

SENATE BILL NO. 252

INTRODUCED BY

Trost

Harp Bank

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR RECOGNITION, IN THE ISSUANCE OF WATER QUALITY DISCHARGE PERMITS, OF NATURAL ATTENUATION ZONES; AMENDING SECTIONS 75-5-103 AND 75-5-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

This bill, which recognizes natural attenuation zones, is intended to supplement existing statutory provisions for mixing zones to recognize the importance of natural treatment mechanisms in addition to dilution in minimizing the effects of discharges on receiving waters.

In the spirit of minimizing the complexity of regulatory requirements and promoting compliance, it is intended that the delineation of natural attenuation zones be a simple procedure. The criteria for defining the boundaries of natural attenuation zones will emphasize land use control that provides control of beneficial uses of water within the attenuation zone for the period of time needed to prevent any effect on uses, in perpetuity if necessary. The control of a natural attenuation zone may include but is not limited to outright ownership or contractual agreements with the property owner or an owner of a water right.

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

NEW SECTION. Section 1. Natural attenuation zones -- authorization -- application -- designation procedure. (1) Upon application under this section, the department shall designate natural attenuation zones in accordance with rules adopted by the board. Water quality changes may occur and water quality standards may be exceeded in natural attenuation zones, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

(2) A person seeking designation of a natural attenuation zone shall submit an application to the department. The application must contain:

(a) the applicant's name and address;

(b) a description of the activity generating a discharge to waters of the state and a description of the anticipated volume and quality of the discharge;

- 1 (c) a description of the means by which the discharge will be mixed with the receiving waters;
- 2 (d) a legal description and map delineating the geographic area proposed by the applicant for
3 designation as the natural attenuation zone for the discharge;
- 4 (e) information establishing that natural processes attenuate the discharge within the entire extent
5 of the proposed natural attenuation zone and a description of those processes;
- 6 (f) information establishing the quality of the receiving water up gradient from and the projected
7 quality of the receiving water down gradient from and throughout the proposed natural attenuation zone;
- 8 (g) information establishing the extent to which the applicant controls access, by ownership, lease,
9 or otherwise, to the area within the proposed natural attenuation zone; and
- 10 (h) a description of the monitoring program proposed by the applicant.

11

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

13 **"75-5-103. Definitions.** Unless the context requires otherwise, in this chapter, the following
14 definitions apply:

15 (1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

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

18 (3) "Council" means the water pollution control advisory council provided for in 2-15-2107.

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

22 (5) "Department" means the department of health and environmental sciences provided for in Title
23 2, chapter 15, part 21.

24 (6) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and
25 includes sewage systems and treatment works.

26 (7) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations
27 of chemical, physical, biological, and other constituents ~~which~~ that are discharged into state waters.

28 (8) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971,
29 whether or not those uses are included in the water quality standards.

30 (9) "High-quality waters" means state waters whose quality for a parameter is better than

1 standards established pursuant to 75-5-301. All waters are high-quality water unless classified by the board
2 within a classification for waters that are not suitable for human consumption or not suitable for growth
3 and propagation of fish and associated aquatic life.

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

6 (11) "Interested person" means a person who has submitted oral or written comments on the
7 department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term
8 includes a person who has requested authorization to degrade high-quality waters.

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

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

14 (14) "Natural attenuation zone" means an area established in a permit or final decision on
15 nondegradation issued by the department where natural attenuation processes reduce the concentrations
16 of chemical constituents within a discharge. Natural attenuation processes include but are not limited to
17 adsorption, chemical precipitation, chemical reaction, dilution, biological reaction, ultraviolet radiation, and
18 volatilization.

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

23 ~~(16)~~(16) "Owner or operator" means a person who owns, leases, operates, controls, or supervises
24 a point source.

25 ~~(16)~~(17) "Parameter" means a physical, biological, or chemical property of state water when a
26 value of that property affects the quality of the state water.

27 ~~(17)~~(18) "Person" means the state, a political subdivision of the state, institution, firm, corporation,
28 partnership, individual, or other entity and includes persons resident in Canada.

29 ~~(18)~~(19) "Point source" means a discernible, confined, and discrete conveyance, including but not
30 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel

1 or other floating craft, from which pollutants are or may be discharged.

2 ~~(19)~~(20) "Pollution" means contamination or other alteration of the physical, chemical, or biological
3 properties of state waters ~~which~~ that exceeds that permitted by Montana water quality standards, including
4 but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or the
5 discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance
6 into state water ~~which~~ that will or is likely to create a nuisance or render the waters harmful, detrimental,
7 or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.
8 A discharge, seepage, drainage, infiltration or flow ~~which~~ that is authorized under the pollution discharge
9 permit rules of the board is not pollution under this chapter. Activities conducted under the conditions
10 imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution
11 under this chapter.

12 ~~(20)~~(21) "Sewage" means water-carried waste products from residences, public buildings,
13 institutions, or other buildings, including discharge from human beings or animals, together with ground
14 water infiltration and surface water present.

15 ~~(21)~~(22) "Sewage system" means a device for collecting or conducting sewage, industrial wastes,
16 or other wastes to an ultimate disposal point.

17 ~~(22)~~(23) "Standard of performance" means a standard adopted by the board for the control of the
18 discharge of pollutants ~~which~~ that reflects the greatest degree of effluent reduction achievable through
19 application of the best available demonstrated control technology, processes, operating methods, or other
20 alternatives, including, where practicable, a standard permitting no discharge of pollutants.

21 ~~(23)~~(24) "State waters" means a body of water, irrigation system, or drainage system, either
22 surface or underground; however, this subsection does not apply to irrigation waters where the waters are
23 used up within the irrigation system and the waters are not returned to any other state waters.

24 ~~(24)~~(25) "Treatment works" means works, including sewage lagoons, installed for treating or
25 holding sewage, industrial wastes, or other wastes.

26 ~~(25)~~(26) "Water quality protection practices" means those activities, prohibitions, maintenance
27 procedures, or other management practices applied to point and nonpoint sources designed to protect,
28 maintain, and improve the quality of state waters. Water quality protection practices include but are not
29 limited to treatment requirements, standards of performance, effluent standards, and operating procedures
30 and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material

1 storage.

2 ~~(26)~~(27) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug,
3 jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition
4 of ground water."

5

6 **Section 3.** Section 75-5-301, MCA, is amended to read:

7 **"75-5-301. Classification and standards for state waters.** Consistent with the provisions of
8 75-5-302 through 75-5-307 and 80-15-201, the board shall:

9 (1) establish and modify the classification of all waters in accordance with their present and future
10 most beneficial uses;

11 (2) formulate standards of water purity and classification of water according to its most beneficial
12 uses, giving consideration to the economics of waste treatment and prevention;

13 (3) review, from time to time at intervals of not more than 3 years, established classifications of
14 waters and standards of water purity and classification;

15 (4) adopt rules governing the granting of mixing zones and natural attenuation zones, ~~requiring that~~
16 providing:

17 (a) that mixing zones and natural attenuation zones granted by the department be specifically
18 identified, ~~and requiring that mixing zones and natural attenuation zones~~ have:

19 ~~(a)(i)~~ (i) the smallest practicable size;

20 ~~(a)(ii)~~ (ii) a minimum practicable effect on water uses; and

21 ~~(a)(iii)~~ (iii) definable boundaries;

22 (b) that the department shall respond to applications submitted pursuant to [section 1] within 30
23 days of receipt;

24 (c) that, to the extent possible, applications for and designations of natural attenuation zones be
25 coordinated with permitting procedures under part 4; and

26 (d) a procedure for appeal by the applicant, to the board, of a department decision;

27 (i) denying an application for designation of a natural attenuation zone; or

28 (ii) designating a natural attenuation zone other than as applied for by the applicant;

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

- 1 (a) provide a procedure for department review and authorization of degradation;
- 2 (b) establish criteria for the following:
- 3 (i) determining important economic or social development; and
- 4 (ii) weighing the social and economic importance to the public of allowing the proposed project
- 5 against the cost to society associated with a loss of water quality; and
- 6 (c) establish criteria for determining whether a proposed activity or class of activities will result in
- 7 nonsignificant changes in water quality for any parameter in order that those activities are not required to
- 8 undergo review under 75-5-303(3). These criteria must be established in a manner that generally:
- 9 (i) equates significance with the potential for harm to human health or the environment;
- 10 (ii) considers both the quantity and the strength of the pollutant;
- 11 (iii) considers the length of time that the degradation will occur; and
- 12 (iv) considers the character of the pollutant so that greater significance is associated with
- 13 carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with
- 14 substances that are less harmful or less persistent.
- 15 (6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective
- 16 and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute
- 17 guidelines for granting or denying applications for authorization to degrade high-quality waters under the
- 18 policy established in 75-5-303(2) and (3).
- 19 (7) adopt rules to implement this section."

20

21 **NEW SECTION. Section 4. Codification instruction.** [Section 1] is intended to be codified as an

22 integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to

23 [section 1].

24

25 **NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.

26

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0252, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act amending the Montana Water Quality Act to recognize "natural attenuation zones" to naturally treat and dilute contaminants from discharges to state waters which are permitted by the Department of Health and Environmental Sciences (DHES).

ASSUMPTIONS:


1. The Executive Budget present law base serves as the starting point from which to calculate the fiscal impact of this proposed legislation.
2. Recent rulemaking for other water quality regulations, such as nondegradation and mixing zones, generated a major amount of public comment. Significant time maybe required in FY96 to draft regulations, conduct formal and informal public review, and respond to comments.
3. Generally all subdivisions which discharge sewage to ground water through subsurface disposal systems are granted mixing zones. Natural attenuation zones are similar to mixing zones and would likely be a popular option for developers. Review of proposed attenuation zones would be concurrent with permit or subdivision review but would constitute additional workload and lengthened review time.
4. To meet the required 30-day response time specified in the legislation, the department estimates it would need the equivalent of a minimum of 0.50 FTE in FY97 to review proposed natural attenuation zones.

FISCAL IMPACT:

	<u>FY96</u>	<u>FY97</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
Operating	5,000	17,000
<u>Funding:</u>		
General Fund	5,000	17,000
<u>Net Impact:</u>		
General Fund Cost	5,000	17,000

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

DHES contracts with local governments to provide review and approval of subdivisions. These reviews must ensure compliance with Montana Water Quality Act requirements such as nondegradation. Local governments would also be required to review and approve natural attenuation zones.

 2-2-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2-2-95
LARRY TVEIT, PRIMARY SPONSOR DATE

Fiscal Note for SB0252, as introduced

SB 252

1 SENATE BILL NO. 252

2 INTRODUCED BY TVEIT

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR RECOGNITION, IN THE ISSUANCE OF WATER
5 QUALITY DISCHARGE PERMITS, OF NATURAL ATTENUATION ZONES CLARIFYING THE WATER QUALITY
6 LAWS TO RECOGNIZE AND PROVIDE FOR GROUND WATER MIXING ZONES AT LEAST TO THE EXTENT
7 OF THE PROPERTY OWNED OR CONTROLLED BY THE DISCHARGER; AMENDING SECTIONS 75-5-103
8 AND 75-5-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
9

10 STATEMENT OF INTENT

11 ~~This bill, which recognizes natural attenuation zones, is intended to supplement existing statutory~~
12 ~~provisions for mixing zones to recognize the importance of natural treatment mechanisms in addition to~~
13 ~~dilution in minimizing the effects of discharges on receiving waters.~~

14 ~~In the spirit of minimizing the complexity of regulatory requirements and promoting compliance, it~~
15 ~~is intended that the delineation of natural attenuation zones be a simple procedure. The criteria for defining~~
16 ~~the boundaries of natural attenuation zones will emphasize land use control that provides control of~~
17 ~~beneficial uses of water within the attenuation zone for the period of time needed to prevent any effect on~~
18 ~~uses, in perpetuity if necessary. The control of a natural attenuation zone may include but is not limited~~
19 ~~to outright ownership or contractual agreements with the property owner or an owner of a water right.~~

20
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
22

23 ~~NEW SECTION. Section 1. Natural attenuation zones — authorization — application — designation~~
24 ~~procedure. (1) Upon application under this section, the department shall designate natural attenuation~~
25 ~~zones in accordance with rules adopted by the board. Water quality changes may occur and water quality~~
26 ~~standards may be exceeded in natural attenuation zones, subject to conditions that are imposed by the~~
27 ~~department and that are consistent with the rules adopted by the board.~~

28 ~~(2) A person seeking designation of a natural attenuation zone shall submit an application to the~~
29 ~~department. The application must contain:~~

30 ~~(a) the applicant's name and address;~~

1 ~~(b) a description of the activity generating a discharge to waters of the state and a description of~~
 2 ~~the anticipated volume and quality of the discharge;~~

3 ~~(c) a description of the means by which the discharge will be mixed with the receiving waters;~~

4 ~~(d) a legal description and map delineating the geographic area proposed by the applicant for~~
 5 ~~designation as the natural attenuation zone for the discharge;~~

6 ~~(e) information establishing that natural processes attenuate the discharge within the entire extent~~
 7 ~~of the proposed natural attenuation zone and a description of those processes;~~

8 ~~(f) information establishing the quality of the receiving water up gradient from and the projected~~
 9 ~~quality of the receiving water down gradient from and throughout the proposed natural attenuation zone;~~

10 ~~(g) information establishing the extent to which the applicant controls access, by ownership, lease,~~
 11 ~~or otherwise, to the area within the proposed natural attenuation zone; and~~

12 ~~(h) a description of the monitoring program proposed by the applicant.~~

13
 14 **Section 1.** Section 75-5-103, MCA, is amended to read:

15 **"75-5-103. Definitions.** Unless the context requires otherwise, in this chapter, the following
 16 definitions apply:

17 (1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

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

20 (3) "CONTROLLED PROPERTY" MEANS THE LAND AREA CONTROLLED BY A DISCHARGER, AT
 21 THE TIME THAT THE PERMIT WAS ISSUED, THROUGH OWNERSHIP, LEASE, OR OTHERWISE, WITHIN
 22 WHICH THE DISCHARGER CONTROLS BENEFICIAL USES OF GROUND WATER.

23 ~~(3)~~ (4) "Council" means the water pollution control advisory council provided for in 2-15-2107.

24 (4) (5) "Degradation" means a change in water quality that lowers the quality of high-quality waters
 25 for a parameter. The term does not include those changes in water quality determined to be nonsignificant
 26 pursuant to 75-5-301(5)(c).

27 ~~(5)~~ (6) "Department" means the department of health and environmental sciences provided for in
 28 Title 2, chapter 15, part 21.

29 ~~(6)~~ (7) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and
 30 includes sewage systems and treatment works.

1 ~~(7)~~ (8) "Effluent standard" means a restriction or prohibition on quantities, rates, and
2 concentrations of chemical, physical, biological, and other constituents ~~which~~ that are discharged into state
3 waters.

4 ~~(8)~~ (9) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971,
5 whether or not those uses are included in the water quality standards.

6 ~~(9)~~ (10) "High-quality waters" means state waters whose quality for a parameter is better than
7 standards established pursuant to 75-5-301. All waters are high-quality water unless classified by the board
8 within a classification for waters that are not suitable for human consumption or not suitable for growth
9 and propagation of fish and associated aquatic life.

10 ~~(10)~~ (11) "Industrial waste" means a waste substance from the process of business or industry or
11 from the development of any natural resource, together with any sewage that may be present.

12 ~~(11)~~ (12) "Interested person" means a person who has submitted oral or written comments on the
13 department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term
14 includes a person who has requested authorization to degrade high-quality waters.

15 ~~(12)~~ (13) "Local department of health" means the staff, including health officers, employed by a
16 county, city, city-county, or district board of health.

17 ~~(13)~~ (14) "Mixing zone" means an area established in a permit or final decision on nondegradation
18 issued by the department where water quality standards may be exceeded, subject to conditions that are
19 imposed by the department and that are consistent with the rules adopted by the board.

20 ~~(14) "Natural attenuation zone" means an area established in a permit or final decision on~~
21 ~~nondegradation issued by the department where natural attenuation processes reduce the concentrations~~
22 ~~of chemical constituents within a discharge. Natural attenuation processes include but are not limited to~~
23 ~~adsorption, chemical precipitation, chemical reaction, dilution, biological reaction, ultraviolet radiation, and~~
24 ~~volatilization.~~

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

29 ~~(15)~~ (16) "Owner or operator" means a person who owns, leases, operates, controls, or supervises
30 a point source.

1 ~~(16)~~(17) "Parameter" means a physical, biological, or chemical property of state water when a value
2 of that property affects the quality of the state water.

3 ~~(17)~~(18) "Person" means the state, a political subdivision of the state, institution, firm, corporation,
4 partnership, individual, or other entity and includes persons resident in Canada.

5 ~~(18)~~(19) "Point source" means a discernible, confined, and discrete conveyance, including but not
6 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel
7 or other floating craft, from which pollutants are or may be discharged.

8 ~~(19)~~(20) "Pollution" means contamination or other alteration of the physical, chemical, or biological
9 properties of state waters ~~which~~ that exceeds that permitted by Montana water quality standards, including
10 but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or the
11 discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance
12 into state water ~~which~~ that will or is likely to create a nuisance or render the waters harmful, detrimental,
13 or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.
14 A discharge, seepage, drainage, infiltration or flow ~~which~~ that is authorized under the pollution discharge
15 permit rules of the board is not pollution under this chapter. Activities conducted under the conditions
16 imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution
17 under this chapter.

18 ~~(20)~~(21) "Sewage" means water-carried waste products from residences, public buildings,
19 institutions, or other buildings, including discharge from human beings or animals, together with ground
20 water infiltration and surface water present.

21 ~~(21)~~(22) "Sewage system" means a device for collecting or conducting sewage, industrial wastes,
22 or other wastes to an ultimate disposal point.

23 ~~(22)~~(23) "Standard of performance" means a standard adopted by the board for the control of the
24 discharge of pollutants ~~which~~ that reflects the greatest degree of effluent reduction achievable through
25 application of the best available demonstrated control technology, processes, operating methods, or other
26 alternatives, including, where practicable, a standard permitting no discharge of pollutants.

27 ~~(23)~~(24) "State waters" means a body of water, irrigation system, or drainage system, either
28 surface or underground; however, this subsection does not apply to irrigation waters where the waters are
29 used up within the irrigation system and the waters are not returned to any other state waters.

30 ~~(24)~~(25) "Treatment works" means works, including sewage lagoons, installed for treating or

1 holding sewage, industrial wastes, or other wastes.

2 ~~(25)~~(26) "Water quality protection practices" means those activities, prohibitions, maintenance
3 procedures, or other management practices applied to point and nonpoint sources designed to protect,
4 maintain, and improve the quality of state waters. Water quality protection practices include but are not
5 limited to treatment requirements, standards of performance, effluent standards, and operating procedures
6 and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material
7 storage.

8 ~~(26)~~(27) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug,
9 jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition
10 of ground water."
11

12 **Section 2.** Section 75-5-301, MCA, is amended to read:

13 **"75-5-301. Classification and standards for state waters.** Consistent with the provisions of
14 75-5-302 through 75-5-307 and 80-15-201, the board shall:

15 (1) establish and modify the classification of all waters in accordance with their present and future
16 most beneficial uses;

17 (2) formulate standards of water purity and classification of water according to its most beneficial
18 uses, giving consideration to the economics of waste treatment and prevention;

19 (3) review, from time to time at intervals of not more than 3 years, established classifications of
20 waters and standards of water purity and classification;

21 (4) adopt rules governing the granting of mixing zones ~~and natural attenuation zones~~, requiring that
22 providing:

23 ~~(a)~~ REQUIRING that mixing zones ~~and natural attenuation zones~~ granted by the department be
24 specifically identified, and requiring that mixing zones ~~and natural attenuation zones~~ have:

25 ~~(a)(i)~~ (A) the smallest practicable size, EXCEPT THAT GROUND WATER MIXING ZONES MUST
26 EXTEND FROM THE POINT OF DISCHARGE DOWN GRADIENT TO THE DISCHARGER'S CONTROLLED
27 PROPERTY BOUNDARY AND MAY, IN ACCORDANCE WITH RULES ADOPTED BY THE BOARD, EXTEND
28 FURTHER;

29 ~~(a)(iii)~~ (B) a minimum practicable effect on water uses; and

30 ~~(a)(iii)~~ (C) definable boundaries;

1 ~~(b) that the department shall respond to applications submitted pursuant to [section 1] within 30~~
 2 ~~days of receipt;~~

3 ~~(c) that, to the extent possible, applications for and designations of natural attenuation zones be~~
 4 ~~coordinated with permitting procedures under part 4; and~~

5 ~~(d) a procedure for appeal by the applicant, to the board, of a department decision:~~

6 ~~(i) denying an application for designation of a natural attenuation zone; or~~

7 ~~(ii) designating a natural attenuation zone other than as applied for by the applicant;~~

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

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

11 (b) establish criteria for the following:

12 (i) determining important economic or social development; and

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

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

18 (i) equates significance with the potential for harm to human health or the environment;

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

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

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

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

28 (7) adopt rules to implement this section."
 29

30 ~~NEW SECTION. Section 4. Codification instruction. [Section 1] is intended to be codified as an~~

1 ~~integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to~~
2 ~~{section 1}.~~

3

4 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

5

-END-

1 SENATE BILL NO. 252

2 INTRODUCED BY TVEIT, HARP, BECK

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR RECOGNITION, IN THE ISSUANCE OF WATER
5 QUALITY DISCHARGE PERMITS, OF NATURAL ATTENUATION ZONES CLARIFYING THE WATER QUALITY
6 LAWS TO RECOGNIZE AND PROVIDE FOR GROUND WATER MIXING ZONES AT LEAST TO THE EXTENT
7 OF THE PROPERTY OWNED OR CONTROLLED BY THE DISCHARGER; AMENDING SECTIONS 75-5-103
8 AND 75-5-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
9

10 STATEMENT OF INTENT

11 ~~This bill, which recognizes natural attenuation zones, is intended to supplement existing statutory~~
12 ~~provisions for mixing zones to recognize the importance of natural treatment mechanisms in addition to~~
13 ~~dilution in minimizing the effects of discharges on receiving waters.~~

14 ~~In the spirit of minimizing the complexity of regulatory requirements and promoting compliance, it~~
15 ~~is intended that the delineation of natural attenuation zones be a simple procedure. The criteria for defining~~
16 ~~the boundaries of natural attenuation zones will emphasize land use control that provides control of~~
17 ~~beneficial uses of water within the attenuation zone for the period of time needed to prevent any effect on~~
18 ~~uses, in perpetuity if necessary. The control of a natural attenuation zone may include but is not limited~~
19 ~~to outright ownership or contractual agreements with the property owner or an owner of a water right.~~
20

21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
22

23 ~~NEW SECTION. Section 1. Natural attenuation zones authorization application designation~~
24 ~~procedure. (1) Upon application under this section, the department shall designate natural attenuation~~
25 ~~zones in accordance with rules adopted by the board. Water quality changes may occur and water quality~~
26 ~~standards may be exceeded in natural attenuation zones, subject to conditions that are imposed by the~~
27 ~~department and that are consistent with the rules adopted by the board.~~

28 ~~(2) A person seeking designation of a natural attenuation zone shall submit an application to the~~
29 ~~department. The application must contain:~~

30 ~~(a) the applicant's name and address;~~

1 ~~(b) a description of the activity generating a discharge to waters of the state and a description of~~
2 ~~the anticipated volume and quality of the discharge;~~

3 ~~(c) a description of the means by which the discharge will be mixed with the receiving waters;~~

4 ~~(d) a legal description and map delineating the geographic area proposed by the applicant for~~
5 ~~designation as the natural attenuation zone for the discharge;~~

6 ~~(e) information establishing that natural processes attenuate the discharge within the entire extent~~
7 ~~of the proposed natural attenuation zone and a description of these processes;~~

8 ~~(f) information establishing the quality of the receiving water up gradient from and the projected~~
9 ~~quality of the receiving water down gradient from and throughout the proposed natural attenuation zone;~~

10 ~~(g) information establishing the extent to which the applicant controls access, by ownership, lease,~~
11 ~~or otherwise, to the area within the proposed natural attenuation zone; and~~

12 ~~(h) a description of the monitoring program proposed by the applicant.~~

13
14 **Section 1.** Section 75-5-103, MCA, is amended to read:

15 "75-5-103. **Definitions.** Unless the context requires otherwise, in this chapter, the following
16 definitions apply:

17 (1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

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

20 (3) "CONTROLLED PROPERTY" MEANS THE LAND AREA CONTROLLED BY A DISCHARGER, AT
21 THE TIME THAT THE PERMIT WAS ISSUED, THROUGH OWNERSHIP, LEASE, OR OTHERWISE, WITHIN
22 WHICH THE DISCHARGER CONTROLS BENEFICIAL USES OF GROUND WATER.

23 ~~(3)~~ (4) "Council" means the water pollution control advisory council provided for in 2-15-2107.

24 ~~(4)~~ (5) "Degradation" means a change in water quality that lowers the quality of high-quality waters
25 for a parameter. The term does not include those changes in water quality determined to be nonsignificant
26 pursuant to 75-5-301(5)(c).

27 ~~(5)~~ (6) "Department" means the department of health and environmental sciences provided for in
28 Title 2, chapter 15, part 21.

29 ~~(6)~~ (7) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and
30 includes sewage systems and treatment works.

1 ~~(7)~~ (8) "Effluent standard" means a restriction or prohibition on quantities, rates, and
2 concentrations of chemical, physical, biological, and other constituents ~~which~~ that are discharged into state
3 waters.

4 ~~(8)~~ (9) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971,
5 whether or not those uses are included in the water quality standards.

6 ~~(9)~~ (10) "High-quality waters" means state waters whose quality for a parameter is better than
7 standards established pursuant to 75-5-301. All waters are high-quality water unless classified by the board
8 within a classification for waters that are not suitable for human consumption or not suitable for growth
9 and propagation of fish and associated aquatic life.

10 ~~(10)~~ (11) "Industrial waste" means a waste substance from the process of business or industry or
11 from the development of any natural resource, together with any sewage that may be present.

12 ~~(11)~~ (12) "Interested person" means a person who has submitted oral or written comments on the
13 department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term
14 includes a person who has requested authorization to degrade high-quality waters.

15 ~~(12)~~ (13) "Local department of health" means the staff, including health officers, employed by a
16 county, city, city-county, or district board of health.

17 ~~(13)~~ (14) "Mixing zone" means an area established in a permit or final decision on nondegradation
18 issued by the department where water quality standards may be exceeded, subject to conditions that are
19 imposed by the department and that are consistent with the rules adopted by the board.

20 ~~(14) "Natural attenuation zone" means an area established in a permit or final decision on~~
21 ~~nondegradation issued by the department where natural attenuation processes reduce the concentrations~~
22 ~~of chemical constituents within a discharge. Natural attenuation processes include but are not limited to~~
23 ~~adsorption, chemical precipitation, chemical reaction, dilution, biological reaction, ultraviolet radiation, and~~
24 ~~volatilization.~~

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

29 ~~(15)~~ (16) "Owner or operator" means a person who owns, leases, operates, controls, or supervises
30 a point source.

1 ~~(16)~~(17) "Parameter" means a physical, biological, or chemical property of state water when a value
2 of that property affects the quality of the state water.

3 ~~(17)~~(18) "Person" means the state, a political subdivision of the state, institution, firm, corporation,
4 partnership, individual, or other entity and includes persons resident in Canada.

5 ~~(18)~~(19) "Point source" means a discernible, confined, and discrete conveyance, including but not
6 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel
7 or other floating craft, from which pollutants are or may be discharged.

8 ~~(19)~~(20) "Pollution" means contamination or other alteration of the physical, chemical, or biological
9 properties of state waters ~~which~~ that exceeds that permitted by Montana water quality standards, including
10 but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or the
11 discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance
12 into state water ~~which~~ that will or is likely to create a nuisance or render the waters harmful, detrimental,
13 or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.
14 A discharge, seepage, drainage, infiltration or flow ~~which~~ that is authorized under the pollution discharge
15 permit rules of the board is not pollution under this chapter. Activities conducted under the conditions
16 imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution
17 under this chapter.

18 ~~(20)~~(21) "Sewage" means water-carried waste products from residences, public buildings,
19 institutions, or other buildings, including discharge from human beings or animals, together with ground
20 water infiltration and surface water present.

21 ~~(21)~~(22) "Sewage system" means a device for collecting or conducting sewage, industrial wastes,
22 or other wastes to an ultimate disposal point.

23 ~~(22)~~(23) "Standard of performance" means a standard adopted by the board for the control of the
24 discharge of pollutants ~~which~~ that reflects the greatest degree of effluent reduction achievable through
25 application of the best available demonstrated control technology, processes, operating methods, or other
26 alternatives, including, where practicable, a standard permitting no discharge of pollutants.

27 ~~(23)~~(24) "State waters" means a body of water, irrigation system, or drainage system, either
28 surface or underground; however, this subsection does not apply to irrigation waters where the waters are
29 used up within the irrigation system and the waters are not returned to any other state waters.

30 ~~(24)~~(25) "Treatment works" means works, including sewage lagoons, installed for treating or

1 holding sewage, industrial wastes, or other wastes.

2 ~~(25)~~(26) "Water quality protection practices" means those activities, prohibitions, maintenance
3 procedures, or other management practices applied to point and nonpoint sources designed to protect,
4 maintain, and improve the quality of state waters. Water quality protection practices include but are not
5 limited to treatment requirements, standards of performance, effluent standards, and operating procedures
6 and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material
7 storage.

8 ~~(26)~~(27) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug,
9 jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition
10 of ground water."
11

12 **Section 2.** Section 75-5-301, MCA, is amended to read:

13 **"75-5-301. Classification and standards for state waters.** Consistent with the provisions of
14 75-5-302 through 75-5-307 and 80-15-201, the board shall:

15 (1) establish and modify the classification of all waters in accordance with their present and future
16 most beneficial uses;

17 (2) formulate standards of water purity and classification of water according to its most beneficial
18 uses, giving consideration to the economics of waste treatment and prevention;

19 (3) review, from time to time at intervals of not more than 3 years, established classifications of
20 waters and standards of water purity and classification;

21 (4) adopt rules governing the granting of mixing zones ~~and natural attenuation zones~~, ~~requiring that~~
22 ~~providing:~~

23 ~~(a)~~ REQUIRING that mixing zones ~~and natural attenuation zones~~ granted by the department be
24 specifically identified, and requiring that mixing zones ~~and natural attenuation zones~~ have:

25 ~~(a)(i)~~ (A) the smallest practicable size, EXCEPT THAT GROUND WATER MIXING ZONES MUST
26 MAY, AT THE REQUEST OF THE DISCHARGER, EXTEND FROM THE POINT OF DISCHARGE DOWN
27 GRADIENT TO THE DISCHARGER'S CONTROLLED PROPERTY BOUNDARY AND MAY, IN ACCORDANCE
28 WITH RULES ADOPTED BY THE BOARD, EXTEND FURTHER;

29 ~~(b)(ii)~~ (B) a minimum practicable effect on water uses; and

30 ~~(c)(iii)~~ (C) definable boundaries;

1 ~~(b) that the department shall respond to applications submitted pursuant to [section 1] within 30~~
 2 ~~days of receipt;~~

3 ~~(c) that, to the extent possible, applications for and designations of natural attenuation zones be~~
 4 ~~coordinated with permitting procedures under part 4; and~~

5 ~~(d) a procedure for appeal by the applicant, to the board, of a department decision:~~

6 ~~(i) denying an application for designation of a natural attenuation zone; or~~

7 ~~(ii) designating a natural attenuation zone other than as applied for by the applicant;~~

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

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

11 (b) establish criteria for the following:

12 (i) determining important economic or social development; and

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

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

18 (i) equates significance with the potential for harm to human health or the environment;

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

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

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

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

28 (7) adopt rules to implement this section."
 29

30 ~~NEW SECTION. Section 4. Codification instruction. [Section 1] is intended to be codified as an~~

1 ~~integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to~~
2 ~~{section 1}.~~

3
4 **NEW SECTION. Section 3. Effective date.** [This act] is effective on passage and approval.

5 -END-



HOUSE STANDING COMMITTEE REPORT

March 16, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 252 (third reading copy -- blue) be concurred in as amended.

Signed: *Dick Knox*
Dick Knox, Chair

And, that such amendments read:

Carried by: Rep. Knox

1. Title, line 6.

Strike: "THE EXTENT"

Insert: "75%"

2. Title, line 7.

Following: "PROPERTY"

Insert: "BOUNDARY"

3. Page 5, line 27.

Following: "GRADIENT"

Insert: "75% of the distance from the discharge source"

-END-

SB 252

Committee Vote:
Yes 12, No 6.

HOUSE



HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 252
Representative Kadas

March 27, 1995 3:41 pm
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 252 (third reading copy -- blue).

Signed: *Kadas*
Representative Kadas

And, that such amendments to Senate Bill 252 read as follows:

1. Page 5, line 25.

Strike: "L" through "ZONES"

Insert: ". In a ground water mixing zone where the smallest practicable size does not extend beyond the discharger's controlled property boundary, the mixing zone"

2. Page 5, lines 27 and 28.

Following: "BOUNDARY" on line 27

Strike: remainder of line 27 through ";" on line 28

Insert: "."

-END-

ADOPT

84-10

SB 252

REJECT

HOUSE

SENATE BILL NO. 252

INTRODUCED BY TVEIT, HARP, BECK

A BILL FOR AN ACT ENTITLED: "~~AN ACT PROVIDING FOR RECOGNITION, IN THE ISSUANCE OF WATER QUALITY DISCHARGE PERMITS, OF NATURAL ATTENUATION ZONES~~ CLARIFYING THE WATER QUALITY LAWS TO RECOGNIZE AND PROVIDE FOR GROUND WATER MIXING ZONES AT LEAST TO THE EXTENT 75 PERCENT OF THE PROPERTY BOUNDARY OWNED OR CONTROLLED BY THE DISCHARGER; AMENDING SECTIONS 75-5-103 AND 75-5-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

~~This bill, which recognizes natural attenuation zones, is intended to supplement existing statutory provisions for mixing zones to recognize the importance of natural treatment mechanisms in addition to dilution in minimizing the effects of discharges on receiving waters.~~

~~In the spirit of minimizing the complexity of regulatory requirements and promoting compliance, it is intended that the delineation of natural attenuation zones be a simple procedure. The criteria for defining the boundaries of natural attenuation zones will emphasize land use control that provides control of beneficial uses of water within the attenuation zone for the period of time needed to prevent any effect on uses, in perpetuity if necessary. The control of a natural attenuation zone may include but is not limited to outright ownership or contractual agreements with the property owner or an owner of a water right.~~

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

~~NEW SECTION. Section 1. Natural attenuation zones authorization application designation procedure. (1) Upon application under this section, the department shall designate natural attenuation zones in accordance with rules adopted by the board. Water quality changes may occur and water quality standards may be exceeded in natural attenuation zones, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.~~

~~(2) A person seeking designation of a natural attenuation zone shall submit an application to the department. The application must contain:~~

1 ~~(a) the applicant's name and address;~~

2 ~~(b) a description of the activity generating a discharge to waters of the state and a description of~~
3 ~~the anticipated volume and quality of the discharge;~~

4 ~~(c) a description of the means by which the discharge will be mixed with the receiving waters;~~

5 ~~(d) a legal description and map delineating the geographic area proposed by the applicant for~~
6 ~~designation as the natural attenuation zone for the discharge;~~

7 ~~(e) information establishing that natural processes attenuate the discharge within the entire extent~~
8 ~~of the proposed natural attenuation zone and a description of those processes;~~

9 ~~(f) information establishing the quality of the receiving water up gradient from and the projected~~
10 ~~quality of the receiving water down gradient from and throughout the proposed natural attenuation zone;~~

11 ~~(g) information establishing the extent to which the applicant controls access, by ownership, lease,~~
12 ~~or otherwise, to the area within the proposed natural attenuation zone; and~~

13 ~~(h) a description of the monitoring program proposed by the applicant.~~

14
15 **Section 1.** Section 75-5-103, MCA, is amended to read:

16 **"75-5-103. Definitions.** Unless the context requires otherwise, in this chapter, the following
17 definitions apply:

18 (1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

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

21 (3) "CONTROLLED PROPERTY" MEANS THE LAND AREA CONTROLLED BY A DISCHARGER, AT
22 THE TIME THAT THE PERMIT WAS ISSUED, THROUGH OWNERSHIP, LEASE, OR OTHERWISE, WITHIN
23 WHICH THE DISCHARGER CONTROLS BENEFICIAL USES OF GROUND WATER.

24 ~~(3)~~ (4) "Council" means the water pollution control advisory council provided for in 2-15-2107.

25 ~~(4)~~ (5) "Degradation" means a change in water quality that lowers the quality of high-quality waters
26 for a parameter. The term does not include those changes in water quality determined to be nonsignificant
27 pursuant to 75-5-301(5)(c).

28 ~~(5)~~ (6) "Department" means the department of health and environmental sciences provided for in
29 Title 2, chapter 15, part 21.

30 ~~(6)~~ (7) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and

1 includes sewage systems and treatment works.

2 ~~(7)~~ (8) "Effluent standard" means a restriction or prohibition on quantities, rates, and
3 concentrations of chemical, physical, biological, and other constituents ~~which~~ that are discharged into state
4 waters.

5 ~~(8)~~ (9) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971,
6 whether or not those uses are included in the water quality standards.

7 ~~(9)~~ (10) "High-quality waters" means state waters whose quality for a parameter is better than
8 standards established pursuant to 75-5-301. All waters are high-quality water unless classified by the board
9 within a classification for waters that are not suitable for human consumption or not suitable for growth
10 and propagation of fish and associated aquatic life.

11 ~~(10)~~ (11) "Industrial waste" means a waste substance from the process of business or industry or
12 from the development of any natural resource, together with any sewage that may be present.

13 ~~(11)~~ (12) "Interested person" means a person who has submitted oral or written comments on the
14 department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term
15 includes a person who has requested authorization to degrade high-quality waters.

16 ~~(12)~~ (13) "Local department of health" means the staff, including health officers, employed by a
17 county, city, city-county, or district board of health.

18 ~~(13)~~ (14) "Mixing zone" means an area established in a permit or final decision on nondegradation
19 issued by the department where water quality standards may be exceeded, subject to conditions that are
20 imposed by the department and that are consistent with the rules adopted by the board.

21 ~~(14) "Natural attenuation zone" means an area established in a permit or final decision on~~
22 ~~nondegradation issued by the department where natural attenuation processes reduce the concentrations~~
23 ~~of chemical constituents within a discharge. Natural attenuation processes include but are not limited to~~
24 ~~adsorption, chemical precipitation, chemical reaction, dilution, biological reaction, ultraviolet radiation, and~~
25 ~~volatilization.~~

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

30 ~~(15)~~(16) "Owner or operator" means a person who owns, leases, operates, controls, or supervises

1 a point source.

2 ~~(16)~~(17) "Parameter" means a physical, biological, or chemical property of state water when a value
3 of that property affects the quality of the state water.

4 ~~(17)~~(18) "Person" means the state, a political subdivision of the state, institution, firm, corporation,
5 partnership, individual, or other entity and includes persons resident in Canada.

6 ~~(18)~~(19) "Point source" means a discernible, confined, and discrete conveyance, including but not
7 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel
8 or other floating craft, from which pollutants are or may be discharged.

9 ~~(19)~~(20) "Pollution" means contamination or other alteration of the physical, chemical, or biological
10 properties of state waters ~~which~~ that exceeds that permitted by Montana water quality standards, including
11 but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or the
12 discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance
13 into state water ~~which~~ that will or is likely to create a nuisance or render the waters harmful, detrimental,
14 or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.
15 A discharge, seepage, drainage, infiltration or flow ~~which~~ that is authorized under the pollution discharge
16 permit rules of the board is not pollution under this chapter. Activities conducted under the conditions
17 imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution
18 under this chapter.

19 ~~(20)~~(21) "Sewage" means water-carried waste products from residences, public buildings,
20 institutions, or other buildings, including discharge from human beings or animals, together with ground
21 water infiltration and surface water present.

22 ~~(21)~~(22) "Sewage system" means a device for collecting or conducting sewage, industrial wastes,
23 or other wastes to an ultimate disposal point.

24 ~~(22)~~(23) "Standard of performance" means a standard adopted by the board for the control of the
25 discharge of pollutants ~~which~~ that reflects the greatest degree of effluent reduction achievable through
26 application of the best available demonstrated control technology, processes, operating methods, or other
27 alternatives, including, where practicable, a standard permitting no discharge of pollutants.

28 ~~(23)~~(24) "State waters" means a body of water, irrigation system, or drainage system, either
29 surface or underground; however, this subsection does not apply to irrigation waters where the waters are
30 used up within the irrigation system and the waters are not returned to any other state waters.

1 ~~(24)~~(25) "Treatment works" means works, including sewage lagoons, installed for treating or
2 holding sewage, industrial wastes, or other wastes.

3 ~~(25)~~(26) "Water quality protection practices" means those activities, prohibitions, maintenance
4 procedures, or other management practices applied to point and nonpoint sources designed to protect,
5 maintain, and improve the quality of state waters. Water quality protection practices include but are not
6 limited to treatment requirements, standards of performance, effluent standards, and operating procedures
7 and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material
8 storage.

9 ~~(26)~~(27) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug,
10 jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition
11 of ground water."

12

13 **Section 2.** Section 75-5-301, MCA, is amended to read:

14 **"75-5-301. Classification and standards for state waters.** Consistent with the provisions of
15 75-5-302 through 75-5-307 and 80-15-201, the board shall:

16 (1) establish and modify the classification of all waters in accordance with their present and future
17 most beneficial uses;

18 (2) formulate standards of water purity and classification of water according to its most beneficial
19 uses, giving consideration to the economics of waste treatment and prevention;

20 (3) review, from time to time at intervals of not more than 3 years, established classifications of
21 waters and standards of water purity and classification;

22 (4) adopt rules governing the granting of mixing zones ~~and natural attenuation zones~~, ~~requiring that~~
23 ~~providing:~~

24 ~~(a) REQUIRING that~~ mixing zones ~~and natural attenuation zones~~ granted by the department be
25 specifically identified, and requiring that mixing zones ~~and natural attenuation zones~~ have:

26 ~~(a)ii~~ (A) the smallest practicable size, ~~EXCEPT THAT GROUND WATER MIXING ZONES MUST.~~
27 IN A GROUND WATER MIXING ZONE WHERE THE SMALLEST PRACTICABLE SIZE DOES NOT EXTEND
28 BEYOND THE DISCHARGER'S CONTROLLED PROPERTY BOUNDARY, THE MIXING ZONE MAY, AT THE
29 REQUEST OF THE DISCHARGER, EXTEND FROM THE POINT OF DISCHARGE DOWNGRADIENT 75% OF
30 THE DISTANCE FROM THE DISCHARGE SOURCE TO THE DISCHARGER'S CONTROLLED PROPERTY

1 ~~BOUNDARY AND MAY, IN ACCORDANCE WITH RULES ADOPTED BY THE BOARD, EXTEND FURTHER;~~

2 ~~(b)(iii) (B) a minimum practicable effect on water uses; and~~

3 ~~(c)(iii) (C) definable boundaries;~~

4 ~~(b) that the department shall respond to applications submitted pursuant to [section 1] within 30~~
5 ~~days of receipt;~~

6 ~~(c) that, to the extent possible, applications for and designations of natural attenuation zones be~~
7 ~~coordinated with permitting procedures under part 4; and~~

8 ~~(d) a procedure for appeal by the applicant, to the board, of a department decision:~~

9 ~~(i) denying an application for designation of a natural attenuation zone; or~~

10 ~~(ii) designating a natural attenuation zone other than as applied for by the applicant;~~

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

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

14 (b) establish criteria for the following:

15 (i) determining important economic or social development; and

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

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

21 (i) equates significance with the potential for harm to human health or the environment;

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

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

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

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

1 (7) adopt rules to implement this section."
2

3 ~~NEW SECTION. Section 4. Codification instruction. [Section 1] is intended to be codified as an~~
4 ~~integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to~~
5 ~~[section 1].~~
6

7 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.
8

-END-