

NUTRIENT WORK GROUP MEETING SUMMARY

July 20, 2023

9:00 a.m. – 11:00 a.m.
Hybrid Meeting: Zoom and DEQ Room 111

ATTENDANCE: NUTRIENT WORK GROUP MEMBERS

Representative & Affiliation	Representing
Louis Engels (Amanda McInnis substituting) City of Billings	Point Source Discharger: Large Municipal Systems (>1 MGD)
Rika Lashley Morrison-Maierle	Point Source Discharger: Small Municipal Systems with Lagoons
Alan Olson Montana Petroleum Association	Point Source Discharger: Non-POTW
Kelly Lynch (Amanda McInnis substituting) Montana League of Cities and Towns	Municipalities
Matt Vincent (Matt Wolfe substituting) Montana Mining Association	Mining
Karli Johnson Montana Farm Bureau Federation	Farming-Oriented Agriculture
Guy Alsentzer (Quincey Johnson substituting) Upper Missouri Waterkeeper	Environmental Advocacy Organization
Kristin Gardner Gallatin River Task Force	Conservation Organization: Local
Sarah Zuzulock Zuzulock Environmental Services	Conservation Organization: Regional
Andy Efta U.S. Forest Service, Northern Region	Federal Land Management Agencies
Tina Laidlaw U.S. Environmental Protection Agency	Federal Regulatory Agencies
Jeff Schmalenberg Department of Natural Resources & Conservation	State Land Management Agencies
Nick Banish (Drew Shafer substituting) Gallatin Local Water Quality District	County Water Quality Districts or Planning Departments
Samantha Tappenbeck Flathead Conservation District	Soil and Water Conservation Districts – West of the Continental Divide
Scott Buecker (Kelsey Wagner substituting) AE2S	Wastewater Engineering Firms
Julia Altemus Montana Wood Products Association	Timber Industry

NOT IN ATTENDANCE: NUTRIENT WORK GROUP MEMBERS

Representative & Affiliation	Representing
Shannon Holmes City of Livingston	Point Source Discharger: Middle-Sized Mechanical System (<1 MGD)
Raylee Honeycutt Montana Stockgrowers Association	Livestock-Oriented Agriculture
David Brooks Montana Trout Unlimited	Conservation Organization: Statewide
Pete Cardinal Pete Cardinal Outfitters	Waster or Fishing-Based Recreation
Dan Rostad Yellowstone River Conservation District Council	Soil and Water Conservation Districts – East of the Continental Divide

ATTENDANCE: OTHER PARTICIPANTS

Casey Lewis, Flathead Basin Commission Executive Director
 Christina Staten, DEQ, TMDL Section Supervisor
 Christine Weaver, DEQ, MPDES Permitting
 Coralynn Revis, HDR
 Darrin Kron, DEQ, Monitoring and Assessment Section Supervisor
 Darryl Barton, DEQ, Water Quality Protection Bureau Section Supervisor
 Dave Clark, HDR
 Ed Coleman, City of Helena
 Eric Sivers, DEQ, Water Protection Bureau Section Supervisor
 Eric Trum, DEQ, Watershed Protection Section Supervisor
 Erik Makus, EPA, Federal Regulatory Agency
 Flathead Conservation District
 Hannah New, DEQ, Water Quality Permit Writer
 Heather Henry, DEQ, Water Quality Permit Writer
 Jason Fladland
 Jason Mohr, Legislative Services Executive Director
 Jeff May, DEQ, Water Quality Permit Writer
 Joanna McLaughlin, DEQ, Water Quality Permit Writer
 Katie Makarowski, DEQ, Standards and Modeling Section Supervisor
 KC Harvey Environmental
 Kristi Kline, Montana Rural Water Systems
 Kurt Moser, DEQ, Legal Counsel
 K Hendrickson
 Leea Anderson, City of Helena
 Lindsey Krywaruchka, DEQ, Water Quality Division Administrator
 Lisa Anderson, DEQ, TMDL Water Quality Scientist
 Logan McInnis, City of Missoula
 Mary Godfrey, DEQ, Program Support Specialist
 Moira Davin, DEQ, Public Information Officer
 Paul Yakawich, DOWL
 Peggy Trenk, Treasure State Resources Association
 Ryan Sudbury

Ryan Urbanec
Vicki Watson, University of Montana Watershed Clinic

MEETING PURPOSE / OBJECTIVES

Meeting Purpose: Discuss CWA compliance options, how the adaptive management program is a compliance schedule, and compliance options for the non-limiting nutrient.

DEQ Updates

- Rulemaking timeline
- Interim permit limits
- Future meetings

CWA Compliance Options

- Meeting limit
- Compliance schedule
- Variance

Adaptive Management Program as a Compliance Schedule

Non-Limiting Nutrient

MEETING HIGHLIGHTS / DECISIONS MADE

- DEQ will be presenting to WPCAC in December
- DEQ is looking to publish the rule package in the MAR in January
- DEQ will provide the updated rule package to the NWG in the Fall

MEETING INITIATION

Moira Davin, Department of Environmental Quality (DEQ) Public Information Officer and meeting facilitator, welcomed everyone to the meeting at 9:05 a.m. Moira Davin went over meeting logistics (slide 2, **Attachment A**), the meeting agenda (slide 3, **Attachment A**), and took a roll call of Nutrient Work Group (NWG) members present either via Zoom or in Room 111 of the DEQ Metcalf Building in Helena (slide 4, **Attachment A**).

DEQ UPDATES

Moira Davin mentioned that DEQ intends to publish the proposed rule package in the Montana Administrative Register in January 2024, and that updates to the documents are ongoing. Moira Davin also mentioned that DEQ would be presenting the rule package to the Water Pollution Control Advisory Council in December 2023 (slide 6, **Attachment A**).

CWA COMPLIANCE OPTIONS

Eric Sivers, DEQ Water Protection Bureau, presented Clean Water Act (CWA) compliance options (slides 8, **Attachment A**). Eric Sivers explained that if DEQ finds there is reasonable potential (RP) to cause or contribute to a water quality exceedance, an effluent limit has to be assigned for the parameter, which

would need to be met as soon as possible. Eric Sivers mentioned that the CWA provides options that allow time via tools to meet that limit. Tools available for dischargers include variances, compliance schedules, and meeting the limit through existing operations and maintenance or capital improvements. Eric Sivers also mentioned that the adaptive management program may not be the proper tool for every discharger, but this is the process for dischargers who decide to go this route.

Eric Sivers then presented on interim permit limits under an adaptive management program (slide 9, **Attachment A**). Eric Sivers stated that a facility in the adaptive management program would have an interim permit limit which provides measurable compliance targets and stepwise progress towards meeting the final effluent limit. DEQ is currently working on developing response variable metrics to interpret the narrative standards on a site-specific basis. Interim permit limits will be case specific for each facility and each receiving water. Eric Sivers also stated DEQ's proposed approach to interim limits: if a facility has an existing limit, it will be maintained. If the facility is performing better than their limit, the facility would be capped at current performance. However, in the absence of site-specific response data, the limit will be chosen from the ecoregional range.

Eric Sivers then talked about how the adaptive management program is a compliance schedule (slide 10, **Attachment A**). Eric Sivers reiterated that the permit does have to have final limits. The compliance schedule on slide 10 of **Attachment A** is an example of what it could look like in a permit. He then mentioned that the adaptive management program monitoring requirements would live in the special conditions portion of the permit. Eric Sivers also added that for a facility under the adaptive management program, DEQ anticipates that achieving final effluent limits will take more than one permit cycle.

Eric Sivers presented on the non-limiting nutrient (slide 11, **Attachment A**). He mentioned that to address the concept of phosphorus prioritization, where it is found appropriate to focus on phosphorus first, the existing total nitrogen limit will be maintained or capped at current performance, if applicable. Nitrogen would be addressed via a variance or compliance schedule. Rika Lashley, Morrison-Maierle, asked if the interim limit could change over the course of the compliance schedule in reference to the last bullet on slide 9 of **Attachment A**. Eric Sivers stated that is included as a recognized possibility. As of right now, DEQ does not have more specifics on that, he just wanted to acknowledge that there could be circumstances where that is appropriate. Rika Lashley then asked if DEQ was just leaving the door open for this. Eric Sivers responded that yes, a tighter limit could be appropriate.

Amanda McInnis stated, in reference to capping at current performance, that facilities drive their loads as low as they can, when you cap at current you are punishing the facility. She mentioned that the facility should be capped at the current limit. Rika Lashley stated the downside of capping at current performance is that it does not allow for growth. Scott Buecker, AE2S, stated that he would like to hear DEQ say they understand what they are talking about. It is not intentional to have underloading, they have to design for 20-year life spans, capping at an underloading scenario is not fair. Eric Sivers stated that DEQ hears these concerns and understands. DEQ is still going through internal discussions on what cap at current looks like.

Sarah Zuzulock, Zuzulock Environmental Services, asked if a facility wants to develop a site specific water quality standard, does that fit as a separate option that a facility is eligible for, or would that happen within a compliance schedule? Katie Makarowski, DEQ Standards and Modeling Section Supervisor, stated that would be effectively a two-step related, but separate action. Adoption of a site-specific standard would require rulemaking. Any newly adopted standard that would have an impact on effluent

limits or compliance schedules would then be taken into account. Sarah Zuzulock then asked if data shows that a facility is meeting beneficial uses, would that result in a specific standard that would somehow still impact effluent limits? Darrin Kron, DEQ Monitoring and Assessment Section Supervisor, stated that the program with the impaired water list would come into play. DEQ would use all data for an assessment unit, including discharger data. If all of the data along the assessment unit indicate the beneficial uses are being met, it would be delisted. This would not necessarily be a standards change. The Adaptive Management Plan and permitting could be modified using that non-impairment call. Eric Sivers added that if DEQ found that beneficial uses are being met, that would be under the existing standard and would not be a new standard. He cannot see that the discharge limit would increase.

Rika Lashley stated that when Eric Sivers presented, he referred to a well-documented way of getting to RP. She said they do not agree with using a toxics procedure for arriving at RP. Let's not treat nutrients as toxics when we establish RP.

UPCOMING MEETINGS

Moira Davin presented slide 13 of **Attachment A**. She mentioned that DEQ is clarifying and updating the rulemaking package, so we want to walk through several things. Moira Davin then discussed a few additional meeting dates in October and November and asked if there were any major conferences or conflicts for the dates that would pose an issue. It was mentioned that Water School goes through October 12, the League of Cities and Towns conference may be October 11-13, the American Water Resources Association is October 11-12, and the Montana Association of Conservation Districts annual meeting is the second week in November. DEQ informed the NWG that they would look at a different week in October.

PUBLIC COMMENT

Moira Davin then opened the meeting up for public comment (slides 14 and 15, **Attachment A**).

Vicki Watson, University of Montana Watershed Clinic, stated in the Q&A that some streams change their limiting nutrient along their length (e.g., the Clark is nitrogen limited in the upper river and phosphorus limited in the lower river).

Moira Davin thanked everyone for joining and informed them they can reach out to Kyle Milke if they have any specific comments or questions.

Meeting ended at 9:40 a.m.

ATTACHMENT A: JULY 20, 2023 NUTRIENT WORK GROUP MEETING PRESENTATION SLIDES

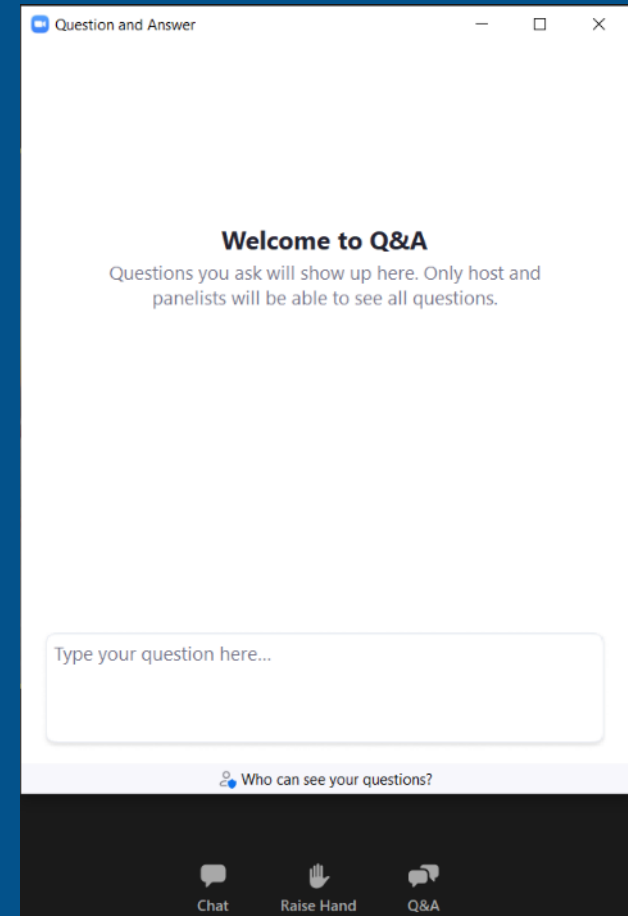


Nutrient Work Group

July 20, 2023

Welcome!

- This meeting is a webinar
- NWG members will be panelists
- Members of the public can raise their hand or use the Q&A feature to ask questions during the public comment portion of the meeting
- *9 raises your hand if you're on the phone
- State your name and affiliation before providing your comment



Leave

Agenda

Meeting Goal: Discuss compliance options, how interim limits work in a compliance schedule, how the adaptive management program is a compliance schedule, and compliance options for the non-limiting nutrient.

Preliminaries

- Nutrient Work Group Roll Call

DEQ Updates

- Rulemaking timeline

CWA Compliance Options

- Meeting limit
- Compliance schedule
- Variance

Adaptive Management Program as a Compliance Schedule

Non-Limiting Nutrient

Public Comment & Close of Meeting

- Meeting Schedule
- Public Comment

Roll Call

Nutrient Work Group Members

Interest Group	Representative	Substitute
Point Source Discharger: Large Municipal Systems (>1 MGD)	Louis Engels	
Point Source Discharger: Middle-Sized Mechanical Systems (<1 MGD)	Shannon Holmes	
Point Source Discharger: Small Municipal Systems with Lagoons	Rika Lashley	
Point Source Discharger: Non-POTW	Alan Olson	
Municipalities	Kelly Lynch	
Mining	Matt Vincent	
Farming-Oriented Agriculture	Karli Johnson	
Livestock-Oriented Agriculture	Raylee Honeycutt	
Conservation Organization - Local	Kristin Gardner	
Conservation Organization – Regional	Sarah Zuzulock	
Conservation Organization – Statewide	David Brooks	
Environmental Advocacy Organization	Guy Alsentzer	
Water or Fishing-Based Recreation	Pete Cardinal	
Federal Land Management Agencies	Andy Efta	
Federal Regulatory Agencies	Tina Laidlaw	
State Land Management Agencies	Jeff Schmalenberg	
Water Quality Districts / County Planning Departments	Nick Banish	
Soil & Water Conservation Districts – West of the Continental Divide	Samantha Tappenbeck	
Soil & Water Conservation Districts – East of the Continental Divide	Dan Rostad	
Wastewater Engineering Firms	Scott Buecker	
Timber Industry	Julia Altemus	



DEQ Updates

DEQ Updates

- Rulemaking Timeline
 - Present to WPCAC in December
 - Publishing proposed rule in the MAR in January



CWA Compliance Options

CWA Compliance Options

If DEQ finds a facility has reasonable potential to cause or contribute to a water quality standards exceedance, DEQ must assign an effluent limit for that parameter.

The limit must be met as soon as possible. If this cannot be done immediately, the Clean Water Act provides several tools allowing dischargers time to make the necessary changes.

- Water quality standards variance
 - individual variance
 - multi-discharger variance
- Compliance schedule with interim limits
 - Time for facility upgrades (short-term)
 - **Time for implementing an adaptive management plan (longer term)**
- Meet the limit: permittee may achieve nutrient limits by existing O & M, capital improvements, land application, seasonal discharge, etc. Permittee will keep limit and continue monitoring.

Interim Permit Limits Under an Adaptive Management Plan

- Interim permit limits provide compliance targets that are measurable steps towards achieving the final effluent limit as soon as possible.
- Interim permit limits will be case-specific for each facility.
- If a facility has an existing limit, it will be maintained or capped at current performance if applicable.
- If a facility doesn't have a nutrient limit (and has RP), it will be capped at the current performance.
- Analysis of site-specific instream response variable data will develop a better description of the final effluent limit, and possibly of future interim limits.

AMP as a Compliance Schedule

- Must have final limits. This is initially based on the ecoregional range until site-specific response variable data is developed. This data will determine compliance with the narrative nutrient criteria.
- What the MPDES Compliance Schedule potentially could look like:
 - Interim Limits (previous discussion)
 - Time required to reach final limits
 - Final Limits (>1 permit cycle)
 - Annual reporting requirement/
Optimization of wastewater treatment
 - Develop and implement monitoring plan
 - Evaluate causal and response variables (3-5 years out)
 - Additional components of an AMP may be added to the compliance schedule as appropriate.

Non-Limiting Nutrient

What's happening with Nitrogen while Phosphorous is being prioritized?

- Existing TN will be maintained or capped at current performance if applicable.
- Nitrogen could be addressed under either a variance or a compliance schedule.



Upcoming Meetings

Upcoming Meeting Schedule

Already Scheduled:

- Wednesday August 16, 9 - 11 a.m.
- Thursday September 14, 9 - 11 a.m.

Proposed Dates:

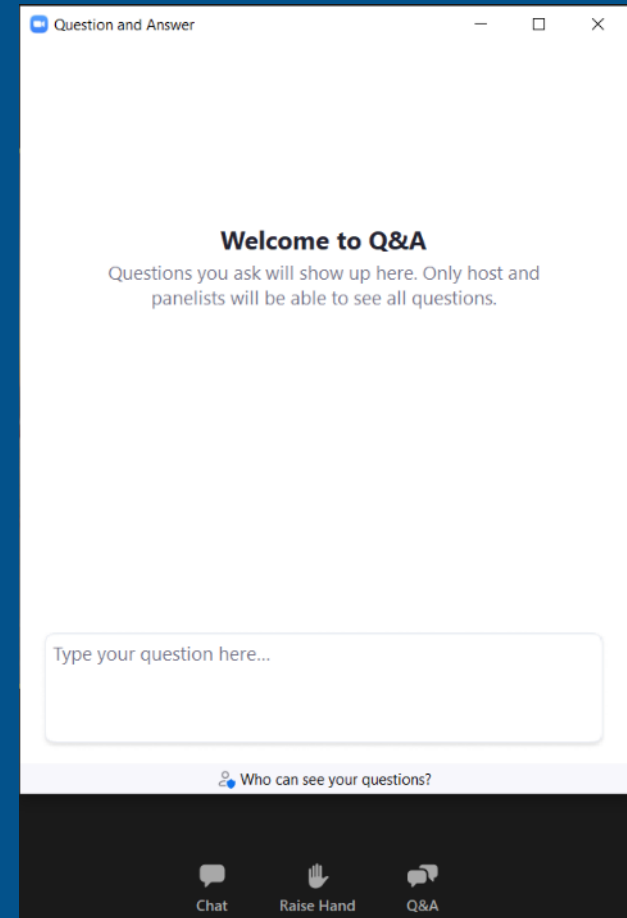
- Thursday, October 12, 9 – 11 a.m.
- Tuesday, November 14, 9 – 11 a.m.



Public Comment

Questions/ Comments

- Raise hand (*9 if on the phone) or type questions into the Q&A
- DEQ will unmute you if you wish to provide your comment orally
- If calling by phone, press*6 to unmute
- State your name and affiliation before providing your comment



Unmute



Chat



Raise Hand



Q&A

Leave

Thanks for Joining Us

Contact:

Kyle Milke

kyle.milke@mt.gov

To submit comments or questions



<https://deq.mt.gov/water/Councils>

