

Report On
Nutrient Work Group Process
&
Proposed Narrative Water
Quality Standards

Directed by Senate Bill 358

Submitted to:



State of Montana
Department of Environmental Quality

By:

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Executive Summary

The State of Montana, Department of Environmental Quality's (DEQ) Water Quality Division engaged an independent consultant to review the rule making process directed by Senate Bill 358 for the establishment of a new narrative water quality standard, which involved a citizen-based Nutrient Work Group in collaboration DEQ staff over a three-year period. The work group consists of a diverse group of stakeholders representing natural resource and environmental protection advocates, agriculture, business and major industries, and municipal water treatment facility operators.

The Nutrient Work Group has met 44 times over a three year period. DEQ has created a proposed new narrative water quality standard as a result of this consultation with the Nutrient Work Group, and has initiated the promulgation of a final narrative water quality standard required by Senate Bill 358.

This review process involved direct interviews with 19 of the 21 members of the Nutrient Work Group. These interviews were conducted in a combination of in-person,

video conferences and phone calls between May 2, 2024 to May 14, 2024. The remaining two work group members, Guy Alsentzer and Pete Cardinal, did not respond to the three voice messages left at their phone numbers, or the three emails sent to each requesting their participation in this review process.

This report will provide specifics on the findings of this review which includes common ground among work group members, gaps in understanding among the work group members, recommendations to address these gaps, build stronger partnerships for water quality and enhance the promulgation of the proposed new narrative standards.

KEY FINDINGS

Common Ground

- All work group members profess to want to meet water quality standards in accordance with the Clean Water Act, and that Montana's rivers and streams are an important resource for many uses and stakeholders.
- All work group members identified attributes of the work group process they liked, especially the openness to all ideas, lively debate and diverse points of views.
- All work group members provided some level of input for DEQ to consider in drafting the new narrative rule.
- Many work group members noted that DEQ staff changes over the past three years affected the deliberative process, but also expressed an optimistic and positive views toward newer DEQ staff members involved with the work group.

Needs Improvement

- A majority of work group members said they have no idea what DEQ did with their input in either accepting these suggestions, nor given a reason why their suggestions may have been rejected if that was the disposition of their input, and that any responses they did receive were provided in an untimely manner.
- Many work group members believe that there should be more to show for three years of effort, with more satisfaction and less contention than is present at this time.
- A majority of work group members felt they were "talked at," and indicate that neutral facilitation for the duration of the work group process and allowing

other members to contribute presentations and help formulate meeting agendas would have made this a better collaborative effort.

- Many work group members do not feel they have the necessary information to do adaptive management plans, nor understand how permitting will work under a new rule. This also includes confusion about how to apply reasonable potential analysis in managing water quality.
- EPA's participation at work group meetings was lacking of any helpful guidance on concepts and proposals being discussed at work group meetings.

Contention and Misunderstanding

- Some work group members believe the new narrative rule should have no connection to numeric values, and expressed disappointment that the proposed rule appears to maintain numeric values or improperly "translates" or "crosswalks" numeric values into narrative standards. - Some work group members have expressed fear that the new narrative standards are unattainable due to current available technology shortfalls, or resources (money) shortfalls.
- Some work group members believe the new standards will force them into tertiary water treatment, that will cost their utility astronomical sums of money to provide with little actual improvement in the waterway as a result.
- Most work group members believe non-point sources needed to be better addressed, and most likely through voluntary incentives and partnerships.
- Some work group members believe the new narrative standard will allow for backsliding on meeting water quality standards and is too reactive in protecting water quality.



- Many work group members think that making phosphorus a priority over nitrogen are wrongheaded and a misplaced priority.
- There is significant opinions and speculation about legal precedents, legislative prerogatives and federal supremacy over the waters of the United States that all serve to undermine ongoing efforts among all the interests represented among the work group members to build a good faith partnership to resolve these issues in a collaborative manner.

a. DEQ has already offered to meet with anyone interested in knowing how to use adaptive management planning and to better understand reasonable potential analysis. Two water treatment utilities have taken advantage of this offer. It would be helpful for DEQ to hold a workshop for all nutrient work group members who are confused on these items, and or publish step by step guidance for the same.

4. DEQ should also address any confusion on the exact requirements and steps for permitting under the new narrative standard through either a separate workshop on this topic, or published step by step guidance.

5. DEQ in partnership with the interests represented on the nutrient work group, along with other sources of funding resources should create a robust program to incentivize voluntary participation to improve and mitigate non-point source effects on water quality upstream of municipal water treatment systems. This is far more cost effective and beneficial than speculation on the need for tertiary treatment systems for municipal systems.

6. DEQ, and other work group members should carefully review the responses provided during the interviews for the review process report for factual errors versus differences of opinion or discontent on the rulemaking process itself. Factual errors that are entering into public discourse through misunderstandings of information, deliberate intention or innocent human error must be corrected just as any other “rumor” or maligned misinformation should be dealt with. Disagree on the facts all you want. However, no greater good or sound sustainable public policy will come from misinformation and errors in fact. The people of Montana deserve no less than honesty and factual information.

Recommendations

1. These recommendations are offered by an independent outside reviewer who does not speak for any interest represented by the Nutrient Work Group, nor is a legal expert or scientist. These recommendations are made in the spirit of the good faith effort that all work group members voiced in their agreement with their charter and their stated commitment to the importance of water quality of Montana. The State of Montana and the Nutrient Work Group members are not obligated to accept the recommendations they are being asked to consider.

2. The Nutrient Work Group should convene before the June 10, 2024 public meeting being held to receive general public comment on the new narrative rule for the purpose of discussing this report and to seek to clarify gaps and resolve misunderstandings.

3. The Montana DEQ should attempt to produce an inventory list of all the work group member input it has received over the past three years, and provide work group members with an accounting of exactly the disposition of the suggestions they received as soon as possible.

Nutrient Work Group Members

NAME:	AFFILIATION:	PARTICIPATED IN PROCESS REVIEW:
Guy Alsentzer	Environmental advocacy organization	No
Julia Altemus	Timber industry	Yes
Nick Banish	County water quality districts or planning depts.	Yes
Ellie Brighton	Livestock oriented agriculture	Yes
David Brooks	Statewide conservation organization	Yes
Scott Buecker	Wastewater engineer firms	Yes
Pete Cardinal	Water or fishing based recreation	No
Andy Efta	Federal land management agencies	Yes
Louis Engels	Large municipal system dischargers	Yes
Kristin Gardner	Local conservation organization	Yes
Shannon Holmes	Mid-sized municipal system dischargers	Yes
Karli Johnson	Farming oriented agriculture	Yes
Lindsey Krywaruchka	State government	Yes
Rika Lashley	Small municipal system dischargers	Yes
Kelly Lynch	Municipalities	Yes
Alan Olson	Point source discharger - non POTW	Yes
Dan Rostad	Soil & water conservation districts - East	Yes
Jeff Schmalenberg	State land management agencies	Yes
Samantha Tappenbeck	Soil & water onservation districts - West	Yes
Matt Vincent	Mining	Yes
Sarah Zuzulock	Conservation Organization Regional	Yes



INTERVIEW RESPONSE SUMMARIES

How many work group meetings did you attend over the past three years?

- The attendance level for the majority of work group members was exceptionally high
- Over the past three years, some original work group members stopped being active for any number of reasons, but were replaced by their organization
- Guy Altsentzer, representing the Upper Missouri Waterkeepers, dropped out after the first year while threatening lawsuits

Was your involvement and input taken seriously by other work group members?

- 15 out of 19 respondents said yes
- The remaining respondents said they were either unsure, or were fairly new to the work group process and did not contribute much to the discussions as a result
- 7 respondents felt that while they were heard, their comments did not receive timely follow-up from DEQ, or that their comments were dismissed by DEQ.

Did you agree with the terms of the work group charter, and do you feel any party failed to live up to the terms of the charter?

- 13 of 19 respondents said they read and agreed with the charter
- 6 of the 19 respondents either did not acknowledge they agreed with the charter, and or found fault in the manner in which the work group sessions were held

Did you provide input into this process that you feel was ignored completely, or inadequately addressed? If yes, what issue was ignored or inadequately addressed?

- 12 of 19 respondents said their input was not ignored
- 7 respondents felt their input including formal written submissions were either ignored, or DEQ responses were untimely or inadequately addressed
- The top issues these respondents felt were ignored or inadequately address are:
 - Permitting process
 - Reasonable potential analysis
 - Cost-benefit analysis
 - Regulating nutrients like toxins
 - Translating from numeric standards into narrative standards

Were there aspects of the water quality standards and rule making process that you had difficulty understanding?

- 8 of 19 respondents said they had no difficulty understanding the terms and concepts discussed within the work group
- 6 of the remaining respondents said they eventually received help to better understand the concepts
- 5 of the remaining respondents still have difficulty understanding some of the concepts discussed by the work group

Did you seek additional information from DEQ representatives or other experts on topics involved with water quality standards, science and this process?

- 18 of 19 respondents did seek additional information from a number of sources
- The type of additional information sought included better understanding policy and regulatory standards, methods used by other states, and scientific principals

What did you like about the work group process?

- 18 of 19 respondents found something they liked about the work group process, especially the diversity of the work group membership and the openness of DEQ to hear all points of view
- Work group members appreciated the ability to gain additional perspectives

What could be improved for future DEQ sponsored work group processes?

- Only 2 of the 19 respondents seemed satisfied with the entire work group process
- 4 of 19 respondents said that DEQ seemed pre-disposed on the outcome of the process, and should not have always set the agenda for the meeting, or were talked at by DEQ
- The following are the top suggestions among the 17 remaining respondents:
 - Have neutral facilitation throughout the process
 - Allow for other work group members to contribute to setting meeting agendas and for other presenters at meetings
 - Keep an input log and provide a more timely response to input
 - Smaller sized work group and shorter duration

Actually allow the work group members to work together and problem solve

Minimize DEQ staff turnover during these deliberative processes

What specific concern do you have with the proposed new narrative rule?

- 5 of 19 respondents have no concerns
- Top concerns of the remaining respondents include:

The absence of permitting guidance and how reasonable potential analysis factors into this

Eco-region standards approach while still including numeric standards seems to cancel out the adaptive management approach

Technology and resources to attain new or current water quality standards are not available

Previous and proposed standards are unattainable

Prioritizing phosphorus over nitrogen

If you have a concern with the proposed new narrative rule, what would resolve your concern?

- The top responses for resolving work group member concerns are:
 - How does permitting work
 - Incentivize non-point sources to participate in water quality practices
 - Let us know what you did with our input
 - Better explain reasonable potential analysis
 - Reconsider the prioritization of phosphorus over nitrogen
 - Resources to do testing and achieve compliance methods
 - Provide Dischargers more time to attain standards

Other Comments:

See complete response section of this report.



INTERVIEW COMPLETE RESPONSES

How many work group meetings did you attend over the past three years?

- All but two or three in person, the rest I attended virtually.
- I attended over 100 meetings among the Work Group and other member meetings.
- Three in the past few months.
- At least 20.
- All with minor exception, including sub-group meetings.
- I only missed a couple of meetings. I attended well over 35.
- I may have only missed a couple of work group meetings and attended a couple hundred with our constituents on this issue.
- 60-70 percent. Content got bogged down on water quality and these were not productive for engineering.
- I was a replacement for someone, but I probably attended at least 15 meetings.
- All but one... 43.
- Attended all since August 2022.
- At least 75 percent online or in-person.
- Three.
- All but one. We have had smaller group meetings including with our constituents as well.
- Every meeting since September 2022. Plus about 200 side meetings.
- 15 – 20.
- Two to three dozen. Easily more than half
- 95 percent. Maybe I missed 3 to 5, but had a proxy sit in for me, when I couldn't be there myself.

Was your involvement and input taken seriously by other work group members?

- I was heard and taken seriously. Structure at times was decentralized which prevented all members from working together the whole time (there were breakout sessions outside of regular meetings).
- Yes, by the dischargers in the group. Previous DEQ staff were not listening to us. The current DEQ staff is finally listening to us.
- Yes.
- Yes and no. My concerns and input did not show up in the proposed standard.
- I don't know the answer to this question. We never had a conversation amongst each other. It was always with DEQ. We were talked at.
- Yes. We're on the land management side of this issue. We're non-point source focused.
- Yes and no. It seems like we gave a lot of information to DEQ, but we don't know if they seriously looked at it and considered it. We don't know if it effected the decision.
- Yes, in the moment. I did feel my most important input was dismissed out of hand for using EPA cost benefit analysis for nutrients.
- Yes, I think so.
- Yes.
- Yes, and I feel I helped to break down some communication barriers.
- I think so. There were things I wanted to know, and other members were more knowledgeable.
- I did not have the opportunity to comment much. There were things I would have commented on if I had the opportunity. There were members of the group that capitalized the time and covered a lot of information, and not giving others the opportunity to address certain pieces.

- I think so, but it started out as a lecture to us.
- I think so. I don't think the structure was designed for us to work things out.
- I believe my input was taken seriously. The follow-through was missing for the stakeholders I represent. The follow through wasn't necessarily there. I asked for summary information that I could share with my constituents and never received any.
- The involvement was taken seriously, but I don't think the input was taken seriously. It seemed DEQ had a predetermined outcome some of the time. I did get some thoughtful responses with documentation.
- Yes, for the most part. I helped to bridge the gap between industry and conservation. Things got repetitive after a while..

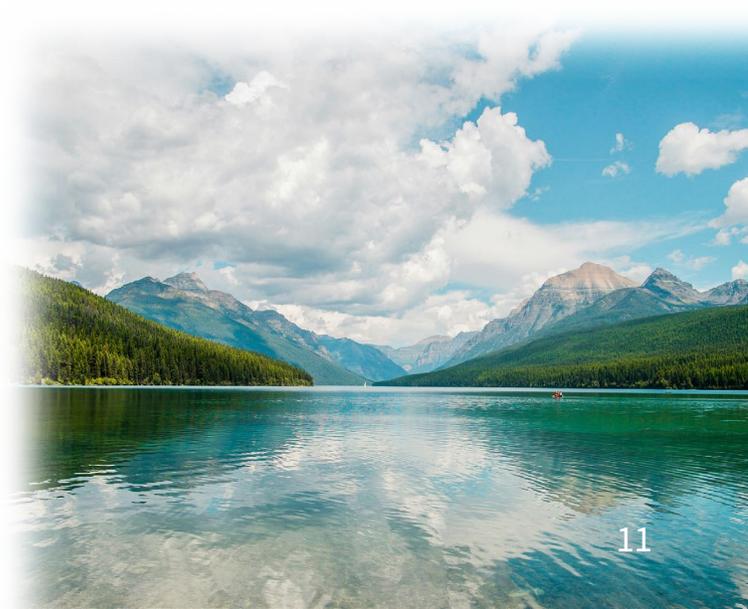
Did you agree with the terms of the work group charter, and do you feel any party failed to live up to the terms of the charter?

- Yes, and I had good access to DEQ staff. Some parties didn't understand what was on, or off the table for this effort (some people didn't realize that EPA has primacy on these standards).
- Most of the meetings, DEQ was presenting and preaching. This did not feel like a collaboration.
- I didn't have any issues with the charter.
- I feel DEQ dictated this process that led to an adversarial atmosphere.
- I didn't read the charter. DEQ was never going to do anything, but what George wanted to do. They just talked at us. DEQ insisted we were not going to revisit the science. By not revisiting some previous precedents, prevented us from possibly discovering new options.
- I believe the group held to the charter. The people who were most effected by the issue came to the meetings, but they were not as prepped as they should have been, and it seemed that some may have reviewed materials an hour before the meetings.

- I agree on most of it. I felt put-off initially with principals 2 and 3. We have more recent science than DEQ has. My whole job is to protect the river. DEQ is acting like Senate Bill 358 doesn't exist. We have no issue taking care of water quality.
- The workshops themselves were good. Good attention by DEQ, but poor follow-up. We got lip-service. They would not give us anything in writing and then nothing would go anywhere.
- I agree with the charter. I believe the group as a collective lived up to it.
- Yes, and Yes. People who represented environmental interests starting threatening lawsuits, and their very strong opinions set us back.
- Yes, and I believe DEQ lived up to it with transparency and inclusivity. There are some voices no longer at the table despite a concerted effort to them there.
- I agreed. One of the members from the Upper Missouri Water Keepers sued and stopped this process. It was dishonest participation and frivolous.
- I think this should have been a smaller group. Building consensus with over 20 people is really challenging. I don't think the first goal of the charter "to protect Montana waters and be implementable" was not met.
- I hardly remember what the charter says now. Technical sub-work group was a lecture and there were personality conflicts with DEQ staff who said they couldn't work with our experts.
- The charter seems obsolete to how the meetings are run now.
- I don't have any specific issues with the charter. My issues are within the legislation and the resources to achieve the new standards. I agreed to participate in this process.
- I did agree with the charter. DEQ did their best to uphold the stipulations of the charter. This took three times as long as it should of, but this may not be DEQ's fault.
- I agreed with the terms. It was a good way to kick off this process. We may have failed to provide productive solutions for what DEQ was proposing.

Did you provide input into this process that you feel was ignored completely, or inadequately addressed? If yes, what issue was ignored or inadequately addressed?

- None of the issues were fully ignored. What needs to be more adequately addressed is that non-point sources can help create off-sets for adaptive management plans for point source permits.
- There were a number of issues... for two years DEQ ignored “reasonable potential analysis.” You can’t regulate nutrients like toxins. DEQ will not give us the permitting limits. We must have this, and it must be in the rule. Put the RPA in writing.
- No issues.
- Our recommendations seemed ignored. Where is the cost-benefit analysis we asked for?
- Yes. 1.) We provided nine sections for adapted management plans, and it took a year to hear back from DEQ. 2.) What do we do in the interim because it’s going to take 5 years to get proper data to figure out the readings for existing loads. 3.) We wanted to make a presentation to the working group that focused on cost-benefit analysis, but none of this showed up in the rule. We identified a better program than using the variance system.
- No.
- The biggest issue is permitting. There is a void in how this will be done. There is no clarity on how reasonable potential analysis affects the decision. This is too vague and effects our support. Flow chart in DEQ Circular 15 doesn’t really say anything (Fig. 1-1). Management of toxins is more clear, and why are we treating nutrients like toxins? If you’re serious about adaptive management, then you have to incentivize non-point sources to engage in the solution with cities.
- Eco-regional standards. It’s not fair for other streams to attempt to match the North Fork or Blackfoot Rivers because there is no development on those streams. Use EPA cost benefit analysis for nutrients.
- People believed adaptive management is too reactive. We should look at proactive measures to determine the water quality of streams.
- My issues were not ignored. EPA and DEQ have no jurisdiction to regulate non-point sources.
- No. these people (DEQ) were amazing. They were patient.
- No.
- We submitted a lengthy letter before this draft rule was written and we received no response.
- We provided a 16 page redline to DEQ and probably a total of 50 page over time, none of which has been addressed.
- DEQ should consider adaptive management up front, like having nutrient trading credits as part of the strategy.
- What was inadequately addressed was how narrative standards were translated from numeric standards and how point source dischargers can use adaptive management to trade nutrient credits with non-point sources. Science was used. There is inadequate information on how all this works and how it’s measured. How do these two sources (point & non-point) equate. I’ve seen examples where upper Midwest states have done a better job doing this.
- My input that wasn’t addressed was actually out of alignment with the SB 358 mandate.



Were there aspects of the water quality standards and rule making process that you had difficulty understanding?

- No, I'm a certified hydrobiologist. I do realize that some people had difficulty understanding some of the information. There were technical breakout sub committees that eventually went away.
- Not really. Some science was not explained really well, for example, "Beck's Biotics Index." I don't understand all the politics behind the standards and rulemaking.
- No.
- Initially yes. But as the process moved forward, I learned a lot more.
- No.
- No.
- DEQ did a decent job for the rule-making process, but it's not clear how our input is being used and how they reach decisions.
- I'm not a water quality expert.
- Some of the topics were new to me, especially as it related to wastewater permitting.
- No.
- There was a lot of information I did not understand at the beginning, but I have gotten a lot of answers.
- Yes. I'm not a chemist and when it came to chemistry, I was oblivious. I relied on scientists.
- DEQ staff worked with me to get up to speed. This is a very complex and there are certainly parts of it that I don't understand.

- Variances and compliance standards are only temporary. Why make a rule that can't be met?
- It's a very complex set of rules. The biggest gap is how these standards make their way into the permits. There is no way to meet these standards. The explanation provided to us by two Ph.Ds. made none of this more understandable and people (Ph. Ds.) don't understand technology or policy.
- More specifically from the regulatory side. The challenges posed by the dischargers. I am good with science and standards.
- For sure. Often it was difficult to understand adaptive management flow charts. And, also how narrative standards respond to numeric inputs.
- The process was clear. I still struggle with the context of the standard of how translators affect reasonable potential analysis for permitting.

Did you seek additional information from DEQ representatives or other experts on topics involved with water quality standards, science and this process?

- Yes, I'm exposed to a lot of information due to my professional position (job). I studied other non-point source best management practices from around the United States, especially for the Chesapeake Bay watershed.
- Others in the group looked at rules for other states.
- No, I did not.
- Yes, and we had sub-group meetings. We also had access to several experts.
- Yes, the League hired two engineering firms in partnership with seven cities. We spent over \$100,000 to gain additional information and provide input into this rule-making process. We also received the input from water treatment operators and an environmental attorney.
- Mostly review of DEQ website and other sources about statutes and standards.
- Yes, attended a couple hundred meetings and consulted with national experts on nutrients.
- I reviewed previous DEQ documents because of this process. I did start paying better attention to water quality information that is available.
- Yes.
- Yes, an independent expert on water and hydrology that is a member of our organization.



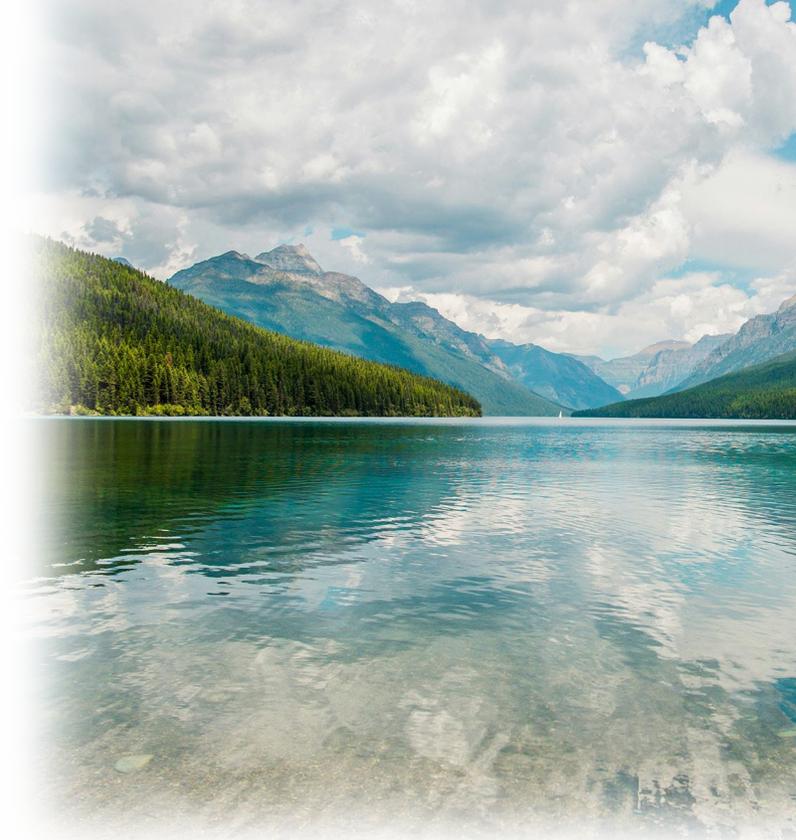
- We consistently talked about to bill proponents, mining interests and EPA. We want to understand the regulation and policy as it relates to new permits.
- Yes.
- Yes.
- We worked with our technical and legal staff.
- Yes.
- I did seek more information on my own to inform myself on regulatory matters and the history of this issue.
- I have been in conversation with my organization's science professionals, especially the affects of nutrients on trout and other fish. I did independent research on nutrient trading.
- Yes. I checked on data and references being used. Spoke with conservation stakeholders.

What did you like about the work group process?

- The whole thing was really interesting to me. "Mike" did a fine job with explaining standards. I liked the idea of using information from other states and best science because it's good to hear other perspectives. DEQ seemed to be open to all manner of comments including fiery dialog.
- There were people from all over the state and with different backgrounds all pulling at the same string. It was good to see this diversity.
- Monthly meetings were good to help us stay up to date and be informed.
- It helped people to better understand the good work that dischargers are doing to treat water, and the cost of doing this, and whether we can afford new standards. This process helped to build relationships. For example we invited some of the environmental groups to tour our treatment facility. More of this needs to happen.
- It brought all the regulated community together to create one strong voice that wasn't happening before.
- The logistics were managed well. The agendas and background information was provided well in advance of the meetings. Everything was transparent and the staff were clear and concise. Potentially affected stakeholders were in the room and the right people were in the room. The meetings ran in a logical progression.
- I do appreciate the ability to be heard. DEQ took the time and it's a complicated. There was meaningful dialog.
- All the various viewpoints were given an opportunity to share. All viewpoints were heard.
- I like that I didn't sit through three years of this.
- I'm not sure I liked any part of this process, but it had to be done. We had to solve a problem. We needed more time.
- I liked gaining the differing perspectives that I would not otherwise get, especially from municipalities and legal.
- I appreciated that everyone had a chance to be heard., and I could always ask staffers questions too.
- I thought the intention of bringing a broad group together to address this was good.
- I liked that people were willing to sit at the table. I had high hopes we would find a solution.
- I liked that we had good participation and people taking this seriously. But we don't know why some concerns are not being addressed.
- I appreciated their (DEQ) flow charts. I like the way they structured solicitation of input. They did have a facilitator early on, and then DEQ staff took this on. I understand the role of DEQ.
- I appreciate the open and vigorous debates and conversations.
- I liked the transparency it provided, and how DEQ was trying to understand how to make the package.

What could be improved for future DEQ sponsored work group processes?

- We could have benefitted by all being in the same room and being able to make eye contact. Some people participating virtually had their cameras turned off, even while talking and that should not have been allowed. EPA and DEQ need to be on the same page. EPA was too quiet at these meetings.
- Earlier in this process DEQ staff were not up to this task for this process. More interaction among work group members needs to be fostered. People do not always speak up in big meetings. We provided recommendations that we believe were ignored, and a timely response to our input would have been more professional.
- I have nothing to compare this to. DEQ was helpful.
- Have neutral facilitation at the beginning of the process. There needs to be a better log of input, and actual responsiveness in a timely manner. This is about accountability.
- Actually allow the work group members to work together and not get talked at by DEQ. Together we could figure this out. We could have built a Montana based program. There was no “working” part of this group.
- Managing group size, smaller is better. Keep meetings shorter. As these groups draw out, you start to lose people. DEQ could have made harder decisions to speed up the results. Complex problems don’t need this much time.
- DEQ should not always drive the agenda for stand alone meetings. These need to be more interactive. DEQ took a stand and deliver approach.
- Have DEQ keep a decision log. List input and identify why or why not comment is being acted on and explain, why or why not.
- Be considerate of the time commitment of participants and was it worth the outcome.
- Some DEQ staff are open and easy to work with, while others are territorial and defensive. Especially the DEQ director. He was curt and sometimes unprofessional.
- Time bound
- I don’t really have any suggestions. I liked the work group process. It’s thorough.
- The group should have been smaller. There were too many people to be able to build consensus. I would encourage DEQ to ensure that all participants are heard and their issues addressed.
- Listen to our concerns and don’t lecture us. Respond in a timely manner.
- They (DEQ) have not been transparent by not answering our questions. Sit at the table, don’t try to run the meeting. Make sure we get the two week window to review information before meetings. Do what you can to make the information more accessible. Everything was so technical and communicate why some information or processes are more important than others. DEQ staff turnover, made this uneven. They tried to run meetings the same way.
- It felt like DEQ was already scripting the rule while we were still discussing things. I don’t feel like we started with a blank page. And, I have to admit that I came to this biased against changing from numeric to a narrative rule. There were too many drafts versions of the rule circulated.
- Having some sub-groups that separate the policy from the technical issues. Finding a space to take more points where people don’t agree and facilitate this would be helpful. I did not like the facilitator that DEQ first used. He seemed bias and unable to accept feedback.



What specific concern do you have with the proposed new narrative rule?

- I do not have specific concerns at this time. I have faith that DEQ will keep refining the rule and the adaptive management process.
- The absence of permitting language and the RPA is troubling and so is the absence of guidance for us to follow outside of the rule. There is no funding for this, especially for small dischargers. This is an unfunded mandate. These rules are not set to help smaller communities with some funding.
- None at this time.
- The “eco-region” standards scheme scares me and it’s unreasonable. Inclusion of EPA numeric standards cancels out adaptive management standards. There are no incentives for non-point sources to be part of the solution. How do we plan for the new standard without more clarity from DEQ? We don’t know what to expect three years from now. We spend a lot of money to treat our water.
- 1.) EPA asked for a crosswalk to show how numeric standard requirements showed up in the narrative standard. 2.) DEQ has not provided anything about permitting to help dischargers comply with the new rules.
- My biggest concern is there is a tight line between the intent of the statute (Senate Bill 358) and the Clean Water Act. This will probably be decided by a judge and probably fall back to numerical standards. The EPA will decide.
- How permitting is going to be done and reasonable potential analysis. We don’t disagree with what needs to be regulated.
- I don’t think the adaptive management approach incentivizes non-point sources. Eco-regional standard makes adaptive management pointless for dischargers. Single value measurements like algae on rocks is squishy and not serious. Numerical values are serious. We asked for a 20-year window for improvement and instead we get 15 years broken into 5 year increments.
- I don’t have a specific concern. General concern is process felt rigged. The State of Montana knew what they wanted from the outset. They rushed this and threw this at us.
- I didn’t have any concerns. We’re a non-point source and were volunteering.
- None
- The response variables and the way they are measured are within the range of minimum vs. maximum effectiveness. The new rule is weakening the current standards. This is backsliding. There is no incentive for dischargers to be more protective. The science doesn’t support why we are prioritizing phosphorus over nitrogen.
- There has to be current technology available to comply with the rule and it has to be affordable.
- I’m concerned that it will be challenging for rural municipalities. That the rule is so strict that it will be irrelevant.
- They (DEQ) don’t follow the intent of SB 358. They are still using numeric standards. Don’t have preconceived notions. I thought this was going to be a good process.
- We are no closer today than when we started to try and meet the requirements of SB 358. It’s unbalanced and unattainable.
- They are passing a lot of the burden onto discharger and they are not providing the resources to facilitate that. The narrative standard is reactive and will be difficult to manage. Don’t throw permit holders out on their own.
- Providing more clarity. There is uncertainty on how this applies to permit limits. The narrative standard is not protective. It takes too long to understand the effects. It allows for elevated levels of chlorophyll before action is taken and prioritizing phosphorus isn’t effective. This allows for degradation. DEQ should separate beneficial use from permits.





If you have a concern with the proposed new narrative rule, what would resolve your concern?

- DEQ needs to get this on the books. We need to see where the flat spots are and work through it. However, we need to see an organically structured adaptive management approach (not a toxics based methodology).
- Provide funding or have DEQ do the additional sampling that will be required and to help cover the plan fees that smaller communities will have to cover.
- Nothing at this point.
- DEQ actually answering the questions we've asked and providing more information would be helpful. Asking point source dischargers to pick up all the cost of testing needs to be addressed. We're put in a position that we can no longer answer questions to our public and elected representatives. How do we plan without more clarity from DEQ?
- We need to keep going to figure out what works for everybody. We need a true adaptive management program that allows for a five year baseline of data before setting limits. We need to pause at secondary treatment before determining if tertiary is necessary. Most beneficial use is just focused on recreational and never associates aesthetic views to the cost to achieve them. Algae on rocks doesn't kill fish.
- My stakeholders are not concerned at this point. The concept of adaptive management plans are working.
- Would you please tell us exactly how permitting works and exactly how you're doing reasonable potential analysis. Can we put money upstream to prevent or treat non-point source nutrients before they reach our municipal systems?
- Remove references to eco-regional standards. Incentivize non-point sources to engage utilities.
- Some of the metrics used to measure response are too complex, yet inconclusive. Using only one method of measuring response variable such as chlorophyll A. Who can interpret these tests? Who has the time? Nutrient Diffusing Substrates, (NDS) concerns me..
- For point source, we need more time. I don't believe they have been heard. It looks like they are going to pay millions more for little improvement. It feels like at the end of this process we're actually back to a numeric standard.
- I think it's well done. It looks at more data and is site specific.
- There is not a one-size fits all solution. Parties need to sit down and negotiate.
- I will provide formal comment to the Department.
- We have given them information from competent technical people, engineers who showed them how we could attain standards. We need to have answers. DEQ appears to be going for a maximum achievable goal instead of a best available technology and cost-benefit approach.
- We gave them detailed alternatives and they are moving forward without this. They didn't take this helpful information into account.
- Seeing more standardized adaptive management options for the permit holders (templates). Package potential solutions, especially for those that will have difficulty meeting the new narrative standards. I recognize this is easier said than done. They (DEQ) could provide more information outside of this forum.
- If the ranges of detection were set at the lowest level of numeric standards rather than allowing higher level of nutrients. More explicit identification of what type of non-point sources are prioritized so we can see if progress is being made. There is too much self-policing for response variables. DEQ needs to be the ones actually doing this work instead of self-policing.
- Repeal SB 358. Repeal the phosphorus requirement and do not allow for degradation.

OTHER RESPONSES

- We felt throughout this process that DEQ was beholden to EPA. We want something that works for the state. DEQ seems to ignore suggestions that are well within the rules, regardless of what EPA says.
- Environmentalists checked out after the first year.
- I would like to understand if agricultural interests would be open to incentives.
- Director Dorrington is pushing that we are doing a good job, but I respectfully disagree.
- When we've put this much energy into this process with DEQ staff and so many stakeholders and experts, we should be in a better place than we are. What is the cost-benefit, where is the money for return on investment?
- The secretary of state does not tell agencies when to file their rules.
- We are not against science. The question is, how is science being used.
- WPIC is waiting for this draft. I hope they tell DEQ to go back to the drawing board. The entire work group should be involved. Timber has BMPs already in place that could be emulated. Non-point sources need to stay involved.
- The flow chart for adaptive management plans discussed in Senate Bill 358 says phosphorus is a priority. The rule has this backward. Make a plan for phosphorus instead of setting a limit first. Call it a "load" instead of a limit.
- Build trust. We wanted to trust them, and they wanted us to trust them (DEQ).
- Kudos to the DEQ. They had to deal with really poor legislation, and they rolled with all the circumstances of conducting this process. This review is a good temperature check before making the rule.
- DEQ showed how they do reasonable potential analysis for toxics, but not for how they will do it for nutrients.
- Dave Clark with HDR Engineering has written papers on WEF and on how to do RPA.
- I was very disappointed with what the DEQ director said at the last WPIC meeting. This issue has never been about killing fish. He misrepresented the issue. This is about how green is too green. This is partially about the optics for someone recreating on the river. DEQ acts like we don't do science. We do testing and science every day. We could spend a lot of money and have nothing to show for it.
- This was a very time intensive process for people who are already overwhelmed including DEQ. Industry representatives were very generous giving this much time, only to feel our input was ignored.
- I want to see a comments and commitments list and answers.
- We received a lot of comments at smaller group meetings that did not get shared with the entire group. That put DEQ and this process at a disadvantage.
- We are not asking to pollute. We are asking for reasonable and affordable means to treat water. Previous rules recognized technology is not yet in place to achieve some standards.
- This is going to result in more legislation and litigation. SB 358 directed that an adaptive management approach is supposed to be used, but the way the proposed rule reads now, it puts in unattainable placeholder standards.
- I want to recognize that DEQ is doing a good job with public outreach, including social media posts. They are trying to make this easier to understand, especially lately within the past 6 months. This is really positive.
- There are finally some documents that help to better explain adaptive management.
- I do think DEQ met the mandate of the work group even though I don't like the decision. DEQ has been put into an impossible position to try to meet the requirements of the Clean Water Act in this way. After all this time it's disappointing that so many have difficulty with this rule package. Some representatives, some work group members could not put aside their organizational positions to more positively create a solution.

