning sources of pollution that is furnished to the board or department or that is obtained by either of them is a matter of public record and open to public use. However, any information unique to the owner or operator of a source of pollution that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if the owner or operator wishes the information to remain confidential. The department must be served in the action and may intervene as a party. Any information not intended to be public when submitted to the board or department must be submitted in writing and clearly marked as confidential. Except as provided in **75-5-314**, the data describing physical and chemical characteristics of a waste discharged to state waters may not be considered confidential. The board may use any information in compiling or publishing analyses or summaries relating to water pollution if the analyses or summaries do not identify any owner or operator of a source of pollution or reveal any information that is otherwise made confidential by this section.

History: En. Sec. 16, Ch. 21, L. 1971; amd. Sec. 10, Ch. 455, L. 1975; R.C.M. 1947, 69-4822; amd. Sec. 25, Ch. 668, L. 1989; amd. Sec. 2493, Ch. 56, L. 2009; amd. Sec. 2, Ch. 267, L. 2011.

Interagency Cooperation -- Enforcement Authorization

75-5-106. Interagency cooperation -- enforcement authorization. (1) The council, board, and department may require the use of records of all state agencies and may seek the assistance of the agencies. When the department's review of a permit application submitted under another chapter or title is required or requested, the department shall coordinate the review under this chapter with the review

conducted by the agency or unit under the other chapter, following the time schedule for that review. State, county, and municipal officers and employees, including sanitarians and other employees of local departments of health, shall cooperate with the council, board, and department in furthering the purposes of this chapter, so far as is practicable and consistent with their other duties.

(2) The department may authorize a local water quality district established according to the provisions of Title 7, chapter 13, part 45, to enforce the provisions of this chapter and rules adopted under this chapter on a case-by-case basis. If a local water quality district requests the authorization, the local water quality district shall present appropriate documentation to the department that a person is violating permit requirements established by the department or may be causing pollution, as defined in **75-5-103**, of state waters or placing or causing to be placed wastes in a location where they are likely to cause pollution of state waters. The board may adopt rules regarding the granting of enforcement authority to local water quality districts.

History: En. Sec. 21, Ch. 21, L. 1971; R.C.M. 1947, 69-4827; amd. Sec. 25, Ch. 357, L. 1991; amd. Sec. 4, Ch. 497, L. 1995.

Part 2. Administrative Agencies

Board Rules Authorized

75-5-201. Board rules authorized. (1) (a) The board shall, except as provided in **75-5-411** and subject to the provisions of **75-5-203**, adopt rules for the administration of this chapter.

(b) The board shall adopt rules that describe the location and the times of the year when suction dredging is permissible. These rules may be adopted only after consultation with the local conservation districts in the areas subject to the rule.

(2) The board's rules may include a fee schedule or system for assessment of administrative penalties as provided under **75-5-611**.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(g); amd. Sec. 1, Ch. 504, L. 1993; amd. Sec. 11, Ch. 471, L. 1995; amd. Sec. 1, Ch. 468, L. 2003; amd. Sec. 2, Ch. 327, L. 2017.

Board Hearings

75-5-202. Board hearings. The board shall hold hearings necessary for the proper administration of this chapter or, in the case of permit issuance hearings, delegate this function to the department.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(f).

State Regulations No More Stringent Than Federal Regulations Or Guidelines

75-5-203. State regulations no more stringent than federal regulations or guidelines. (1) Except as provided in subsections (2) through (5) or unless required by state law, the board may not adopt a rule to implement **75-5-301**, **75-5-302**, **75-5-303**, or **75-5-310** that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The board may incorporate by reference comparable federal regulations or guidelines.

(2) The board may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the board makes a written finding after a public hearing and public comment and based on evidence in the record that:

(a) the proposed state standard or requirement protects public health or the environment of the state; and

(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference pertinent, ascertainable, and peer-reviewed scientific studies contained in the record that forms the basis for the board's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the board that that person believes to be more stringent than comparable federal regulations or guidelines may petition the board to review the rule. If the board determines that the rule is more stringent than comparable federal regulations or guidelines, the board shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 8 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The board may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the board for a rule review under subsection (4)(a) if the board adopts a rule in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted board rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of **2-4-303(1)**.

History: En. Sec. 1, Ch. 471, L. 1995; amd. Sec. 2, Ch. 378, L. 2015.

Through 75-5-210 Reserved

75-5-204 through 75-5-210 reserved.

Department To Administer Chapter

75-5-211. Department to administer chapter. (1) Except as otherwise provided, the department is responsible for administration of this chapter.

(2) The department may use its personnel and those of the local departments of health as necessary to administer this chapter.

History: En. Sec. 125, Ch. 197, L. 1967; amd. Sec. 4, Ch. 21, L. 1971; amd. Sec. 60, Ch. 349, L. 1974; R.C.M. 1947, 69-4805.

Department Research And Information

75-5-212. Department research and information. (1) The department shall:

(a) collect and furnish information relating to the prevention and control of water pollution;

(b) conduct or encourage necessary research and demonstrations concerning water pollution;

(c) encourage and provide for the use of appropriate new methods, materials, and models in evaluation, design, and construction as they relate to water quality.

(2) (a) In the implementation of subsection (1)(a), the department shall, at intervals not to exceed 5 years, compile and when necessary, update department organizational information, statutes, rules, permitting information, standards, and bulletins related to water quality. The first compilation must be complete and made available in hard copy and for electronic access by January 31, 2000.

(b) The department may charge a reasonable fee for purchase of the hard-copy compilation, not to exceed the department's costs for copying, assembly, and distribution of the compilation.

History: En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974; amd. Sec. 6, Ch. 455, L. 1975; amd. Sec. 4, Ch. 444, L. 1977; R.C.M. 1947, 69-4809.1(1)(d), (1)(e); amd. Sec. 1, Ch. 511, L. 1999.

Comprehensive Plan For Prevention And Control Of Water Pollution

75-5-213. Comprehensive plan for prevention and control of water pollution. The department shall advise, consult, and cooperate with other states, other state and federal agencies, affected groups, political subdivisions, and industries in the formulation of a comprehensive plan to prevent and control pollution.

History: En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974; amd. Sec. 6, Ch. 455, L. 1975; amd. Sec. 4, Ch. 444, L. 1977; R.C.M. 1947, 69-4809.1(1)(h).

Pipeline Reporting Requirements

75-5-214. Pipeline reporting requirements. (1) By January 1, 2016, the department of environmental quality shall compile information in accordance with subsection (2) for all pipelines that intersect or cross a navigable river in Montana.

(2) The compilation, at a minimum, should include to the extent the data is available from the federal government or another source:

- (a) standard pipeline identification information, as determined by the department;
- (b) a pipeline's size;
- (c) the commodity transported by the pipeline;
- (d) navigable rivers intersected or crossed by the pipeline;
- (e) the distance between shutoff valves that isolate the segment of a pipeline that crosses a navigable river from the balance of the pipeline;
- (f) the county in which a pipeline crosses a navigable river; and
- (g) the depth of coverage when the pipeline was installed.

(3) (a) The department of environmental quality shall make the information collected in accordance with subsection (2) available to the public on the agency's website.

(b) The department of natural resources and conservation shall provide a link on its website to the information provided by the department of environmental quality in accordance with subsection (3)(a).

(4) For the purposes of this section, "pipeline" means a pipeline greater than or equal to 8 inches in inside diameter that transports oil, gas, or liquid.

History: En. Sec. 1, Ch. 332, L. 2015.

Through 75-5-220 Reserved

75-5-215 through 75-5-220 reserved.

Water Pollution Control Advisory Council -- General

75-5-221. Water pollution control advisory council -- general. (1) The council provided for in **2-15-2107** shall select a presiding officer from among its members. The director of the department of environmental quality shall designate a member of the staff of the department to act as secretary to the council. The secretary shall keep records of all actions taken by the council.

(2) Meetings must be held at the call of the presiding officer or on written request of two or more members.

(3) Each member may, by filing with the secretary, designate a deputy or alternate to perform the member's duties.

(4) The council shall act only in an advisory capacity to the department on matters relating to water pollution.

(5) The director of the department may designate other persons to participate with council members in evaluating particular issues arising under this chapter that are brought before the council.

History: En. Sec. 132, Ch. 197, L. 1967; amd. Sec. 10, Ch. 21, L. 1971; amd. Sec. 64, Ch. 349, L. 1974; R.C.M. 1947, 69-4812; amd. Sec. 1, Ch. 297, L. 1995; amd. Sec. 185, Ch. 418, L. 1995.

State Regulation For Natural Conditions

75-5-222. State regulation for natural conditions. (1) The department may not apply a standard to a water body for water quality that is more stringent than the nonanthropogenic condition of the water body. For the parameters for which the applicable standards are more stringent than the nonanthropogenic condition, the standard is the nonanthropogenic condition of the parameter in the water body. The department shall implement the standard in a manner that provides for the water quality standards for downstream waters to be attained and maintained.

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

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

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

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

History: En. Sec. 1, Ch. 378, L. 2015.

Part 3. Classification and Standards

Classification And Standards For State Waters

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

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

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

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

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

(3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this chapter, revise established classifications of waters and adopted standards of water quality;

(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the department be specifically identified and requiring that mixing zones have:

(a) the smallest practicable size;

(b) a minimum practicable effect on water uses; and

(c) definable boundaries;

(5) adopt rules implementing the nondegradation policy established in **75-5-303**, including but not limited to rules that:

(a) provide a procedure for department review and authorization of degradation;

(b) establish criteria for the following:

(i) determining important economic or social development; and

(ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality;

(c) establish criteria for determining whether a proposed activity or class of activities, in addition to those activities identified in **75-5-317**, will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under **75-5-303(3)**. These criteria must be established in a manner that generally:

(i) equates significance with the potential for harm to human health, a beneficial use, or the environment;

(ii) considers both the quantity and the strength of the pollutant;

(iii) considers the length of time the degradation will occur;

(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent.

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

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

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

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

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

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

(7) adopt rules to implement this section.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(part); amd. Sec. 26, Ch. 668, L. 1989; amd. Sec. 2, Ch. 595, L. 1993; (7)En. Sec. 5, Ch. 595, L. 1993; amd. Sec. 5, Ch. 497, L. 1995; amd. Sec. 4, Ch. 501, L. 1995; amd. Sec. 1, Ch. 539, L. 1995; amd. Sec. 1, Ch. 40, L. 1997; amd. Sec. 5, Ch. 195, L. 1999; amd. Sec. 1, Ch. 588, L. 1999.

Revising Classifications In Accordance With Existing, Present, And Future Most Beneficial Uses Of Water Bodies

75-5-302. Revising classifications in accordance with existing, present, and future most beneficial uses of water bodies. When the board or department is presented with facts indicating that a body of water is not properly classified in accordance with its existing, present, and future most beneficial uses, the department shall, within 90 days, evaluate the facts and advise the board whether the water body is not properly classified. If the board determines that the water body is not properly classified, the board shall initiate rulemaking to properly classify the water body in accordance with its existing, present, and future most beneficial uses. Board action pursuant to this section is subject to **75-5-307**.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(c)(i); amd. Sec. 6, Ch. 497, L. 1995; amd. Sec. 2, Ch. 539, L. 1995; amd. Sec. 1, Ch. 131, L. 2015.

Nondegradation Policy

75-5-303. Nondegradation policy. (1) Existing uses of state waters and the level of water quality necessary to protect those uses must be maintained and protected.

(2) Unless authorized by the department under subsection (3) or exempted from review under **75-5-317**, the quality of high-quality waters must be maintained.

(3) The department may not authorize degradation of high-quality waters unless it has been affirmatively demonstrated by a preponderance of evidence to the department that:

(a) degradation is necessary because there are no economically, environmentally, and technologically feasible modifications to the proposed project that would result in no degradation;

(b) the proposed project will result in important economic or social development and that the benefit of the development exceeds the costs to society of allowing degradation of high-quality waters;

(c) existing and anticipated use of state waters will be fully protected; and

(d) the least degrading water quality protection practices determined by the department to be economically, environmentally, and technologically feasible will be fully implemented by the applicant prior to and during the proposed activity.

(4) The department shall issue a preliminary decision either denying or authorizing degradation and shall provide public notice and a 30-day comment period prior to issuing a final decision. The department's preliminary and final decisions must include:

(a) a statement of the basis for the decision; and

(b) a detailed description of all conditions applied to any authorization to degrade state waters, including, when applicable, monitoring requirements, required water protection practices, reporting requirements, effluent limits, designation of the mixing zones, the limits of degradation authorized, and methods of determining compliance with the authorization for degradation.

(5) An interested person wishing to challenge a final department decision may request a hearing before the board within 30 days of the final department decision. The contested case procedures of Title 2, chapter 4, part 6, apply to a hearing under this section.

(6) Periodically, but not more often than every 5 years, the department may review authorizations to degrade state waters. Following the review, the department may, after timely notice and opportunity for hearing, modify the authorization if the department determines that an economically, environmentally, and technologically feasible modification to the development exists. The decision by the department to modify an authorization may be appealed to the board.

(7) The board may not issue an authorization to degrade state waters that are classified as outstanding resource waters.

(8) The board shall adopt rules to implement this section.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(c)(ii), (1)(c)(iii); amd. Sec. 3, Ch. 595, L. 1993; (7)En. Sec. 5, Ch. 595, L. 1993; amd. Sec. 2, Ch. 495, L. 1995; amd. Sec. 5, Ch. 501, L. 1995.

Adoption Of Standards -- Pretreatment, Effluent, Performance

75-5-304. Adoption of standards -- pretreatment, effluent, performance. (1) The board shall:

(a) adopt pretreatment standards for wastewater discharged into a municipal disposal system;

(b) adopt effluent standards as defined in **75-5-103**;

(c) adopt toxic effluent standards and prohibitions;

(d) establish standards of performance for new point source discharges; and

(e) adopt rules necessary to ensure the primacy of the department to regulate cooling water intake structures under 33 U.S.C. 1326(b).

(2) In taking action under subsection (1), the board shall ensure that the standards are cost-effective and economically, environmentally, and technologically feasible.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(h); amd. Sec. 7, Ch. 497, L. 1995; amd. Sec. 1, Ch. 156, L. 2013.

Adoption Of Requirements For Treatment Of Wastes -- Variance Procedure -- Appeals

75-5-305. Adoption of requirements for treatment of wastes -- variance procedure -- appeals.

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

(2) (a) The board shall establish minimum requirements for the control and disposal of sewage from private and public buildings, including standards and procedures for variances from the requirements.

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

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

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

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

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

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

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

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(2)(b); amd. Sec. 1, Ch. 479, L. 1991; amd. Sec. 8, Ch. 497, L. 1995; amd. Sec. 10, Ch. 150, L. 2007; amd. Sec. 3, Ch. 312, L. 2007; amd. Sec. 1, Ch. 73, L. 2009.

Purer Than Natural Unnecessary -- Dams -- Definition

75-5-306. Purer than natural unnecessary -- dams -- definition. (1) It is not necessary that wastes be treated to a purer condition than the natural condition of the receiving stream as long as the minimum treatment requirements established under this chapter are met.

(2) "Natural" refers to conditions or material present from runoff or percolation over which humans have no control or from developed land where all reasonable land, soil, and water conservation practices have been applied. Conditions resulting from the reasonable operation of dams on July 1, 1971, are natural.

History: En. Sec. 121, Ch. 197, L. 1967; amd. Sec. 1, Ch. 21, L. 1971; amd. Sec. 1, Ch. 455, L. 1975; R.C.M. 1947, 69-4801(2); amd. Sec. 2494, Ch. 56, L. 2009.

Hearings Required For Classification, Formulation Of Standards, And Rulemaking

75-5-307. Hearings required for classification, formulation of standards, and rulemaking. (1) Before streams are classified or standards established or modified or rules made, revoked, or modified, the board shall hold a public hearing. Notice of the hearing specifying the waters concerned and the classification, standards, or modification of them and any rules proposed to be made, revoked, or modified shall be published at least once a week for 3 consecutive weeks in a daily newspaper of general circulation in the area affected. Notice shall also be mailed directly to persons the board believes may be affected by the proposed action. The council shall be given not less than 30 days prior to first publication to comment on the proposed action.

(2) At a hearing held under this section, the board shall give all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. The board may make rules for the orderly conduct of the hearing but need not require compliance with the rules of evidence or procedure applicable to hearings held under **75-5-611**.

History: En. Sec. 134, Ch. 197, L. 1967; amd. Sec. 12, Ch. 21, L. 1971; R.C.M. 1947, 69-4814.

Short-Term Water Authorizations -- Water Quality Standards

75-5-308. Short-term water authorizations -- water quality standards. (1) Because these activities promote the public interest, the department may, if necessary, authorize short-term exemptions from the water quality standards for the following activities:

(a) emergency remediation activities that have been approved, authorized, or required by the department; and

(b) application of a pesticide that is registered by the United States environmental protection agency pursuant to 7 U.S.C. 136(a) when it is used to control nuisance aquatic organisms or to eliminate undesirable and nonnative aquatic species.

(2) An authorization must include conditions that minimize, to the extent practicable, the magnitude of any change in the concentration of the parameters affected by the activity and the length of time during which any change may occur. The authorization must also include conditions that prevent significant risk to public health and that ensure that existing and designated uses of state water are protected and maintained upon completion of the activity. Authorizations issued under this section may include conditions that require water quality or quantity monitoring and reporting. In the performance of its responsibilities under this section, the department may negotiate operating agreements with other departments of state government that are intended to minimize duplication in review of activities eligible for authorizations under this section.

(3) An authorization to use a pesticide does not relieve a person from the duty to comply with Title 80, chapters 8 and 15. The department may not authorize an exemption from water quality standards for an activity that requires a discharge permit under rules adopted by the board pursuant to **75-5-401**.

History: En. Sec. 2, Ch. 340, L. 1993; amd. Sec. 2, Ch. 588, L. 1999.

Repealed

75-5-309. Repealed. Sec. 3, Ch. 378, L. 2015.

History: En. Sec. 1, Ch. 497, L. 1995.

Site-Specific Standards Of Water Quality For Aquatic Life

75-5-310. Site-specific standards of water quality for aquatic life. (1) Notwithstanding any other provisions of this chapter and except as provided in subsection (2), the board, upon application by a permit applicant, permittee, or person potentially liable under any state or federal environmental remediation statute, shall adopt site-specific standards of water quality for aquatic life, both acute and chronic, as the standards of water quality required under **75-5-301**(2) and (3). The site-specific standards

of water quality must be developed in accordance with the procedures set forth in draft or final federal regulations, guidelines, or criteria.

(2) If the department, based upon its review of an application submitted under subsection (1) and sound scientific, technical, and available site-specific evidence, determines that the development of site-specific criteria in accordance with draft or final federal regulations, guidelines, or criteria would not be protective of beneficial uses, the department, within 90 days of the submission of an application under subsection (1), shall notify the applicant in writing of its determination and of all additional procedures that the applicant is required to comply with in the development of site-specific standards of water quality under this section. If there is a dispute between the department and the applicant as to the additional procedures, the board shall, on the request of the department or the applicant, hear and determine the dispute. The board's decision must be based on sound scientific, technical, and available site-specific evidence.

History: En. Sec. 2, Ch. 497, L. 1995.

Local Water Quality Districts -- Board Approval -- Local Water Quality Programs

75-5-311. Local water quality districts -- board approval -- local water quality programs. (1) A county that establishes a local water quality district according to the procedures specified in Title 7, chapter 13, part 45, shall, in consultation with the department, undertake planning and information-gathering activities necessary to develop a proposed local water quality program.

(2) A county may implement a local water quality program in a local water quality district if the program is approved by the board after a hearing conducted under **75-5-202**.

(3) In approving a local water quality program, the board shall determine that the program is consistent with the purposes and requirements of Title 75, chapter 5, and that the program will be effective in protecting, preserving, and improving the quality of surface water and ground water, considering the administrative organization, staff, and financial and other resources available to implement the program.

(4) Subject to the board's approval, the commissioners and the governing bodies of cities and towns that participate in a local water quality district may adopt local ordinances to regulate the following specific facilities and sources of pollution:

- (a) onsite wastewater disposal facilities;
- (b) storm water runoff from paved surfaces;
- (c) service connections between buildings and publicly owned sewer mains;
- (d) facilities that use or store halogenated and nonhalogenated solvents, including hazardous substances that are referenced in 40 CFR 261.31, United States environmental protection agency hazardous waste numbers F001 through F005, as amended; and
- (e) internal combustion engine lubricants.

(5) (a) For the facilities and sources of pollution included in subsection (4) and consistent with the provisions of subsection (6), the local ordinances may:

(i) be compatible with or more stringent or more extensive than the requirements imposed by **75-5-304**, **75-5-305**, and **75-5-401** through **75-5-404** and rules adopted under those sections to protect water quality, establish waste discharge permit requirements, and establish best management practices for substances that have the potential to pollute state waters;

(ii) provide for administrative procedures, administrative orders and actions, and civil enforcement actions that are consistent with **75-5-601** through **75-5-604**, **75-5-611** through **75-5-616**, **75-5-621**, and **75-5-622** and rules adopted under those sections; and

(iii) provide for civil penalties not to exceed \$1,000 per violation, provided that each day of violation of a local ordinance constitutes a separate violation, and criminal penalties not to exceed \$500 per day of violation or imprisonment for not more than 30 days, or both.

(b) Board approval of an ordinance or local law that is more stringent than the comparable state law is subject to the provisions of **75-5-203**.

- (6) The local ordinances authorized by this section may not:
- (a) duplicate the department's requirements and procedures relating to permitting of waste discharge sources and enforcement of water quality standards;
 - (b) regulate any facility or source of pollution to the extent that the facility or source is:
 - (i) required to obtain a permit or other approval from the department or federal government or is the subject of an administrative order, a consent decree, or an enforcement action pursuant to Title 75, chapter 5, part 4; Title 75, chapter 6; Title 75, chapter 10; the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 through 9675, as amended; or federal environmental, safety, or health statutes and regulations;
 - (ii) exempted from obtaining a permit or other approval from the department because the facility or source is required to obtain a permit or other approval from another state agency or is the subject of an enforcement action by another state agency; or
 - (iii) subject to the provisions of Title 80, chapter 8 or chapter 15.
- (7) If the boundaries of a district are changed after the board has approved the local water quality program for the district, the board of directors of the local water quality district shall submit a program amendment to the board and obtain the board's approval of the program amendment before implementing the local water quality program in areas that have been added to the district.
- (8) The department shall monitor the implementation of local water quality programs to ensure that the programs are adequate to protect, preserve, and improve the quality of the surface water and ground water and are being administered in a manner consistent with the purposes and requirements of Title 75, chapter 5. If the department finds that a local water quality program is not adequate to protect, preserve, and improve the quality of the surface water and ground water or is not being administered in a manner consistent with the purposes and requirements of Title 75, chapter 5, the department shall report to the board.
- (9) If the board determines that a local water quality program is inadequate to protect, preserve, and improve the quality of the surface water and ground water in the local water quality district or that the program is being administered in a manner inconsistent with Title 75, chapter 5, the board shall give notice and conduct a hearing on the matter.
- (10) If after the hearing the board determines that the program is inadequate to protect, preserve, and improve the quality of the surface water and ground water in the local water quality district or that it is not being administered in a manner consistent with the purposes of Title 75, chapter 5, the board shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.
- (11) If an ordinance adopted under this section conflicts with a requirement imposed by the department's water quality program, the department's requirement supersedes the local ordinance.
- (12) If the board finds that, because of the complexity or magnitude of a particular water pollution source, the control of the source is beyond the reasonable capability of a local water quality district or may be more efficiently and economically performed at the state level, the board may direct the department to assume and retain control over the source. A charge may not be assessed against the local water quality district for that source. Findings made under this subsection may be based on the nature of the source involved or on the source's relationship to the size of the community in which it is located.

History: En. Sec. 24, Ch. 357, L. 1991; amd. Sec. 12, Ch. 471, L. 1995.

Temporary Water Quality Standards

75-5-312. Temporary water quality standards. (1) The board may, upon recommendation of the department or upon a petition for rulemaking, as provided in **2-4-315**, by a person, including a permit applicant or permittee, temporarily modify a water quality standard for a specific water body or segment on a parameter-by-parameter basis in those instances in which substantive information indicates that the water body or segment is not supporting its designated uses. When the board adopts temporary standards, the goal is to improve water quality to the point at which all the beneficial uses designated for that water body or segment are supported.

(2) As a condition for establishing temporary water quality standards for a particular water body or segment, the department or the petitioner, as applicable, shall prepare a support document and a preliminary implementation plan for use by the board in determining whether to adopt the proposed temporary water quality standards. A person shall submit a support document and a preliminary implementation plan to the department for its review at least 60 days prior to filing a petition with the board requesting the adoption of temporary water quality standards.

(3) The support document prepared by the department or the petitioner, as applicable, must describe:

- (a) the chemical, biological, and physical condition of the water body or segment;
- (b) the specific water quality limiting factors affecting the water body or segment;
- (c) the existing water quality standards that are not being achieved;
- (d) the temporary modifications to the existing water quality standards being requested;
- (e) existing beneficial uses; and
- (f) the designated uses considered attainable in the absence of the water quality limiting factors.

(4) The preliminary implementation plan prepared by the department or the petitioner, as applicable, must contain:

(a) a description of the proposed actions that will eliminate the water quality limiting factors identified in subsection (3)(b) to the extent considered achievable; and

(b) a schedule for implementing the proposed actions that ensures that the existing water quality standards for the parameter or parameters at issue are met as soon as reasonably practicable.

(5) Within 30 days after the board's adoption of temporary water quality standards, the department or the petitioner, as applicable, shall:

(a) modify the preliminary implementation plan and schedule to reflect the requirements and timeframe adopted by the board for the temporary standards; and

(b) develop a detailed work plan describing the implementation activities that will be conducted during the first field season of the temporary standards. The work plan must be approved by the director of the department.

(6) By March 1 of each year that the temporary water quality standards are in effect, the department or the petitioner, as applicable, shall submit a detailed work plan describing the implementation activities that will be conducted during that season. The annual work plans must be approved by the director of the department. The department shall maintain copies of the implementation plan, schedule, and annual work plans and any modifications to those plans and schedule.

(7) Upon the board's adoption of a temporary water quality standard, the department shall ensure that reasonable conditions and limitations designed to achieve compliance with the implementation plan are established in appropriate discharge permits.

(8) (a) A temporary modification of a water quality standard may not result in adverse impacts to existing beneficial uses or be established for a total period longer than 20 years.

(b) During the period of the temporary modification, the board may not allow a discharge that will cause overall water quality to become worse than the overall quality of the water body or segment prior to the discharge.

(9) If a state water is designated as having temporary standards, the department shall report to the board at least every 3 years or upon request of the board regarding whether adequate efforts have been made to implement the plans submitted as the basis for the temporary standards.

(10) The board shall review the temporary standards and implementation plan at least every 3 years at a public hearing for which notice and an opportunity for comment have been provided. During this review, the board shall consider the progress made in restoring water quality to a level that achieves the goal of the temporary water quality standards. The board may terminate or modify the temporary standards based on information submitted at the time of review.

(11) The board shall terminate a temporary standard for a parameter if:

(a) values for the modified parameter or parameters improve to conditions that support all designated uses for that classification;

(b) the state water for which the temporary standard is adopted is reclassified as provided for in **75-5-302**; or

(c) the plan submitted in support of the temporary water quality standard is not being implemented according to the plan's schedule or modifications to that plan or schedule made by the board or department.

(12) The board or the department may modify the implementation plan if there is convincing evidence that the plan needs modification.

(13) If a temporary standard for a parameter in a particular state water is terminated because the plan submitted in support of the temporary water quality standard is not being implemented according to the plan's schedule or modifications to that schedule made by the board or department, a person may request a new temporary standard by submitting both a petition for rulemaking and an implementation plan that meet the requirements of subsection (4). However, the board may not adopt another temporary standard for the parameter in the state water that would cumulatively be in effect for a total period longer than 20 years for the parameter in the state water.

History: En. Sec. 3, Ch. 539, L. 1995; amd. Sec. 1, Ch. 384, L. 2001.

Nutrient Standards Variances -- Individual, General, And Alternative

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

(2) (a) The department, in consultation with the nutrient work group, shall develop guidelines for individual nutrient standards variances to ensure that the economic impacts from base numeric nutrient standards on public and private systems are equally and adequately addressed. In developing those guidelines, the department and the nutrient work group shall consider economic impacts appropriate for application within Montana, acknowledging that advanced treatment technologies for removing nutrients will result in significant and widespread economic impacts.

(b) The department shall consult with the nutrient work group prior to recommending base numeric nutrient standards to the board and shall continue to consult with the nutrient work group in implementing individual nutrient standards variances.

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

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

(5) (a) Because the treatment of wastewater to base numeric nutrient standards would result in substantial and widespread economic impacts on a statewide basis, a permittee who meets the requirements established in subsection (5)(b) may, subject to subsection (6), apply for a general nutrient standards variance.

(b) The department shall approve the use of a general nutrient standards variance for permittees with wastewater treatment facilities that discharge to surface water:

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

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

(iii) from lagoons that were not designed to actively remove nutrients if the permittee maintains the performance of the lagoon at a level equal to the performance of the lagoon on October 1, 2011.

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

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

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

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

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

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

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

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

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

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

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

(12) On or before July 1 of each year, the department, in consultation with the nutrient work group, shall report to the water policy committee established in **5-5-231** by providing a summary of the status of the base numeric nutrient standards, the nutrient standards variances, and the implementation of those standards and variances, including estimated economic impacts.

(13) On or before September 1 of each year preceding the convening of a regular session of the legislature, the department, in consultation with the nutrient work group, shall summarize the two most recent reports provided under subsection (12) and submit to the water policy committee established in **5-5-231** this final summary in accordance with **5-11-210**.

History: En. Sec. 2, Ch. 267, L. 2009; amd. Sec. 3, Ch. 267, L. 2011; amd. Sec. 5, Ch. 122, L. 2015.

Confidentiality Of Base Numeric Standards And Nutrient Standards Variances

75-5-314. Confidentiality of base numeric standards and nutrient standards variances. (1) Except as provided in **80-15-108** and subsection (2) of this section, information concerning base numeric nutrient standards or nutrient standards variances that is furnished to the board or department or that is obtained by either of them is a matter of public record and open to public use.

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

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

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

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

History: En. Sec. 4, Ch. 267, L. 2011.

Outstanding Resource Waters -- Statement Of Purpose

75-5-315. Outstanding resource waters -- statement of purpose. (1) The legislature, understanding the requirements of applicable federal law and the uniqueness of Montana's water resource, recognizes that certain state waters are of such environmental, ecological, or economic value that the state should, upon a showing of necessity, prohibit, to the greatest extent practicable, changes to the existing water quality of those waters. Outstanding resource waters must be afforded the greatest protection feasible under state law, after thorough examination.

(2) The purpose of **75-5-316** and this section is to provide this protection, when necessary, and to provide guidance to the board in establishing rules to accomplish that level of protection.

History: En. Sec. 2, Ch. 501, L. 1995; amd. Sec. 1, Ch. 208, L. 2003.

Outstanding Resource Water Classification -- Rules -- Criteria -- Limitations -- Procedure -- Definition

75-5-316. Outstanding resource water classification -- rules -- criteria -- limitations -- procedure -- definition. (1) As provided under the provisions of **75-5-301** and this section, the board may adopt rules regarding the classification of waters as outstanding resource waters.

(2) The department may not:

(a) grant an authorization to degrade under **75-5-303** in outstanding resource waters; or

(b) allow a new or increased point source discharge that would result in a permanent change in the water quality of an outstanding resource water.

(3) (a) A person may petition the board for rulemaking to classify state waters as outstanding resource waters. The board shall initially review a petition against the criteria identified in subsection (3)(c) to determine whether the petition contains sufficient credible information for the board to accept the petition.

(b) The board may reject a petition without further review if it determines that the petition does not contain the sufficient credible information required by subsection (3)(a). If the board rejects a petition under this subsection (3)(b), it shall specify in writing the reasons for the rejection and the petition's deficiencies.

(c) The board may not adopt a rule classifying state waters as outstanding resource waters until it accepts a petition and makes a written finding containing the provisions enumerated in subsection (3)(d) that, based on a preponderance of the evidence:

(i) the waters identified in the petition constitute an outstanding resource based on the criteria provided in subsection (4);

(ii) the increased protection under the classification is necessary to protect the outstanding resource identified under subsection (3)(a) because of a finding that the outstanding resource is at risk of having one or more of the criteria provided in subsection (4) compromised as a result of pollution; and

(iii) classification as an outstanding resource water is necessary because of a finding that there is no other effective process available that will achieve the necessary protection.

(d) The written finding provided for in subsection (3)(c) must:

(i) identify the criteria provided in subsection (4) that the board believes serve as justification for the determination that the water is an outstanding resource;

(ii) specifically identify the criteria that are at risk and explain why those criteria are at risk; and

(iii) specifically explain why other available processes, including the requirements of **75-5-303**, will not achieve the necessary protection.

(4) The board shall consider the following criteria in determining whether certain state waters are outstanding resource waters. However, the board may determine that compliance with one or more of these criteria is insufficient to warrant classification of the water as an outstanding resource water. The board shall consider:

(a) whether the waters have been designated as wild and scenic;
(b) the presence of endangered or threatened species in the waters;
(c) the presence of an outstanding recreational fishery in the waters;
(d) whether the waters provide the only source of suitable water for a municipality or industry;
(e) whether the waters provide the only source of suitable water for domestic water supply; and
(f) other factors that indicate outstanding environmental or economic values not specifically mentioned in this subsection (4).

(5) Before accepting a petition, the board shall:

(a) publish a notice and brief description of the petition in a daily newspaper of general circulation in the area affected and make copies of the proposal available to the public. The cost of publication must be paid by the petitioner.

(b) provide for a 30-day written public comment period regarding whether the petition contains sufficient credible information, as provided in subsection (3)(b), prior to the hearing required in subsection (5)(c);

(c) hold a public hearing regarding the petition and its contents and allow further written and oral testimony at the hearing;

(d) issue a proposed decision, including:

(i) the written finding provided for in subsection (3)(c); and

(ii) the board's acceptance or rejection of the petition;

(e) provide for a 30-day public comment period regarding the board's proposed decision; and

(f) issue a final decision on acceptance or rejection of the petition, which must include a response to comments that were received by the board, and make copies of this decision available to the public.

(6) (a) After acceptance of a petition, the board shall direct the department to prepare an environmental impact statement, as provided under Title 75, chapter 1, part 2, and this section.

(b) (i) The petitioner is responsible for all of the costs associated with gathering and compiling data and information, and completing the environmental impact statement.

(ii) Before the department may initiate work on the environmental impact statement, the petitioner shall pay the estimated cost of completing the environmental impact statement, as determined by the department.

(iii) Upon completion of the environmental impact statement, the petitioner shall pay the department any costs that exceeded the estimated cost. If the cost of the environmental impact statement was less than the estimated cost paid by the petitioner, the department shall reimburse the difference to the petitioner.

(iv) The board may not grant or deny a petition until full payment for the environmental impact statement has been received by the department.

(7) The board shall consult with other relevant state agencies and county governments when reviewing outstanding resource water classification petitions.

(8) (a) After completion of an environmental impact statement and consultation with state agencies and local governments, the board may deny an accepted outstanding resource water classification petition if it finds that:

(i) the requirements of subsection (3)(c) have not been met; or

(ii) based on information available to the board from the environmental impact statement or otherwise, approving the outstanding resource waters classification petition would cause significant adverse environmental, social, or economic impacts.

(b) If the board denies the petition, it shall identify its reasons for petition denial.

(c) If the board grants the petition, the board shall initiate rulemaking to classify the waters as outstanding resource waters.

(9) A rule classifying state waters as outstanding resource waters under this section may be adopted but is not effective until approved by the legislature.

(10) The board may not postpone or deny an application for an authorization to degrade state waters under **75-5-303** based on pending:

- (a) board action on an outstanding resource water classification petition regarding those waters; or
- (b) legislative approval of board action designating those waters as outstanding resource waters.

(11) As used in this section, "petitioner" means an individual, corporation, partnership, firm, association, or other private or public entity that petitions the board to adopt rules to classify waters as outstanding resource waters.

History: En. Sec. 3, Ch. 501, L. 1995; amd. Sec. 3, Ch. 588, L. 1999; amd. Sec. 2, Ch. 208, L. 2003.

Nonsignificant Activities

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

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

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

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

(c) use of agricultural chemicals in accordance with a specific agricultural chemical ground water management plan promulgated under **80-15-212**, if applicable, or in accordance with an environmental protection agency-approved label and when existing and anticipated uses will be fully protected;

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

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

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

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

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

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

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

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

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

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

(i) such recreational activities as boating, hiking, hunting, fishing, wading, swimming, and camping;

(ii) fording of streams or other bodies of water by vehicular or other means; and

(iii) drinking from or fording of streams or other bodies of water by livestock and other domesticated animals;

(n) coal and uranium prospecting that does not result in a discharge to surface water, that does not involve a test pit located in surface water or that may affect surface water, and that is performed in accordance with Title 82, chapter 4;

(o) solid waste management systems, motor vehicle wrecking facilities, and county motor vehicle graveyards licensed and operating in accordance with Title 75, chapter 10, part 2, or Title 75, chapter 10, part 5;

(p) hazardous waste management facilities permitted and operated in accordance with Title 75, chapter 10, part 4;

(q) metallic and nonmetallic mineral exploration that does not result in a discharge to surface water and that is permitted under and performed in accordance with Title 82, chapter 4, parts 3 and 4;

(r) stream-related construction projects or stream enhancement projects that result in temporary changes to water quality but do not result in long-term detrimental effects and that have been authorized pursuant to **75-5-318**;

(s) diversions or withdrawals of water established and recognized under Title 85, chapter 2;

(t) the maintenance, repair, or replacement of dams, diversions, weirs, or other constructed works that are related to existing water rights and that are within wilderness areas so long as existing and anticipated beneficial uses are protected and as long as the changes in existing water quality relative to the project are short term; and

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

History: En. Sec. 6, Ch. 501, L. 1995; amd. Sec. 4, Ch. 588, L. 1999; amd. Sec. 2, Ch. 73, L. 2009.

Short-Term Water Quality Standards For Turbidity

75-5-318. Short-term water quality standards for turbidity. (1) Upon authorization by the department or the department of fish, wildlife, and parks pursuant to subsection (4), the short-term water quality standards for total suspended sediment and turbidity resulting from stream-related construction activities or stream enhancement projects are the narrative standards for total suspended sediment adopted by the board under **75-5-301**. If a short-term narrative standard is authorized under this section, the numeric standard for turbidity adopted by the board under **75-5-301** does not apply to the affected water body during the term of the narrative standard.

(2) The department shall review each application for short-term standards on a case-by-case basis to determine whether there are reasonable alternatives that preclude the need for a narrative standard. If the department determines that the numeric standard for turbidity adopted by the board under **75-5-301** cannot be achieved during the term of the activity and that there are no reasonable alternatives to achieve the numeric standard, the department may authorize the use of a narrative standard for a specified term.

(3) Each authorization issued by the department must include conditions that minimize, to the extent practicable, the magnitude of any change in water quality and the length of time during which any change may occur. The authorization must also include site-specific conditions that ensure that the activity is not harmful, detrimental, or injurious to public health and the uses of state waters and that ensure that existing and designated beneficial uses of state water are protected and maintained upon completion of the activity. The department may not authorize short-term narrative standards for

activities requiring a discharge permit under rules adopted by the board pursuant to **75-5-401**. Authorizations issued under this section may include conditions that require water quality or quantity monitoring and reporting.

(4) In the performance of its responsibilities under this section, the department may negotiate operating agreements with other departments of state government that are intended to minimize duplication in review of activities eligible for authorizations under this section. The department of fish, wildlife, and parks may, in accordance with subsections (1), (2), and (3), authorize short-term water quality standards for total suspended sediment and turbidity for any stream construction project that it reviews under Title 75, chapter 7, part 1, or Title 87, chapter 5, part 5.

History: En. Sec. 5, Ch. 588, L. 1999.

Compliance Schedule For Base Numeric Nutrient Standards

75-5-319. Compliance schedule for base numeric nutrient standards. If the United States environmental protection agency vetoes or objects to a discharge permit because of a nutrient standards variance provided for in **75-5-313** and the environmental protection agency determines that no variance may be granted for the permit, the department shall modify the discharge permit to contain nutrient limits based on the base numeric nutrient standards and a compliance schedule for meeting these nutrient limits. The compliance schedule may not extend for more than 20 years. The department may review and modify the compliance schedule every 3 years.

History: En. Sec. 1, Ch. 415, L. 2015.

Temporary Water Quality Standards Variances

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

- (a) a variance will not result in a lowering of currently attained, ambient water quality;
- (b) the department rules are consistent, as necessary, with federal rules that authorize states to adopt variances from standards, including but not limited to 40 CFR 131.14; and
- (c) (i) a permittee cannot reasonably expect to meet a water quality standard during the permit term for which the variance is approved; and
(ii) a permit compliance schedule is not feasible to preclude the need for a variance during the permit term for which the variance is approved.

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

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

History: En. Sec. 1, Ch. 251, L. 2019.

Through 75-5-324 Reserved

75-5-321 through 75-5-324 reserved.

Definitions

75-5-325. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

- (1) "Gray water" means wastewater that is collected separately from a sewage flow and that does not contain industrial chemicals, hazardous wastes, or wastewater from toilets.
- (2) "Gray water reuse system" means a plumbing system that collects gray water.

History: En. Sec. 1, Ch. 312, L. 2007; amd. Sec. 3, Ch. 73, L. 2009.

Gray Water Reuse -- Restrictions

75-5-326. Gray water reuse -- restrictions. (1) Gray water may not be used to irrigate plants to be consumed by humans.

(2) Gray water reuse systems may not be located within a flood plain, as defined in **76-5-103**.

History: En. Sec. 2, Ch. 312, L. 2007.

Local Gray Water Regulations

75-5-327. Local gray water regulations. The requirements of **75-5-305** and **75-5-326** are minimum requirements and do not restrict a local governing body from adopting stricter or additional regulations for gray water reuse systems.

History: En. Sec. 4, Ch. 312, L. 2007.