

DRAFT RULES FOR IMPLEMENTATION OF MCA 75-5-222 PART 1

To add to definition section in 17.30 subchapter 6:

Definition of non-anthropogenic condition: Non-anthropogenic condition means the background concentration of a parameter in surface water or groundwater due only to non-anthropogenic sources, i.e., non-human induced sources.

Definition of performance-based method: Performance-based method means an adopted water quality standard that is a specific process and methodology leading to and describing implementation of a numeric water quality criterion. It may be used for the derivation of site-specific numeric criteria or for interpreting narrative criteria into quantifiable measures.

NEW RULE. Performance-based Methods for Determination of Site-Specific Water Quality Criteria. (1) Performance-based methods may be developed for parameters as necessary to facilitate the development of site-specific criteria where existing water quality standards are more stringent than the non-anthropogenic condition of the waterbodies.

(2) The board incorporates by reference Department Circular DEQ-13, "Performance-based Methods and Methodology (2017)."

(3) Performance-based methods must be sufficiently detailed with suitable safeguards to ensure predictable, repeatable outcomes. Once performance-based methods are adopted by the Board and approved by the US Environmental Protection Agency (EPA), individual site-by-site criteria developed using the methods become effective as rule after the public review process described in (4) and (5) below.

(4) The Department will prepare a public notice including the performance-based method used, the criterion derived using the method, and the waterbody to which the criterion applies. The data and calculations for deriving the site specific criterion shall be posted on the Department website and a link to the website provided in the public notice. The public notice must also state the ending date of a 45 day public comment period and to whom comments on the criterion should be sent. The public notice and information regarding calculation of the criterion must be made available as described in (a) through (d) below:

(a) A copy of the public notice must be mailed to the EPA.

(b) A copy of the public notice must be mailed to members of the Water Pollution Control Advisory Council and the Board of Environmental Review and to any persons who may be affected by implementation of the criterion.

(c) The notice must be published in a daily newspaper in Helena and in other daily newspapers of general circulation in the affected area.

(d) A person may request hard copies of supporting information such as data and calculations used in the derivation of the criterion from the Department. The Department must provide the information within 14 days of the request.

(5) The Department shall consider relevant comments received during the public comment period and act upon those comments as appropriate.

(6) The Department must maintain a publically available, comprehensive list of all site-by-site water quality criteria derived using performance-based methods.

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