

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I under Title 17, chapter 30, subchapter ___ pertaining to water quality standards))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION (WATER QUALITY)
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TO: All Concerned Persons

1. On _____, 2017, at _____ a/p.m., the Board of Environmental Review will hold a public hearing in Room _____, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact _____, Administrative Rules Coordinator, no later than 5:00 p.m., _____, 2017, to advise of the nature of the accommodation that you need. Please contact _____ at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-____; fax (406) 444-4386; or e-mail _____.

3. The new rule proposed to be adopted provides as follows:

NEW RULE 1 Variance from Standard for Water Body Conditions (1) The department may grant to a permittee a variance from a water quality standard if the department determines in writing that:

- (a) the standard is more stringent than the quality of the receiving water;
 - (b) the condition in (a) exists because of anthropogenic contributions of the pollutant to the water body;
 - (c) the condition in (a) cannot reasonably be expected to be remediated during the permit term for which the variance is sought;
 - (d) the discharge to which the variance would apply would not materially contribute to the condition in (a); and
 - (e) one of the demonstrations provided at 40 CFR 131.14(b)(2)(i)(A)(1), which is by this reference adopted and incorporated into this rule, applies.
- (2) To obtain a variance, a permittee shall submit to the department an application that:
- (a) identifies the pollutant for which the variance is sought;
 - (b) identifies the permittee by name, address, and telephone number;
 - (c) identifies the receiving water body;
 - (d) demonstrates to the department's satisfaction that the requirements of (1) are met; and
 - (e) proposes, with supporting documentation, a variance level that is:

(i) the highest attainable interim standard in the receiving stream;

(ii) the interim effluent condition that reflects the greatest pollutant reduction that is achievable; or

(iii) if no additional feasible pollutant control technology can be identified, the interim standard or effluent condition that reflects the greatest pollutant reduction achievable with the pollutant control technologies installed at the time the variance is submitted. For a variance under this paragraph (2)(e)(iii), the permittee shall prepare and implement a pollutant minimization plan that contains a structured set of activities to improve processes and pollutant controls that will prevent and reduce pollutant loading.

(3) The department shall review each application to determine whether a reasonable alternative is in place that would eliminate the need for the variance, including:

(a) a permit compliance schedule;

(b) reuse;

(c) a TMDL for the pollutant where the permittee is meeting the established waste load allocation; or

(d) other department actions.

(4) If the department makes a preliminary finding that a reasonable alternative to approving a variance is available, the department shall consult with the applicant prior to making a decision regarding the variance.

(5) If the department determines that no reasonable alternative to a variance exists, the department shall determine whether the information provided by the applicant meets the requirements of (1) and (2). If the department finds that the requirements of (1) and (2) are met, and that a variance is needed, the department shall approve the variance after conducting a hearing following no less than 45 days' notice to the public. All written or oral public comments related to the variance shall be presented to the department during this public comment period.

(6) Within thirty days after approval of the variance, the department shall submit the variance and any supporting documentation and analysis to EPA. The variance is not approved for Clean Water Act purposes until EPA notifies the department that the variance complies with the Federal Clean Water Act, 33 USC 1251, et seq.

(7) The variance may be used to develop MPDES permit limits. A permit incorporating a variance issued by the department under this rule is subject to ARM Title 17, chapter 30, subchapter 13. The department shall review the variance five years from the date the department issues a final discharge permit incorporating the variance.

(8) The variance must be reviewed by the department every five years to reevaluate the conditions in (2)(e). Based on this review, the department may terminate, continue, or modify the variance. In order to continue or modify the variance, the permittee shall provide information demonstrating compliance with (1) and (2). In cases where water quality in the receiving stream has improved during the term of the variance, DEQ shall consider the ambient upstream condition of the waterbody, as characterized for the previous two years, in determining an appropriate variance level under (2)(e).

(9) Based on the review conducted under (8), the department may approve

the variance, with any modifications after public comment and public hearing under (5). The modified or continued variance is not approved for Clean Water Act purposes until EPA notifies the department that the variance complies with the Federal Clean Water Act, 33 USC 1251, et seq.

(10) A copy of 40 CFR 131.14(b)(2)(i)(A)(1) may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59601-0901.

AUTH: 75-5-222, MCA

IMP: 75-5-222, MCA

REASON: The New Rule is necessary to fulfill the requirements of Montana Code Annotated (MCA) 75-5-222(2). This statute states that if pollution upstream of a discharger is due to anthropogenic sources, a variance from the applicable standards may be appropriate under certain conditions. It also requires rulemaking to implement the statute. The statute codifies Senate Bill 325, introduced in the 2015 Montana Legislature. This statute was directed at focusing water quality remediation efforts toward the primary pollution contributors, often historic mining, instead of less significant Montana Pollutant Discharge Elimination System dischargers such as publicly owned treatment works, until such time that their contributions were significant.

The New Rule sets forth the conditions under which a permittee may apply for a variance from water quality standards.

5. 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 _____, Administrative Rules Coordinator, 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 _____, no later than 5:00 p.m., _____, 2017. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. Andres Haladay, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

7. The board 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; 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 _____, Administrative Rules Coordinator, 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 _____ at _____, or may be made by completing a request form at any rules hearing held by the board.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by the department in person on March 7, 2017.

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

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/

JOHN F. NORTH

BY: /s/
_____, CHAIRMAN

Certified to the Secretary of State, _____, 2017.