

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING ON
17.30.1304 and the adoption of New Rule I)	PROPOSED AMENDMENT AND
pertaining to definitions and the)	ADOPTION
development process for the adaptive)	
management program to implement)	(WATER QUALITY)
narrative nutrient standards)	

TO: All Concerned Persons

1. On February 8, 2022, at 2:00 p.m., the Department of Environmental Quality (department) will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

The department is committed to preventing the spread of COVID-19 and promoting the health and wellness of others. Members of the public may participate either in-person or virtually. For in-person meetings, while face masks are not required, meeting attendees are welcome to wear masks. If you are not feeling well, please do not attend the in-person meeting. Registration with Zoom may be made at the following link: [Join Zoom Meeting](#)

Join Zoom Meeting

<https://mt-gov.zoom.us/j/82082577152?pwd=REVKNKGhCSmxJTWdsV2d5YzB5VIJJdz09>

Meeting ID: 820 8257 7152

Password: 850245

Dial by Telephone

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Meeting ID: 820 8257 7152

Password: 850245

Find your local number: <https://mt-gov.zoom.us/j/82082577152>

Join by SIP

82082577152@zoomcrc.com

Join by H.323 (Polycom)

162.255.37.11##82082577152

Please contact Loryn Johnson, paralegal, at the Department of Environmental Quality at (406) 444-1388 or Loryn.Johnson2@mt.gov should you encounter any difficulties.

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 Loryn Johnson, paralegal, no later than 4:00 p.m. on February 2, 2022, to advise us of the nature of the accommodation that you need. Please contact Loryn Johnson at the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-1388; fax (406) 444-4386; or e-mail Loryn.Johnson2@mt.gov.

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

17.30.1304 DEFINITIONS In this subchapter, the following terms have the meanings or interpretations indicated below and shall be used in conjunction with and are supplemental to those definitions contained in 75-5-103, MCA.

(1) remains the same

(2) "Adaptive management plan" means a watershed-specific plan developed under the adaptive management program to achieve the narrative nutrient standards and address nutrients in a specific watershed. An adaptive management plan includes a watershed monitoring plan and, if required, an implementation plan.

(3) "Adaptive management program" means a watershed-scale program that protects water quality from the impacts of nutrient sources by:

(a) prioritizing phosphorus reduction, as appropriate, while accounting for site specific conditions;

(b) allowing for nutrient sources to be addressed incrementally over time by incorporating flexible decision-making which can be adjusted as management actions and other factors become better understood;

(c) reasonably balancing all factors impacting a waterbody while considering the relative cost of treatment options, their feasibility, and their expected water quality improvement;

(d) identifying specific nutrient reduction requirements; and

(e) setting as its goal the protection and achievement of beneficial uses of the waterbody.

(2) through (81) remain the same but are renumbered (4) through (83).

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: In 2021, the 67th Montana Legislature enacted Senate Bill 358 (codified at 75-5-321, MCA). Senate Bill 358 requires the department to adopt rules related to narrative nutrient standards in consultation with the nutrient work group, an advisory work group convened by the department. Nutrients, in this context, refer to total phosphorus and total nitrogen concentrations in state surface waters. The rules are required to provide for the development of the adaptive management program which provides for an incremental watershed approach for protecting and maintaining water quality. To implement Senate Bill 358, it is necessary to define what the adaptive management program encompasses. The department and the nutrient work group further identified the need to define an adaptive management

plan, which is a detailed plan developed for a specific watershed that implements the adaptive management program on a watershed-by-watershed basis.

4. The rule proposed to be adopted provides as follows:

NEW RULE I DEVELOPMENT OF AN ADAPTIVE MANAGEMENT PROGRAM IMPLEMENTING NARRATIVE NUTRIENT STANDARDS (1) The

department will adopt rules, in consultation with the Nutrient Work Group, for:

(a) the development of the Adaptive Management Program under which point source dischargers whose discharges include total phosphorus and/or nitrogen may apply for Individual Montana Pollutant Discharge Elimination System Permits (MPDES).

(i) Applications for MPDES Permits from these point source dischargers must include an Adaptive Management Plan. The Adaptive Management Plan must include a Watershed Monitoring Plan and may include an Implementation Plan.

(ii) The Watershed Monitoring Plan must:

(A) quantify nutrient loading from both point and non-point sources within watersheds;

(B) evaluate impacts of nutrients on beneficial uses of surface water bodies by requiring monitoring of appropriate response variables and any associated impact thresholds; and

(C) consider impairment status when identifying monitoring objectives.

(iii) If an Implementation Plan is required, the Implementation Plan:

(A) must establish a process for identifying nutrient loading reductions and other actions needed to achieve the narrative nutrient standards and protect beneficial uses. This process will prioritize phosphorus, considering site specific conditions; and

(B) may include flexibility for point sources to identify a variety of specific actions to reduce nutrient loading within the watershed. These actions must be based on results from the Watershed Monitoring Plan or department assessments.

(b) the establishment of a process for incorporating the Watershed Monitoring Plan requirements and any Implementation Plan into MPDES permits;

(c) the establishment of a process for developing nutrient loading reductions and other actions that can be incorporated into MPDES permits as enforceable conditions; and

(d) the development of an Incentive Program to incentivize additional nutrient reductions and other actions using methods that improve water quality beyond minimum requirements.

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-321, 75-5-401, MCA

REASON: As previously indicated, Senate Bill 358 requires the department to adopt rules related to narrative nutrient standards in consultation with the nutrient work group. Senate Bill 358 directs the department to adopt rules by March 1, 2022.

The department convened the nutrient work group in May of 2021, and held meetings approximately bimonthly through the end of October 2021, to develop a

comprehensive rule package related to narrative nutrient standards. Despite a concerted effort by the department and the nutrient work group to develop a comprehensive rule package, there remains a substantial amount of work needed for the department to fully address the concerns of multiple parties. Rather than immediately move forward with a comprehensive rule package, the department has opted to adopt New Rule I, which establishes the basic elements of an adaptive management program required under Senate Bill 358. Proposed New Rule I provides a framework for the department to follow as it continues to meet and consult with the nutrient work group and work toward completion of the comprehensive rule package, to be adopted later in 2022.

Finally, Senate Bill 358 directs the department to amend the administrative rules to delete references to Department Circular DEQ-12A, which sets numeric nutrient standards for TP and TN. Amendment of the administrative rules to delete references to DEQ-12A will be conducted concurrently with the adoption of the comprehensive rule package.

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 Loryn Johnson, paralegal, 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 loryn.johnson2@mt.gov, no later than 5:00 p.m., February 8, 2022. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. 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; solar and 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 Loryn Johnson, paralegal, 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 Loryn Johnson at Loryn.Johnson2@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

7. Kurt R. Moser, attorney for the department, or another department attorney, has been designated to preside over and conduct the hearing.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have

been fulfilled. The primary sponsor was notified on December 8, 2021, by regular mail.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the proposed amendment and adoption of the above-stated rules will not significantly and directly impact small businesses.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ Edward Hayes
EDWARD HAYES
Rule Reviewer

BY: /s/ Christopher Dorrington
CHRISTOPHER DORRINGTON
Director
Department of Environmental Quality

Certified to the Secretary of State December 14, 2021.