In The Matter Of:

Before the Department of Environmental Quality
Rules Hearinag

Transcript of Public Hearing
June 10, 2024

Lesofski Court Reporting, Inc.
7 West Sixth Avenue, Suite 2C
Helena, MT 59601
406-443-2010

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of adoption of NEW RULE I and NEW RULE II, the amendment of ARM 17.30.201, 17.30.507, 17.30.516, 17.30.602, 17.30.619, 17.30.622, 17.30.623, 17.30.624, 17.30.625, 17.30.626, 17.30.627, 17.30.628, 17.30.629, 17.30.635, 17.30.702, 17.30.715, and 17.30.1304, the repeal of ARM 17.30.660 and 17.30.1388, and the adoption of Circular DEQ-15 pertaining to translation of narrative nutrient standards and implementation of the Adaptive Management Program	)

PUBLIC HEARING

On the 10th of June, 2024, beginning at 10:00 a.m., a hearing was held in Room 111 of the Metcalf Building at 1520 East Sixth Avenue, Helena, Montana, before Holly E. Fox, Court Reporter and Notary Public.

A P P E A R A N C E S

APPEARING ON BEHALF OF MT DEQ:

Kurt Moser, hearing officer
Lindsey Krywaruchka
Loryn Johnson

The following proceedings were had and testimony taken:

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HEARING OFFICER MOSER: Okay. Good morning. This is hearing is called to order. Let the record show that it is 10:01 a.m. on June 10, 2024. This hearing is taking place both in person at -- and at DEQ's Metcalf office in Helena and virtually via Zoom. The meeting will be recorded.

This is the time set for the rulemaking hearing in the matter or the proposed adoption of New Rule I and New Rule II; the amendment of ARM 17.30.201, 17.30.507, 17.30.516, 17.30.602, 17.30.619, 17.30.622, 17.30.623, 17.30.624, 17.30.625, 17.30.626, 17.30.627, 17.30.628, 17.30.629, 17.30.635, 17.30.702, 17.30.715, and 17.30.1304; the repeal of ARM 17.30.660 and 17.30.1388; and adoption of Circular DEQ-15 pertaining to translation of narrative nutrient standards and implementation of the adaptive management program.

This proposal was originally published in the Montana Administrative Register, MAR Notice Number 17-434 at Pages 794 to 817 on April 26, 2024.

My name is Kurt Moser, and I'm an attorney with

the Montana Department of Environmental Quality, and I'll preside over the hearing today.

Section 2-4-302, sub 7, MCA, and Administrative Rule of Montana -- Administrative Rules of Montana 1-3-311 require me to read the Notice of Function of the Administrative Rule Review Committee. It is as follows.

Notice of Function of Administrative Rule Committee: Interim Committees and the Environmental Quality Council. Administrative rule review is a function of interim committees and the Environmental Quality Council. These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to the agencies for administrative purposes.

For the Economic Affairs Interim Committee, the Department of Agriculture, the Department of Commerce, the Department of Labor and Industry, the Department of Livestock, the Office of the State Auditor and Insurance Commissioner, and the Office of Economic Development, Division of Banking and Financial Institutions, Alcohol Beverage Control Division, and the Cannabis Control Division.

For the Education Interim Committee, state Board of Education, Board of Public -- Board of Public Education, Board of Regents of Higher Education, Office of Public Instruction, Montana Historical Society, and the Montana State Library.

For the Children, Families, Health, and Human Services Interim Committee, the Department of Public Health and Human Services.

For the Law and Justice Interim Committee, the Department of Corrections and the Department of Justice.

For the Energy and Telecommunications Interim Committee, the Department of Public Service Regulation.

For the Revenue Interim Committee, the Department of Revenue and the Montana Tax Appeal Board.

For the State Administration and Veterans' Affairs Interim Committee, the Department of Administration, Montana Public Employees Retirement Administration, Board of Investments, Department of Military Affairs, Office of the Secretary of State, and Office of the Commissioner for Political Practices.

For the Transportation Interim Committee, the

Department of Transportation and the Motor Vehicle Division of the Department of Justice.

For the Environmental Quality Council, the Department of Environmental Quality, the Department of Fish, Wildlife and Parks, and the Department of Natural Resources and Conservation.

For the Water Policy Interim Committee where the primary concern is the quality or the quantity of water, the Department of Environmental Quality, the Department of Fish, Wildlife and Parks, and the Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule; and to request that the agency prepare a statement of estimated economic impact of a proposal. They also may poll the members of the legislature to determine if a proposed rule is consistent with the intent of the legislature; or, during a legislative session, introduce a bill repealing a rule or directing an agency to adopt or amend a rule or a joint resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear

before them and to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address P.O. Box 201706, Helena, Montana 59620-1706.

I'm also advising everyone present today of the requirement in Montana law that agencies of state government create and maintain a list of persons who are interested in that agency's rulemaking proceedings. An agency's interested persons list must indicate the subject or subjects in which each person on the list is interested. Persons whose names are on the list will receive notice by mail of all agency rulemaking notices in the subjects indicated. Anyone attending today who would like to have his or her name placed on the Department and Board of Environmental Review's interested persons list may do so by filling out one of the forms available by the door today or by making a written request to Loryn Johnson, paralegal, Department of Environmental Quality, 1520 East Sixth Avenue, P.O. Box 200901, Helena, Montana 59620; fax your request to the Department's offices at (406) 444-4386; or email a request to Loryn Johnson at loryn.johnson2@mt.gov. Please indicate which area of rulemaking interests you so that the Department

can notify you of future rulemaking in that area.

Notice of this hearing was published on April 26, 2024, in the 2024 Montana Administrative Register, beginning on Page 794 of Issue Number 8 and under Notice 17-434.

As required by ARM 1.3.311 of the Secretary of State's model rules, which have been adopted by the Department, I'm required to summarize the major provisions of the hearing notice.

Paragraph 3 of the hearing notice sets forth the text of the proposed New Rules I and II, as well as the legal authority and rationales for their adoption, and the rationale for the adoption of Circular DEQ-15. Because of the length of the new rules and also the rationales, I will not read the rules or those statements into the record. A complete copy of the hearing notice will be included in the official record of this hearing, and copies are available here today.

Paragraph 4 of the hearing notice sets forth the text of the proposed rule amendment, as well as the legal authority and rationale for their amendments. Because of the length of the amendments and the associated rationales, I will not read them into the record today.

Paragraph 5 of the hearing notice sets forth the rules the Department has proposed to repeal, as well as the reasons for the repeal. The repeal of ARM 17.30.660 is an administrative update to remove a rule that was directly repealed by Senate Bill 358 from the 2021 legislative session. The repeal of ARM 17.30.1388 is necessary because the rule will be unnecessary and redundant based on the proposed adoption of New Rules I and II in this notice.

Paragraph 7 of the hearing notice indicates that concerned persons may submit written data, views, or arguments to the Department of Environmental Quality at 1520 East Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; fax at (406) 444-4386; or email at DEQMAR17-434@mt.gov no later than 5:00 p.m. on Monday, June 10, 2024 -- today. To be guaranteed consideration mailed comments must be postmarked on or before today's date.

Paragraph 9 gives notice that the Department maintains rulemaking interested persons lists and indicates how persons may have their names placed on the list to receive notification from the Department regarding rulemaking matters. The Department is required by MCA 2-4-302, Sub 7, Sub b, to send a copy of each proposed notice of rulemaking to

interested persons who have requested to be informed of the Department's rulemaking proceedings, or, if a person has considered -- has consented, electronic notification that the proposed notice is available on the Department's website with a link that contains the notice.

The order of presentation of testimony today will be as follows:

I will ask a representative of the Department to provide an introductory statement about the proposed rulemaking. I will then ask to hear the testimony of proponents; first, those appearing in person and then those online. Then we will hear the testimony of opponents; first, in person, then online. Then we will hear the statements of anyone else wishing to be heard; again, in person and then online. And finally, I will then ask for any written comments that any person who does not submit oral testimony may wish to provide here today.

If you wish to present views -- data, views, arguments, or other testimony, either orally or in writing, please write your name, address, and affiliation on the sign-up sheets that are available near the back of the room. Please also indicate whether you support or oppose the proposed rules.

If you are appearing online via Zoom and wish to present data, views, arguments, or other testimony, please write your name, address, and affiliation in the chat feature of the Zoom platform. Please also indicate whether you support or oppose the proposed rules, or take no position, in the chat feature.

If you are appearing online and wish to present written testimony, please postmark mail no later than today, Monday, June 10, 2024, or fax or email the Department as I previously indicated.

This is an informational hearing, the purpose of which is to hear any and all relevant comments regarding the proposed rules and the proposed amendments and the repeal.

Formal rules of evidence will not be observed, but testimony must be relevant to the matter at issue in this hearing; that is the proposed adoption of New Rules I and II pertaining to the translation of narrative nutrient standards and the implementation of the adaptive management program, as well as the amendment or repeal of the rules I have previously mentioned.

Copies of the hearing proposed notice, as well as DEQ Circular 15, are available here today.

As the presiding officer, I may also examine any

witnesses making a statement here today.

I guess I would -- there appears to be a fair amount of folks in the room, so I would ask you to limit your testimony if you're providing testimony today to no more than 10 minutes.

If you are appearing virtually, please use the "raise hand" feature in the Zoom application to indicate you would like to speak. When you are called upon to speak, DEQ will unmute you. If you are joining by phone, press star-9 to raise your hand, press star-6 to mute or unmute yourself. Prior to giving any testimony here today, please identify yourself by name, address, and affiliation, if any.

I will now ask the representative from the Department to present an introductory statement.

MS. KRYWARUCHKA: Good morning. My name is Lindsey Krywaruchka. I am the division administrator for water quality at the Department of Environmental Quality. I'm here to provide an introductory statement concerning the purpose of the rulemaking that is the subject of the hearing today, MAR Notice Number 17-434.

Montana, with the rest of the nation, has long considered excess nutrients a priority in water

quality management. When I speak about nutrients, I am referring to total phosphorous and total nitrogen in state surface water. In excess nutrients impact the ability of rivers and streams to support their valid beneficial uses, include fish, aquatic life, and recreation.

The Department adopts water quality standards to establish water quality goals for our state waters. We designate the beneficial uses that our waters should support, and then we set criteria to protect those uses. Montana adopted a narrative water quality standard applicable to state surface waters in the 1970s. That standard centers on preventing undesirable aquatic life. The Department has long used this standard for addressing excess nutrient problems.

In 2014 Montana adopted base numeric nutrient standards for wadable streams and some large river segments. These numeric standards were adopted in Circular DEQ-12A and supplemented the narrative standards which remained in place and continued to be used to interpret eutrophication-based impacts to water quality from nutrients in non-DEQ-12A waters.

Then in 2021 the Montana legislature passed Senate Bill 358, which required the Department to

delete all references to the numeric nutrient standards and to adopt new rules related to nutrient -- or narrative nutrient standards in consultation with the Nutrient Work Group. The new rules were to include an adaptive management program, a program which provides for an incremental watershed approach for protecting and maintaining water quality, while reasonably balancing all factors impacting a water body, prioritizing phosphorous minimization and identifying appropriate response variable affected by nutrients and associated impact thresholds.

The Department has been working diligently in consultation with the Nutrient Work Group since May of 2021 to develop the rules that are the subject of today's hearing. We appreciate the time an input the work group members have contributed to this rulemaking process. The Department believes that the rules before us today fulfill the requirements of Senate Bill 358. The Department is proposing to adopt two new rules and a new department circular detailing procedures and requirements related to the narrative nutrient standards. We are also repealing and amending existing rules to reflect this transition.

New Rule I in Circular DEQ-15 provides translators for the narrative nutrient standards; each translator being applicable to different regions of Montana and different categories of streams and rivers. These translators provide a consistent approach for determining whether the narrative nutrient standards are met. Each translator combines nutrient causal and in-stream response variables, plus protective impact thresholds for each. Developed using Montana-based science, response variables include measures of the bottom-dwelling aquatic insect -- that is macroinvertebrate population; the changes in dissolved rock and changes is dissolved oxygen. The narrative translators place greater emphasis on the biological responses measured in the river or stream and less emphasis on the actual in-stream nutrient concentrations when deciding whether aquatic life and recreation uses are supported. The more biologically-oriented approach can provide a more accurate assessment of each river and stream and is consistent with other states such as Minnesota, Ohio, Vermont, and Utah.

Numeral II in Circular DEQ-15 describes in the implementation of an adaptive management program

within Montana's surface water pollutant discharge permitting program. New Rule II adds a new compliance option to afford permittees greater flexibility in how they achieve compliance with their nutrient permit limit and conditions. The Department has long acknowledged that reducing nutrients in state waters has economic implications for our communities and businesses. For example, the Department began examining the potential economic impact of the numeric nutrient standards in 2007, a full seven years before those standards were ultimately adopted. With today's rulemaking I want to emphasize the Department's ongoing commitment that we will ensure that the economic impacts of reducing nutrients in our watersheds is given due consideration.

With the new adaptive management program, compliance schedules can be used to achieve incremental nutrient production milestones over time and allowing permittees to prioritize phosphorous reduction when appropriate. The new program also presents an opportunity for point source dischargers to engage in partnership to achieve nutrient reductions throughout their watershed, including from non-point sources of nutrients, as an

alternative to costly facility upgrades. Importantly, the adaptive management program is optional and does not include permittees from -- or does not preclude permittees from pursuing other compliance options available under federal and state law or changing to a different compliance option at a later date.

Together, New Rule I and II aim to protect water quality, improve permittees' ability to affordably comply with nutrient permit limits, fulfill the requirements of Senate Bill 358 and MCA 75-5-321, and comply with the Montana Water Quality Act and the federal Clean Water Act.

The Department remains committed to working with permittees to identify the most appropriate and useful means of achieving compliance with their permits and remains committed to protecting water quality and beneficial uses for the benefit of all Montanans and the environment.

I have several documents to submit for the record: A copy of the Department's introductory statement, which I have just read, and an analysis that these rule changes are not more stringent than federal regulations or guidelines and do not have takings implications.

This concludes the Department's introductory statement.

Thank you.

HEARING OFFICER MOSER: Thank you. Let the record reflect I'm taking those documents that Ms. Krywaruchka had just mentioned that she was providing for the record. I'm taking them into the record now.

Okay. Are there -- now I'll go to -- if there are any proponents -- are there any proponents of this rulemaking, people who are in favor of the rulemaking, who wish to testify here in person today?

Okay. Seeing none, is there anyone online that wishes to -- any proponents of the rulemaking who wish to testify that are online today?

MS. JOHNSON: If you are for this amendment, can you raise your hand, and I will promote you to speak.

Seeing none online.

HEARING OFFICER MOSER: Okay. Seeing none online, are there any persons here who oppose this rulemaking who wish to testify in person today?

Okay. Please, I guess, approach the -- I don't have a list of those people that I can -- I think

you signed up in the back, so if you would please come to the podium and -- and testify.

Please state your name and your affiliation.

MR. WOOLEY: I'm Ken Wooley, general manager --

MS. JOHNSON: Click on microphone.

MR. WOOLEY: I'm Ken Wooley. I'm the general manager at the -- for the Montana operations for Westmoreland. I'm also submitting extended comments, so I'll support those with brief oral comments.

I'm here to present comments on the proposed nutrient water quality standards detailed in Montana MAR 17-434. Westmoreland has proudly operated in Montana for many years with our Absaloka, Rosebud, and Savage mines, contributing significantly to the state's economy while upholding the highest standards in safety and environmental reclamation. However, we have several critical concerns about this proposed rule.

Firstly, the translation of nutrient standards to numeric values directly opposes the legislative directive to establish narrative standards as directed in MCA 75-5-321 and Senate Bill 358. The proposed numeric standards for total nitrogen and

total phosphorous remain largely unchanged from the previously unachievable Circular DEQ-12A standards, particularly impacting the eastern ecoregion.

Furthermore, the introduction of numeric standards for response variables complicates compliance unnecessarily. These standards risk deeming a water body noncompliant on this technicality despite it supporting all beneficial uses. This reinstates the unachievable numeric standards outlawed by the legislature and adds new previously unregulated parameters heightening compliance risk for permittees.

The response variable standards are problematic, particular in the eastern ecoregion where dissolved oxygen delta must be monitored under impractical conditions. August often sees intermittent streams reduced to isolated pools, making the required 14-day continuous monitoring unrealistic. Additionally, the introduction of biotic insects, Version 3, is not an industry standard. It raises concerns due to its lack of validation and unexplained deviation from established metrics like the Hilsenhoff Biotic Index.

Moreover, the proposed rules do not adequately justify the impossibly low numeric standard for

protecting recreation and aquatic life. Standards based on subjective public opinion surveys fail to differentiate between natural and anthropogenic algae levels, making them unsuitable for regulatory purposes.

We are also troubled by the delay in revising existing total maximum daily loads, TMDLs, to align with narrative standards. The proposed three to five years of data collection before considering the water quality compliance determinations and TMDL revision is unjustified and leaves the repealed DEQ-12A scheme in place contrary to the legislative direction.

Additionally, the lack of clear permitting guidance under the proposed rules create uncertainty and potential for permit limits that exceed the capabilities of even state-of-the-art treatment technologies. This imposes substantial economic and technical burdens on existing and new dischargers, effectively hindering development.

Another concern is the reliance on compliance schedules, variances, and adaptive management plans. These are not proven or effective long-term solutions. They provide temporary relief, at best, and come with substantial litigation risks.

Ultimately, the standards and resulting effluent limits must be met, but current technology does not support achieving these standards. This reality poses severe legal and operational risk for permittees. When Montana first considered numeric standards for total nitrogen and total phosphorous, the legislature acknowledged the significant economic impact of such regulations. Numeric standards were contingent on variances being available for both public and private dischargers. However, private dischargers were denied general variances by the EPA and there remains no clear pathway to obtain one. The Ninth Circuit upheld public general variances, noting that water quality standards must protect public welfare, which includes considering substantial and widespread economic impacts. Therefore, implementing numeric nutrient standards is not consistent with legislative or federal Clean Water Act intentions. The proposed rule reinstates these numeric standards without addressing the negative economic impacts contrary, again, to legislative direction.

In conclusion, Westmoreland strongly urges the Department to suspend the proposed rule package in MAR 17-434. The focus should be on development of

truly narrative standards that meets legislative requirements and practical environmental management needs without imposing undue burdens.

Thank you for your attention and the opportunity to present.

HEARING OFFICER MOSER: Thank you.

MS. MCINNIS: Good morning. I'm Amanda McInnis. I'm a professional engineer licensed in the state of Montana. I have a master's degree in nutrient removal design for wastewater treatment facilities. I've worked for more than 25 years in the state of Montana doing facilities planning for Montana cities. I've worked for the City of Billings, City of Missoula, City of Bozeman, City of Great Falls, and the City of Helena. I'm also providing testimony today on behalf of Dave Clark from HDR testifying in opposition to MAR 17-434.

I want to start my testimony by reminding DEQ that Montana cities and towns have developed -- have invested more than $400 million in capital in removing nutrients in Montana watersheds under a narrative system. We continue to invest millions of dollars in operations, power, and chemical consumption year after year. Our stakeholders have done more to address nutrients in Montana watersheds

than any other group.

Senate Bill 358 requests development of an adaptive management plan. However, the adaptive management plan as it's proposed in this rule package drives point sources to higher levels of treatment for phosphorous immediately based on numeric ecoregion values rather than focusing on locally developed adaptive management plans to develop more appropriate actions. This approach is really a nutrient approach rather than a narrative approach as called for by Senate Bill 358.

And the first step in the flowchart included in the package removes all incentives that the discharger would have to enter into an adaptive management plan and, in fact, provides disincentives in the form of requiring additional monitoring even if the point source has already invested for the limits of nutrient technology.

The proposed rule, circular, and guidance documents do not describe how MPDES permit limits will be formulated. This is vital to our members. The structure of effluent limits in MPDES permits may in and of itself determine whether compliance is technically feasible. Effluent limits that are over-specified using historical EPA guidance that

are focused on toxins rather than nutrients can result in a combination of concentration and mass based on short timeframe that are infeasible to comply with even with the best designed and operated treatment facilities and are unnecessary for the management of nutrients in our watersheds.

For the ecoregions of Montana, the proposed numeric standards for total nitrogen and total phosphorous are orders of magnitude lower than what can be achieved with conventional nutrient technology. In many cases the proposed numeric standards for total nitrogen and total phosphorous are substantially lower than what we can achieve. Energy use, chemical use, excess solid residuals, and damaging greenhouse gas emissions are not considered in any way. Nitrogen removal at these levels requires supplemental carbon emissions using dangerous chemicals such as methanol, which is often produced using natural gas or coal. Most of methanol is produced in the South and the Midwest and would come to Montana in tanker trucks to comply with the rule. This rule actually moves many of our dischargers away from their climate action goals in an effort to comply with the proposed standards.

At this same time the cost and complexity to

accomplish these goals is what is called out in EPA's own 2021 life cycle cost divestment and calls on the regulating community to carefully consider the higher power and chemical consumption associated with lower and lower nutrient removal.

Installation of approved treatment systems requires planning, funding, and coordination that takes extended periods -- extended time and resources. The municipal dischargers have often expressed this need time after time, illustrating that they need both -- to both plan and seek funding from their constituents far in advance of compliance needs. Therefore, all the dischargers need a clear way to anticipate what their permit limits will be under the proposed rule. No clear way of determining the permit limits has been provided in writing or as part of the proposed rules, leaving our permittees with an unworkable proposal.

There are other issues in the proposed rulemaking. While MDEQ added additional response variables to provide more diversity in the package, they added -- the exceedance of one of those single values does not -- if there's independent applicability of each of the response variables, one single exceedance of a numeric or aquatic life

standard does not equate to impairment of a recreational beneficial use. DEQ has selected single exact values for response variables as the proposed method of determining compliance with the nutrient standards over large ecoregions that cover the western half and eastern half of the state. That high degree of specificity is inconsistent with the high degree of variability of individual watershed responses and nutrients and the high degree of variability in even the monitoring techniques used to gather data for these parameters.

It also was blind to the priority of the stakeholders in the in individual watersheds. DEQ-15 fails to consider the actual degree of beneficial use support or the technical feasibility or affordability of compliance with the proposed package. Recreation on our rivers does not end, nor does aquatic life cease to exist, if a single value selected for a response variable, like chlorophyll a, is exceeded. Site-specific watershed conditions are more variable than these single values represent. The response of individual streams to more nutrients is more uncertain than these single statewide ecoregion values suggest. Further, beneficial use is not impaired by exceeding

a single value and expression of nutrient impacts on surface waters occur over a gradient of changes, not a single numeric value.

Thank you.

HEARING OFFICER MOSER: Thank you.

Ms. McInnis, just for the record -- again, I think I missed it at the beginning -- were -- you're testifying on behalf of --

MS. MCINNIS: On behalf of the Montana League of Cities and Towns. Sorry. Yep.

HEARING OFFICER MOSER: Thank you.

How many more folks are planning on providing testimony here today?

Okay. Go ahead.

MR. ENGELS: Good morning. My name is Louis Engels. I'm the water quality superintendent speaking on behalf of the City of Billings. I'm also the large municipal representative on the Nutrient Work Group. I'm also representing the large cities today, and you will hear from several of them after me.

I just want to talk about three things today. One is just our commitment to water quality and science. Also, I'm going to talk about five reasons that we oppose this rule and five reasons that -- or

things to take back to the drawing board that we request after putting this rule on pause.

So let me talk about our commitment first. Amanda mentioned this briefly, but no group has spent more on water quality in this state than Montana's cities and towns. Collectively we've spent over $400 million dollars to upgrade our treatment facilities to remove nutrients. In Billings alone we've spent $82 million to date to remove 90 percent of the nitrogen and soon to be 95 percent of the phosphorous being discharged into the Yellowstone River.

Our team of scientists and engineers operate these facilities 24/7, 365. They don't have the luxury of going home, and they're all environmental stewards keenly focused on protecting our precious watersheds. In Billings alone we have over 50 staff dedicated to the conveyance and treatment of wastewater and safely returning it to the Yellowstone River.

So let me get into the reasons why I oppose and we oppose this rule. So the first reason is utilities in Montana may be forced to put what is effectively drinking water treatment plants at the end of our wastewater treatment plants, costing

hundreds of millions of dollars beyond what we've already expended.

Number two, little to no water quality improvements are expected, with potential environmental harms, including greenhouse gases and additional chemicals that will be required to treat to these levels. In Billings alone, if were taken to the limit of technology, we would be spending about 1300 pounds of coal every hour -- the equivalent of in power -- to power the facility to treat to the standard. Additionally, no technology exists to meet the water quality standards as presented in the rule if taken at our outfalls. They're still an order of magnitude lower than what we can achieve with the best available technology.

Fourthly, DEQ has not provided information on how permits are to be written in combination with this rule. DEQ has told us to trust them and the permitting guidance will be provided later. We need to see the permitting guidance before we could support any rule package moving forward.

The Montana League of Cities and Towns and industry agree that this shouldn't move forward in addition to environmental groups who also oppose this rule moving forward.

So I don't want to just speak about problems. I'm bringing forth five things to consider when taking this back to the drawing board. Firstly, being clarity on how permits will be written. We can't support the rule without first receiving guidance on how the rule will be implemented. Additional clarity on what constitutes reasonable potential to cause or contribute to an exceedance of a water quality standard would help us support this rule.

Number two, focus on response variables -- algae and bug health -- not the numeric nutrient criteria that was repealed in Senate Bill 358. Right now we still have numeric nutrient criteria in this rule even though the numerics were repealed.

Thirdly, a more workable adaptive management plan with clarity and incentives for utilities to enter. Currently I don't know of one utility that will enter into the adaptive management plan that's currently written in DEQ Circular 15.

Number four, DEQ has stated that they don't want us to put drinking water treatment plants at the end of our wastewater treatment plants, but unfortunately we don't see that in the rule package. We ask for assurance that utility be forced to put

drinking water treatment plants at the end of our wastewater treatment plants so that costs aren't driven up and people are forced -- more people are forced to be put on wells and septic tanks.

A finally, consensus on what it will cost Montana to implement these rules. Right now there is a grand canyon of difference between what engineers think it will cost our utilities and what DEQ says it will cost.

Finally, I'd just like to say we aren't quitting, we aren't going anywhere. We will continue to work on this. I myself and others have attended over 50 Nutrient Work Group meetings. We want what's right for our rivers, we want what's right for our environment, and we want what's right for Montanans.

Thank you.

HEARING OFFICER MOSER: Thank you.

MR. COLEMAN: Hello, and thank you for being here. My name is Ed Coleman, C-o-l-e-m-a-n. I'm the deputy public works director for the City of Helena, and if I start going too fast, please stop me.

First off, I'd just like to say that the city is a strong advocate of the protection of water

quality. We take great pride in the efforts that we take for environmental stewardship. We live here in this valley. We live in this watershed. We raise our families here. We're proud of what we do. The last thing we want to do is to taint the water quality.

The folks before me did a phenomenal job, although I'm a little concerned the coal guys are changing their testimony right now hearing how much coal it's going to burn to meet these limits, we'll just go ahead.

So anyway, so initially what I'll touch on is some procedural concerns. Back in 2021 when this effort started after Senate Bill 358 passed, the City of Helena was an interested party and was denied access to deliberative documents so that we could participate in the process. This goes against Montana Constitution, as well as some statutes.

Secondly, we've had some issues where material has come out -- and, Kurt, I do have an email that documents that. And secondly, we do have some concerns that deliberative documents were provided at the last minute, not giving us the ability to comment on them and provide informed and meaningful discussion, especially at public meetings. This is

true just up until recently when we received the environmental impact analysis after the -- or right before the WPIC meeting where we would have actually been able to speak intelligently to that and may have actually swayed some of WPIC through requesting an informal objection at that point in time.

And then I'll just jump to rule content. The folks before me did a great job on that, and we have some other technical people after. But -- so I will talk a little bit outside of my ballpark here, but for discussion of chlorophyll a as a -- as an adaptive management, as a -- sorry. I lost my place.

But anyway, the chlorophyll a standard for protection of recreation is a single number. It's 150 milligrams per meter squared or something along those lines. The concern that we have is that really should be a range. I'm not going to go to the creek to go fishing and be like, Oh, it's 145 milligrams per meter squared on that rock; I'm good to go at 155. I'm going home, my day is over.

So, I mean, I really think that needs to be looked at as far as on the response variables, these shouldn't be hard numbers. This is -- especially

when we're talking about protecting recreation, where the how green is too green probably came out two decades ago, and we've seen a significant increase in river user days, whereas views have likely changed on what should be expected. Increase of development along streams and rivers has grown exponentially, so therefore there's more -- there are more influences of fertilizer and septics.

And then I would also like to see that Figure 1.1 in C -- DEQ Circular 15 was proposed as to be revised. Nobody can really understand this chart. I've asked multiple people to explain it to me. We don't get it, so if we could get a workable chart, because that is really important because it outlines the implementation of narrative nutrient standards and steps in the adaptive management program.

And then also talking to -- talking about the rule implementation impacts, and I brought this up on several times. The City of Helena, along with the other municipalities, if we are caused -- or if these rules cause us to make significant improvements to our wastewater treatment plans, those impacts and those costs are going to fall to our ratepayers, many of which can't really afford

them. Also, there's a huge push and need for affordable housing in all Montana communities. The key to that is being able to connect to city services so we can have higher density housing. With high connection costs and with higher monthly rates for utilities, that's going to be dissuading people from being able to fulfill those needs for affordable housing. It's just one of the factors, or else we're going to be dealing with more urban sprawl, more septics. It's just adding to the challenge.

And then as far as -- I'll go back to what Lin -- or -- Lindsey -- I'll go back to what Lewis and Amanda said. I mean, there are real-life concerns about the increase in chemicals, about the increase in energy and everything along those lines associated with increased greenhouse gas emissions and an increased carbon footprint when we're talking about doing these major upgrades to our plant. I have a quote in my comments for a healthy Montana, but I forgot my glasses, so I'll have to go back on that one right now.

And last but not least, you know, we do really appreciate the efforts put forward. We know you guys have spent a lot of time on this. We have too.

You know, I've been to probably about 50 meetings, as well as Louis. I mean, so this -- this is a big deal. This is a big deal for all of us where one sentence, one word matters. That's why we'd just like to see this -- this rule package slow down, have DEQ withdraw it voluntarily, and let's hit the brakes, and let's work together and do this right. This goes back to 2014 when the numeric standards were adopted. I mean, we've been fighting this for a decade. So I would really recommend that we withdraw this, we work together, and we find a workable solution.

So thank you very much for your time. And, Kurt, if you want to examine me, I'm available.

HEARING OFFICER MOSER: Thank you, Mr. Coleman.

MR. COLEMAN: Where would you like the written comments?

HEARING OFFICER MOSER: You can just provide them to me right here.

MR. COLEMAN: Thank you.

HEARING OFFICER MOSER: Thank you.

Other opponents that wish to testify in the room today?

MS. LASHLEY: I'm Rika Lashley. I'm the

representative for the small dischargers and lagoon systems on the Nutrient Work Group, and I'm also a registered engineer with the State of Montana with 18 years of experience working with small communities and larger ones, both for planning, for assessment of existing facilities, wastewater facilities, and also design and cost estimating.

My first topic regarding economic impact statement. If I read this right, it really only provides the cost of inaction, not so much what the cost would be if incremental implementation of measures was done to -- as proposed under the adaptive management program to improve beneficial uses. So in that I feel that that economic impact statement is incomplete.

And then also looking at it, it only mentions small dischargers kind of marginally. It did not really provide enough detail. There's some 70 or so lagoon facilities with surface water discharge permits, and about three-quarters of them serve communities with a population of 1,000 or less. And just under half of them serve communities of only 500 people or fewer, so very small communities.

And so the Department also made available the information on the 2019 economic impact analysis

done by map. And looking at that, there were a handful of examples of small and very small dischargers. But for all of them the analysis assumed that they can stop discharging during the months when nutrient standards are in effect. That might be working for some of them, but possibly not for all of them. And so, again, this -- this analysis did not include -- did not look the cost for a community that has to implement nutrient treatment and what that would mean for their repairs there.

And we all know economies of scale work backwards for small communities. And so for them, any investments into treatment are actually proportionately much higher than for bigger cities, where there are simply more ratepayers to support those.

So at that point an adaptive management program would probably look very good to a small community, except -- and this is my second part -- what DEQ-15 is currently presenting, how it's worded, and how the flowchart in Figure 1.1 is set up. It all says that permits will -- sorry -- limits will be put in the permit in the beginning, then they can enter an adaptive management plan where there would be this

incremental approach. But any community that has a limit in their permit is required to work toward complying with the permit; right? So if you're then looking at -- looking for funding, looking how to make that work, investing in the adaptive management plan doesn't make any sense because there's also costs associated with that; right? So we don't want to spend money on that if we're already needing to plan for complying with the limit in the permit.

And so that approach then, if we're not doing adoptive management planning, that approach does not allow for looking at other sources of nutrients in those streams. It does not allow for looking at what would this upgrade actually do to the stream health or to protecting beneficial uses. That approach does not allow for really planning and incrementally -- incrementally implementing measures that would slowly and surely benefit that stream and initially maybe return the beneficial uses and ultimately protect them.

Part of the issue of that is that there is very much a lot of questions about how reasonable potential is determined and how what is currently in DEQ-15 standards, how they're put into permits. And this has been said before, and I'll think you'll

hear it again, that clarity needs to be there before anybody can be comfortable with what's presented in DEQ-15, and that clarity does not exist.

And then I know that variances are mentioned as one tool in the toolbox to respond to strict nutrient standards that can't be -- that either are financially not achievable or technologically not achievable. Variances have their own set of problems like limited timeframes, ramping down of the highest achievable condition, or HAC. But I guess variances aren't really a part of this rule package, so I'll leave it at that.

And so I just very much believe that a lot more work is needed to make DEQ-15 a workable setup, a workable document that presents an affordable adaptive management program that's effective for protecting and improving beneficial uses and consider economic impact and -- and watershed-wide nutrient sources potential, and, also has been stated, other potential environmental impacts by having to implement really high grade level treatment solutions.

HEARING OFFICER MOSER: Thank you.

Other opponents that wish to testify here today?

MR. KUHTZ: Good morning. I'm Shawn Kohtz,

the City of Bozeman utilities director representing the City of Bozeman. So Bozeman is supportive of the concept of nutrient adaptive management as intended by SB 358. We believe that this is a solution that can work to improvement nutrient water quality for our water in the East Gallatin River. However, we need to understand how discharge permits will be written in the proposed standards.

(Court reporter clarification.)

MR. KUHTZ: We do not have that clarity now. We do not support the rule package proposed as a result.

To tell Bozeman's story a little bit, we've made significant investments in our wastewater treatment plant to remove nutrients. We've done that over a decade ago now to remove 90 percent of nitrogen and greater than 95 percent of phosphorous. So we've been heavily invested in that. As many of my Montana League of Cities and Towns colleagues have indicated, we're part of that $400 million investment statewide.

Going forward, without a working adaptive management plan, Bozeman would be subject to nutrient discharge limits that would require removing greater than 99 percent of nitrogen and

phosphorous. Such treatment limits come at a very high cost to remove in terms of removing phosphorous and are simply unachievable with respect to nitrogen. All of this for a minute incremental improvement.

I've got with me a handout, and I'll provide this at the end of my public comment, that is a facility planning document for the City of Bozeman that outlines what the limit of technology nutrient removal system would cost for the City of Bozeman. But that cost is $92.4 million in 2022 dollars. Our ongoing O&M costs for such a facility would be $2.5 million, with 20-year present worth costs of $126 million. In essence, a drinking water treatment plant would be added as a final step in the treatment process, resulting in fractional reductions in nitrogen and phosphorous that not only come at an extraordinary capital cost, they require amounts of energy and chemical inputs, expanded carbon footprints and greenhouse gas emissions, and are expensive and complicated to operate. All of this, again, for a minor incremental improvement to improve nutrient water quality that falls on the backs of Bozeman's utility ratepayers.

I talked to my finance director yesterday about

this, and we're still paying off improvements for our last treatment plant upgrade. And our current bonding capacity is about $20 million, and we -- Bozeman couldn't even afford to bond for such a wastewater treatment plant.

So if we look at watershed scale solutions, you now, we do believe we can do better. Other solutions are poised to attain nutrient water quality standards over time that come at lower costs and much higher water quality benefits. We believe the adaptive management framework under a narrative water quality standard intended by SB 358 is the path to get there. If Bozeman focuses its investments strategically on reducing nutrient pollution under an adaptive management program such as connecting areas of dense residential septics to municipal sewer, partnering on watershed scale projects to implement nutrient BMPs, and restoring wetlands on tributary streams, we believe we can attain a narrative nutrient water quality on standard this scale. The AMP is a watershed-focused community-based solution to attaining water quality improvements that benefit all Montana's residents and visitors.

Bozeman wants to see AMPs work. To ensure AMPs

work in alignment with SB 358, additional time is needed for DEQ in consultation with the Nutrient Work Group to develop discharge permitting guidance under an AMP to provide reasonable permitting assurances that water quality progress is being made to achievable permit limits.

I'd like to recognize the effort that DEQ has put into DEQ Circular 15 and its guidance. An enormous amount of work has gone into producing the draft bills. Nonetheless, there are several outstanding items that require attention. The rules do not contain details sufficient to understand how discharge permits will be written under the narrative standard. It is imperative that the rules clearly set forth how the limits be calculated and how interim permit limits will be applied.

So a path forward. We're submitting a letter. I'll provide that at the end of my public record that provides specific and additional technical comments, as well as a review of rule validity under the Montana Administrative Procedures Act. Although we do not support the current draft rule package as is, we see a path forward to allow an adaptive management framework to work effectively at a watershed scale, provide necessary detail and

clarity for permit writing, and allow sufficient time for incremental watershed improvements to be made in lieu of implementation of limit of technology nutrient treatment at wastewater treatment facilities.

Thank you for your time.

HEARING OFFICER MOSER: Thank you.

Are there further opponents that wish to testify here today?

MR. VINCENT: Thank you. Matt Vincent, V-i-n-c-e-n-t, representing the Montana Mining Association as well as a coalition of point source dischargers and other interested parties that have been tracking this for some time. I've been a member of the working group for the last nearly two years, and my predecessor was there since its inception.

You know, this is the public hearing, so I'll say a few words, but we believe that -- that everything has really been said. A lot of the folks that have already gotten up are part of the coalition that is going to be submitting this package of over 400 pages of supporting documentation, evidence of input that we've put forth, our concerns from both a technical standpoint

as well as an economic standpoint. I think to really kind of summarize, we just feel that these rules are -- they're -- they're not legal, they're not practicable, and they don't meet the legislative intent of Senate Bill 358 from the '21 session. Overly complex in the rules and excessively vague in how they will be translated into permits, which is just an untenable combination for both industry and municipalities.

I would like to close by, I guess, drawing maybe on some of the things that Ed Coleman said. I mean, we recognize the amount of effort and time that the Department staff has put into this package. And, you know, MMA and the rest of industry, as well as the municipal partners, have exerted significant resources as well. But there's just too many unresolved concerns and unanswered questions for these to be ready for adoption. And so, you know, we -- we thank you for considering what -- what we have laid out here. And I would say that, just for clarity, the coalition is the Montana Mining Association, the Montana Petroleum Association, the Treasure State Resources Association, the Montana League of Cities and Towns, the Montana Infrastructure Coalition, and the Montana Chamber of

Commerce. So it covers a wide variety of input and concern relative to these rules.

But we -- we hope you'll consider this one final time and make the right choice on this, at which point we are ready to work with the Department to come up with an alternative path for us to be able to figure out how we move forward and come up with some rules that are workable, but also protective of water quality.

Thanks.

HEARING OFFICER MOSER: Thank you, Mr. Vincent.

Further opponents that are here today that wish to testify?

MR. MCINNIS: Hello. My name is Logan McInnis. I'm the deputy public works director for the City of Missoula. I oversee the water, wastewater, and stormwater utilities. I'm also an engineer with about 18 years' experience working with Missoula and other communities of Montana.

Preserving water quality is one of things most valued by the citizens and local government officials in Missoula. The city proactively participated in negotiating the voluntary nutrient reduction program, or VNRP, which is a TMDL still in

effect on our segment of the Clark Fork River. The VNRP led the City of Missoula to building the second major biological nutrient removal, or BNR, plant in Montana. DEQ staff have told us that this rule has no impact on Missoula because we operate under an existing TMDL, but it is clear that the Clark Fork River TMDL will be reevaluated in the next few years as there's a lot of growth going on in our neck of the woods, so we feel we're going to be impacted by these rules just as much as everybody else in Montana.

The economic impact to Missoulians has not been a factor in DEQ's economic analysis. Our 2019 facility plant document shows that to improve our plant to meet the highest attainable conditions, the cost at that time would have been $52 million. And with the more than 50 percent inflation that's occurred in our industry in that time, that cost now exceeds $75 million. And, of course, the cost to achieve the actual nutrient levels of RO would venture into the hundreds of millions of dollars. We do not believe that it is in our citizens' best interest to make investments of tens of millions of dollars to meet variance levels that we are told would be reevaluated every three years. These

variance levels could change, resulting in a need for additional millions of dollars in investment.

Missoula, like many other communities, would be better off investing those tens of millions of dollars buying up land and land to apply wastewater to avoid nutrient standards, thus depriving our state fisheries of water at a time when stream flows are most critical.

We agree that many dischargers should be asked to do something about their nutrient discharge, but we don't think it makes sense to ask our large BNR systems to install additional infiltration and infrastructure to go well beyond the 80 to 90 percent nitrogen removal that they already accomplish. The City of Missoula would rather make reasonable investments and improvements in our watershed that could make measurable improvements in water quality. We could invest in projects that are known to reduce nutrient loading of rivers, like installing riparian fencing to keep cattle out of the river. But we are only willing to make these sorts of investments if the DEQ can provide us with assurances that these improvements would satisfy our permit requirements. DEQ has not provided any safe harbor for municipalities that stand to risk

millions of dollars not knowing whether a completed project will meet our permit limits.

DEQ also states that even if our projects remove nutrients, if other upstream sources of nutrients increase, the city will need to do more to remove those nutrients as well. We cannot be held responsible for other non-point source discharges in the watershed that continue to keep the Clark Fork River baseline water quality above the DEQ ecoregion values.

We could also continue to make investments in connecting septic tanks to our facility, removing aging systems that most experts agree are adding significant nutrients to our waters. But DEQ has indicated that only a nominal nitrogen credit will be given for septics that have been removed from service and connected to our VNR plant. This flies in the face of DEQ's own data from the Bitterroot showing that septic systems contribute four times more nitrogen than a municipal wastewater treatment facility on a per capita basis.

The DEQ wants the city's ratepayers to take them at their word that this will have no financial impact to the city based on the economic analysis or take them at their word that our investment in AMP

projects will not be vain despite no safe harbor provisions or guidance on project crediting, or that we will not be required to install millions of dollars in infrastructure to build tertiary treatment plants to meet numeric standards that will have almost no measurable benefit to the river. Based on all these unknowns, the city can't ask its ratepayers to take on that level of risk.

We also think there are many intended consequences of casting such a wide net with these rules. They will only further incentivize development to focus outside of cities, where projects are exempt from nutrient rules and from water rate permitting. It also disincentivizes developing areas building new wastewater plants or lagoons. They will be subject to technically unachievable standards. So septic systems will remain the only viable system. Inability to build new wastewater treatment systems will limit new housing starts and further contribute to the affordable housing crisis. These rules will also add significantly to the carbon footprint associated with wastewater treatment when the goal needs to be reducing the carbon footprint. And the rules will add to the skyrocketing cost of development as

impacting connection fees will need to increase to pay for the required new infrastructure, making it more difficult for many cities in Montana to meet the need for adequate and affordable housing.

Montana should follow the lead of all other states in EPA Region 8 who are taking more measured steps to reduce nutrient pollution and proposing standards that can actually be met. Instead, we're trying to invent a management system to meet unachievable standards, setting up a nutrient permitting system destined to rely on costly variances that will likely end up in court.

(Court reporter clarification.)

MR. MCINNIS: So instead of investing our citizens' money in on-the-ground projects that improve water quality, we will have no choice but to continue hiring lawyers and consultants to help us navigate a system of unachievable limits and find limited variance.

I appreciate the opportunity to comment, and thanks to everybody for all their hard work on this.

Thank you.

HEARING OFFICER MOSER: Thank you.

Further individuals that wish to provide testimony opposing the rule?

MR. GAUB: Good morning. I'm Christoff Gaub, G-a-u-b, the public works director for the City of Great Falls. Thanks for this time to -- to present our -- our viewpoint. I won't repeat everything that my fellow municipalities have said, but I definitely concur 100 percent with them.

I'm just going to give a little bit more high-level look at this, kind of how I see it. I am not a water quality specialist. I have not been participating in the work groups because the person who I did task with that is Jason Fladland, my previous water treatment plant manager. He made a career change, so I'm getting into the meeting myself. But he has relayed a lot to me over the last couple of years since I joined the City of Great Falls in 2022.

I am a big believer in water quality. I grew up walking out my back door in Bozeman to the East Gallatin River and fishing. So -- so I definitely appreciate water quality. I also did 28 years in the United States Air Force traveling the world, and I've seen a lot of places that have no water quality or probably better defined as no -- negative water quality. So I have a deep appreciation for good water.

No decision should be made in a vacuum, so I think we need to keep our -- the people that we represent in mind, which in Great Falls is the citizens of Great Falls. They are under a lot of economic pressure, as we all are over the last few years, with COVID and the effects of inflation. The last two years, including this year, we are increasing rates on utility, sanitation rates, street assessments, et cetera. So their rates are already going up. And then, as you all know better than I do, we have a lot of other regulations and other potentialities sitting out there between PFAS and PFOS and forever chemicals. We have lead pipes coming down the pike here. Plastics now -- plastics, microplastics. So in other words, this is never going to end. So the pressure will never end on our citizens and -- to -- to get clean water. Now, again, that's highly valuable. What's it worth, what's water worth, that a good question.

So as I present things to the commission for budget perspectives, I have to, you know, justify the dollars. You know, why are we spending all these dollars. So real quick story, at our wastewater plant, if you go to our outfall, we've had people -- we get occasional phone calls or

concerns from people that say, Hey, we think you might have an oil spill. And the reason they think that is because when they look at the river, they see black coming out of our outfall. What they don't realize is that's because -- and we have to educate them on this -- what they don't realize is that's because the water that we -- that comes out of our wastewater plant is so clean you can see to the bottom of the river, and it's a stark contrast to the Missouri River. So what that means is the water that we take in at our water treatment plant upstream is much dirtier than the water that we return back to the river.

So if we're already taking -- if we're already returning the water cleaner than we receive it, how can I justify to my citizens to, you know, invest another $100 million in another water -- you know, basically another treatment plant. So if we're going to invest, you know, that kind of money into this infrastructure, maybe I need to start considering, you know, for that kind of money, would we just pipe the water from the wastewater treatment plant back to our water treatment plant, and just do a closed loop system with that kind of significant investment.

So those are kind of the discussions we're having. Again, like many of the others have said, you know, your return on investment is in -- is in -- it's probably in the watershed. It's not in the non-point sources where we've already reduced the vast majority of nutrients and phosphorous. So bottom line, we return the water cleaner than we receive it, so what's the $100 million for?

Thanks for your time. And I do have a one-page summary that we provided to our -- to our commission to provide to you today. Thanks.

HEARING OFFICER MOSER: Thank you.

MS. LEWIS: Good afternoon. My name is Melissa Lewis, and I'm here today on behalf the Montana Petroleum Association to provide public comment on the water quality narrative nutrient standard rulemaking. Executive Director Dave Galt asked me to attend this meeting on his behalf today.

The Montana Petroleum Association represents several hundred thousand -- or several hundred hardworking women and men in Montana's petroleum industry. Our associate members bring a wealth of knowledge to the table to help Montana's oil and gas industry to successfully navigate complex state and federal issues while proactively planning and

preparing for the future. We have solid track record of working with the state and the federal government to adopt solutions that work for Montana. Sage grouse comes to mind.

The Montana Petroleum Association has actively participated in a coalition comprised of Montana municipalities and their fellow industry partners, some of whom have provided public comment today. We've also engaged throughout the proposed rulemaking and public comment period.

As most of us know, the proposed rulemaking action attempts to implement Senate Bill 358 sponsored by state senator John Eck and adopted by the 2021 Montana Legislature. In preparation for today I actually went back and listened to the 2021 hearings. I found it really helpful to actually hear the intent of Senate Bill 358, and maybe you will also.

For the record, I would like to share a few seconds of audio, which is very brief and to the point.

(Audio played.)

MS. LEWIS: While the Department may contend that the proposed rules actually do eliminate numeric standards, its translator tool

translates words, the narrative, into numbers, numeric. The result is a numeric limit applied to permitted facilities affecting all communities across the state, small and large, and all permitted facilities by the private sector as well. This brings us right back to the very numeric standard that Senate Bill 358 intends to eliminate.

The bill sponsor goes on to explain how Senate Bill 358 came about.

(Audio played.)

MS. LEWIS: The bill sponsor finally closes with very brief remarks.

(Audio played.)

MS. LEWIS: The Montana Petroleum Association was actually the first proponent to speak in favor of Senate Bill 358 with the bill title "Repeal Numeric Standards." Today the Montana Petroleum Association unfortunately rises in objection to the proposed rules due to the clear and direct conflict with legislative intent. We're also very concerned about the communities in which we live and work. You know, if Bozeman can't afford this, we really think about the smaller towns, like Chester and other small communities that are watching and worrying.

It is worth noting that the Department has contended that permittees may obtain a variance. The private sector cannot obtain a general variance. The private sector must apply, resulting in multimillions of dollars of investment with uncertainty of being able to even comply to the rule as technology is not proven in all industrial settings. Today it is my understanding that not one private sector variance has ever been approved.

Thank you for holding this public hearing.

HEARING OFFICER MOSER: Thank you.

Additional opponent that wish to testify?

MS. LYNCH: Good morning. My name is Kelly Lynch. I'm the executive director of the Montana League of Cities and Towns.

These rules do not meet the intent or the direction of SB 358. We asked for a robust framework where permittees could operate under their current loads while gathering the data for that specific water to figure out what is happening in that water and taking actions to see how the water reacted. I want to be clear we have never suggested this legislation be used to pollute our waters. Our members, cities and towns of Montana, have spent more resources than any other entity in Montana to

clean our waters. We have just reached the point where we are literally flushing our taxpayer dollars down the drain. It's time to refocus our efforts as a state on a watershed approach. These rules do not do that. Our collective organizations have just provided you with hundreds of pages of documents where we have asked you over and over to look at these rules differently and do what SB 358 directed you to do. Instead DEQ has returned to numeric standards. These rules do not serve Montana, who has primacy to create our standards. They do not do what the legislature asked DEQ to do. They only demonstrate EPA and DEQ's refusal to let go of numeric standards that do not and have never worked. There are so many other contributions to nutrients in a watershed that need to be taken into account, and a true adaptive management program is the way to do that. These rules do not propose that type of AMP. Please suspend this rulemaking.

HEARING OFFICER MOSER: Thank you.

MR. IVERSON: Hello. My name is John Iverson. I'm representing the Treasure State Resources Association. We are cosigners on the -- on the couple hundred pages there as well. And so there's just a couple other things that I'd like to

bring up, and it specifically relates to the economic impact statement.

I believe that economic impact statement relies on incorrect assumptions and unsettled facts. Specifically, it says in it -- and in the basis of its analysis it talks about how, absent these rules, we go back to the 12-A standards. We disagree that those 12-A standards are still in play, and so therefore we disagree with the basis of the economic assumption. We know these rules are going to have significant impacts financially on the dischargers. But what we can't figure out, between the DEQ and the dischargers, is just how much that's going to be. And what we do know is there's a huge canyon between what the Department believes this is going to cost us and what we believe this is going to cost us.

There's certainly people on both sides, good people acting in good faith, that are trying to come up with this answer. But we are a long ways apart right now between what the Department believes this will cost and what everyone else in the room believes this will cost.

So we ask that you pause these rules and we take more time to put a -- sharpen the pencil a little

more so we can actually ascertain a real number for the economic impact statement.

Thank you.

HEARING OFFICER MOSER: Thank you.

Anyone else present here today who wishes to testify on opposing the rules?

Okay. I will go --

MS. JOHNSON: Are you --

MS. WATSON: I'm speaking for information.

HEARING OFFICER MOSER: Okay. We'll wait then till the next step I have.

But, first, anyone online that wishes to testify in -- opposing the proposed rules?

MS. JOHNSON: I'm promoting Butch.

Could you state and spell your name, and speak slowly and clearly for our court reporter in any information you may have.

Butch, if you could unmute yourself.

HEARING OFFICER MOSER: Is that all we have is Butch?

MS. JOHNSON: We have a couple others online as well.

HEARING OFFICER MOSER: Okay.

MS. JOHNSON: There we go.

MR. GILLESPIE: Is this good now?

MS. JOHNSON: Yes, sir. Please state and spell your name --

MR. GILLESPIE: Sorry about that. Yeah. Hit enough buttons and I'll get the right one.

Yeah. Bruce Butch Gillespie up in Ethridge, Montana, on the Hi-Line. Rancher, livestock nutritionalist, senator in Senate District 9, and I am on the WPIC committee. And I was at our last meeting, and I was kind of a party of one to put this whole thing on hold. And I guess I've heard so much good testimony here today that I think, you know, that is still on the very right track. I know a lot of my counterparts kind of wanted to wait see what happened here today, and -- and I just really appreciate all the good testimony that was here.

So based on that and kind of what I felt already, it just looks, like as Mr. Iverson said, there's a huge divide there between cost estimates. And if -- if the large cities can't make it, our little towns, small towns, which my district is full of, darn sure probably isn't going to be able meet the deal. So there has to be a way. I just can't help but think -- I know we've spent time on this and we need to get it wrapped up sooner rather than later -- but there's just got to be a way here that

we can kind of combine good water with reasonable cost.

So with that, thank you so much for your time and taking the time to listen.

HEARING OFFICER MOSER: Thank you very much.

Next online, those who wish to testify in opposition.

MS. JOHNSON: I am promoting Mary Harlow.

If you could state and spell your name and any affiliation you have, and speak clearly and slowly for our court reporter.

MS. HARLOW: Yes. My name is Mary Harlow, H-a-r-l-o-w. I live at 3 Reeders Village Drive, Helena, Montana. I am -- I am listening into this hearing today to tell you that as a citizen of Montana, resident of Montana, a native Montanan, I do not agree or support DEQ-15. I support numeric standards regulating and enforcing MPDES permits on upstream polluters, and I also am very concerned about what is going with the whole language. I think these narrative standards are taking Montana backwards. This is where we started. And I -- I have listened to a lot of the -- the cities and other agencies that are -- have MPDES permits,

and I have concern that nobody is talking about the regulations here. And, you know, Montana is a -- has primacy. And EPA Section 1413, the Clean Water Act, provides for a state to have primary enforcement responsibility for public water systems and for programs based on science. It has five conditions for primacy, and they're listed in Section 14-3. And I think maybe some of the cities and some of the other entities providing information today should take a look at that.

The EPA considers numeric standards to be an absolutely guarantee of clean water. The EPA must approve a change, deletion, addition to standards. Revocation of primacy, which we all should be concerned about, can occur if the state fails to enforce it. The EPA can directly overcede the state's water system. I don't think anybody on this hearing today would like to have that happen.

The state must use the authority to enforce the drinking water regulations that are no less stringent that the national drinking water act. If Montana loses primacy, the DEQ documents state that if this rulemaking does not advance, DEQ-15, and replace the existing DEQ-12-A standards, communities will have to comply with the requirements of the

numeric standards that were promulgated in 2014. With a loss of state control, EPA will have to substitute the effective federal standards in MPDES permits on an independent basis or promulgate DEQ-12-A as a federal numeric standard for Montana. The EPA's oversight would be more expensive and less flexible to achieve. EPA has already stated nonsupport for SB 358, and I don't think anybody has -- is acknowledging that. EPA acted on SB 358 on May 10, 2022. The EPA disapproved the repeal of DEQ-12-A and informed Montana that the revisions occasioned by SB 358 cannot be used for any Clean Water Act purposes. The letters from Darcy O'Connor, director, water division, EPA Region 8, to Christopher Dorrington, director of Montana Department of Environmental Quality. I think that's really important.

Another thing that I'm really concerned about is the Montana constitution that requires us to have a clean environment. And I think sometimes we forget that the State of Montana constitution requires that of all of us, that we ensure that the environment is not degredated [sic] by the implementation of some of these standards that are not actually in the best interest of Montana or users.

One thing I think I noticed too with the DEQ documents was that the downstream users were not mentioned in -- in the beneficial use. And I know that the State of Missouri has already had some issues with the State of Montana over some of the EPA's giving some variances on standards. So this is something to think about. There are downstream users, other states that are going to use our water, and they are expecting us to do the best we can to make sure that we're not degredating the water.

Another use that -- that you haven't talked about is drinking water supplies. I understand recreation and fishing. Fishing brings in a billion dollars a year, and so does -- and recreation is very important. But drinking water supplies are very important too. Something I think that we should be taking a look at too is what's happening with our lakes and streams already.

And now I -- I have my documents which I have supported, sent in to the state on the DEQ and why I don't suppose -- support this document has to do with the requirements of the fishing. The State of Montana supports fishing consumption guide. I don't know if anybody took a look at that, but if you take a look at that, you're going to see how badly our

streams and our lakes and our waters are already contaminated. And when the state fish and wildlife puts out of huge list of fish that you can't eat anymore and tells you that you eat the small fish because, you know, those are -- don't have as much contamination, I think it's a shame. I think it's a shame that we already have degredated our water. And when we have a chance to say, Okay, let's make sure we reduce these nutrient standards that are numeric -- no, we want narrative because we can loosen the quality of our water quality.

This is so poor for Montana. We have to protect our lakes and waters and streams. And I would also like to say -- I really -- as you can see, I'm very emotional about water because I've been a water quality analyst. I know we can't go backwards, but, you know, we've got find out where the polluters are, and we have got to stop the polluters at their source. It's not the water treatment plants that should be carrying the burden of the upstream polluters who are not meeting their permit. And the State of Montana has got to start enforcing those permits. And I know there's been a lot of variances given and there's been some problems with so many people being grandfathered in, but it's time. And

we don't want -- climate change is here. We're not going to have enough water in the future here. We have so many other things that are impacting the sources of water, the amount of water, and the quality of water. We have got to get ahold on this.

And I thank the DEQ and Lindsey for their hard work on this. There's so many documents, so much information, and it's really hard to get a handle on this. But I'm just a regular citizen who's very concerned. Thank you for the chance to provide my comments.

HEARING OFFICER MOSER: Thank you, Ms. Harlow.

Additional people online that wish to oppose the rulemaking?

MS. JOHNSON: I'm promoting Shannon Holmes. If you could state and spell your name for our court reporter and speak clearly.

MS. HOLMES: Yes. Good morning. This is Shannon Holmes. S-h-a-n-n-o-n, H-o-l-m-e-s. I am the public works director for the City of Livingston. I represent the less than 1 MGD point source dischargers in the Nutrient Work Group, and I'm also on the governor's water pollution control advisory council. Thank you for allowing me to

speak this morning.

First off, I'd like to go on record that I agree with the testimonies of other point source dischargers from municipalities and the Montana Mining Association. Livingston is very passionate about water quality, especially with Yellowstone River that runs through our beautiful community. We invested $19 million in our water reclamation facility back in 2017. This resulted in some of the highest sewer rates in the state of Montana. A resident of our community pays about $65,000 -- $65, excuse me, to treat 5,000 gallons of wastewater per month.

We in Livingston were excited about the adaptive management plan and the ability to collaborate with upstream stakeholders. But this current rule package, there's essentially no incentive for non-point source polluters to cooperate with dischargers or financially contribute to nutrient reduction projects. I'm not sure how we can use city rate revenue for our sewer fund to pay for nutrient reduction projects that would be significantly less expensive and less energy consumption than expensive modifications to our facility, but we were certainly excited to explore

that opportunity.

I respectfully request you pause this package. SB 358 directs Montana Department of Environmental Quality to develop a narrative approach to nutrient management. The current approach is numeric rather than narrative. SB 358 directs Montana DEQ to develop an adaptive management plan; however, the package in its current form does not provide a viable pathway for using a local watershed's driven adaptive management plan. And with pausing this, we very much look forward to continuing to work with Montana Department of Environmental Quality to develop a package that supports local watershed management and commonsense nutrient control to protect our watershed.

Thank you for the opportunity to testify this morning.

HEARING OFFICER MOSER: Thank you, Mr. Holmes.

Any additional folks online wish to testify in opposition?

MS. JOHNSON: I'm promoting Scott.

If you could state and spell your name for our court reporter and speak clearly.

MR. BUECKER: This is Scott Buecker with

AE2S. I was representing engineering consulting companies on the Nutrient Work Group, and I'd like to reiterate what Mr. Holmes just said and specifically add that I believe my biggest disappointment with the framework is the fact that it puts the entirety of financial responsibility for adaptive management on the dischargers. There's absolutely no incentive for non-point sources to financially contribute to that program; therefore, it's going to be extremely hard for a municipality to justify spending money on infrastructure that is not on their property.

Thank you.

HEARING OFFICER MOSER: Thank you. Thank you, Mr. Buecker.

MS. JOHNSON: If there's anyone else online who wishes to provide comment, could you please raise your hand?

HEARING OFFICER MOSER: And this would be in opposition to the rule.

MS. JOHNSON: I'm not seeing any more hands.

HEARING OFFICER MOSER: Okay.

Then if there's no one else in the room that wishes to testify in opposition, then I would ask

those present here in the room to provide testimony if you do not want to take a position.

Anyone else here that wishes to testify?

Again, please state your name and any affiliation.

MS. WATSON: Hi. My name is Vicki Watson, and I'm speaking for myself as a citizen. I have worked for decades on documenting the relationship of nutrients to nuisance algae levels in Montana streams and lakes. But I'm speaking for information today because I support many aspects of the rules, but I have some concerns about other aspects of the rules. So I've -- I would find it hard to be either completely pro or completely con. I'm a mixed bag here.

I want to thank DEQ and the nutrient working group for their hard work on this challenging subject and for the opportunity to comment. I would like to say -- make a few sort of general comments and then get into some more specific comments on the rules.

I would to say why numeric standards, or at least numeric guidance for narrative standards, is essential. Numeric standards were adopted after extensive scientific research conducted here in

Montana for two main reasons. The first is to prevent degradation. Without numeric guidance for the causal variables of nitrogen and phosphorous, we must wait for those response variables -- algal blooms, low DO, altered aquatic populations -- to become a problem. We have already allowed degradation to occur, and now we must try to turn back the clock.

Number two, numeric targets give wastewater engineers a target to design facilities to aim for. We were asked by many wastewater engineers to -- you know, we need a target to design for. We -- you can't come and say, Well, that last reduction wasn't enough, turn it down some more. No, that's not enough, turn it down some more. We've got to have a target, so we design for that so that we can avoid those costly redesign efforts.

The next point I'd like to make is that there is a very ancient technology that can meet these numeric standards. It's about 8,000 years old, and it's called irrigation or land application. Crops can take up nutrients from treated effluence. And we have a shortage of water in this state, so here we have some nutrient-rich water we can use for irrigation. Admittedly, land is becoming more and

more costly in Montana, so this old technology, while effective, is also becoming more costly. But we should still keep it in mind as a possibility.

Third point I want to make, numeric nutrient standards applied in the Clark Fork River produced very dramatic results -- huge, huge reductions in loads, even as the population surge was growing, and big responses in the river itself in terms of those response variables improving. Missoula citizens agreed to take on the cost of better treatment to improve and protect the river, but also to lower river reservoirs and Lake Pend Oreille in Idaho. Reservoirs and lakes are even more sensitive to nutrient loads than our streams and rivers, and recognizing those distant downstream impact is essential. Missoula improved its wastewater treatment, expanded sewer service to many more entities, began to use land application, et cetera, et cetera, and achieved these great results.

So now back to those proposed narrative standards being discussed today. I'm glad to see that the proposed narrative standards are still intended to be guided by science conducted by DEQ over many, many years, and using that science to characterize the nutrient levels and response

variables in Montana least-impacted reference streams. These are our best guides for avoiding degradation of our streams and restoring those that have been degraded. But I am concerned that Part 1 of the proposed rules has so many exceptions for atypical water bodies, streams, creeks, dam-impacted streams, and so many site-specific, case-by-case definitions of full use or required minimum data collections, et cetera. This is a very complex technical process that will be hard for ordinary citizens to understand and feel assured that their local streams and the systems connected to them are being protected. It also represents a challenging increased workload for DEQ and for dischargers, and this will delay action on all but the highest priority streams. The non-degradation section, which is Section 6.0, Part I, is of particular concern. It seems to say that changes in parameters that have only narrative standards are assumed to be nonsignificant. There's a vague mention of using models to evaluate this, but once again, without numeric targets for nutrients, it will be very difficult to prevent degradation. Instead, we'll by trying to correct it as we recognize that degradation has happened. I was also wondering how

the data reset section, Section 3.3, could affect the determination of degrading conditions.

Now, on to Part II, the adaptive management section thoughtfully recognizes the need to take a watershed approach and to consider additive and cumulative effects of many sources, and that the response of distant downstream water bodies may be different from those near the sources, so the limiting factors may be different there. However, the level of monitoring, analysis, and modeling involved for so many site-specific watershed-level plans will surely strain DEQ's resources. Sections 8.0 and 8.1 discuss the integration of AMPs and TMDLs and the revising of TMDLs. I'm aware of quite a few TMDLs that are 10 to 20 years old. DEQ has not had the staff resources to update these in a timely fashion, and there are a lot of changes in 10 to 20 years. A lot of population increases and new technologies and so on. Adding the AMP work to DEQ's plate requires more staff resources to update those old TMDLs and build those new AMPs.

Then I have few sort of minor technical points, which I'll just rely on the written version that I'm going to hand you to communicate those. And I want to finish up with just a personal story that I think

says something about why we need policy and process that drives timely action and trying to avoid more and more delays of that action. I grew up on a small family farm with a creek running through the farm. And a small town upstream discharged its sewage into that creek, which became unusable as the town grew. We rural folks called on the urban folks to treat their wastewater, but they said it's just too costly, we don't have the money to do it. Until the 1972 Clean Water Act required treatment, and then they somehow found the resources and got it done. Gradually the creek healed, but now it's suffering again, due again to population growth and a weakening resolve to provide adequate treatment.

Montana is suffering similar growing pains, and we need to resolve to take the action needed to protect and restore our streams from all forms of pollution, including nutrient pollution, using the best available science and a process that's understandable to our citizens.

But I do want to thank the wastewater treatment operators for their hard work and how much they have improved their discharge and their willingness to continue to work on this tough problem. With population growth, our streams are having to work

harder and harder, and they need our help.

So here is a typed-up version of that with a few corrections where artificial impudence chose to change the wording I was using.

MS. KRYWARUCHKA: I just got that.

HEARING OFFICER MOSER: Thank you, Ms. Watson.

Is there anyone else here that wishes to provide general comments?

Is there anyone online that wishes to provide general comment?

MS. JOHNSON: If you would like to provide general comments, please raise your hand.

I am not seeing any hands being raised.

HEARING OFFICER MOSER: Okay. Seeing no hands raised, correct, online -- okay. All right.

Again, if there is any person who wishes to submit written comments, please provide those by 5:00 p.m. today through the means I already indicated, postmarked or emailed by today. If you have written comments right here that you want to give me, you can give these to me too right now.

And -- and so I guess with that being stated, thank you very much for all your -- for your attendance and for all your testimony here today.

The hearing is now adjourned. Thank you.

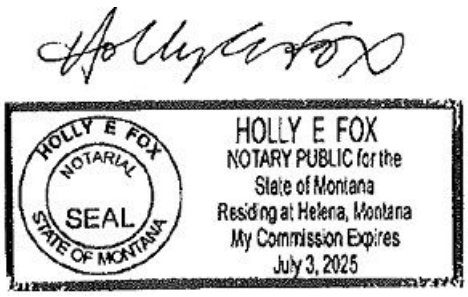
(Proceedings concluded at 11:49 a.m.)

C E R T I F I C A T E

STATE OF MONTANA)
ss.
COUNTY OF LEWIS AND CLARK)

I, HOLLY FOX, Freelance Court Reporter and a Notary Public for the State of Montana, do hereby certify that I did report the foregoing proceedings to the best of my ability.

IN WITNESS WHEREOF, I have set my hand and seal on this 2nd day of July, 2024.



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