

## DRAFT MONTANA TMDL PRIORITY RATING METHOD

For efficiency purposes, Montana DEQ favors a watershed scale approach for developing TMDLs, and therefore sets TMDL development priorities at a watershed scale although there is allowance for setting priorities at the individual waterbody scale. In setting TMDL priorities, DEQ must incorporate the priority factors within the relevant sections of State Law (**Attachment A**).

### PRIORITY LEVELS

#### Level 1

Highest level of priority with TMDL completion anticipated within 2 years.

#### Level 2

TMDL completion anticipated within 2 to 6 years; water quality planning activities and other TMDL development support may be in progress.

#### Level 3

TMDL development not started or TMDL completion anticipated beyond 6 years

### PRIORITY RATING STEPS

#### Step 1: Watershed Scale Prioritization

1. Identify watersheds. TMDL watersheds generally correspond to TMDL Planning Areas.
2. All watershed TMDL priorities are initially set at Level 3 priority.
3. Watershed TMDL priority can be changed to Level 1 or Level 2 based on priority factors (see below) applicable to the watershed or a pollutant group (e.g. nutrients) within the watershed. Individual waterbody factors can influence the watershed priority.
4. All waterbody TMDL development priorities are set equal to the corresponding watershed priority. If the prioritization is only applicable to a specific pollutant group, then only those specific waterbody – pollutant combinations within the watershed receive the higher priority level.

#### Step 2: Waterbody Scale Prioritization

1. Only pursued where there is an apparent need to modify an individual waterbody (or waterbody – pollutant combination) priority from what was developed under Step 1.
2. This can result in one or more waterbodies (or waterbody – pollutant combinations) receiving a TMDL priority level that is different from the watershed priority. This implies variable TMDL completion schedules within the watershed. Therefore, this type of priority adjustment should only be pursued where the priority factors or other unique circumstances justify the potential reduction in TMDL development efficiency.
3. Example situations where this may occur:
  - a. A higher priority may be assigned to an individual waterbody where the TMDL is required or could have significant impact on a new discharge permit.
  - b. A lower priority may be assigned where significant standards development is desired and the potential outcome could negate the need for a TMDL on one or more waterbodies.

## TMDL PRIORITY FACTORS

Note that the **Attachment A** subsections (a) through (m) within 75-5-702 (7) and the new individual permit application requirement within 75-5-702 (9) are referred to as “priority factors”.

### Priority Factors with Greatest Influence

#### ***New Individual Permit Application Factor***

*NOTE: This overrides all other priority factors, if 75-5-702 (9) applies, then it is a high priority unless there is an alternative schedule that is agreed upon between the applicant and DEQ as allowed under 75-5-702*

#### ***Factors linked to Potential Implementation***

- (d) the degree of public interest and support;
- (k) the availability of technology and resources to correct the problems;
- (l) whether actions or voluntary programs that are likely to correct the impairment of a particular waterbody are currently in place;

#### ***Factors linked to Program Coordination***

- (j) state policies and priorities, including the protection and restoration of native fish when appropriate;
- (h) immediate programmatic needs, such as waste load allocations for new permits or permit renewals and load allocations for new nonpoint sources;

#### ***Factors linked to Resource Value***

- (f) whether the waterbody is an important high-quality resource in an early stage of degradation;
- (m) the recreational, economic, and aesthetic importance of a particular waterbody

#### ***Factors linked to Magnitude of Potential Impact to Use***

- (c) the impacts to human health and aquatic life;  
*NOTE: Unless there are unique circumstances, this factor will be considered inherently equivalent for all watershed projects and all waterbodies.*

### Priority Factors with Medium Influence

#### ***Factors linked to Impairment Characteristics***

- (e) the character of the pollutant and the severity and magnitude of water quality standard noncompliance;  
*NOTE: This factor will be considered inherently equivalent except that sediment, temperature and metals TMDLs in warm water streams may be of lower priority until further standards or assessment method development; unless this work is integrated within the TMDL development.*

#### ***Factors linked to Court Determinations***

- (i) court orders and decisions relating to water quality;

*NOTE: This is still a priority influence because of the need to avoid future court orders. Montana will need to maintain a TMDL pace that chips away at the 303 list, which will be close to 900 TMDLs still required after 2014.*

## **Priority Factors with Lowest Influence**

### ***Factors linked to General Waterbody Characteristics***

- (a) the beneficial uses established for a waterbody;  
*NOTE: Unless there are unique circumstances, this factor will be considered inherently equivalent for all watershed projects and all waterbodies.*
- (b) the extent that natural factors over which humans have no control are contributing to any impairment;  
*NOTE: Unless there are unique circumstances, this factor will be considered inherently equivalent for all watershed projects. If an impairment is predominately due to these type of conditions, then it is possibly an assessment or standards issue that can be addressed outside of TMDL development.*
- (g) the size of the waterbody not achieving standards;  
*NOTE: Unless there are unique circumstances associated with size only, this factor will be considered inherently equivalent for all watershed projects.*

## **ATTACHMENT A: TMDL PRIORITY LANGUAGE FROM STATE LAW (75-5-702)**

(7) Except as provided in subsection (9), in prioritizing waterbodies for TMDL development, the department shall, in consultation with the statewide TMDL advisory group, take into consideration the following:

- (a) the beneficial uses established for a waterbody;
- (b) the extent that natural factors over which humans have no control are contributing to any impairment;
- (c) the impacts to human health and aquatic life;
- (d) the degree of public interest and support;
- (e) the character of the pollutant and the severity and magnitude of water quality standard noncompliance;
- (f) whether the waterbody is an important high-quality resource in an early stage of degradation;
- (g) the size of the waterbody not achieving standards;
- (h) immediate programmatic needs, such as waste load allocations for new permits or permit renewals and load allocations for new nonpoint sources;
- (i) court orders and decisions relating to water quality;
- (j) state policies and priorities, including the protection and restoration of native fish when appropriate;
- (k) the availability of technology and resources to correct the problems;
- (l) whether actions or voluntary programs that are likely to correct the impairment of a particular waterbody are currently in place; and
- (m) the recreational, economic, and aesthetic importance of a particular waterbody.

(8) Except as provided in subsection (9), the department shall, in consultation with the statewide TMDL advisory group, develop a method of rating waterbodies according to the criteria and considerations described in subsection (7) in order to rank the listed waterbodies as high priority, moderate priority, or low priority for TMDL development. The department may not rank a waterbody as a high priority under this section without first validating the data necessary to support the ranking.

(9) (a) When the department receives an application for a new individual permit to discharge into a surface waterbody or a segment of a surface waterbody pursuant to 75-5-401, the surface waterbody or segment of a surface waterbody has been listed pursuant to subsection (2) of this section, the discharge would contain a pollutant for which the waterbody or segment is threatened or impaired, and a TMDL has not been developed for that waterbody or segment, the department shall:

- (i) within 30 days of the department's receipt of the application, initiate the development of a TMDL on the waterbody or segment; and
- (ii) except as provided in subsection (9) (b), within 180 days of the department's receipt of the application, complete development of the TMDL pursuant to 75-5-703.