

## **Examples of Feedback Received from Nutrient Work Group Members and Incorporated by DEQ during Rule Development**

### **Nutrient Work Group**

- DEQ was continually asked for more time for NWG consultation.
  - DEQ adopted a framework rule in 2022 as a placeholder to meet statutory deadline in SB 358 following agreement with NWG to allow more time for consultation.
  - DEQ devoted an additional two years to rule development -- beyond the SB 358 statutory deadline of March 1, 2022.
  - DEQ agreed to postpone rulemaking initiation in early 2024 to provide additional time for review, despite DEQ believing the rule package was ready to file.
- DEQ was asked to improve clarity.
  - DEQ accepted extensive editorial suggestions in draft rules and circular and delivered many presentations to review the content.
- DEQ was frequently asked for additional meetings with individuals or interests outside of entire Nutrient Work Group meetings.
  - DEQ held dozens of separate meetings, hosted listening sessions, held technical subcommittee meetings, etc.
- DEQ was asked to include additional representatives in Nutrient Work Group meetings.
  - DEQ was open to input from stakeholders that were not identified as NWG members during NWG meetings, including open dialogue from additional representatives from some stakeholder interests during Nutrient Work Group meetings as well as during a public comment period held at the end of each meeting.

### **Bill Proponents/Dischargers**

- DEQ was asked for the flexibility to explore cost-effective approaches to nutrient load reduction and comply with permit limits.
  - DEQ expanded available compliance options by developing a flexible adaptive management program.
  - The adaptive management program allows for both point and/or nonpoint source load reduction strategies in the watershed, and considers relative nutrient loads from different sources, current treatment for nutrients, estimated cost of projected facility upgrades, limits of technology, and other considerations.
  - DEQ adopted ARM 17.30.662 in 2022 to ensure that variances remain a compliance option available to all permittees.
  - Permittees can opt to enter or leave adaptive management to pursue alternate compliance options.
  - DEQ did not preclude the use of any available compliance options.
- DEQ was asked for biological response variables to be more heavily weighted in compliance decisions as compared to numeric nutrient standards in DEQ-12A.
  - DEQ developed decision frameworks structured this way in DEQ-15 (Part I, Section 3.2).

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- DEQ was asked to enable prioritization of phosphorus reductions before nitrogen reductions are required.
  - DEQ incorporated phosphorus prioritization throughout NEW RULE II.
- DEQ was asked to reasonably balance all factors impacting a waterbody.
  - Important environmental factors were analyzed and are now included for consideration in the circular (e.g., drought, influence of dams, specific conductivity, spring creeks).
  - Ability to adjust the permit limit by accounting for reductions achieved via both/either point and nonpoint sources throughout the watershed.
- DEQ was asked to incorporate site-specific data into standards attainment and permit decisions.
  - DEQ included adequate time (3-5 years) to monitor instream conditions and included both upstream and downstream monitoring to provide sufficient data for reasonable potential determinations, permit limit assessment, and adaptive management planning.
  - DEQ acknowledged the potential for applying different translator thresholds than those applied to the broader ecoregion, or for development of site-specific standards, if necessary and if justified based on site-specific data.
- DEQ was asked to account for natural variability in biological response variables.
  - DEQ developed regional-specific response variables and thresholds.
  - DEQ incorporated an allowable number of exceedances of the thresholds.
  - DEQ allows averaging of biological conditions over time.
- DEQ was asked to consider whether the point source is new or existing and whether the receiving water is impaired or unimpaired.
  - DEQ specified in Circular how existing TMDL documents with wasteload allocations would be revised where an AMP is developed.
  - DEQ specified how AMPs may integrate with Advanced Restoration Plans or prioritization for future TMDL development.
- DEQ was asked, with the transition to narrative standards, to apply narrative nondegradation provisions.
  - DEQ's proposed rule amendments clarify that the narrative nondegradation provision (ARM 17.30.715(1)(h)) applies to parameters addressed in NEW RULE I.
- DEQ was asked for technical support for the adaptive management program.
  - DEQ developed a detailed guidance document and associated SOPs, AMP and annual reporting templates, online tools, etc.
  - DEQ created and filled a full-time AMP scientist position.
  - DEQ is developing a suite of training materials.
- DEQ was asked to allow for data to be excluded if it is considered outdated when making AMP, permitting, standards attainment, or other decisions.
  - DEQ explained in Circular that data can be excluded if no longer representative of current conditions.

- DEQ was asked to provide MPDES permitting guidance as part of the rule package, including guidance on how reasonable potential will be assessed in permits and how limits will be calculated.
  - DEQ provided a presentation of how RP and limits will be assessed for nutrients at the Feb 26 2024 NWG meeting.
  - DEQ explained to NWG members that the development of permitting guidance should remain separate from rulemaking to allow for greater flexibility in implementation, and subjects the resulting documents to EPA review as part of the standards review process.
  - DEQ has committed to developing MPDES permitting guidance documents after the approval of a narrative standard.
- DEQ, in late 2021 and early 2022, documented in detail the relationship between the Montana League of Cities and Town's Procedural Discussion Proposal and (1) the Framework Rule and (2) 10/18/2021 draft department documents (rule, Circular DEQ-15, guidance). Details were captured in NWGProcedure\_CrossWalk.xlsx
  - This fine-detailed approach to addressing stakeholder proposals was covered over the course of several NWG meetings but was unpopular with the NWG at the time due to the degree of minutia; it appeared that bigger-picture ideas and approaches still needed to be addressed.
- DEQ, on February 16, 2024, received from the Montana League of Cities and Towns, Montana Mining Association, Montana Petroleum Association, and Treasure State Resources Association, a red-line/strikeout version of NEW RULE I and II and, over the course of two lengthy internal DEQ meetings involving cross-department staff and management, evaluated each change and accepted all changes it could reasonably incorporate.
  - The changes DEQ incorporated are reflected in the proposed rules (MAR 17-434).

### **Environmental**

- DEQ was asked for assurance that the new standards would be protective of beneficial uses.
  - DEQ included biological response variables which are direct measures of beneficial use support and is clear that the standard is not attained if any one response variable threshold is exceeded.
  - DEQ updated and expanded its scientific analysis to ensure the response variable and causal variable thresholds were appropriate and protective of the most sensitive beneficial uses.
  - DEQ specified extensive monitoring requirements, including instream, to evaluate if thresholds are met.
- DEQ was asked to ensure that Montana's nutrient standards adhere to federal Clean Water Act requirements.
  - DEQ adhered to EPA combined criterion guidance in the development of new rules and Circular.
  - DEQ has consulted extensively with the EPA throughout the development of the combined criterion and to resolve any technical concerns that may affect approvability, including which response variables and thresholds are appropriate and protective of most sensitive use.
  - DEQ acknowledges throughout the circular that EPA approval is necessary for any site-specific standards adoption.
  - DEQ has outlined how the narrative nutrient standards will be implemented in 303(d) and MPDES permitting programs.

- DEQ was asked for assurance that permittees will be held accountable if implementing nonpoint source reductions in lieu of facility-based reductions.
  - DEQ required in NEW RULE II written agreements for nonpoint source projects.
  - DEQ required load reduction estimates to be included in AMPs to inform project selection and department review and approval of AMPs.
  - DEQ requires interim performance milestones and annual reporting under the adaptive management program.

**EPA**

- DEQ was asked to ensure that response variables and thresholds are appropriate and protective of the most sensitive use.
  - DEQ has conducted additional data collection, scientific analyses, and technical support documentation to address technical concerns expressed by EPA.
- DEQ was asked to ensure that Montana’s nutrient standards adhere to federal Clean Water Act requirements.
  - DEQ adhered to EPA combined criterion guidance in the development of new rules and circular.
  - DEQ has consulted extensively with the EPA throughout the development of the combined criterion and to resolve any technical concerns that may affect approvability, including which response variables and thresholds are appropriate and protective of most sensitive use.
  - DEQ acknowledges throughout the circular that EPA approval is necessary for any site-specific standards adoption.
  - DEQ has outlined how the narrative nutrient standards will be implemented in 303(d) and MPDES permitting programs.
- DEQ was asked to ensure that the implementation of narrative nutrient standards by the MPDES program, including the adaptive management program, adheres to federal Clean Water Act requirements.
  - DEQ does not preclude the use of any approved compliance option.
  - DEQ was clear that the adaptive management program will be implemented as a long-term compliance schedule which must achieve milestones as soon as possible.
  - DEQ verified that appropriate compliance tools (e.g., compliance schedules, variances) will be applied to nitrogen during P prioritization.
- DEQ was asked to provide information on how this standard would be implemented for purposes of 303(d) assessment and listing of impaired waters.
  - DEQ provided draft assessment methods for review alongside the rule package which explain data requirements, decision frameworks, and other information pertinent to assessment.