

WATER POLLUTION CONTROL ADVISORY COUNCIL
10:00 am, March 15, 2024
Room 111 DEQ Metcalf & Zoom Meeting

FINAL MEETING MINUTES

ATTENDEES

Council Members:

Amanda Knuteson (chair)
Ron Pifer
Eric Campbell
Mike Koopal
Teri Polumsky
Dennis Teske

Montana DEQ:

Lisa Anderson
Tatiana Davila
Maira Davin
Erik Englebert
Ella Gaffney
Meagan Gilmore
Heather Henry
Darrin Kron
Lindsey Krywaruchka
Tiffany Lyden
Katie Makarowski
Kyle Milke
Kurt Moser
Hannah New
Mark Ockey
Hannah Riedl
Alanna Shaw
Eric Sivers
Christina Staten
Mike Suplee
Lauren Sweeney
Andy Ulven

Members of the Public:

Scott Buecker
Ed Coleman
Elena Evans
Loren Franklin
Joelle Gipson
Brian Heaston
Joshua Hector
Kelly Hendrix
Emilie Henry
Karli Johnson
Ali Hupka
Steve Jenicek
Casey Lewis
Joe Lierow
Aaron Losing
Vicki Marquis
Alie Simpson
Jaden Toole
Ciashe Vang
Matt Vincent
Jillian Waltman
Sarah Zuzulock
Montana Trout Unlimited
Anna
Brenna
Iverson
Jenna
Rickey

CALL TO ORDER

Chair Knuteson called the meeting to order and a round-table attendance was taken.

APPROVAL OF AGENDA

Teri Polumsky moved to approve the agenda as written. Ron Pifer seconded, and all approved.

APPROVAL OF MINUTES

Teri Polumsky moved to approve the January 26, 2024 meeting minutes. The motion was seconded by Ron Pifer, and all approved.

BRIEFING ITEMS

Updates:

- Narrative Nutrient Rulemaking
- Septic Issues and Strategies
- Water Quality Educational Opportunities
- WPCAC Members

NARRATIVE NUTRIENT RULEMAKING UPDATE

Lindsey Krywaruchka – Water Quality Division Administrator

Lindsey gave an overview, explained that the passage of Senate Bill 358 in 2021 was the impetus for this effort. Version 6 of the rules, Circular-15 and the Adaptive Management Plan package was sent out on March 8th. With each version the scope has narrowed, which would indicate we're on the right track. Today we are providing WPCAC an update and overview. We intend to file a draft proposal with the Secretary of State on April 16th, which will be the same information WPCAC received on March 8th. Lindsey K explained that this 30-day window we are in is for WPCAC members to advise the Water Quality Division, so the take-home message today is to please comment and let us know. Once we move into formal rulemaking, that is when the public process starts. After April 16th, any changes made will be in response to comments, or as a result of comments. She stated that they have worked really hard to get to this point, and appreciate the input. Getting input, clarification, and feedback from wastewater facilities and people with discharge permits that will be applying these rules, has been very helpful.

Katie Makarowski – WQ Standards and Modeling Section Supervisor

Katie presented an overview of DEQ's proposed rulemaking to transition to narrative nutrient standards, and said comments and discussion are welcome. This rulemaking package centers on nutrient standards and includes adoption of new rules as well as amendment and repeal of existing rules.

Background: Nutrient standards refer to total nitrogen and total phosphorus in state waters. Excess nutrients cause undesirable water quality conditions. Controlling nutrients is necessary to protect beneficial uses – aquatic life and recreation uses are the most sensitive to nutrient effects. Excess nutrients are the most common causes of impairment in Montana waterbodies.

Narrative nutrient standards are in ARM 17.30.637(1)(e) General Prohibitions: State surface waters must be free from substances attributable to municipal, industrial, agricultural practices or other discharges that will create conditions which produce undesirable aquatic life. These narrative standards have applied to all state surface waters since adoption in 1970s.

In 2014 Montana adopted numeric standards (contained in Circular DEQ-12A) for total nitrogen (TN) and total phosphorus (TP) for:

- Wadeable streams and rivers (grouped by ecoregion)
- Large rivers: two segments of the lower Yellowstone River

- Nine individual stream reaches (site-specific standards)

These TN and TP concentrations were set to protect beneficial uses, and prevent exceedances of other water quality standards affected by TN and TP concentrations.

Also in 2014, DEQ also adopted a general variance available to MPDES permittees to account for the high cost of meeting stringent 12A standards and to allow for compliance with 12A standards over time. The ability to participate in the general variance diminished over time due to changes in federal regulations related to water quality variances and legal challenges and litigation around variances.

In 2021, Senate Bill 358 (SB 358) was passed, it required a transition from numeric to narrative nutrient standards, and a new incremental/adaptive approach for addressing excess nutrients in watersheds. The key directives were for DEQ to:

“adopt rules related to narrative nutrient standards in consultation with the nutrient work group.”

“provide for the development of an adaptive management program which provides for an incremental watershed approach for protecting and maintaining water quality.”

“amend rules...to delete all references to department circular DEQ-12A, department circular DEQ-12B, base numeric nutrient standards, and nutrient standards variances.”

An important aspect to highlight today is that DEQ consulted extensively throughout this process with the nutrient work group (NWG) as required by SB 358. The NWG is an advisory group convened by the department, and initially created in 2008. There are 21 interest groups represented in the NWG, including publicly owned and privately owned point sources of pollution and nonpoint sources of pollution, and other interested parties. The NWG has the defined purpose to “advise the department (DEQ) on nutrient standards, the implementation of those standards, and associated economic impacts.” The NWG has had 45 meetings since August 2020, and 40 since SB 358 passed and was signed into law in April 2021. The NWG’s time and input is greatly appreciated.

In addition to consulting with the NWG, DEQ also conducted additional stakeholder outreach. An opportunity for informal public comment was provided at each NWG meeting and we met extensively with individuals representing various stakeholder interests, including bill proponents, permittees, conservation interests, EPA and others. We hosted listening sessions, informational meetings, and technical subcommittee meetings. Throughout this process we presented at conferences and other statewide meetings. We’ve provided updates to WPCAC members and to the public. Throughout this consultation and development period we’ve shared drafts, listened to concerns, incorporated feedback, and adjusted along the way to improve clarity, and to come as close as we can to addressing interests and concerns.

While developing this rule package, DEQ adhered to several guiding pillars that were lined out from the outset. First, we need to ensure that we are protecting the beneficial uses of state waters. Our rules need to be based on sound science. We need to fulfill the requirements of SB 358, Federal Clean Water Act, as well as current State rules and regulations, including the Montana Water Quality Act. Furthermore, we need to be sure that we’re proposing rules that are implementable across various DEQ water programs.

Overview of Rulemaking Package: DEQ is proposing to adopt two new rules and one new circular, amend 17 existing rules, and repeal two existing rules:

Adopt:

- New Rule I – Translation of Narrative Nutrient Standards – will be placed in Water Quality Subchapter 6 – Surface Water Quality Standards and Procedures.
- New Rule II – Implementation of the Adaptive Management Program for Narrative Nutrient Standards – will be placed in Water Quality Subchapter 13 – MPDES Permits.
- Department Circular DEQ-15 – provides details and procedures related to both of these new rules.

Amend:

- 11 rules (ARM 17.30.507, 17.30.602, 17.30.619, and 17.30.622-17.30.629)
One requirement of SB 358 was to delete all references to Department Circular DEQ-12A, DEQ-12B, and/or nutrient standards variances. In these eleven rules, DEQ is proposing to delete these references and remove a contingent voidness provision pertaining to nutrient standards and nutrient standard variances.
- ARM 17.30.201 Permit Application, Degradation Authorization, and Annual Permit Fees
DEQ is proposing to add fees associated with Adaptive Management Program (AMP). This includes an Application fee (\$5000) with submission of an Adaptive Management Plan every 5-years, and an Annual fee (\$3000 minimum, scaled based on discharge volume). DEQ received one-time funding in 2021, but no sustained funding to implement AMP, and fees are necessary to recover department costs associated with implementation, enforcement, and compliance.
- ARM 17.30.516 Standard Mixing Zones for Surface Water
Overview of change – for total nitrogen (TN) and total phosphorus (TP) or nutrient parameters identified in Department Circular DEQ-7, the stream low flow used in calculating the dilution ratio is based on the seasonal 14-day, five-year (14Q5) low flow. This seasonal 14Q5 was initially adopted as the low-flow criteria for use with numeric nutrient criteria in DEQ-12A; it is proposed to be retained as it remains the appropriate low-flow statistic. Bottom-attached algae can develop in about 15-20 days when nutrient concentrations are elevated. Use of seasonal 14Q5 for design of disposal systems should prevent excess algae levels from occurring, on average, more than once in five years, which is within acceptable recommendations by US EPA.
- ARM 17.30.702 Definitions
Overview of changes – proposing to define “nutrients” to mean inorganic phosphorus and total inorganic nitrogen, removing reference to “total inorganic phosphorus”, and adding “required” to “reporting limit” definition. Total inorganic nitrogen and inorganic phosphorus will now be consistent with the only two parameters categorized as nutrients in Circular DEQ-7. This allows for clearer distinction between how nondegradation is implemented for the parameters defined as nutrients as compared to TN and TP. Also proposing to update term “required reporting limit” to be more consistent with DEQ-7.
- ARM 17.30.635 General Treatment Standards
Proposing to adjust use of acronym “7Q10” and add the word “nutrients” to specify dilution requirements must be based on seasonal 14Q5. These changes will improve clarity by appropriately using and defining the acronym, and will improve consistency with amendments proposed in ARM 17.30.516 and 17.30.702.
- ARM 17.30.715 Criteria for Determining Nonsignificant Changes in Water Quality
Proposing to remove “nutrients”, remove references to Circular DEQ-12A, and add “total nitrogen

and total phosphorus for reaches of the Clark Fork River”. Also proposing to add “including those addressed by NEW RULE I” in 17.30.715(1)(h), and remove contingent voidness provision. These changes are being proposed to comply with SB358 requirements, and to clarify that when evaluating nonsignificance under nondegradation, total nitrogen and total phosphorus are to be treated as parameters for which there are only narrative water quality standards, except for the reaches of the Clark Fork River that have numeric standards at ARM 17.30.631.

- ARM 17.30.1304 Definitions
Proposing to remove: “An adaptive management plan includes a watershed monitoring plan and, if required, an implementation plan” in order to match the definition of AMP in Circular DEQ-15 and to be more concise, since the components of an AMP are described in greater detail in Circular DEQ-15 and not necessary anymore in the definition.

Repeal:

- ARM 17.30.1388 Development of an Adaptive Management Program
This was a “Framework rule” adopted in 2022, used as interim step to meet a statutory deadline between adoption of SB 358 and this current comprehensive rulemaking. DEQ is proposing to repeal this rule, as the adoption of these new rules will render this framework rule unnecessary and redundant.
- ARM 17.30.660 Nutrient Standard Variances
This is an administrative update following the direct repeal of this rule by SB 358.

Mike Suplee – WQ Standards Scientist

Proposed New Rule I – Translation of Narrative Nutrient Standards:

Mike gave an overview of New Rule I.

New Rule I:

- Specifies that the narrative standard at ARM 17.30.637(1)(e) is the narrative standard that applies to nutrients.
- Adopts and incorporates by reference Department Circular DEQ-15, which provides procedures and requirements for the translation of narrative nutrient standards.

New Rule I is necessary to fulfill the requirements of SB 358. This required us to adopt rules related to narrative nutrient standards and to identify the appropriate response variables affected by the nutrients and associated impact thresholds in accordance with the beneficial uses of state waters. This process ensures narrative nutrient standards will be translated consistently across department water programs.

Circular DEQ-15 Part 1 – Translation of Narrative Nutrient Standards:

- Provides narrative nutrient standards translators to determine if narrative nutrient standards are met.
- Combined criterion approach:
 - a. Response variables – direct measures of the biological community or its effects
 - b. Causal variables – TN and TP concentrations
- This process is consistent with EPA guidance. Overall, it’s a weight-of-evidence procedure that gives greater weight to the biologically-based response variables over measured TN or TP.
- There are numerous translators in the circular because different types of water bodies and regions of the state require different activities so they’re accurate. Translators are applicable to different:
 - a. Water bodies – wadeable streams & medium rivers, and large rivers

- b. Beneficial uses – recreation and aquatic life
- c. Regions – western & transitional ecoregions, and eastern ecoregions
- Acknowledgement that exceptions and special conditions (dams, spring creeks, drought) may warrant site-specific response and causal criteria.

Alanna Shaw – Program Section Supervisor, MPDES

Proposed New Rule II

Alanna gave an overview of New Rule II, which describes implementation of the AMP, which is a new compliance option for meeting the narrative nutrient standards described in part I, using a flexible, iterative, watershed approach. New Rule II describes the implementation of a new compliance option within the MPDES permitting program – the AMP. This allows owners or operators of point source discharges to meet narrative nutrient standards using a watershed approach, including nonpoint source nutrient reduction projects. MPDES permits may include limits and conditions consistent with the department-approved Adaptive Management Plans. New Rule II adopts and incorporates by reference Department Circular DEQ-15.

The AMP option was created in conjunction with the NWG to fulfill Senate Bill 358 and 75-5-321, MCA to meet the needs of permittees and to protect water quality using a sensible Montana approach. This includes adopting rules related to narrative nutrient standards that “provide for the development of an adaptive management program that provides for an incremental watershed approach for protecting and maintaining water quality”, reasonably balancing all factors impacting a water body, and prioritizing the minimization of phosphorus, taking into account site-specific conditions.

The AMP is a long-term compliance schedule, which is a department-approved plan for meeting a water quality standard as soon as possible. The timeframe is proposed for 10-to-20 years, which aligns with the time periods over which municipalities conduct fiscal planning, including capital improvements, to wastewater infrastructure. This allows for planning of watershed projects that may allow for the protection of beneficial uses without more expensive facility upgrades. The AMP will be implemented in MPDES permits, with interim performance milestones evaluated annually, and at each 5-year permit cycle. Permit limits and conditions will be derived to achieve narrative nutrient standards as provided in New Rule I, to attain water quality goals as soon as possible. The adaptive management program is optional. Permittees are not precluded from pursuing, at any time, other regulatory compliance options such as water quality standards variances.

This new compliance option needs to be flexible, adaptive, and incremental, and these were our guiding principles in developing the AMP. This program is flexible in that it allows for facility and/or watershed focus, including optimization at the facility, capital improvements of the facility, point and/or nonpoint source reductions in nutrients, and incorporates site specific data. It's adaptive in that it relies on an iterative cycle of planning, implementation, monitoring, evaluation, and adjustment, and is incremental in that it is a compliance schedule with interim and final effluent limits that address both TN and TP where necessary, but allows for phosphorous prioritization where it is appropriate. This is the first time that nonpoint source projects have been an option for meeting MPDES permit limits and achieving water quality standards, which is something we're quite proud of.

Adaptive Management Plans will:

- be subject to Department approval
- include monitoring requirements (effluent and instream)
- emphasize watershed implementation – including facility optimization, nutrient source identification,

- pollutant reduction activities, load reduction estimates, partner commitments
- include annual reporting of progress
- may involve the use of mechanistic water quality models, especially for large rivers

Circular DEQ-15 Part II includes details and procedures related to implementing the AMP, including:

- Program eligibility
- Phosphorus prioritization
- Lake, reservoir, downstream protections
- Identifying nutrients for permit limits
- Field audits
- Adaptive Management Plan requirements (including pollutant minimization activities and watershed-scale plan)
- Large rivers and water quality models
- Integration with Total Maximum Daily Load (TMDL) program

Katie Makarowski – WQ Standards and Modeling Section Supervisor

Rulemaking Timeline:

March 15, 2024 – Rulemaking update to WPCAC

March 18, 2024 – Rulemaking overview to WPIC

April 16, 2024 – File proposal notice with Secretary of State (SOS)

April 26, 2024 – Proposal notice published in Montana Administrative Record (MAR)

April 26 – June 10, 2024 – Public comment period

June 10, 2024 – Public Hearing

Respond to comments; modify adoption notice

September 24, 2024 – File adoption notice with SOS

October 4, 2024 – Adoption notice published in MAR

November 2024 – Submit to EPA for review and approval

Amanda Knuteson thanked everyone for the overview.

COMMENTS and QUESTIONS from WPCAC MEMBERS

Ron Pifer: I think the whole program is impressive, and as an aquatic ecologist and plant ecologist background, I'm thrilled. I was wondering if any other state is doing the same kind of thing that we are in Montana, or are we kind of at the point of the spear with this new concept?

Lindsey K replied: Thank you, Ron. I'll let Mike Suplee answer in detail, but I would say we are definitely ahead of the curve. A lot of states are using the science that has been developed by Dr. Suplee in their approach to nutrient management.

Mike Suplee: It's my understanding that our adaptive management program is pretty uncommon nationally, so that's relatively new. However, the idea of using a combined criterion, using biology for this kind of process, that's not as new. They've got a combined criterion approach for nutrients in Florida and Minnesota, in Vermont (since 2016) and in Utah. It's also now proposed in Maine. So quite a few other states have actually implemented or have been using this. They're looking at a combination of nutrient concentrations, plus some sort of biological response variable or variables, to make decisions about the conditions of their flowing waters.

Ron Pifer replied: That's impressive. Mike, you implied in one of the slides that the EPA goes along with or supports this. So that's important. When we finally have to make the November or December presentation to the EPA, do they generally go along with biological responses as being a legitimate way to evaluate water quality?

Mike Suplee replied: yes, they do. There are a few small additional comments they would like us to look at in terms of some very fine details about some of the statistical analyses we did. All of those are well within our capacity to address, but generally they are supportive of this approach.

Eric Campbell: He received an email from Amanda McInnis. Her group has some issues with this nutrient rule package. He explained it was just an email he received, and shared the content:

- The first one is permitting information is missing. The current package is silent on how permits will be written, both for receiving waters with TMDLs and those without existing TMDLs. Without understanding how permits will be written, the cities cannot support the package. The cities have been making this request for three years.
- Number two: standards are unachievable. The current limit for treatment technology for nitrogen from municipal wastewater is about 3 milligrams per meter. Standard is an order of magnitude lower than what best treatment facilities can produce, 0.3 milligrams per liter. While DEQ is proposing a variance patch to address this issue, the variance is time limited, and would leave utilities without the achievable pathway forward, without permitting guidance. How/if variance would be issued would be unclear.
- Number three: significant cost increases for urban users. We estimate that the near-term compliance would be hundreds of millions of dollars, require significant increases in wastewater rates, and long-term compliance is unachievable. The increase would further divide between costs for rural residents on septic tanks, and urban water users. Greenhouse gas power consumption concerns are undressed. The package in its current form is likely to require significant upgrades to most of Montana's treatment facilities. These upgrades will have increased power and chemical production and the consumption implications that would not have been considered in any way. Lack of consultation with NWG. SB 358 asked for DEQ to work in consultation with the NWG. Montana DEQ failed to respond to numerous requests from the group on permitting guidance, technical feedback, and the proposed feedback, and most recently, edits to the proposed rulemaking.
- Number four: Numeric, rather than narrative approach. SB 358 specifically calls for a narrative approach, and one that is watershed-based. The proposed package is neither narrative, nor watershed based.

Amanda Knuteson replied: Thank you, Eric. I just would insert one point, which is that as Lindsey pointed out earlier, there is a 30-day window for us, as WPCAC members, to comment prior to rule publication, and maybe to the extent that WPCAC members agree with or endorse concerns that are coming to us from the public, we can pass those along during that 30-day window. I think maybe the 30-day window is being used by other members of the public, and not just WPCAC members. We are here to pass concerns along to the extent members, at their discretion, want to. DEQ, would you like to respond?

Lindsey K. replied: Thank you, Eric, for bringing that forward, I think there's a lot to respond within that. We have spent the last 3 years and 45 public meetings, and an uncounted number of other meetings, hashing this

out. It is the role of public servants to listen to all sides and consult all sides. We are really proud of the work that we've done, and we're really proud of the amount of time we've spent listening and also responding. We are happy to dive into some of those details with any member of WPCAC, and happy to take this offline to dive into each one of the areas addressed, but I would say that we have heard those concerns, and we're comfortable and proud of the work that we've done to date.

Mike Koopal: There's no doubt that DEQ has just taken on a herculean effort here to come up with these proposed rules in Circular-15, and I think it's fair to say that this is going to be a lot more complicated to implement than the current numeric standards. I was pleased to see that DEQ is going to be auditing 10% of the AMPs per year, so there's some backend quality control with what's happening on the ground. I would like to go back to a comment earlier by Lindsey about clarification and consistency, and one thing that's still somewhat confusing to me are the terms waterbody, watershed, and hydrologic unit code. New Rule II refers to a watershed, and I'm not exactly sure how you're defining a watershed. In other words, what scale of a watershed are we talking about? And then Circular 15 mentions the hydrologic unit code (HUC), but I'm not sure as to what level HUC we're talking about, and so is that ultimately a DEQ determination? Or do we need better consistency in the language in these documents?

Mike Suplee replied: I think I can help address this question. You had three terms you were asking questions about: waterbody, watershed and HUC. There's a couple of ways of looking at what a waterbody is, in the common knowledge way, the Yellowstone River is a waterbody. It also can be divided into assessment units, which the department has, or by different points for different standards that apply along the river, there are natural breakpoints, so all those things are a waterbody. A watershed is exactly as it sounds. Then when it comes to HUCs, we had a lot of conversations early in this process about using the US Geological Survey's process for developing HUCs, allowing people to identify their watersheds. Where we landed is to be flexible - it's going to depend on the discharger, the permit, and how big the watershed is that they're affecting. If you're on the Yellowstone River you're probably going to be looking at more HUC 8, so a larger scale, but if you're on a small watershed it, it might be down to a HUC 12. So we had a lot of detailed information and discussion of that during the first five or six NWG presentations back around 2021.

Mike Koopal: I'm still confused when there are multiple dischargers within a defined HUC or watershed and how they will parse out who's responsible for what with the AMP.

Alanna Shaw: The AMP is a voluntary compliance option that's an option for dischargers, and so it gives dischargers the option to collaborate in a watershed in order to meet watershed level water quality goals through agreements and contracting. So, there's no prescriptive from DEQ that requires collaboration at different levels of a watershed. So if collaborative agreements are made, then DEQ will evaluate whether or not they are appropriate, and whether or not they are likely to succeed in meeting the goals in the watershed. This process is meant to be adaptive and flexible, so there will be adaptation and flexibility built in.

Lindsey K added: I think it's also important to note that for the AMP, we've been both guided first by SB 358 to establish this compliance option, and then also working arm-in-arm with the EPA.

Katie Makarowski added: Particularly with the increased emphasis on in-stream biological response in this transition to narrative nutrient standards, and using this combined criterion approach and AMP approach, there's certainly going to be increased monitoring occurring throughout the receiving water bodies at different points. If watershed scale nutrient reductions are being sought, one of the first and important steps would be

nutrient source identification and monitoring to understand how conditions vary throughout the waterbody, taking into consideration different point and nonpoint sources of nutrients that may exist there, to really understand the magnitude and location of different sources.

Ron Pifer: When I was in the early phases of my professional career I was doing environmental impact reports in multiple states. One of them was in California on dams, and this addresses what Eric was saying regarding the email he received. I don't know if the email was from the Montana Cities and Towns Association, but that's the challenge with environmental rules and regulations, is finding the balance where it's affordable to implement them, or even if they can be implemented. In the project I was doing, we had to look at the Federal clean water drinking standards, and I may not have the number right, but I think the TDS value couldn't exceed 500 parts per million, and in Southern California the water coming in was 800 or 900 parts per million, so they could say that it exceeded the standard, but there was no practical way of reducing it to below 500 milligrams per million. So we may run into situations like that implementing these narrative and biological response standards where we have to have some wiggle room and work with people to do the best we can. That's my input, but that's just one data point I had from history. They can't even implement their clean water drinking act in some areas of Southern California, because the salt levels are too high in the water.

Lindsey K replied: Thank you, Ron. I think that's the goal of the AMP. As a headwaters state we have very pristine water and naturally occurring high water quality, and the knowledge of exactly what you just said is what really led to this AMP approach.

PUBLIC COMMENT

Vicki Marquis: I work with a group of point source dischargers who were the proponents of SB 358. Amanda McInnis is also working with that group. The group includes the League of Cities and Towns, the Treasure State Resource Association, the Montana Mining Association, and the Montana Petroleum Association. The bill proponents wanted to design a system that was protective of water quality based on science, but also something that was achievable without creating an immense economic burden on our communities and across the State. That group has consistently asked for an option that allows for compliance, without requiring compliance schedules or variances. The reason is that both of those two items are heavily litigated, and they cannot be used forever. That's important, because in a case like here, where you have very, very low numbers, where nobody even knows what technology in some cases could be used to reach those, we know that a variance cannot last forever, and at some point, the standard will either have to be met, or we'll have to downgrade the use, which may not be possible, and frankly, may not be something that Montana wants to do - to remove aquatic life and recreation uses from its waterbodies. You've heard several members of the group present in front of you before, Amanda McInnis, Kelly Lynch, Alan Olsen, and Matt Vincent. This group asked for more time late last year because we were getting a lot of documents, and we felt like we were playing catch up a lot of the times.

In one area there was science done by DEQ outside the purview of the NWG. So that was one area where the technical experts within the NWG were not consulted until the end. Science was just been provided to them at the same time it's been provided to members of the public. We were also provided with DEQ rules and a new version of Circular-15. We appreciated the additional time. We gave DEQ a red line version of the rules. We've suggested some changes. We met with DEQ on February 22nd, and we went through the changes and broadly discussed some of our concerns. We were expecting another follow-up, either in writing, or something from

DEQ. What we got was the same thing that the public got, the new rules and the circular last Friday. I've learned some today listening to the presentations, but essentially there's been some change, but not on the substantive issues. This is a state issue, and while EPA can recommend and put guidelines in place, they don't require any particular number, they do on some standards, but not for nutrients. So this is a state issue. For perspective, I appreciate the discussion of what other states are doing, I think we need to look at what other states are promulgating in terms of rules and standards. We looked within our EPA region 8 and our neighboring state of Idaho, and none of those states have promulgated rules this stringent that apply immediately on a statewide basis. The closest we found was in Colorado and Utah. I believe in Colorado, they have some stringent standards, but they have not promulgated them as standards yet. What they've done is, they said they're going to consider them for adoption in the year 2027, and until then they've put effluent limitations in place for their dischargers. They have different effluent limitations for municipal dischargers, publicly owned treatment works, and different numbers for industrial dischargers, and new facilities get different numbers, as well, but they've done that, and they've provided an incentive where the dischargers can put off their compliance with whatever new rules they adopt in 2027, based on how quickly they achieve nutrient reductions in their effluent. Utah also has numeric standards, but those only apply to their perennial headwater streams. They don't apply statewide, and they also have promulgated effluent limitations that apply to dischargers. So just for perspective, I think it's wise to look at what the rest of the nation is doing. I've given you an overview of what are some of the numeric approaches used within our region, but what we saw the last time Montana got out ahead of the rest of the states and put numeric standards in place, we saw litigation. We saw regulatory changes that paralyzed the State, and put us in a state of a flux that has been very expensive for everyone, and that money could have gone into protecting water quality. We don't want to see that again. There's one publication that we'd like to draw to your attention – an EPA publication from August of 2021 titled, "The Life Cycle and Cost Assessments of Nutrient Removal Technologies in Wastewater Treatment Plants". In that document, EPA describes five levels of treatment. To achieve the numbers proposed in Circular DEQ-15, I believe you would have to go down to a level 4 or 5 treatment. The cost of treatment goes up as though different levels increase. Levels 4 and 5 are the most expensive treatment, and level 5 treatment comes with some adverse impacts, because it requires a lot more energy and chemical consumption. If you look at the total picture, requiring level 5 treatment may not always be your most environmentally friendly option.

New Rule I, as it was presented by DEQ, while it's called a narrative standard, it's not narrative, it's translated into numbers. What we proposed was truly a narrative standard. It did not refer back to the generic narrative standard that applies to all parameters, but it applies to nutrients, and it requires protection of beneficial uses. New Rule II essentially provides for the AMP, but essentially it turns adaptive management plans into a long-term compliance schedule, which is how we've heard the department described those. What that means is that a permittee in an AMP will see a permit based on numbers, standards taken from DEQ-15, that cannot be achieved. We don't see how this will help dischargers in the long run. They'll still have to plan to meet those numbers. While those numbers may change somewhere down the line, putting those numbers in place right out of the gate isn't helpful.

Amanda Knuteson: It pains me to do this, but because we have a lot of attendees, and I'm usually never strict about the 3-minute rule, but we're up to 8 or 9 minutes right now. I'm sorry to curtail this, and I think that these comments are really valuable and need to be put into the record at the public formal comment period, or if you'd like to reach out to those of us on WPCAC that you think might have the appropriate background to further those for you in this 30-day period, that would be another alternative, but right now we want to be fair to all of the attendees, so please do give us your summary.

Vicki Marquis: Absolutely. I respect that. Thank you very much. I just want to point to pages 7 and 8 in DEQ-15. The numbers there don't have the low-end numbers, but if you look at the text that precedes that on page 7, it's pretty clear that there's an opportunity for even lower numbers to be used, and without knowing where the floor is, we can't plan. We don't know how low the numbers are going to be. From my view, that's a litigation risk. I also want to point out pages 15 and 18, the tables used to determine compliance. We appreciate there's one more avenue to find compliance, there are multiple, more avenues to find lack of compliance, so it creates another problem in that regard. Lastly, I just want to say, commenting during the rulemaking, in our experience, once the rulemaking is initiated, there are only minimal changes made between then and when the rule is finalized. We've provided comments over the last 10 years since this effort has started, and so our comments have been given to DEQ. We'll make them again in the public comment period if rulemaking is initiated, but we recognize that if any substantial changes are made, it would require reinitiation of that rulemaking. For all these reasons we ask for a motion from WPCAC advising DEQ that the rules not go forward at this time in this state, and that they consider removing DEQ-15, and creating a truly narrative standard. Thank you.

Ed Coleman: I'm Deputy Director of Public Works for the City of Helena. I would like to reiterate a lot of what Vicki said. For the City of Helena right now, based on the information that we have, we're looking at potentially doing a hundred-million-dollar plant upgrade. That money will fall on the backs of rate payers to try to upgrade our plant to meet standards that we don't really know that we can meet, even with that 100-million-dollar upgrade. So, we're all about improving water quality and maintaining water quality, but we're sitting here looking at a 100-million-dollar upgrade. We don't know if we can meet the standards. We're not even certain whether or not that would improve water quality in Prickly Pear Creek, considering there are 2 lagoons from private subdivisions out in the county that are that are directly downstream of our discharge that are also likely leaking into the receiving waters. So even if we spend a hundred-million dollars on removing phosphorus and nitrogen, there's still a good chance that those nutrients will be going in there from other sources, and so what we've contemplated is how do we address those potentially leaking lagoons? Well, maybe we could fix those at the cost of tens-of-millions of dollars or connect them, but what was DEQ informed us, is that really the only way that we are going to get a better end of pipe translator number is by improving upstream water quality standards, and that would address our reasonable potential analysis and give us a higher number translator at the end of pipe. The problem is that upstream of us, is East Helena Wastewater Treatment Plant is what feeds Prickly Pear Creek.

The bottom line is, as Lindsey pointed out, that this effort has been tremendous. It is an ultra-marathon, and we're real close and we're in the last few miles. We would like to see these ideas fully cooked and fully baked, and really address a watershed approach. So, if a point source discharger does improvements downstream, they're actually getting credit at their end of pipe narrative limit that's translated to a numeric number. To reiterate what Vicki said, is the new documents came out last Friday, we haven't had a chance to thoroughly review them, and a couple of words make a big difference, especially in a rule package. So with that I just urge you, as Vicki said, to see WPCAC recommend to DEQ that they continue to work with stakeholders so that we can get a rule package that we can move forward and that we can all work with that protects water quality, is not going to cause significant problems, or make unreasonable requests for municipalities and other dischargers, wherein those efforts, and the cost of those, are going to fall on the backs of rate payers. Thank you very much for your time. I appreciate it.

Amanda Knuteson: This is the first time we've had a formal request from public attendees to call us to action to make a motion. One of the things we possibly haven't done a great job of clarifying here at WPCAC is that our function is solely advisory, and now, more than even when we first started, we are a speed bump on the

agency's way towards promulgating their rules, to publishing their rules. We are a great forum for inviting comment, and getting you into the record, and being available between meetings. If you want to have more discussions, and maybe gain a better understanding of your position so we can advocate for that, or if you want to be on our agenda, you can do that. What we can't do is procedurally block DEQ from moving forward with rules when they, as an agency, have determined the time has come. I appreciate with the 45 meetings, and with the pressures from several different angles, and with the EPA looming right there, and I think most of us prefer that we not lose control over administering our water quality regulation to the Federal Government. At this point, I feel like DEQ is going to move forward. WPCAC doesn't have power to stop them from moving forward, but we definitely will continue to provide a forum where you will be heard, and where your comments can be received not only here, but if you want to reach out to us in between meetings again and have us advocate your position and so people with relevant backgrounds can gain a better understanding of it. I personally am curious about economics, but that's beyond the purview of this discussion. As Chair of this group, I don't personally think that we're in a position to make a motion to put an obstacle in front of Montana DEQ, if the agency has determined that moving forward and taking these comments in the context of the formal comment period is the way that they want to go. That's my personal opinion, and I am open to comments from my fellow WPCAC members on that right now, but any motion that we would make and vote on would be purely symbolic right now. My position is the comments have the weight that they're going to have, whether we vote on it or not. Does anyone else in my group, though, disagree? I invite discussion on that from WPCAC members.

Ron Pifer: We had a very useful meeting with Lieutenant Governor yesterday regarding the function of WPCAC and our advisory capacity, and as such we're also a platform for advice. Vicki and Ed just created and transmitted some advice. The members of DEQ in attendance at this meeting received the advice, and they're aware of it. So as a platform, we've been a vehicle for that. I agree with you that any motion that we make, although it could be symbolic, it's not an impediment to DEQ to do whatever they want to do, because they can do that. It's just a question of people being reasonable, rational, and sensible, and setting forth the rules that are less likely to have a ton of litigation, or create a mountain of frustration for Montanans. I'm actually glad I'm not in DEQ shoes, in a sense, because it's going to be challenging going forward. Like you say, Amanda, I know for Vicki it may not feel confident that putting this in the public record will matter, and maybe it won't, when DEQ is 95% of the way to the goal line, but it is what it is. We're trying to do our part, but this is about all we can do is just provide a format for discussion and input.

Dennis Teske: There are a lot of parts to this machine that's moving down the track. I'm a County Commissioner, and we deal with all kind of issues, from Department of Transportation to DEQ to BLM, and what happens is we propose rules, regulations, codes, laws, and it seems simple enough, but it never is. I'm never in a hurry to accept a new law, new rule, until you really analyze it and look at it. It's never wrong to do the right thing, and sometimes we burden society as we do with the greenhouse gases and CO2. I've got to have that on my farm or I can't grow a crop, but somehow, it's a bad thing. I've got cows that stand up in a field and fart, and sometimes that's a bad thing. What happens when we put all these things on society, we can break a law or rule. I think, Trent Lewis said, the average citizen commits three felonies a day and doesn't realize it. With all our rule making, and all the things we do, my challenge would be to DEQ that as we move this forward that we really get it right. 100-million dollars is a lot of dough in anybody's world. In my little county a thousand bucks is a lot of dough. If we're looking for compliance and making it work for everybody, I'm a farmer irrigating, and I have to have clean water to put on my crops. I don't want anything off my field leaching into the Yellowstone River, it is a pretty important deal. It's finding that place together, as Montanans, that we make it work, and that we just don't hurry things along. These things have to be really thought out, and I thought Vicki

brought up some very good points. Thank you.

Amanda Knuteson: I agree that we do really appreciate the comments and the points, and we learn a lot from them, and again, do reach out to us in this intervening 30 days, if you'd like, we'll work with you, if we can. We have only the authority we have, and this is a great forum, but it's not a place where we are going to be creating roadblocks to rules. We just implore DEQ to listen to reason, and hope you've considered all relevant factors prior to moving forward with this rule package. So with that, we're a fair amount off of our agenda. Following the next item, we will still have time for more public comment if there are more attendees that think of something and want to share your perspective at the end.

SEPTIC ISSUES AND STRATEGIES SUBCOMMITTEE UPDATE

Amanda Knuteson: The next item on the agenda was just a quick update on the Septic Issues and Strategies Work Group that we formed in January. I'll defer to vice chair Pifer, since he's leading that charge, but just to say that right now it's still very much in the development phase. I think that we're still at the point right now where we would invite those who are interested, to send their email in and you can be included on a notice list. Vice chair Pifer, would you like to take over and give a brief update on that?

Ron Pifer: We've just had one meeting with Amanda, Mike Koopal, and myself, and we had another meeting yesterday with Lieutenant Governor. The Lieutenant Governor reiterated our advisory role; however she feels it's valuable for us to look into matters relating to septic issues, and put together a concise summary for DEQ that they can use to their benefit, or in whatever way they choose. Thus far, with my background, I looked into biological additives for extending the time between pump outs and reducing the load on the regional wastewater treatment plants, and found that three states (Florida, Massachusetts, and Washington) have already implemented legislation. I will be providing to DEQ a white paper on what these three states are doing, and what the steps are to provide that to the state, knowing the state cannot endorse a particular product. In Florida, they issue a letter of no objection. Florida allows both biological chemical additives, but discussions among ourselves, we don't think there should be chemical additives in Montana, just biological, but that's something that could be discussed. We may look into creative on-site wastewater treatment systems and the procedures that other states are doing. Montana has its own procedures for that, so we're hoping to gather a little bit more information and summarize it, and then provide it at a future meeting to DEQ, for their advisement. The Lieutenant Governor told us yesterday that any information that we provide to the DEQ, they can take it under advisement, and if they feel it's valid enough to sponsor a bill, then they would be working with the governor's office, which is also working with legislators to sponsor, and they want it to be a clean process, if in fact anything like that goes forward. Our part is just to provide some information, and I don't know that we'll provide that much advice, but we'll provide you some information on what's out there and what other people should do and pass it on. So that's where we stand right now, and if anybody is interested, you can email Amanda or myself, or Mike Koopal, who's also in our group of three that's kicking ideas around. Thank you so much.

Amanda Knuteson: Thank you, Ron, and I think another important point is that the Western Montana Conservation Commission, that was just formed in the last legislative session, and convened for their semi-annual meeting shortly after we formed this work group, also formed an onsite work group, so the logistics of that right now is just that we need to avoid duplication of efforts. It's possible that some of the work that was maybe contemplated through the WPCAC work group would actually be better performed in the context of the WMCC group. This was a conversation we literally just had yesterday, so as of right now, there's no substance to present. It's still in the developmental phase that it was when we first conceived of this and voted on it in

January, but do sign up, and send your email, if you're interested in being apprised of what's going on. We'll have summary updates at regular WPCAC meetings.

Ron Pifer: Yes, and the other part is both myself and Mike are on the WMCC, so we will know what each group is doing regarding gathering information on septic issues, and so there won't be any duplication of effort, and we will we will share with each other. It's all for the common good, and some of it will end up at DEQ, and some of it at DNRC.

Lindsey K: stated she is also on that commission.

Amanda Knuteson: asked if there is an update on that front? Any update on the Executive Committee related to this to the subgroup?

Mike Koopal: All the committees at the WMCC are being developed, so we haven't landed on any particular structure for those. We are a new organization, we've met twice, and so we are still working on the structural underpinnings of the organization, and the committees will play a huge role informing the work of the Commission, but we're just not there yet. We hope to navigate through that committee formation this year, and to work cooperatively with WPCAC on this specific septic issue. We have a little more flexibility at WMCC, in that we have some legislators that are on the Commission and a fairly robust staffing from DNRC to assist us in the effort. So we're optimistic about our opportunity to provide information to the agencies.

Amanda Knuteson: The takeaway would be that members of the public interested in septic subgroup work should be following the agendas of both WMCC and WPCAC. We eventually are going to have an email list, but DEQ doesn't have resources to host, and we're not hosting public meetings between now and the next meeting. Mike, how can people follow when WMCC is going to have meetings?

Mike Koopal: Currently you can find the agendas on the WMCC website. That entire website is under development, however I just heard yesterday that the web developer is nearing completion of all the updates, so we hope to have that up for the public soon.

Amanda Knuteson: Thank you. Now DEQ is going to give us a quick update on water quality educational opportunities.

WATER QUALITY EDUCATIONAL OPPORTUNITIES

Tiffany Lyden:

I work in the Nonpoint Source and Wetlands section at DEQ. This was a request from the WPCAC chair to give a brief overview and share available resources with WPCAC members. I pulled together a few slides that I will post to the WPCAC page on the DEQ website, so that you have easy access to the links. Primarily, the resources I'm going to go over today fall into four areas: General Resources, Recurring Trainings and Conferences, Upcoming Opportunities, and Online Event Calendars and Other Resources.

General Resources: Are available online, there is no cost, you can access them at any time.

DEQ website – Water – Resources - Water Seminar – will bring up a series of videos. The videos are short and give an overview of different topics including beneficial uses, setting water quality standards, nondegradation, etc. Similarly, there are videos that are posted on the Engineering and Subdivision's page on our DEQ website. Those videos are from a subdivision application training series that DEQ hosts every fall. The training sessions

are focused towards sanitarians or consultants that are doing subdivision reviews, however, there is a lot of helpful and interesting information about onsite wastewater systems, stormwater, nondegradation information, etc.

Recurring Trainings and Conferences:

- DEQ Subdivision Application Trainings (training for sanitarians and consultants) – Fall
- MT Water School - training for Water and Wastewater Operators (MSU/DEQ collaboration) - Spring
- Montana Environmental Health Association (MEHA) conference – Spring
- Montana Section American Water Works Association (MSAWWA) & Montana Water Environment Association (MWEA) – Spring
- Montana American Water Resources Association (AWRA) – Fall
- MT Stormwater Conference – 2025

Upcoming Opportunities:

- April 1 – 3, 2024: Confluence 2024: The Power of Possibility Reimagining Public and Environmental Health in Montana confluencepha.org/
- April 23 – 25, 2024: MSAWWA / MWEA 2024 Joint Conference montanawater.org
- April 24 – 25, 2024: 2024 Clark Fork Science Forum – on MT Tech Campus, Butte
- May 14 – 16, 2024: MT Water School ato.montana.edu/waterschool/
- October 9 – 11, 2024: 2024 Montana AWRA Annual Conference montanaawra.org/

Online Event Calendars / Other Resources:

- Montana Association of Conservation Districts: macdnet.org/events-calendar/
- Montana Watershed Coordination Council: mtwatersheds.org/resources/training/
- MSU Extension Water Quality: waterquality.montana.edu/
- Department of Environmental Quality social media posts: current events and other information

Amanda Knuteson: Thank you, this is really valuable, and having it early in the year is helpful, especially when there are so many new rule packages that will be taking effect in different areas. It will be helpful for us as WPCAC members to get more background and be able to go to events or learn more.

Lindsey K: I would just like to add, we've really tried to make all of the resources in small, bite-size pieces. So where you saw the links and what you'll see in what Tiffany shares may seem like a lot of links, but we tried to keep the content short, like 10-to-15 minutes, and by topic, so you're not having to listen to a 1-hour presentation and instead can take 10 minutes and learn about groundwater permits.

Ron Pifer: Does DEQ have any outreach programs, particularly to the schools in Montana, where you engage them with your programs, or make them aware of the programs, so that the kids can get some good, practical education?

Tiffany Lyden: Yes, that is one of my focus areas. I work in the Nonpoint Source and Wetlands Section as an Outreach and Education Specialist. This last year have been doing a number of different youth education programs in the schools. We've done a number of things here in Helena, in the Bitterroot, Great Falls, and other areas. We've been getting kids outside doing some water quality sampling, stream measurements, and other activities. So yes, lots of opportunities where we've been engaging kids, mostly middle school, and high school kids, in water quality topics and just trying to get them interested and engaged in science, and really

thinking about some of these really important issues.

UPDATES FROM WPCAC MEMBERS AND PUBLIC COMMENT

Amanda Knuteson: I would like to open the floor again, for our formal public comment period and there's no topic off limits, and I hope that my speech about authority or lack thereof, didn't deter anyone from being heard today or voicing their opinions, because it is important. It does put you on the record, and again, we encourage you to please take your comments forward into the formal comment period, should those rules move forward into that phase in 30-days. As to the narrative package, you'll want to be as detailed as you can during that process, so that DEQ is on notice of what the issues are, and hopefully can seriously consider, and address each comment and all of its facets. So with that, I would yield the floor first to other WPCAC members. Is there anyone in the group, or the council that has anything they'd like to ask before we move to public comment?

Michelle Jenicek (online caller): My only affiliation is I'm a private citizen with some experience in dealing with marijuana grows, and I think DEQ is well aware of my concerns, and my biggest concern is lack of enforcement, and the fact that marijuana grows and their resulting wastewater discharges are considered to be a low priority for the DEQ. Most of them are dumping their wastewater into their septic tanks, and they're going unnoticed, or unenforced in terms of what they should be doing with their wastewater. At the December 13th meeting, I said there are 300 plus marijuana grows throughout the State, and not one of them, at this point, has a discharge permit, which is something that is required if there's any sort of industrial wastewater being emitted into the ground, and in addition to that, some of them may be putting their wastewater into tanks. The tanks have nowhere to go. I've been doing some research on that, and I'm not getting much assistance through DEQ, in terms of where they can dump this wastewater that is now being held in the tanks. So, this is an ongoing issue that the State needs to deal with. Marijuana growth has been around since 2004, that's when medical marijuana became legal, and then in 2020, recreational marijuana became legal. So it's not a new industry, and something needs to be recognized, because who knows what kind of nutrient pollution, nitrates and phosphorus especially, are going into the ground water or surface waters ultimately. Thank you for your time.

Amanda Knuteson: Thank you. I'm glad that you spoke up. I would just say, from my perspective, having done only a very surface level bit of research, I do understand your perspective, that this isn't a new industry, but it's still, relatively speaking, new in the context of water quality regulation. It's still considered new as compared to, for instance, feed lots and other agricultural activities that have been regulated for a long time. I do know that there are a few states that are regulating it, unsurprisingly, California is a leader in that, so that might be an area you look into as far as where and how to voice your concerns and be heard. This is definitely one forum and should DEQ undertake some rulemaking where this could be addressed in more detail, or the wastewater characterized and regulated in more detail, that might come from a legislative prompt, or maybe a judicial decision down the road, but you always are free to share research that you've done with us, and we appreciate citizen efforts to research and understand some of these emerging issues that aren't well understood right now, or regulated necessarily here in Montana yet. Does anyone else have any response or comment?

Lindsey K: I am working with the Cannabis Control Division Administrator at Department of Revenue and Ms. Jenicek to set up a time where we can all get together and talk about what we've done since the 2023 legislative session and share some information in that format. Just know that is taking place on our end.

AGENDA ITEMS FOR NEXT MEETING

Amanda Knuteson: asked if there were any more comments from anyone. Our next meeting is May 10th at

10am. Does DEQ anticipate any updates on the rule front?

Lindsey K: Our intent with the narrative nutrients is to file the draft with the Secretary of State on the sixteenth of April, so we can provide a timeline update on that. We also have the nondegradation rule package that is out right now, so I can also provide an update on that.

Amanda Knuteson: The public hearing on that is April 23rd. The nondegradation rule package was presented to us more than once. The most recent version was presented on January 26th and is on file at the Secretary of State, so that is open for formal public comment, and I encourage anyone with interest to make sure your comments are detailed and get them in as soon as possible.

Lindsey K: April 23rd is the closing date and the public hearing for the nondegradation rule package. The Zoom link is posted on the Secretary of State's website as part of the announcement. It will be held here in the DEQ, Metcalf Building, Room 111, at 1:00 PM.

Amanda Knuteson: are there any more potential agenda items? We always want to get that published one week prior to the meeting, at the latest. The public can always reach out to us if you would like to be on the agenda at our next meeting - DEQ has a form that can be filled out in advance.

Amanda Knuteson adjourned the meeting.

Respectfully submitted by Theresa Froehlich