

## Outline of Key Events Leading to Today's Rulemaking Request

**2014:** Adoption of Department Circulars DEQ-12A and DEQ-12B

**2015:** EPA approves Circular DEQ-12A and -12B (February)

**2015:** EPA adopts its water quality variance regulations at 40 CFR 131.14 (August)

**2016:** EPA sued by *Upper Missouri WaterKeeper* for having approved DEQ's nutrient variance rules (i.e., 12B). Suit is primarily based upon challenge to the use of economic and social factors to grant a WQS variance.

**2017:** DEQ's 1<sup>st</sup> triennial review of 12A and 12B; 12B rewritten considering EPA's updated regulations. EPA's updated regulations require the term of the variance be based upon the time necessary to meet the interim treatment requirements, not the underlying standards

**2019:** Court finds EPA's use of economic and social factors to approve a WQS variance to be consistent with the Clean Water Act. Court upholds the Current Variance Standard (Table 12B-1 treatment requirements) and EPA's approval of Montana's economic and social impacts analysis results. However, Court also finds EPA's regulations contradicted themselves, and specifically finds EPA's approval allowing time to achieve merely the interim treatment requirements to be unreasonable (March).

**2019:** Per Court order, parties conferred in good faith to find a resolution but did not come to a common accord; individual briefs filed (July 1)

**2019:** July 16: Court orders DEQ to address the timeline to meet (a) interim treatment requirements and (b) base numeric nutrient standards, within 120 days, leading to this rulemaking. Court partially vacates the approval related to these issues, and then stays that vacatur, to allow time for DEQ and EPA to address its concerns. Because the Court stayed its partial vacatur, EPA's approval of Montana's general variance is still in place, however, time is of the essence to address the Court's concerns.