

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.30.660 pertaining to nutrient standard)
variances)
)

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT

(WATER QUALITY)

TO: All Concerned Persons

1. On October 18, 2019, at 9:00 a.m., the Department of Environmental Quality (department) will hold a public hearing in Room 111 of the Metcalf Building, 1520 E. Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Sandy Scherer no later than 5:00 p.m., October 11, 2019, to advise us of the nature of the accommodation that you need. Please contact Sandy Scherer at the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail sscherer@mt.gov.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

17.30.660 NUTRIENT STANDARDS VARIANCES (1) A person may apply to the department for a nutrient standards variance at any time following the board's adoption of base numeric nutrient standards. In addition to this rule, variances are subject to the procedures and requirements contained in Department Circular DEQ-12B (~~May 2018~~ November 2019 edition).

(2) An application for a general variance must provide information demonstrating that the wastewater treatment facility meets the requirements of Department Circular DEQ-12B (~~May 2018~~ November 2019 edition). The decision to grant the general variance must be reflected in the permit that is made available for public comment.

(3) remains the same.

(4) The department may approve the adoption of an individual variance that specifies interim effluent limits different from those contained in general variance limits contained in Department Circular DEQ-12B (~~May 2018~~ November 2019 edition), if water quality modeling demonstrates that greater emphasis on the reduction of one nutrient may achieve similar water quality and biological improvements as would the equal reduction of both nitrogen and phosphorus. The variance must provide effluent limits that reflect the lowest effluent concentration that is feasible based on achieving the highest attainable condition for the receiving water. A person shall submit the proposed effluent limits and supporting data in an application for an individual nutrient variance under (3). A person who has an

individual variance with effluent limits that are based on this section shall, in each subsequent triennial review of those limits conducted pursuant to 75-5-313(7), MCA, collect and submit water quality data to demonstrate whether the biological status of the receiving water continues to justify those effluent limits.

(5) through (7) remain the same.

(8) The department adopts and incorporates by reference Department Circular DEQ-12B, entitled "Nutrient Standards Variances" (~~May 2018~~ November 2019 edition), which provides procedures and requirements for nutrient standards variances. Copies of Department Circular DEQ-12B are available at the Department of Environmental Quality, 1520 East 6th Avenue, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-5-201, 75-5-301, MCA

IMP: 75-5-313, MCA

REASON: The department is proposing to revise Department Circular DEQ-12B to respond to the U.S. District Court for the District of Montana's Order in Upper Missouri Waterkeeper v. U.S. EPA, Case No. CV-16-52-GF-BMM (July 16, 2019). While the Court found significant portions of the general nutrients standards variance to be lawful and supported by the record, the Court partially vacated and remanded a portion of EPA's approval of the general variance found in Department Circular DEQ-12B. The Court then stayed this vacatur and provided the department 120 days from the date of the Order to adopt a revised general variance timeline, and provided U.S. EPA 90 days to complete its review of these changes. The Court did not vacate EPA's approval of the department's findings concerning widespread economic and social impacts, nor did it vacate approval of the treatment requirements found in Table 12B-1 of Department Circular DEQ-12B (what the Court refers to as the "Current Variance Standard"). This rulemaking is only intended to address the specific concerns of the Court related to (a) the timeline necessary to meet the Table 12B-1 treatment requirements and (b) the timeline and process necessary to meet the base numeric nutrient standards contained in Department Circular DEQ-12A. The rulemaking will allow continued use and application of the general variance for eligible dischargers and will prevent the related economic and social harm from requiring immediate compliance with the base numeric nutrient standards.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to sscherer@mt.gov, no later than 5:00 p.m., October 21, 2019. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have

their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wind energy bonding, wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Sandy Scherer at sscherer@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

6. Kurt Moser, attorney for the department, has been designated to preside over and conduct the hearings.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

Reviewed by: DEPARTMENT OF ENVIRONMENTAL QUALITY

/s/
EDWARD HAYES
Rule Reviewer

BY: /s/
SHAUN McGRATH
Director

Certified to the Secretary of State, August 27, 2019.