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\*\*\* Bill No. \*\*\*

Introduced By \*\*\*\*\*

By Request of the (Agency or Department)

A Bill for an Act entitled: "An Act repealing and amending laws related to the establishment of nutrient standards variances; repealing sections 75-5-313, 75-5-314, and 75-5-319, MCA; amending sections 75-5-103, 75-5-105, and 75-5-320, MCA; and providing an immediate effective date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Repealer.** The following

sections of the Montana Code Annotated are repealed:

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

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

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

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

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"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.~~

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10.21.20 Nutrient variance repelaer bill draft with  
Transition Sec\_.docx

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

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

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

~~(6)~~(5) (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)~~(6) "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)~~(7) "Department" means the department of environmental quality provided for in 2-15-3501.

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

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Last printed 10/27/2020 7:02:00 AM  
10.21.20 Nutrient variance repelaer bill draft with  
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~~(10)~~(9) "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)~~(10) (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.

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10.21.20 Nutrient variance repelaer bill draft with  
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(b) The term does not include a nuclear facility as defined in 75-20-1202.

~~(12)~~(11) "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)~~(12) "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)~~(13) "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)~~(14) "Industrial waste" means a waste substance from the process of business or industry or from the development

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10.21.20 Nutrient variance repelaer bill draft with  
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of any natural resource, together with any sewage that may be present.

~~(16)~~(15) "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)~~(16) "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)~~(17) "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.

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10.21.20 Nutrient variance repelaer bill draft with  
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~~(19)~~(18) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

~~(20)~~(19) "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)~~(20) "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

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Last printed 10/27/2020 7:02:00 AM  
10.21.20 Nutrient variance repelaer bill draft with  
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~~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)~~(21) "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)~~(22) "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)~~(23) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.



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Last printed 10/27/2020 7:02:00 AM  
10.21.20 Nutrient variance repelaer bill draft with  
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~~(27)~~(24) "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)~~(25) "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)~~(26) "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)~~(27) (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

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10.21.20 Nutrient variance repelaer bill draft with  
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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)~~(28) "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.

**CD-ROM Draft Copy**

Last printed 10/27/2020 7:02:00 AM  
10.21.20 Nutrient variance repelaer bill draft with  
Transition Sec\_.docx

~~(32)~~(29) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(33)~~(30) "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)~~(31) (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.

## CD-ROM Draft Copy

Last printed 10/27/2020 7:02:00 AM  
10.21.20 Nutrient variance repelaer bill draft with  
Transition Sec\_.docx

~~(35)~~(32) "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)~~(33) "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)~~(34) "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.

**CD-ROM Draft Copy**

Last printed 10/27/2020 7:02:00 AM  
10.21.20 Nutrient variance repelaer bill draft with  
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~~(38)~~(35) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(39)~~(36) "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)~~(37) "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)~~(38) "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.

## CD-ROM Draft Copy

Last printed 10/27/2020 7:02:00 AM  
10.21.20 Nutrient variance repelaer bill draft with  
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~~(42)~~(39) "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; or
  - (g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.

## CD-ROM Draft Copy

Last printed 10/27/2020 7:02:00 AM  
10.21.20 Nutrient variance repelaer bill draft with  
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~~(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)~~(2) "Board" means the board of environmental review provided for in 2-15-3502.

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

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

~~(6)~~(5) (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)~~(6) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter.

## CD-ROM Draft Copy

Last printed 10/27/2020 7:02:00 AM  
10.21.20 Nutrient variance repelaer bill draft with  
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The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

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

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

~~(10)~~(9) "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)~~(10) (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;



**CD-ROM Draft Copy**

Last printed 10/27/2020 7:02:00 AM  
10.21.20 Nutrient variance repelaer bill draft with  
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(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)~~(11) "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)~~(12) "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.

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~~(14)~~(13) "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)~~(14) "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)~~(15) "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)~~(16) "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)~~(17) "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

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Last printed 10/27/2020 7:02:00 AM  
10.21.20 Nutrient variance repelaer bill draft with  
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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)~~(18) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

~~(20)~~(19) "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)~~(20) "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~~

## CD-ROM Draft Copy

Last printed 10/27/2020 7:02:00 AM  
10.21.20 Nutrient variance repelaer bill draft with  
Transition Sec\_.docx

~~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)~~(21) "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)~~(22) "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

## CD-ROM Draft Copy

Last printed 10/27/2020 7:02:00 AM  
10.21.20 Nutrient variance repelaer bill draft with  
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(b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and approved by the legislature.

~~(26)~~(23) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(27)~~(24) "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)~~(25) "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)~~(26) "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)~~(27) (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,

**CD-ROM Draft Copy**

Last printed 10/27/2020 7:02:00 AM  
10.21.20 Nutrient variance repelaer bill draft with  
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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

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Last printed 10/27/2020 7:02:00 AM  
10.21.20 Nutrient variance repelaer bill draft with  
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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)~~(28) "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)~~(29) "Sewage system" means a device for collecting or  
conducting sewage, industrial wastes, or other wastes to an  
ultimate disposal point.

~~(33)~~(30) "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.

**CD-ROM Draft Copy**

Last printed 10/27/2020 7:02:00 AM  
10.21.20 Nutrient variance repelaer bill draft with  
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~~(34)~~(31) (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)~~(32) "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)~~(33) "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



## CD-ROM Draft Copy

Last printed 10/27/2020 7:02:00 AM  
10.21.20 Nutrient variance repelaer bill draft with  
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permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

(b) documented adverse pollution trends.

~~(37)~~(34) "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)~~(35) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(39)~~(36) "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)~~(37) "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

## CD-ROM Draft Copy

Last printed 10/27/2020 7:02:00 AM  
10.21.20 Nutrient variance repelaer bill draft with  
Transition Sec\_.docx

and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

~~(41)~~(38) "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)~~(39) "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."

**Section 3.** Section 75-5-105, MCA, is amended to read:

"**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

## CD-ROM Draft Copy

Last printed 10/27/2020 7:02:00 AM  
10.21.20 Nutrient variance repelaer bill draft with  
Transition Sec\_.docx

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~~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."

**CD-ROM Draft Copy**

Last printed 10/27/2020 7:02:00 AM  
10.21.20 Nutrient variance repelaer bill draft with  
Transition Sec\_.docx

**Section 4.** Section 75-5-320, MCA, is amended to read:

**"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.

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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.

NEW SECTION. **Section 5. Transition.** Any administrative rules currently authorized under 75-5-313 are authorized under 75-5-320 as of [the effective date of this act].

NEW SECTION. **Section 6. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

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