

## NUTRIENT WORK GROUP MEETING SUMMARY

### September 14, 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 City of Billings	Point Source Discharger: Large Municipal Systems (>1 MGD)
Shannon Holmes City of Livingston	Point Source Discharger: Middle-Sized Mechanical System (<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 Montana League of Cities and Towns	Municipalities
Matt Vincent Montana Mining Association	Mining
Karli Johnson Montana Farm Bureau Federation	Farming-Oriented Agriculture
Ellie Brighton Montana Stockgrowers Association	Livestock-Oriented Agriculture
Guy Alsentzer 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 Agency
Nick Banish Gallatin Local Water Quality District	County Water Quality Districts or Planning Departments
Dan Rostad Yellowstone River Conservation District Council	Soil and Water Conservation Districts – East of the Continental Divide
Scott Buecker AE2S	Wastewater Engineering Firms
Julia Altemus Montana Wood Products Association	Timber Industry

**NOT IN ATTENDANCE: NUTRIENT WORK GROUP MEMBERS**

<b>Representative &amp; Affiliation</b>	<b>Representing</b>
David Brooks Montana Trout Unlimited	Conservation Organization: Statewide
Pete Cardinal Pete Cardinal Outfitters	Water or Fishing-Based Recreation
Samantha Tappenbeck Flathead Conservation District	Soil and Water Conservation Districts – West of the Continental Divide

**ATTENDANCE: OTHER PARTICIPANTS**

Aaron Losing  
 Alanna Shaw, MPDES Section Supervisor  
 Amanda McInnis, Jacobs  
 Amelia Flanery, DEQ, Surface Water Discharge Permitting  
 Andy Ulven, DEQ, Water Quality Planning Bureau Chief  
 Brian Heaston, City of Bozeman  
 Brian Sugden, Sugden Forest Environmental, LLC  
 Christina Staten, DEQ, TMDL Section Supervisor  
 Christopher Dorrington, DEQ, Director  
 Christopher Romankiewicz, DEQ, Environmental Compliance Inspector  
 Coralynn Revis, HDR  
 Darrin Kron, DEQ, Monitoring and Assessment Section Supervisor  
 Dave Clark, HDR  
 Ed Coleman, City of Helena  
 Eric Sivers, DEQ, Policy Analyst  
 Hannah New, DEQ, Surface Water Discharge Permitting  
 Heather Henry, DEQ, Water Quality Scientist  
 Jason Mohr, Legislative Services Executive Director  
 Jeff May, DEQ, Surface Water Discharge Permitting  
 Joe Lierow, ExxonMobil Billings Refinery  
 KC Harvey Environmental  
 Katie Makarowski, DEQ, Standards and Modeling Section Supervisor  
 Kristi Kline, Montana Rural Water Systems  
 Kurt Moser, DEQ, Legal Counsel  
 Leea Anderson, City of Helena  
 Lindsey Krywaruchka, DEQ, Water Quality Division Administrator  
 Lisa Anderson, DEQ, TMDL Water Quality Scientist  
 L Franklin  
 Mae Vader, DEQ, New Media Specialist  
 Mark Ockey, DEQ, Water Quality Specialist  
 MaryAnn Dunwell, Montana State Legislator  
 Mary Godfrey, DEQ, Program Support Specialist  
 Michael Kasch, HDR  
 Moira Davin, DEQ, Public Information Officer  
 Peggy Trenk, Treasure State Resources Association  
 Ryan Leland, City of Helena

Ryan Sudbury  
Ryan Urbanec  
Tatiana Davila, DEQ, Water Protection Bureau Chief  
Torie Haraldson, DEQ, Water Quality Specialist  
Vicki Marquis, Holland and Hart  
Vicki Watson, University of Montana Watershed Clinic

## MEETING PURPOSE / OBJECTIVES

Meeting Goal: Discuss update on Circular DEQ-15 roll-out timeframe, the rulemaking process and timeline, and the updated Rules.

### Rulemaking Updates

- Rulemaking Overview and Timeline
- Sections of Administrative Rules of Montana to be Modified During Rulemaking
- Draft Circular DEQ-15 roll-out timeframe

### Updated Rule

- Split into two rules

## MEETING HIGHLIGHTS / DECISIONS MADE

- Future meeting schedule
  - Monday October 16, 2023 9 – 11 a.m.
  - Tuesday November 14, 2023 9 – 11 a.m.

## MEETING INITIATION

Moira Davin, 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**).

Moira Davin handed it over to Andy Ulven, DEQ, Water Quality Planning Bureau Chief, to discuss rulemaking updates (slide 5, **Attachment A**).

## RULEMAKING UPDATES

Andy Ulven discussed draft document roll-out timeframes (slide 6-7, **Attachment A**). The draft rules have been split into two and were posted to the Nutrient Work Group (NWG) webpage prior to the meeting and are available for review. Andy Ulven also mentioned that the draft Circular DEQ-15 will be released shortly after the October 16, 2023 NWG meeting and the updated draft guidance will be released prior to the November 16, 2023 NWG meeting. The target date for public hearing engagement opportunities will be January 30<sup>th</sup>, 2024. Andy Ulven stated that we are approaching our internal rulemaking preparations phase, which includes a notice to the governor. The Water Pollution Control Advisory Council has a scheduled meeting on December 1, 2023 and it is DEQ's goal to introduce the rule package on that date.

Lindsey Krywaruchka, DEQ, Water Quality Division Administrator, clarified that this timeline has to do with the Secretary of State guidelines.

Andy Ulven then discussed the necessary Administrative Rules of Montana (ARM) modifications (slides 8-9, **Attachment A**). There are a number of references to DEQ-12A that will be modified/removed.

## UPDATED RULES

Katie Makarowski, DEQ, Standards and Modelling Section Supervisor, presented on the updated rules that were recently split and posted on the NWG webpage (slide 11, **Attachment A**). This rulemaking effort addresses two primary components: translation of narrative nutrient standards (which is captured in New Rule I), and implementation of the Adaptive Management Program (which is captured in New Rule II). DEQ decided to split the rule for clarity and efficiency. The ARMs are applied by various DEQ programs. Each new rule can be adopted into the most appropriate subchapter of the water quality chapter of the administrative rules (ARM 17.30). As DEQ is revising Department Circular DEQ-15, we will structure that document to correspond to each rule. Katie Makarowski stated that today we will briefly review the new rules as they are presented in the draft document. The language that appears on each slide is a paraphrased version of the language contained in the draft rules themselves. These new rules and Circular DEQ-15 work in concert with one another – the rules lay a foundation of requirements that the circular expands upon in more detail.

Katie Makarowski then presented on New Rule I (slide 12, **Attachment A**). New Rule I is quite brief and specifies that the Department will translate narrative nutrient standards at ARM 17.30.637(e). As a reminder, this narrative standard was adopted in the 1970s and remains applicable to all state waters. The narrative nutrient standards continued to apply to those waters for which numeric nutrient standards were adopted, and applied to waters for which numeric standards were not yet adopted. The aim of that narrative standard is to prevent undesirable aquatic life and protect beneficial uses. New Rule I also incorporates by reference Department Circular DEQ-15 which lays out in detail how the department will translate the narrative nutrient standards.

Katie Makarowski then presented on New Rule II (slides 13-18, **Attachment A**). Subsection 3(e) indicates that if the Department concludes that prioritization or limitation of phosphorus alone is not appropriate and a discharge has reasonable potential to cause or contribute to an instream excursion above the narrative nutrient standards, then the Department will develop nitrogen limits and/or total phosphorus limits and require the permittees to include in their Adaptive Management Plan (AMP) a “watershed plan” (slide 15, **Attachment A**). This watershed plan builds in many of the AMP components that describe how nutrients will be reduced in a watershed which we’ve been discussing all along the way. This includes:

- Identifying and quantifying sources
- Identifying partners willing to participate in nutrient reduction strategies
- Documenting nutrient reduction action items and specific goals for reduction including expected timelines
- Demonstrating the ability to fund the identified nutrient reduction activities (backed by enforceable agreements with partners)

It likely will include expanded monitoring of response variables as performance indicators to determine if these actions are effective in achieving compliance with narrative nutrient standards, plus timeframes and annual reporting by March 31<sup>st</sup> (a timeframe we heard from this group was reasonable).

Subsection 3(f) specifies that compliance with the narrative nutrient standards shall be determined at a point(s) downstream of the facility, point(s) which will be described in further detail in Circular DEQ-15 (slide 15, **Attachment A**).

Section 4 of New Rule II pertains to adaptive management for large rivers. In many ways, this section looks very similar to the language contained in Section 3 for wadeable streams and medium rivers, but builds in more of the modeling components that are likely with these large systems (slide 16, **Attachment A**). When developing an AMP for large rivers, many of the same minimum requirements we described for wadeable streams and medium rivers must also be included, and additional requirements may also be appropriate.

Subsection 4(a) explains that the department or permittee(s) may develop a mechanistic water quality model for a large river which may be used to derive phosphorus limits for use in Montana Pollutant Discharge Elimination System permits that protect beneficial uses and achieve narrative nutrient standards and other applicable water quality standards related to nutrients like dissolved oxygen and pH.

As included in Subsection 4(b), if no model is developed then the department shall derive phosphorus and/or nitrogen limits based on best available information to protect uses and achieve standards. Subsection 4(c) reaffirms that total phosphorus limits apply during a growing season (again, with some exceptions). Subsection 4(d) requires that nutrient reductions be evaluated using data collected in the river (by the Department and/or permittee(s)) to confirm that uses are protected and standards are achieved, and to determine if further nutrient reductions are necessary. Sampling requirements are detailed in Circular DEQ-15.

In Subsection 4(e), as with wadeable streams or medium rivers, if the department concludes that phosphorus reduction alone is insufficient to achieve narrative nutrient standards and protect uses in a larger river, the permittee(s) who have opted into the Adaptive Management Program must include a watershed plan in their AMP (slide 17, **Attachment A**). The same watershed components that were described previously for wadeable streams and medium rivers would apply for large rivers. This approach affords some time and flexibility for determining the most effective and cost-effective nutrient reduction strategies to pursue in a specific watershed while also aiming to achieve narrative nutrient standards as soon as possible.

Subsection 4(f) affirms compliance in large rivers is also determined at a point(s) downstream of the facility, consistent with requirements contained in Circular DEQ-15.

Section 5 states that permittees are not precluded from pursuing, at any time, other regulatory compliance options (slide 18, **Attachment A**). These options include, but are not limited to:

- Variances
- Compliance schedules
- Reuse
- Trading
- Recharge
- Land application

This recognizes that we are building an approach that must suit the needs of a broad community of dischargers and need to have options available along the way, from the outset and at each permit renewal cycle, for example.

Finally, in Section 6 of New Rule II, the department adopts and incorporates by reference Department Circular DEQ-15 which provides procedures and requirements for the translation of narrative nutrient standards and the implementation of the Adaptive Management Program.

Moira Davin then asked if there were any questions on the new rules.

Louis Engels, City of Billings, asked in the chat when an updated DEQ Circular DEQ-15 is expected to be released? Katie Makarowski replied that many changes are a restructuring for more clarification and refining clarifications. We expect to have it completed and shared with the group after the October 16 NWG meeting.

Amanda McInnis, Jacobs, asked in the chat will the detailed permitting information be included in the guidance? Tatiana Davila, DEQ, Water Protection Bureau Chief, asked what information on permitting? Amanda McInnis said a detailed explanation of how permits will be written and as she understood that DEQ had committed to providing more detail. Tatiana Davila responded that some of these questions may be answered in the October meeting. A lot of the information about what it looks like in a permit will be included in the guidance document.

Lindsey Krywaruchka added that any suggestions on what is needed would be helpful.

Katie Makarowski added that it is helpful to keep in mind this is a tiered approach. The language in the rule is pretty concise. This is expanded upon in Circular DEQ-15 and then further in Guidance.

Amanda McInnis also asked will the guidance address the power and chemical production, transport, and consumption associated with point source upgrades, as SB358 referred to overall environmental considerations? Tatiana Davila stated that she is not familiar intimately with the language Amanda McInnis is talking about, but the goal of the Adaptive Management Program allows for flexibility of the things you are talking about. Amanda McInnis stated that the way it is currently proposed you get ecoregion limits at the end of pipe and if that is how it is structured no one will enter the Adaptive Management Program. The program also misses this piece that is being overlooked.

Kurt Moser, DEQ, Legal Counsel, responded to Amanda McInnis saying that overall, when looking at the plan that is in Circular DEQ-15 and Guidance, there are other mechanisms for point source dischargers to look at other means to achieve effluent limits, including reaching out to partners in the watershed. This is an area where the plan does address those kinds of things. Amanda McInnis agreed that that is the intent of the program and agrees with what was just said. But Amanda McInnis thinks that the way the program is currently structured, no one will enter the Adaptive Management Program and have the opportunity to do what was just said. A fundamental difference in vision here is the way the program is structured; you get the ecoregion criteria as end of pipe limits right away and the reality is treatment plants make 30-year timeframe long-term decisions. If DEQ insists that that is step one, then no one will do adaptive management. Problem two is that we see an AMP differently. DEQ thinks we are going to get nonpoint source (NPS) offsets, but there is a whole breadth of other things that go on in these watersheds that are different from NPS offsets such as tree plantings in riparian areas and stormwater

inputs that are not captured. When a treatment plant has already made a secondary upgrade, that gets lost too. A tertiary upgrade has marginal improvement and lots of energy consumption.

Katie Makarowski responded that that notion that not immediately driving all dischargers to secondary treatment has been discussed and our aim has been to provide a program that provides options and provides time to explore other options, including interim limits. There is a lot of opportunity to address the inputs that Amanda McInnis mentioned.

Kelly Lynch, Montana League of Cities and Towns, stated that she does not think it is accurate or fair to say they are proposing something that does not have places for ensuring water quality standards are met. They have never proposed that and their proposal does not indicate an open process like that, they are just saying it should not be a number.

Moira Davin asked if you are requesting that there is not a number in the permit?

Kelly Lynch stated that Katie Makarowski just said DEQ has to come up with a process that must hold point sources accountable. We have never said that we should not be held accountable.

Katie Makarowski responded that she thinks it is a common goal.

Moira Davin asked if you want to elaborate on what you mean by you do not want it to be a number?

Kelly Lynch said no, she was just responding to what Katie Makarowski said.

Rika Lashley, Morrison-Maierle, said in the chat that we are looking for a narrative final limit.

Guy Alsentzer, Upper Missouri Waterkeeper, said that you have three different compliance options, and most facilities cannot meet the limits. He would like to focus on an Adaptive Management Program that is durable, defensible, and practical. He is hearing from the League of Cities and Towns that they don't think it is practical. How are we verifying the NPSs? How do we have a more effective program that addresses NPS pollution? The example of Chesapeake Bay had a far more robust program than what is being considered here. The fundamental crux is if we are going to go down the Adaptive Management Program path and want to make good on reducing NPSs, there has to be a way to do this upfront – clarity is needed on what you have to do. It cannot be delegated to the permittee after the permit is approved. We need to have it upfront.

Amanda McInnis stated that she totally agrees with Guy Alsentzer on this.

Guy Alsentzer stated that we have a lot of federal funding coming in and there is a huge opportunity to consider how to incentivize these types of practices. We need to do a better job of creating accountability for sources other than point sources.

Amanda McInnis said that the program put forward only focuses on downstream of the treatment plant and that we think it should be broader than that.

Andy Ulven reminded the group of the August presentation where Kyle Milke, DEQ, Adaptive Management Program Scientist, walked through the AMP template. The way we are stepping through this is because we must prioritize phosphorus, the initial phase may focus on the treatment facility, but

later phases focus on the watershed as a whole. Assurance is in the stream; the steps will be lined out through milestones in the AMP that is approved by DEQ. Providing assurance that NPS implementation projects will have the expected results is part of the submittal and approval process.

Guy Alsentzer stated that he was confused about how DEQ is going to have reasonable assurance of best management practices (BMPs) if they are providing you with something that has never been applied or tested in Montana? You could end up in a situation where nutrient pollution was not actually reduced and a permittee is on the hook for a reduction that did not happen because we did not verify it up front.

Eric Sivers, DEQ, Policy Analyst, asked how do we establish that if it hasn't been done in Montana?

Guy Alsentzer referenced the timeliness of getting this out the door and stated that we should not be pushing out this rule proposal because it is not timely, and it is not complete. What is in Chesapeake Bay is way more representative and exhaustive. This is the only road map that I am aware of. I would be willing to spend time with DEQ staff on how to adopt this example.

Andy Ulven asked if Guy Alsentzer could speak about the process that went into it and the number of years it took? How do you think the process would apply to a state as large as Montana with a Continental Divide?

Guy Alsentzer said that the geographic scope of Chesapeake Bay is representative as well as land uses are comparable. Their approach started with exhaustive modeling. Without having baseline data on land use patterns, where major nutrient sources are coming from based upon land uses and sectors, we cannot determine how to protect designated uses. This is a far more robust undertaking than what we have done here and there was an enormous amount of funding available that is not available here.

Andy Ulven responded that that would point back to last month's presentation that provided some resources and noted that modeling will be incumbent on the Adaptive Management Program applicant.

Guy Alsentzer replied that without a robust statewide framework to create the level of accountability, we are looking at small sample size snapshots of water quality. We have a piecemeal understanding of NPSs across the state where we have done Total Maximum Daily Loads (TMDLs) and there are a lot of watersheds that have not been monitored.

Lindsey Krywaruchka stated that we are in an imperfect storm of a timeline.

Guy Alsentzer said that pushing forward something that is not legally defensible is not a good idea. Who do we need to talk to to extend the timeline?

Tina Laidlaw, EPA, stated that we have come to the table and worked really hard. All we get is "this doesn't work". Bring us something that works. We can't do this alone.

Julia Altemus, Montana Wood Products Association, stated that there is a set of BMPs that have been out since the 80s – she provided the link in the chat. Getting dragged into some kind of regulatory guidance document would be very concerning for us, regarding timber management.

Kelly Lynch said that the League's position is not to come up with anything that requires enforceability against NPSs.

Rika Lashley stated in the chat that given the current discussion about BMPs – could these existing BMPs help get us to the BMPs Guy Alsentzer and the dischargers would like to see developed?

Andy Ulven responded that we linked all of our BMP resources in the August presentation. Applying these to a local watershed will require some additional study.

Darrin Kron, DEQ, Monitoring and Assessment Section Supervisor, said that we have a moderate understanding of how BMPs affect water in our state, and we have some tools that could be improved over time.

Kurt Moser stated that SB358 never gave us additional authority to regulate NPSs. The furthest we can go is where a point source is getting into a contractual agreement with a NPS. Underlying the Adaptive Management Program is a compliance program which is somewhat modeled after the state of Wisconsin's, it is not modeled after Chesapeake Bay. We must move forward with what our legislative directive is.

Guy Alsentzer replied that we are not suggesting that we create new statutory authority through this work group. This is nutrient credit trading through a different name.

Chris Dorrington, DEQ, Director, said that the Adaptive Management Program all along has been a highly collaborative discharger led process and the dischargers have committed to doing this. The discharger must coordinate and lead the effort and provide sound planning and process with the AMP that is submitted to the Department. Having listened to this for 2.5 years, the agency is in a tough spot trying to thread the needle and navigating a lot of different stakes to say here's a protective standard. To point sources that feel ratcheted down upon, we are saying do the Adaptive Management Program and work on the rest of the watershed. But we are in between two things: remaining protective and doing something fit for Montana that remains protective. We need to move on to other work and do the iterative work on whatever we advance. We will continue to be as transparent as we have been through this whole process. But we must move on. The team is exhausted from taking input and trying to do the right thing.

MaryAnn Dunwell, Montana State Legislator, stated she voted against SB358; she liked the numeric standards. DEQ works their hearts out to protect and improve a clean and healthful environment. She would not encourage trying to meet the deadline. It is a matter of fairness for the point source dischargers because we know there is a huge problem with NPSs. It is not going to get any better unless we do the best we can with Circular DEQ-15. The ultimate authority is our Montana Constitution which sets responsibilities for DEQ to be part of protections. We need to be as protective as we can.

Alan Olson, Montana Petroleum Association, stated that if we went back 10 years knowing what we know today, this legislation never would have passed. There were good intentions to pass the original nutrient legislation, but we ended up in court. This has been the biggest boondoggle over the last 10 years. Our group has submitted dozens of pages of comments and I think we need to look at that again. We were all in favor of an Adaptive Management Program, but it has morphed. So, we are stuck between a rock and a hard place. We cannot justify spending \$35,000,000 to get no meaningful

reductions in nutrients. Cities and towns are going to have a harder time meeting these requirements than the industrial sector.

Guy Alsentzer stated that we are already losing out on dozens of millions of dollars a year by not protecting our waters. He does not support the idea of prioritizing one use over another and wants to get to the end goal of protecting our uses.

Alan Olson responded that they have never denied that. We want a clean environment too. But to continue pushing down this path, we are going to have nothing.

Dave Clark, HDR, commented on the heavy lift to replicate something like the Chesapeake Bay BMP manual. To do something like that would meet Guy Alsentzer's test of durability and defensibility – riparian fencing is easy to verify – we have experience with these and they are easy to incentivize through funding. Sewering and taking the wastewater to WWTP facilities is another 100% effective BMP.

Chris Dorrington stated that he agrees with Dave Clark but does not agree with the simplicity of it. Trying to get a bill through with this is difficult. It is not simple through a policy or financial standpoint.

Kelly Lynch stated that they did propose a detailed multi-part Adaptive Management Program approach for the rules and that was a couple years ago now and they would like DEQ to go back and take a look at that again. We felt the responses to that weren't really fleshed out and there is a lot of good in there.

Lindsey Krywaruchka replied that we are committed to doing that.

Moira Davin wanted to go back to Rika Lashley's comment in the chat about wanting a narrative final limit.

Rika Lashley said she typed that into the chat when Kelly Lynch was saying "we don't want a number".

Chris Dorrington agreed on the BMPs that were mentioned. He asked what is wanted from a BMP manual? What does that get us?

Guy Alsentzer said that he doesn't think it is just those three that were mentioned. It must be low-cost and practical BMP that are applicable on a wide land-use scale.

Dave Clark stated that we cannot build everything at once, but there are simple things we could start with.

Chris Dorrington replied that if these are practical, they are working in some places, but we continue to simplify how easy it is to fence every watershed. If we put out a BMP manual with these practices, if it is that simple, why isn't it being picked up on a broad scale right now?

Dave Clark stated that funding is the limitation currently.

Andy Ulven said that we do have a limited amount of 319 funding available to us, which is not applicable for point source projects. We will be looking to utilize private dollars to put projects on the ground.

Katie Makarowski stated that funding is not the only limiting factor. There are programs at DEQ that work very hard to engage with landowners and support and coordinate watershed efforts like this.

Louis Engels said that he wanted to provide some context on the financial aspect of what the utilities do. To go from our current treatment process to secondary treatment is \$100,000,000 for the city of Billings to do that. That is why we entered this – we want to help with NPS projects. We just don't want to have to go to tertiary treatment before entering the Adaptive Management Program. Just don't want to see us just into limits of technology. That is why it is unattractive to municipalities. We want to do the things that make the most bang for the buck in the watershed.

Moira Davin stated that you would prefer to go into a watershed based approach first, but the bill requires us to prioritize phosphorus reduction first, which is hard to do in a watershed. Matching the bill with matching what you are talking about – do you have proposed solutions for that?

Kurt Moser said that he was confused on why he keeps hearing that dischargers would be held to the limits of technology right away. I don't think that is the case. The Adaptive Management Program is a compliance schedule which means you are not held to the limits of technology at the beginning. Same thing with variances. The only time it might happen is if you have a discharger with no data that says they can meet the ecoregional ranges.

Louis Engels replied that a utility plans 20 years out, so when we see a variance and a compliance schedule that shows limits of technologies, we assume that is where we have to be. We have to start the process now.

Kelly Lynch following-up on what Louis Engels said, one of the big pieces on having to make decisions 20 years out is we must bond and increase our utility assessments to pay for the bond. We are then legally and fiscally dedicated to the improvement at that point.

Amanda McInnis stated that the reason we think that is because the flow chart puts the ecoregional values first and those are an order of magnitude lower than what we can achieve.

## **UPCOMING MEETINGS**

Moira Davin presented the upcoming meeting schedule and agendas (slide 20, **Attachment A**). The meetings will be held October 16, 2023 and November 14, 2023 9 – 11:00 a.m.

## **PUBLIC COMMENT**

Moira Davin opened it up for public comment.

Brian Heaston, City of Bozeman, stated in the Q&A following up on Amanda McInnis' question on permitting guidance, would ask that guidance be issued for how TMDLs may be updated to reflect the narrative standard, and how wasteload allocations are revised to reflect narrative standards. This is a longstanding question which deserves clarification.

Andy Ulven replied that this was presented over the last year or so. Portions of the Circular and Guidance do address how and when TMDLs will be updated. How the wasteload allocation will be revised will depend on the discharger.

Brian Sugden, Sugden Forest Environmental, LLC, stated in the Q&A that he is not sure he totally understands. If phosphorus is limited then an AMP is prepared, which can include watershed NPS reductions in total phosphorus. But if DEQ determines the waterbody is nitrogen limited (or co-limited), then a supplemental watershed plan is needed for the total nitrogen component. Why the difference in terminology? In the case of nitrogen limitation, why not just have a total nitrogen component to the AMP?

Andy Ulven replied that DEQ can see where that might be confusing. A lot of our focus based on SB358 is phosphorus prioritization. There may be cases where nitrogen is the limiting nutrient, moving into nitrogen focus could happen sooner. It wouldn't be a separate document; it would still be an AMP with nitrogen as the limiting nutrient for the watershed.

Lindsey Krywaruchka added that it is important to note that we do appreciate this conversation – it is not always easy, but it is appreciated and helpful.

There was no further public comment.

The meeting ended at 11:04 a.m.

**ATTACHMENT A: SEPTEMBER 14, 2023 NUTRIENT WORK GROUP  
MEETING PRESENTATION SLIDES**



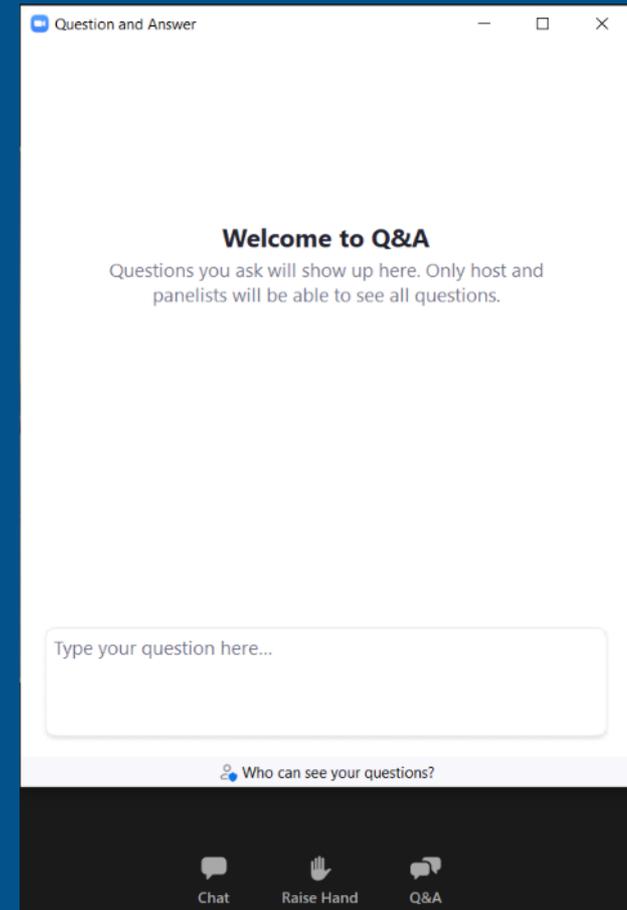
# Nutrient Work Group

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September 14, 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



Unmute

Chat

Raise Hand

Q&A

Leave

# Agenda

Meeting Goal: Discuss update on Circular DEQ-15 roll-out timeframe, the rulemaking process and timeline, and the updated Rules.

## Preliminaries

- Nutrient Work Group Roll Call

## Rulemaking Updates

- Draft Circular DEQ-15 roll-out timeframe
- Rulemaking Overview and Timeline
- Sections of ARM to be Modified During Rulemaking

## Updated Rule

- Split into two rules

## Future NWG Meeting Agendas

- October 16, 2023
- November 14, 2023

## Public Comment & Close of Meeting

- 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	Ellie Kenagy	
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	

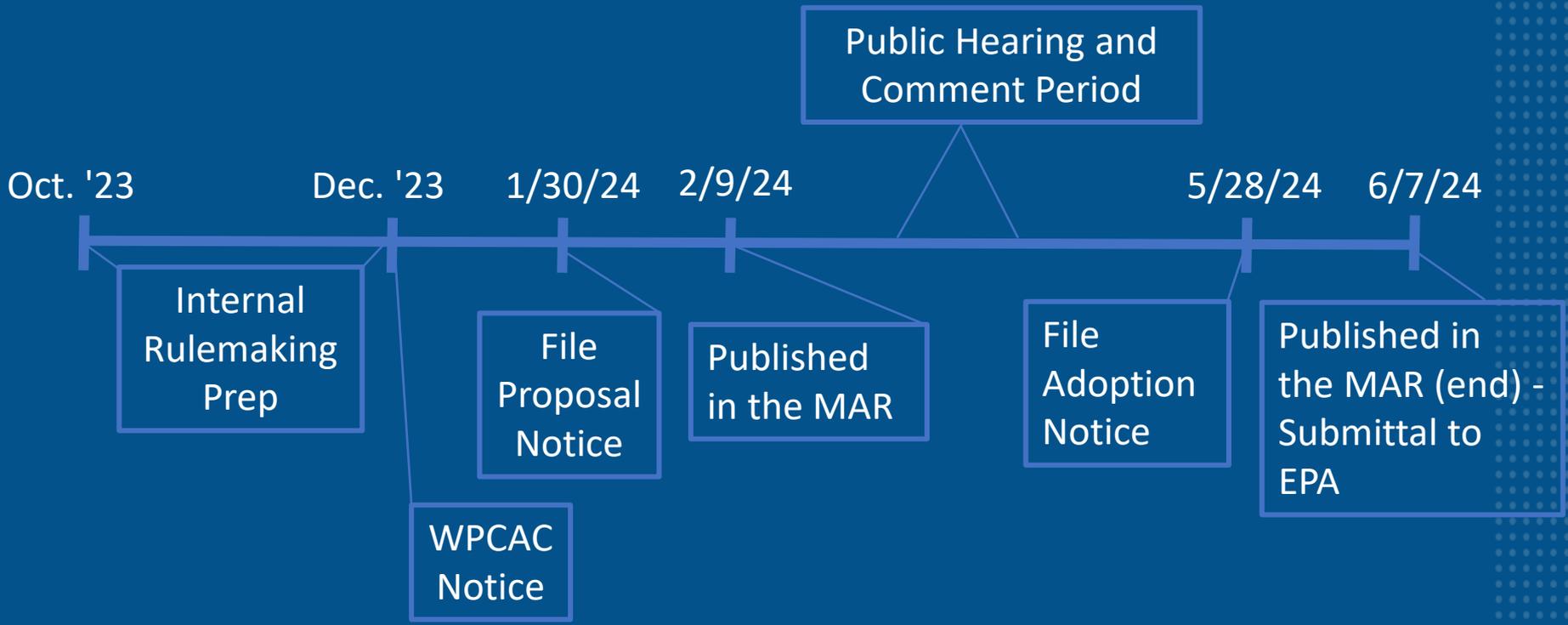


# Rulemaking Updates

# Draft Document Roll-Out

- Draft rules provided prior to this meeting
- Updated draft Circular DEQ-15 will be released shortly after the October 16, 2023 NWG meeting
- Updated draft guidance will be released prior to the November 16, 2023 NWG meeting

# Rulemaking Overview & Timeline



# ARM Modifications

ARM	Rule Name	Type of Change	Nature of Change
17.30.1388	Development of an Adaptive Management Program & Implementing Narrative Nutrient Standards	Repeal	SB358 prompted rule package
17.30.6xx or 17.30.13xx	Translation of Narrative Nutrient Standards	Adopt	New Rule I
17.30.13xx	Implementation of the Adaptive Management Program		New Rule II
17.30.602, 17.30.702, 17.30.1304	Definitions	Modify	Refine and add definitions, as needed (e.g., adaptive management program, adaptive management plan); Remove references to "DEQ-12A"
17.30.7XX	Nondegradation of water quality		Reflect transition to narrative nutrient standards; Remove references to "DEQ-12A"

# ARM Modifications

ARM	Rule Name	Type of Change	Nature of Change
17.30.507	Specific Restrictions for Surface Water Mixing Zones	Modify	Remove reference to "DEQ-12A"
17.30.516	Standard Mixing Zones for Surface Water		
17.30.619	Incorporations by Reference		
17.30.622	A-1 Classification Standards		
17.30.623	B-1 Classification Standards		
17.30.624	B-2 Classification Standards		
17.30.625	B-3 Classification Standards		
17.30.626	C-1 Classification Standards		
17.30.627	C-2 Classification Standards		
17.30.628	I Classification Standards		
17.30.629	C-3 Classification Standards		
17.30.201	Permit Application, Degradation Authorization, and Annual Permit Fees	Modify	Add AMP fee structure



# Updated Rules

# Updated Rules

Two rules address two components:

- New Rule I. Translation of Narrative Nutrient Standards
- New Rule II. Implementation of the Adaptive Management Program

Splitting into two rules for clarity and efficiency

- Administrative Rules of Montana (ARMs) are applied by various DEQ programs
- New rules will be adopted into appropriate subchapters of water quality chapter of ARM (17.30)
- Sections of Circular DEQ-15 will correspond to each rule

# New Rule I

- (1) Department translates narrative nutrient standards at 17.30.637(1)(e) as provided in Department Circular DEQ-15
- (2) Incorporates by reference Department Circular DEQ-15



# New Rule II

- (1) Point source owners and operators may choose to enter the Adaptive Management Program to achieve nutrient standards and address nutrients in a specific watershed.
- (2) MPDES permits may include limits and conditions consistent with the department-approved Adaptive Management Plan.



# New Rule II

- (3) Adaptive Management for Wadeable Streams and Medium Rivers
  - (a) Adaptive management plan must contain, at a minimum... (e.g., monthly effluent monitoring, monitoring plan, plan for examining possible pollutant minimization activities in the effluent, nutrient reduction activities for the broader watershed, annual reporting)
  - (b) department shall determine if phosphorus prioritization is appropriate
  - (c) if phosphorus prioritization is appropriate, department shall develop and implement total phosphorus effluent limits
  - (d) department may find, based on total phosphorus reductions, that beneficial uses are protected



# New Rule II

## (3) Adaptive Management for Wadeable Streams and Medium Rivers

(e) if phosphorus prioritization alone is insufficient, the department shall develop total nitrogen and/or total phosphorus limits and require the permittee(s) to develop a watershed plan in adaptive management plan

- watershed plan describes how nutrients will be reduced in a watershed (e.g., must identify and quantify sources, identify partners, document nutrient reduction action items, demonstrate ability to fund watershed plan, include enforceable agreements with partners, monitoring, timeframes, annual progress report)

(f) compliance determined at point(s) downstream of the facility



# New Rule II

## (4) Adaptive Management for Large Rivers

(a) department or permittee may develop a mechanistic water quality model; may be used to derive total phosphorus limits

(b) if no model, department shall derive limits for phosphorus and/or nitrogen based on best available information to protect uses and achieve standards

(c) total phosphorus limits apply during growing season (with exceptions)

(d) nutrient reductions will be evaluated using data collected in the river, consistent with Circular DEQ-15



# New Rule II

## (4) Adaptive Management for Large Rivers

(e) if P reduction alone is insufficient, permittee(s) shall develop a watershed plan for nutrient reduction

- watershed plan describes how nutrients will be reduced in a watershed (e.g., must identify and quantify sources, identify partners, document nutrient reduction action items, demonstrate ability to fund watershed plan, include enforceable agreements with partners, monitoring, timeframes, annual progress report)

(f) compliance determined at point(s) downstream of the facility



# New Rule II

- (5) permittee not precluded from pursuing, at any time, other regulatory compliance options (e.g., variances, compliance schedules, reuse, trading, recharge, land application)
- (6) department adopts and incorporates by reference Department Circular DEQ-15





# Upcoming Meetings

# Upcoming Meeting Schedule

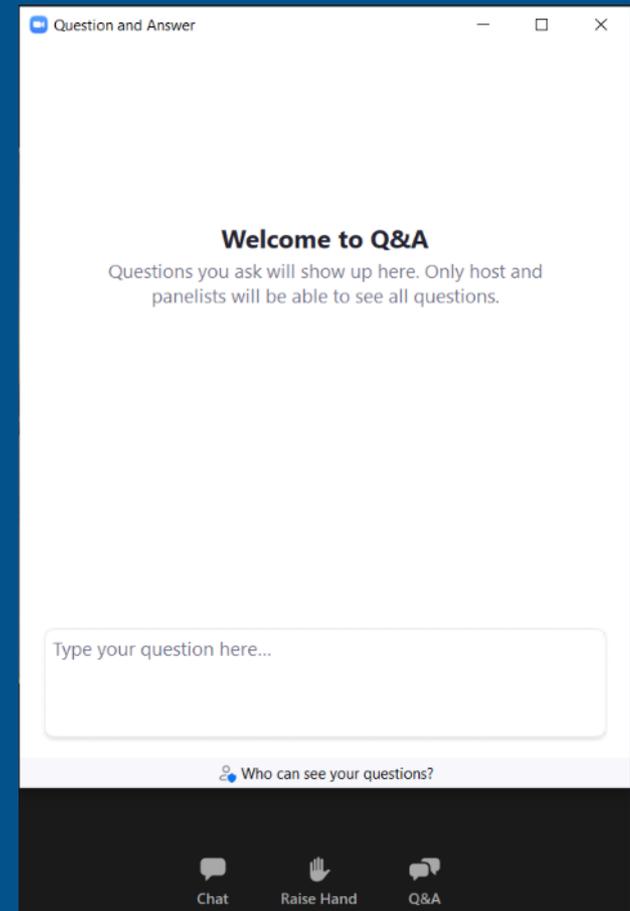
- October 16, 2023 9 – 11:00 a.m.
  - Overview of the translation of narrative nutrient standards
  - Overview of the implementation of the adaptive management program with permitting examples
  - Update on Circular DEQ-15
- November 14, 2023 9 – 11:00 a.m.
  - Rule package document revisions (clarifications based on feedback)
  - Fee structure
  - Budgeting and costs
    - List of items for consideration
    - Budgetary planning
  - Training program



# 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:

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To submit comments or questions



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