



January 18, 2024

TO: Members of the Water Pollution Control Advisory Council & the public

FROM: Rachel Clark, Eric Regensburger; MT DEQ

MEETING DATE: January 26, 2024

SUBJECT: MAR 17-439: Proposed Nondegradation and Mixing Zone Rule Revisions

ACTION REQUIRED BY COUNCIL:

*Briefing item.*

BACKGROUND:

*At the December 13, 2023, WPCAC meeting, DEQ committed to providing an update with any changes made to the rules presented. The Rule Package schedule has changed slightly. The MAR notice will be published on March 8, 2024, and the public comment period will close on April 24, 2024. The public hearing is tentatively scheduled for April 23, 2024. This is approximately two weeks later than the original schedule provided to WPCAC, but we do not anticipate a change in the final adoption date of June 21, 2024.*

*Substantive Changes to the Rules include:*

ARM 17.30.716

- A new sub-section has been added to (4)(b). New section (4)(b)(iii) requires the absorption system to be pressured-dosed. This was added to be consistent with all the other nonsignificant categories in ARM 17.30.716 except for category 9 in Table 1 (the over 20 acre lot category) which does not require pressure dosing.
- The maximum background nitrate (as N) concentration (row (iii)) for new category 9 in Table 1 has been changed from 5 mg/L (or no limit when the absorption system is more than 500 feet from the downgradient lot boundary) to 4 mg/L for any location of the absorption system. This change was made to be consistent with the existing groundwater nonsignificance limit of 5 mg/L in ARM 17.30.715, and not allow further development with this nonsignificance criteria when the background concentration is approaching the existing 5 mg/L groundwater limit.
- The proposed change to the minimum distance from proposed subdivision boundary to any existing or approved wastewater system outside the subdivision boundaries (row (x)) for existing category 3 in Table 1 from 500 to 200 feet has been eliminated. The setback of 500 feet in the existing rule has been maintained. This proposed change to 200 feet was initially

proposed to account for absorption system setback requirements in ARM 17.30.122(6), but upon further review the change was flawed.

- Footnote 6 in Table 1 has been modified to clarify that nonsignificant category 8 for gray water systems does not apply to alternate systems required in DEQ-4.
- The term “categorical exclusion” used in the existing (7) and (7)(b)(i) has been deleted and replaced with “nonsignificance criteria” to provide a better description of the categories in (3) and (4) of the rule. There is no change in intent or meaning of the rule.
- (7) has been modified to clarify that if the petition process in (7) is successful, activities that could meet the requirements (2) through (4) are required to demonstrate nonsignificance pursuant to ARM 17.30.715. There is no change in intent or meaning of the rule.

#### ARM 17.30.718

- (8)(a)(i) and (ii) have been modified to provide that the monitoring frequency described in (i) and (ii) for systems with a design flow of less than 5,000 gpd only apply to systems that do not require a MPDES or MGWPCS permit. This change is necessary because of other department rule-making (MAR 17-433, Ground water rules) has changed the threshold defining which wastewater systems are required to obtain a MGWPCS permit.

#### RECOMMENDATION:

*Briefing item only.*

Please contact us with any questions: *Rachel Clark or Eric Regensburger, DEQ – Metcalf Building P.O. Box 200901, Helena, MT 59620; Rachel Clark: 406.444.1277 / rachel.clark2@mt.gov; Eric Regensburger: 406.444.6714 / eregensburger@mt.gov.*

Attachments: *none*