

STATEWIDE ADVISORY GROUP LEGAL REFERENCES (11/13/13)

75-5-702. Monitoring -- water quality assessment listing -- statewide advisory group. (1) The department shall monitor state waters to assess the quality of those waters and to identify surface water bodies or segments of surface water bodies that are threatened or impaired. The department shall use the monitoring results to revise the list of water bodies that are identified as threatened or impaired and to establish a priority ranking for TMDL development for those waters in accordance with subsections (4) and (7).

(2) In revising the list prepared pursuant to this section, the department shall use all currently available data, including information or data obtained from federal, state, and local agencies, private entities, or individuals with an interest in water quality protection. Except as provided in subsection (6), the department may modify the list only if there is sufficient credible data to support the modification. Prior to publishing a final list, the department shall provide public notice and allow 60 days for public comment on the draft list. The department shall make available for public review, upon request, documentation used in the determination to list or delist a particular water body, including, at a minimum, a description of the information, data, and methodology used. The department may charge a reasonable fee for the documentation, commensurate with the cost of providing the documentation to the requestor.

(3) A person may request that the department add or remove a water body or reprioritize a water body on a draft or published list by providing the data or information necessary to support the request. The department shall review the data within 60 days from its submittal. If the department determines that there is sufficient credible data to grant the request, the department shall provide public notice of its intended action and allow 60 days for public comment prior to taking action on the request. A person aggrieved by the department's decision to grant or deny the request may appeal the department's decision to the board.

(4) The department shall, in consultation with local conservation districts and watershed advisory groups pursuant to [75-5-704](#), review and revise the list and priority rankings of water bodies identified as threatened or impaired. The department shall review and revise the list at intervals not to exceed 5 years. The department shall make available for public review the data and information used in making any changes in its list of threatened or impaired water bodies that is developed and maintained pursuant to this section.

(5) By October 1, 1999, and in consultation with the statewide TMDL advisory group established pursuant to subsection (9), the department shall develop and maintain a data management system that can be used to assess the validity and reliability of the data used in the listing and priority ranking process. The department shall make available to the public, upon request, data from its data management system. The department may charge a reasonable fee for the data, commensurate with its cost of providing the data to the requestor.

(6) By October 1, 1999, and in consultation with the statewide TMDL advisory group, the department shall use the data management system developed and maintained pursuant to subsection (5) to revise the list and to remove any water body that lacks sufficient credible data to support its listing. If the department removes a water body because there is a lack of sufficient credible data to support its listing, the department shall monitor and assess that water body during the next field season or as soon as possible thereafter to determine whether it is a threatened water body or an impaired water body.

(7) In prioritizing water bodies 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 water body;

- (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 water body is an important high-quality resource in an early stage of degradation;
- (g) the size of the water body 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 water body are currently in place; and
- (m) the recreational, economic, and aesthetic importance of a particular water body.

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

(9) (a) The department shall establish a statewide TMDL advisory group to serve in the consultation capacity set forth in [75-5-703](#), [75-5-704](#), and this section. Fourteen members, and any replacement members that may be necessary, must be appointed by the director, based upon one nomination from each of the following interests:

- (i) livestock-oriented agriculture;
- (ii) farming-oriented agriculture;
- (iii) conservation or environmental interests;
- (iv) water-based recreationists;
- (v) the forestry industry;
- (vi) municipalities;
- (vii) point source dischargers;
- (viii) mining;
- (ix) federal land management agencies;
- (x) state trust land management agencies;
- (xi) supervisors of soil and water conservation districts for counties east of the continental divide;
- (xii) supervisors of soil and water conservation districts for counties west of the continental divide;
- (xiii) the hydroelectric industry; and
- (xiv) fishing-related businesses.

(b) If the director receives more than one nomination from a particular interest, the director shall notify the respective nominators and request that they agree on one nominee.

(10) The department shall provide public notice of meetings of the statewide TMDL advisory group and shall solicit, document, and consider public comments provided during the deliberations of the advisory group.

History: En. Sec. 3, Ch. 541, L. 1997; amd. Sec. 1, Ch. 93, L. 1999.

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

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

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

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

(5) For water bodies listed under [75-5-702](#), the department shall provide assistance and support to landowners, local conservation districts, and watershed advisory groups for interim measures that may restore water quality and remove the need to establish a TMDL, such as informational programs regarding control of nonpoint source pollution and voluntary measures designed to correct impairments. When a source implements voluntary measures to reduce pollutants prior to development of a TMDL, those measures, whether or not reflected in subsequently issued waste discharge permits, must be recognized in development of the TMDL in a way that gives credit for the pollution reduction efforts.

(6) After development of a TMDL and upon approval of the TMDL, the department shall:

- (a) incorporate the TMDL into its current continuing planning process;
- (b) incorporate the waste load allocation developed for point sources during the TMDL process into appropriate water discharge permits; and
- (c) assist and inform landowners regarding the application of a voluntary program of reasonable land, soil, and water conservation practices developed pursuant to subsection (2).

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

(8) The department shall support a voluntary program of reasonable land, soil, and water

conservation practices to achieve compliance with water quality standards for nonpoint source activities for water bodies that are subject to a TMDL developed and implemented pursuant to this section.

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

(a) the implementation of a new or improved phase of voluntary reasonable land, soil, and water conservation practice is necessary;

(b) water quality is improving but a specified time is needed for compliance with water quality standards; or

(c) revisions to the TMDL are necessary to achieve applicable water quality standards.

(10) Pending completion of a TMDL on a water body listed pursuant to [75-5-702](#):

(a) point source discharges to a listed water body may commence or continue, provided that:

(i) the discharge is in conformance with a discharge permit that reflects, in the manner and to the extent applicable for the particular discharge, the provisions of [75-5-303](#);

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

(iii) minimum treatment requirements adopted pursuant to [75-5-305](#) are met;

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

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

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

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

History: En. Sec. 4, Ch. 541, L. 1997; amd. Sec. 2, Ch. 93, L. 1999; amd. Sec. 1, Ch. 128, L. 2003; amd. Sec. 1, Ch. 302, L. 2011.

75-5-704. Watershed advisory groups. (1) In implementing the consultation requirements under [75-5-702](#)(4) and [75-5-703](#)(1) and (2), the department shall request the participation of representatives of the following interest groups to work in an advisory capacity with the local conservation districts and the department:

(a) livestock-oriented agriculture;

(b) farming-oriented agriculture;

(c) conservation or environmental interests;

(d) water-based recreationists;

(e) the forestry industry;

(f) municipalities;

(g) affected or potentially affected point source dischargers;

(h) mining;

(i) existing local watershed groups;

(j) federal land management agencies;

(k) state trust land management agencies;

(l) the tourism industry;

(m) the hydroelectric industry, if applicable; and

(n) fishing-related businesses.

(2) In implementing the consultation requirements of [75-5-702](#) and [75-5-703](#), the department shall:

(a) prior to consultation with the statewide TMDL advisory group pursuant to [75-5-702](#)(7) and (8), schedule meetings with appropriate local conservation districts and the watershed advisory groups at a location within their affected geographic area to review and revise the list of water bodies provided for in [75-5-702](#); and

(b) at a meeting held pursuant to subsection (2)(a), request whether there is new information that may affect the listing or priority ranking on water bodies within the affected area and solicit comments on revising the list.

(3) Based upon the information provided pursuant to subsection (2)(b), the department shall revise the list according to [75-5-702](#).

(4) Prior to and during the development of a TMDL within a particular watershed or basin, the department shall schedule a meeting or meetings with appropriate local conservation districts and watershed advisory groups at a location within the affected geographic area in order to solicit comments on developing the TMDL and information on sources that may be contributing to water quality impairment.

History: En. Sec. 5, Ch. 541, L. 1997.