

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the adoption of NEW)	NOTICE OF PUBLIC HEARING ON
RULE I and NEW RULE II, the)	PROPOSED ADOPTION,
amendment of ARM 17.30.201,)	AMENDMENT, AND REPEAL
17.30.507, 17.30.516, 17.30.602,)	
17.30.619, 17.30.622, 17.30.623,)	(WATER QUALITY)
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)	

TO: All Concerned Persons

1. On June 10, 2024, at 10:00 a.m., the Department of Environmental Quality (department) will hold an in-person public hearing in Room 111 of the Metcalf Building, at 1520 E. Sixth Avenue, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules. Interested parties may also attend the hearing electronically in the following ways:

<https://mt-gov.zoom.us/j/86122594706?pwd=T0crdWxwUTVsZlQ0Nk5EeTU1OVkxZz09>
Passcode: 362275

Or One tap mobile :

- +12063379723,,86122594706#,,,,*362275# US (Seattle)
- +12133388477,,86122594706#,,,,*362275# US (Los Angeles)

Or Telephone:

- Dial(for higher quality, dial a number based on your current location):
- +1 206 337 9723 US (Seattle)
- +1 213 338 8477 US (Los Angeles)
- +1 646 558 8656 US (New York)

Webinar ID: 861 2259 4706

Passcode: 362275

International numbers available: <https://mt-gov.zoom.us/j/86122594706>

Or an H.323/SIP room system:

- H.323: 162.255.37.11 (US West) or 162.255.36.11 (US East)
- Meeting ID: 861 2259 4706
- Passcode: 362275
- SIP: 86122594706@zoomcrc.com

Passcode: 362275

2. The Department of Environmental Quality will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Environmental Quality no later than 5:00 p.m. on June 1, 2024, to advise us of the nature of the accommodation that you need. Please contact the Department of Environmental Quality at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-1388; fax (406) 444-4386; or e-mail DEQMAR17-434@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I TRANSLATION OF NARRATIVE NUTRIENT STANDARDS

(1) The narrative standard that applies to nutrients is found at ARM 17.30.637(1)(e). The department translates the narrative standards at ARM 17.30.637(1)(e) as provided in Part I of Department Circular DEQ-15 (March 2024 edition).

(2) The department adopts and incorporates by reference Department Circular DEQ-15, entitled "Translation of Narrative Nutrient Standards and Implementation of the Adaptive Management Program" (March 2024 edition), which provides procedures and requirements for the translation of narrative nutrient standards and implementation of the Adaptive Management Program. Copies of Department Circular DEQ-15 may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-5-201, 75-5-301, 75-5-321, MCA
IMP: 75-5-301, 75-5-321, MCA

REASON: The 67th Montana Legislature enacted Senate Bill 358, Chapter 342, Laws of 2021 (codified, in part, at 75-5-321, MCA), which requires the department to adopt rules related to narrative nutrient standards in consultation with the Nutrient Work Group, an advisory group that advises the department on nutrient standards, the implementation of nutrient standards, and associated economic impacts. Nutrients, in this context, refer to total phosphorus and total nitrogen concentrations in state surface waters. NEW RULE I is necessary in order to fulfill Senate Bill 358 requirements to adopt rules related to narrative nutrient standards that identify appropriate response variables affected by nutrients—along with impact thresholds for each response variable—in accordance with the beneficial uses of state surface waters. NEW RULE I is also necessary to ensure narrative nutrient standards are translated consistently across department water programs. NEW RULE I(1) specifies that narrative nutrient standards are found at ARM 17.30.637(1)(e) and must be translated as provided in new Department Circular DEQ-15. NEW RULE I(2) adopts and incorporates by reference new Department Circular DEQ-15.

Part I of Circular DEQ-15 provides narrative nutrient standards translators comprised of nutrient causal and instream response variable parameters applicable

to different beneficial uses, regions, and waterbodies. The translators provide impact thresholds for each parameter in accordance with the applicable waterbody's beneficial uses. Parameters listed in Circular DEQ-15 must be measured in order to translate the narrative nutrient standards and are applicable to wadeable streams, medium rivers, and large rivers. Special ecological considerations and exceptions are also described, to ensure that response variables are applied in the most appropriate manner. Part I of Circular DEQ-15 provides procedures for evaluating collected data (i.e., nutrient concentrations and response variables) to determine if beneficial uses are protected and narrative nutrient standards are achieved. These weight-of-evidence procedures give greater weight to the biologically based response variables. See also, reasons specified below (ARM 17.30.619).

Part I of Circular DEQ-15 provides necessary details and procedures for translating the narrative nutrient standards at ARM 17.30.637(1)(e) into actionable waterbody assessments and MPDES permit limits. The translation process is complex due to the variable nature of waterbodies across Montana's landscape. In Montana, streams and rivers have different sensitivities to nutrients (i.e., total nitrogen and total phosphorus) depending on their size, slope, location in the state, etc. For example, in Part I, different impact thresholds apply to the same response variable (Beck's Biotic Index version 3, a biological index based on aquatic insects) depending on whether a stream is high gradient or low gradient. Part I also provides (a) allowable exceedance frequencies for the response and the causal (i.e., total nitrogen and total phosphorus) variables, (b) region-specific decision tables—each comprising multiple data types—ensuring consistent application of the narrative standards, (c) consideration for effects on response variables from environmental factors not related to total nitrogen and total phosphorus, (d) methods for applying nondegradation, and other requirements.

It would be cumbersome, expensive, and otherwise inexpedient to include the text of Circular DEQ-15 in the Montana Administrative Register. The information and requirements contained in Circular DEQ-15 are too lengthy and complex to be included directly in rule; therefore, the incorporation by reference of a new department circular is appropriate.

The department considered the economics of waste treatment and prevention during this transition for nutrient standards and throughout the development of NEW RULE I and NEW RULE II. Since Senate Bill 358 was passed, the department met 40 times with the Nutrient Work Group which advises the department on nutrient standards implementation and associated economics, and additionally consulted with individual stakeholders. As a result, consideration of the economics of waste treatment and prevention for narrative nutrient standards was made in the formulation of NEW RULE I and Circular DEQ-15. For instance, the narrative nutrient standards translators provided in Part I of Circular DEQ-15 indicate the standard is met when the biological response variables are met, even if stringent total nitrogen and total phosphorus thresholds are exceeded; this avoids additional costly nutrient reductions if they are not necessary to protect beneficial uses. Consideration of the economics of waste treatment and prevention for NEW RULE I are further addressed via adoption of NEW RULE II, which describes a new adaptive management program (see below). The Adaptive Management Program allows for time and/or cost considerations to incrementally achieve narrative nutrient standards

and avoid costly facility upgrades if other watershed approaches are adequate to protect beneficial uses. In addition to the Adaptive Management Program, other existing MPDES permit compliance options remain which also allow for time and/or cost considerations, for example, variances based on substantial and widespread economic impacts and traditional compliance schedules. See also reasons below (NEW RULE II).

NEW RULE II IMPLEMENTATION OF THE ADAPTIVE MANAGEMENT PROGRAM FOR NARRATIVE NUTRIENT STANDARDS (1) Any person who applies for or holds an MPDES permit issued pursuant to ARM Title 17, chapter 30, subchapter 13 may choose to enter the adaptive management program to achieve nutrient standards and to address nutrients in a specific watershed. To enter the Adaptive Management Program, the owner or operator of a point source must provide an Adaptive Management Plan (AMP) to the department for review and approval.

(2) MPDES permits shall include limitations and conditions consistent with the assumptions and elements of department-approved AMPs. Related MPDES permit limitations and conditions must be derived to achieve narrative nutrient standards as provided in [NEW RULE I].

(3) Adaptive management requirements for wadeable streams and medium rivers.

(a) The AMP must contain, at a minimum, the following:

(i) monthly effluent monitoring for total phosphorus (TP) and total nitrogen (TN) concentrations;

(ii) a monitoring plan for assessing near field response variables and causal variables downstream and upstream of the facility, consistent with Department Circular DEQ-15;

(iii) a plan for examining those pollutant minimization activities that have the potential to reduce nutrient concentrations in the effluent and watershed, such as:

(A) documentation, to be included in the Operations and Maintenance Manual, of process control strategies identified and implemented through optimization of the existing wastewater treatment facility;

(B) training of operations staff in advanced operational strategies;

(C) minor changes to infrastructure to complement and further advance operational strategies; and

(D) implementation of any pollutant trading, nutrient reduction activities, or the reuse of effluent, identified for potential implementation in the AMP;

(iv) documentation of any nutrient reduction activities implemented by the permittee in the watershed; and

(v) a plan for annual reporting to the department. The annual report must be submitted to the department by March 31 of each year and shall include, at a minimum:

(A) a description of any deviations from the AMP, and proposed corrective actions;

(B) a summary of near field monitoring data;

(C) a description of any facility upgrades and/or reductions achieved in nutrient effluent concentrations resulting from pollutant minimization activities; and

(D) a description of actions to further reduce effluent and watershed nutrient concentrations proposed for implementation in the current year.

(b) Before an AMP is approved by the department, and as necessary thereafter, the department shall determine if prioritization of phosphorus reduction is appropriate for both the point source and the receiving waterbody. To determine if it is appropriate to prioritize phosphorus reductions from a point source and in a receiving water body, the department may consider:

- (i) existing controls on point and nonpoint sources of pollution;
- (ii) the presence and variability of the pollutant(s) in the effluent;
- (iii) dilution of the effluent in the receiving water, if appropriate;
- (iv) monitoring and assessment information for the receiving waterbody collected by the department or the permittee;
- (v) whether phosphorus or nitrogen limits plant and algal growth in the waterbody;
- (vi) the ratio of nitrogen to phosphorus in the effluent and instream; and
- (vii) any other credible, pertinent data available, including data provided in the AMP.

(c) If the department determines prioritization of phosphorus reduction is appropriate under (3)(b), then the department shall develop and implement TP effluent limits in accordance with [NEW RULE I]. TP effluent limits apply during a growing season as provided in Department Circular DEQ-15, unless a lake or reservoir is affected by the point source, or another downstream use requires protection in which case the limits may apply year-round.

(d) The department may find, based on TP reductions required under (3)(c), associated water quality and response variable monitoring, or other credible data, that the narrative nutrient standards in [NEW RULE I] are met.

(e) If the department concludes under (3)(b) and (c) that the prioritization or limitation of phosphorus alone is not appropriate and that a discharge causes, has reasonable potential to cause, or contributes to an in-stream excursion above the narrative nutrient standards in [NEW RULE I], then the department shall:

(i) develop effluent limits for TN and/or TP in accordance with [NEW RULE I] and consistent with the assumptions and elements of the department-approved AMP under (3)(a); and

(ii) require a permittee or multiple permittees who have chosen to enter into the adaptive management program to develop and include in their AMP a watershed plan describing how nutrients may be reduced in the watershed. To achieve the effluent limits developed under (e)(i), the watershed plan must:

(A) identify and quantify, to the extent feasible, all major sources of nutrient contributions in the watershed in which the facility is located;

(B) identify all partners that will assist in implementing the nutrient reductions including each partner's level of support;

(C) document action items for the reduction of nutrients in the watershed and specific goals for reductions including expected timelines to achieve the reductions and anticipated load reduction based on sound scientific and engineering practices;

(D) demonstrate the ability to fund the watershed plan either individually, or in conjunction with other permittees and nonpoint sources, or other partners, including municipal and county governments, in the watershed;

(E) if partners are used to implement nutrient reduction actions in lieu of permittees, the watershed plan must include written agreements, enforceable by the permittee, reflecting commitments by partners to implement nutrient reduction actions and must identify the period of commitment;

(F) include continued or expanded monitoring of response variables and water quality as performance indicators to determine if the plan is effective in achieving compliance with narrative nutrient standards;

(G) identify the timeframes for completing and submitting each component of the watershed plan under (3)(e)(ii)(A) through (F);

(H) be submitted to the department annually by March 31, along with the annual report in (3)(a)(v), documenting progress and effectiveness of the watershed plan;

(I) be approved by the department; and

(J) in addition to this rule, be subject to requirements contained in Department Circular DEQ-15.

(f) Compliance with the narrative nutrient standards shall be determined at a point or points downstream of the permitted facility established consistent with the requirements in Department Circular DEQ-15.

(4) Adaptive management requirements for large rivers. The AMP must meet the requirements in (3)(a) and, as appropriate, additional requirements in (4)(a).

(a) The department or permittee(s) may develop a mechanistic water quality model for a large river. A calibrated and validated model may be used to derive phosphorus limits for use in MPDES permits that achieve narrative nutrient standards and achieve other applicable water quality standards related to nutrients (dissolved oxygen and pH) along the modeled reach. Permittee-developed mechanistic models must be documented in the AMP. Based on modeling, MPDES permit limits will be allocated considering each facility's relative load, its current treatment for nutrients, estimated cost for projected facility upgrades, the limits of technology, and other considerations as appropriate.

(b) For large rivers where a model has not been developed, the department shall derive MPDES permit limits for phosphorus and/or nitrogen, where necessary, based on best available information regarding the protection of beneficial uses, achieving narrative nutrient standards, and achieving other applicable water quality standards related to nutrients (dissolved oxygen and pH).

(c) TP effluent limits apply during a growing season as provided in Department Circular DEQ-15, unless a lake or reservoir is affected by the point source(s) or another downstream use requires protection in which case the limits may apply year-round.

(d) The nutrient reductions required under (4)(a) and (4)(b) will be evaluated using data collected in each river by the department and/or permittee(s) to confirm that beneficial uses are protected, applicable water quality standards are achieved, and to determine if further reductions for phosphorus and/or nitrogen are needed. Sampling methods must be documented in the AMP consistent with requirements in Department Circular DEQ-15.

(e) A permittee or multiple permittees who have chosen to enter the adaptive management program shall develop a watershed plan for the reduction of nutrients

in the watershed if, based on data and information in (4)(a) and/or updated modeling, the department concludes that phosphorus control alone is insufficient to protect beneficial uses and if additional nutrient controls are needed to comply with applicable water quality standards. The watershed plan must:

- (i) identify and quantify, to the extent feasible, all sources of nutrient contributions in the watershed in which the facility or facilities are located;
- (ii) identify all partners that will assist in implementing the nutrient reductions including each partner's level of support;
- (iii) document action items for the reduction of nutrients in the watershed and specific goals for reductions including expected timelines to achieve the reductions and an anticipated load reduction based on sound scientific and engineering practices;
- (iv) demonstrate the ability to fund the watershed plan either individually, or in conjunction with other permittees and nonpoint sources, or other partners, including municipal and county governments, in the watershed;
- (v) if partners are used to implement nutrient reduction actions in lieu of permittees, the watershed plan must include written agreements, enforceable by the permittee, reflecting commitments by partners to implement nutrient reduction actions and must identify the period of commitment;
- (vi) include continued or expanded monitoring of the response variables as performance indicators to determine whether the plan is effective in achieving compliance with the narrative nutrient standards;
- (vii) identify the timeframes for completing and submitting each component of the watershed plan under (4)(e)(i) through (vi);
- (viii) be submitted to the department annually by March 31, along with an annual report documenting progress and effectiveness of the watershed plan;
- (ix) be approved by the department; and
- (x) in addition to this rule, be subject to requirements contained in Department Circular DEQ-15.

(f) Compliance with the narrative nutrient standards, and other applicable water quality standards per (4)(a) and (b), shall be determined at a point or points downstream of the facility or facilities established consistent with the requirements in Department Circular DEQ-15.

(5) A permittee under the adaptive management program is not precluded from pursuing, at any time, other regulatory compliance options including, but not limited to variances, compliance schedules, reuse, trading, recharge, land application, or authorizations to degrade.

(6) The department adopts and incorporates by reference Department Circular DEQ-15, entitled "Translation of Narrative Nutrient Standards and Implementation of the Adaptive Management Program" (March 2024 edition), which provides procedures and requirements for the translation of narrative nutrient standards and the implementation of the adaptive management program. Copies of Department Circular DEQ-15 may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-5-201, 75-5-321, 75-5-401, 75-5-402, MCA
IMP: 75-5-321, 75-5-401, 75-5-402, MCA

REASON: The 67th Montana Legislature enacted Senate Bill 358, Chapter 342, Laws of 2021 (codified, in part, at 75-5-321, MCA), which requires the department to adopt rules related to narrative nutrient standards in consultation with the Nutrient Work Group, an advisory group that advises the department on nutrient standards, the implementation of nutrient standards, and associated economic impacts. Nutrients, in this context, refer to total phosphorus and total nitrogen concentrations in state surface waters. NEW RULE II is necessary to fulfill Senate Bill 358 requirements to adopt rules which provide for the development of an adaptive management program. Per Senate Bill 358, the adaptive management program (a) provides for an incremental watershed approach for protecting and maintaining water quality, (b) reasonably balances all factors impacting a waterbody, and (c) prioritizes the minimization of phosphorus while taking into account site-specific conditions. NEW RULE II describes the implementation of the adaptive management program within the Montana Pollutant Discharge Elimination System (MPDES) permitting program and adopts and incorporates by reference Department Circular DEQ-15.

Permittees are not required to enter the adaptive management program in order to comply with narrative nutrient standards; entry into the program is optional. Other options for compliance include, for example, water quality standards variances (note that other compliance options have separate rules not addressed by NEW RULE II). Overall, NEW RULE II provides a means by which the narrative nutrient standards in NEW RULE I can be achieved by MPDES permittees incrementally. This will allow for the most cost-effective and efficient means of meeting the standards to be tried and then evaluated. At the same time, more will be learned about the biological response in each affected watershed—further enhancing the ability to make sound, scientifically based nutrient management decisions. This step-by-step approach ensures best use of financial and other resources for the purpose of meeting the narrative nutrient standards over time. See also reasons for NEW RULE I.

NEW RULE II(1) provides that owners or operators of point sources that apply for or hold an MPDES permit may choose to enter the Adaptive Management Program. To participate in the program, NEW RULE II(1) also provides that owners and operators of point sources (i.e., permittees) must provide an Adaptive Management Plan (AMP) to the department for review and approval.

NEW RULE II(2) enables MPDES permits to include limitations and conditions consistent with a department-approved AMP and requires that any related MPDES permit limitations and conditions must be derived to achieve narrative nutrient standards.

NEW RULE II(3) and (4) establish detailed AMP requirements for wadeable streams, medium rivers, and large rivers. These AMP rules include provisions that allow for the prioritization of phosphorus reduction (where appropriate), monitoring and reporting requirements for response variables affected by nutrients and associated impact thresholds, requirements for watershed plans designed to consider and balance factors impacting water quality, partner participation requirements, including the enforceability requirements of related partnership agreements, and provisions that specify nutrient standards compliance will be

determined at a point or points downstream of the facility. These rules are necessary to allow the adaptive management program to focus on a watershed approach when addressing nutrient impacts.

NEW RULE II(5) explains that permittees may choose to discontinue their participation in the adaptive management program and pursue other authorized regulatory compliance options. This provision is important to ensure that permittees continue to have the full slate of regulatory options available to them, particularly if continued participation in the adaptive management program is no longer feasible or necessary and other compliance options are more suitable to comply with nutrient standards. In most cases, such a change would need to be occasioned through a permit renewal or modification.

NEW RULE II(6) adopts and incorporates by reference Circular DEQ-15, which contains details on the adaptive management program's requirements and procedures for addressing nutrients in a specific watershed. Part II of Department Circular DEQ-15 contains additional details on requirements—for both the department and permittee participants—for implementing the Adaptive Management Program. Circular DEQ-15 also provides important definitions related to implementing the program.

The adaptive management program needed additional detail beyond what is provided in NEW RULE II if it were to be successfully implemented. This is due, in part, to the fact that the adaptive management program will function as a longer term compliance schedule that requires considerable watershed monitoring and reporting. Part II of Circular DEQ-15 is necessary to provide a higher level of detail concerning the implementation of the adaptive management program, including: (a) program eligibility requirements, (b) requirements for cases where a point source discharge is direct to a lake or reservoir, (c) types of sampling sites and suggestions for their placement in a watershed in order to comply with an adaptive management plan, (d) requirements for mechanistic water quality modeling of large rivers, (e) integration of the adaptive management program and the total maximum daily load program, among other things.

It would be cumbersome, expensive, and otherwise inexpedient to include the text of Circular DEQ-15 in the register. The information and requirements contained in Circular DEQ-15 are too lengthy and complex to be included directly in rule; therefore, the incorporation by reference of a new department circular is appropriate.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

17.30.201 PERMIT APPLICATION, DEGRADATION AUTHORIZATION, AND ANNUAL PERMIT FEES (1) The purpose of this rule is to provide fee schedules for use in determining fees to be paid to the department under 75-5-516, MCA. The types of fees provided under this rule are:

- (a) remains the same.
- (b) application fees for non-storm water general permits (Schedule 4I.B);
- (c) application fees for storm water general permits (Schedule 4I.C);
- (d) application fees for other activities (Schedule 4I.D);
- (e) and (f) remain the same.

- (g) annual fees for non-storm water permits (Schedule III.B); and
- (h) annual fees for storm water general permits (Schedule III.C); and
- (i) annual fees for adaptive management program participation (Schedule

III.D).

(2) through (5) remain the same.

(6) The fee schedules for new or renewal applications for, or modifications of, a Montana pollutant discharge elimination system permit under ARM Title 17, chapter 30, subchapter 11 or 13, a Montana ground water pollution control system permit under ARM Title 17, chapter 30, subchapter 10, or any other authorization under 75-5-201, 75-5-301, or 75-5-401, MCA, or rules promulgated under these authorities, are set forth below as Schedules I.A, I.B, I.C, and I.D. Fees must be paid in full at the time of submission of the application. For new applications under Schedule I.A, the annual fee from Schedule III.A for the first year must also be paid at the time of application. For new applications under Schedule I.B and I.C, the annual fee is included in the new permit amount and covers the annual fee for the calendar year in which the permit coverage becomes effective.

(a) through (h) remain the same.

[Schedules I.A and I.B remain the same.]

(i) through (n) remain the same.

[Schedule I.C remains the same.]

(o) remains the same.

(p) The authorization fee for individual MPDES permittees who elect to participate in the adaptive management program for implementing nutrient standards in Schedule I.D is assessed upon submission of an adaptive management plan under [NEW RULE II] for each 5-year permit cycle the permittee is eligible for participation in the adaptive management program.

Schedule I.D Application Fee for Other Activities

Category	Amount
Short-term water quality standard, turbidity "318 authorization"	\$ 250
Short-term water quality standard, remedial activities and pesticide application "308 authorization"	250
Federal Clean Water Act section 401 certification	See ARM 17.30.201(6)(o)
Review plans and specifications to determine if permit is necessary, pursuant to 75-5-402(2), MCA	2,000
<u>Authorization for adaptive management program participation pursuant to [NEW RULE II]</u>	<u>5,000</u>
Major modification	Renewal fee from Schedule I.A
Minor modification, includes transfer of ownership	500
Resubmitted application fee	500
Administrative processing fee	500

(7) remains the same.

[Schedule II remains the same.]

(8) and (8)(a) remain the same.

[Schedules III.A and III.B remain the same.]

(b) through (d) remain the same.

[Schedule III.C remains the same.]

(e) through (11) remain the same.

(12) The annual fee for individual MPDES permittees who elect to participate in the adaptive management program for implementing nutrient standards in Schedule III.D is assessed upon submission of an adaptive management plan annual report, as required in [NEW RULE II], for each year the permittee is eligible for participation in the adaptive management program, excepting the year in which the application fee is assessed.

Schedule III.D Annual Fee for Adaptive Management Program Participation

<u>Category</u>	<u>Minimum Fee</u>	<u>Fee Per Million Gallons of Effluent per Day (MGD)</u>
<u>Annual fee for adaptive management program participation pursuant to [NEW RULE II]</u>	<u>\$3,000</u>	<u>\$3,000</u>

AUTH: 75-5-516, MCA

IMP: 75-5-516, MCA

REASON: The department is revising ARM 17.30.201 to prescribe fees for the adaptive management program which was developed in consultation with the Nutrient Work Group, under 75-5-321, MCA. Section 75-5-321, MCA, directed the department to develop an adaptive management program without providing additional funding support. Fees are necessary for the department to recover costs for implementation of the adaptive management program, including enforcement and compliance monitoring for individual adaptive management plans (AMPs). Services provided by the department to permittees entering the adaptive management program will include, but are not limited to, review and approval of AMPs; training on necessary nutrient, algae, dissolved oxygen, and macroinvertebrate sampling methods; assistance on required data entry; and consultation on AMP development methods. The proposed fees will financially support the department's services.

The fees to be assessed by the department will include an application fee for permittees seeking authorization for participation in the adaptive management program and an annual fee for permittees with an approved adaptive management plan that are eligible to continue participating in the adaptive management program. The program authorization fee will be assessed per permit cycle, based upon permit application and renewal. Adaptive management program fees to be assessed are in addition to the fees for individual and general permit application and annual fees. These additional fees are necessary for department staff to process reviews of

AMPs, conduct compliance inspections of AMP sampling protocols, any enforcement of permit conditions associated with the AMP, as well as staff travel costs associated with compliance inspections and AMP training provided to permittees.

The department calculated its costs for implementing the adaptive management program on an annual basis at an amount of approximately \$207,000. However, subject to statutory fee caps in 75-5-516, MCA, an adaptive management program application fee must be capped at \$5,000 and annual fees capped at \$3,000 per million gallons discharged per day. Assuming seven permittees participate in the adaptive management program on an annual basis, \$29,588 would need to be collected from each permittee to cover department costs. Therefore, the fee structure as proposed in ARM 17.30.201 is insufficient to recover department costs to implement the adaptive management program.

Section (1) is also being amended to replace incorrect numbering in (1)(b), (c), and (d).

17.30.507 SPECIFIC RESTRICTIONS FOR SURFACE WATER MIXING ZONES (1) Mixing zones for surface waters are subject to the following water quality standards:

(a) narrative water quality standards, standards for harmful substances, numeric acute and chronic standards for aquatic life, ~~standards in Department Circular DEQ-12A~~; and standards based on human health must not be exceeded beyond the boundaries of the surface water mixing zone;

(b) through (3) remain the same.

AUTH: 75-5-301, MCA

IMP: 75-5-301, ~~75-5-313~~, MCA

REASON: Subsection (1)(a) is amended to comply with SB 358 that requires removal of all references to Department Circular DEQ-12A. With the adoption of this rulemaking package, any reference to DEQ-12A is obsolete. See also, reasons specified below (ARM 17.30.619).

17.30.516 STANDARD MIXING ZONES FOR SURFACE WATER (1) and (2) remain the same.

(3) Facilities that meet the terms and conditions in (a) through (e) qualify for a standard mixing zone as follows:

(a) Facilities that discharge a mean annual flow of less than one million gallons per day (MGD) to a stream segment with a dilution ratio greater than or equal to 100:1. For purposes of this procedure, the stream dilution ratio is defined as the seven-day, ten-year (7Q10) low flow of the stream segment without the discharge, divided by the mean annual flow of the discharge. For total nitrogen, total phosphorus, 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, which is the lowest average 14 consecutive day low flow, occurring from July through October, with an average recurrence frequency of

once in five years. In this case discharge limitations will be based on dilution with the applicable low flow value, the 7Q10, or the seasonal 14Q5.

(b) Facilities that discharge a mean annual flow less than one MGD to a stream segment with a dilution less than 100:1. In cases where dilution is less than 100:1, discharge limitations will be based on dilution with 25 percent of the 7Q10 (or 100 percent of the seasonal 14Q5 for total nitrogen, total phosphorus, or nutrient parameters identified in Department Circular DEQ-7).

(c) remains the same.

(d) Facilities whose discharge results in a nearly instantaneous mixing zone. Discharge limitations shall be based on dilution with the ~~seven-day, ten-year 7Q10~~ (or the seasonal 14Q5 for total nitrogen, total phosphorus, or nutrient parameters identified in Department Circular DEQ-7) low flow of the receiving water except as limited by consideration of the factors listed in ARM 17.30.506. For surface waters, nearly instantaneous mixing will be assumed when there is an effluent diffuser which extends across the entire stream width (at low flow), or when the mean daily flow of the discharge exceeds the ~~seven-day, ten-year 7Q10~~ (or the seasonal 14Q5 for total nitrogen, total phosphorus, or nutrient parameters identified in Department Circular DEQ-7) low flow of the receiving water. A discharge may also be considered nearly instantaneous if the discharger so demonstrates in accordance with a study plan approved by the department. For the purposes of this demonstration nearly instantaneous mixing will be assumed when there will be not more than a ten percent difference in bank-to-bank concentrations at a downstream distance less than two stream/river widths.

~~(e) Facilities that discharge the parameters found in Department Circular DEQ-12A to surface water. Discharge limitations must be based on dilution with the entire seasonal 14-day, five-year (seasonal 14Q5) low flow of the receiving water without the discharge.~~

(4) The length of a standard mixing zone for flowing surface water, other than a nearly instantaneous mixing zone, must not extend downstream more than the one-half mixing width distance or extend downstream more than ten times the stream width, whichever is more restrictive. For purposes of making this determination, the stream width as well as the discharge limitations are considered at the 7Q10 or seasonal 14Q5 low flow. ~~The seasonal 14Q5 low flow may be used only in conjunction with base numeric nutrient standards in Department Circular DEQ-12A.~~ The seasonal 14Q5 low flow may be used only in conjunction with total nitrogen, total phosphorus, or the nutrient parameters identified in Department Circular DEQ-7. The recommended calculation to be used to determine the one-half mixing width distance downstream from a stream bank discharge is described below.

(a) remains the same.

(b) $L = CDU$, where:

(i) C = channel irregularity factor immediately downstream of the discharge,

where:

(A) remains the same.

(B) $C = 0.3$ for channelized streams;

(C) through (6) remain the same.

AUTH: 75-5-301, MCA
IMP: 75-5-301, MCA

REASON: Subsections (3)(a), (b), and (d) are revised to clarify that for discharges of total nitrogen, total phosphorus, and the nutrient parameters identified in Department Circular DEQ-7, the seasonal 14Q5 is the correct low flow value to use instead of the 7Q10. The reason for applying the seasonal 14Q5 in rule is explained in the reason statement for amendments to (4). Subsection (3)(e) is removed to comply with SB 358 that requires removal of all references to DEQ-12A. Section (4) has been amended because the seasonal 14Q5 that was originally adopted in rule as the low-flow criteria for use in DEQ-12A has been retained in the rule. 14Q5 has been retained because it is the appropriate low-flow statistic to use only for seasonal impacts to surface waters from those parameters in (4) of this rule. Scientific work by DEQ shows that bottom-attached algae can develop in about 15 to 20 days when nutrient concentrations are elevated. The use of the seasonal 14Q5 for the design of disposal systems should not allow excess algae levels to occur on average more than once in five years, which is within acceptable recommendations by the U.S. Environmental Protection Agency. Those parameters with nutrient-related impacts are added to (4) and include total nitrogen, total phosphorus, and the nutrient parameters identified in Department Circular DEQ-7; nutrient parameters in DEQ-7 are dissolved forms of nitrogen and phosphorus which can, when elevated, stimulate algae growth as efficiently as total nutrients.

See also, reasons specified below (ARM 17.30.619).

Subsection (4)(b)(i)(B) is revised to correct a typographical error to change the letter "O" to the number zero.

17.30.602 DEFINITIONS In this subchapter the following terms have the meanings indicated below and are supplemental to the definitions given in 75-5-103, MCA:

(1) through (40) remain the same.

~~(41) "DEQ-12A" means the department circular that is adopted and incorporated by reference in ARM 17.30.619 and is entitled "Montana Base Numeric Nutrient Standards." This circular contains numeric water quality standards for total nitrogen and total phosphorus in surface waters.~~

~~(42) "DEQ-12B" means the department circular that is adopted and that is entitled "Montana Base Numeric Nutrient Standards Variances." This circular describes procedures for receiving a variance from the standards and will document recipients of individual variances.~~

AUTH: 75-5-201, 75-5-301, MCA
IMP: 75-5-301, 75-5-313, MCA

REASON: Sections (41) and (42) are removed to comply with SB 358 that requires removal of all references to DEQ-12A and DEQ-12B. With the adoption of this rule package, any reference to DEQ-12A is obsolete. DEQ-12B was repealed directly by SB 358.

17.30.619 INCORPORATIONS BY REFERENCE (1) The department adopts and incorporates by reference the following state and federal requirements and procedures as part of Montana's surface water quality standards:

(a) through (c) remain the same.

(d) 40 CFR 131.10(g), (h) and (j) (2000), which establishes criteria and guidelines for conducting a use attainability analysis; and

~~(e) Department Circular DEQ-12A, entitled "Montana Base Numeric Nutrient Standards" (July 2014 edition), which establishes numeric water quality standards for total nitrogen and total phosphorus in surface waters; and~~

(f) remains the same but is renumbered (e).

~~(2) If a court of competent jurisdiction declares 75-5-313, MCA, or any portion of that statute invalid, or if the United States Environmental Protection Agency disapproves 75-5-313, MCA, or any portion of that statute, under 30 CFR 131.21, or if rules adopted pursuant to 75-5-313(6) or (7), MCA, expire and general variances are not available, then (1)(e) and all references to DEQ-12A, base numeric nutrient standards and nutrient standards variances in ARM 17.30.201, 17.30.507, 17.30.516, 17.30.602, 17.30.622 through 17.30.629, 17.30.635, 17.30.702, and 17.30.715 are void, and the narrative water quality standards contained in ARM 17.30.637 are the standards for total nitrogen and total phosphorus in surface water, except for the Clark Fork River, for which the standards are the numeric standards in ARM 17.30.631.~~

(3) remains the same but is renumbered (2).

AUTH: 75-5-201, 75-5-301, MCA

IMP: 75-5-301, ~~75-5-313~~, MCA

REASON: Subsection (1)(e) is removed to comply with SB 358 that requires removal of all references to DEQ-12A. Section (2) was adopted in conjunction with DEQ-12A and therefore is also removed as required by SB 358; this contingent voidness provision is now obsolete.

This action effectively repeals the base numeric nutrient standards at DEQ-12A and replaces those numeric standards with the narrative nutrient standards at ARM 17.30.637(1)(e) and as provided in NEW RULE I. The department has concluded that NEW RULE I and the narrative nutrient standards translators and provisions in Circular DEQ-15 provide the same or a better level of protection for beneficial uses of state waters as was previously provided by numeric nutrient standards in Circular DEQ-12A. Circular DEQ-15 contains endnotes referencing department scientific studies—including newer scientific work completed since 2022—documenting the protectiveness of the biologically based response variables which are at the core of the new process. Also, the narrative nutrient standards in NEW RULE I and the narrative nutrient standards translators and provisions in Circular DEQ-15 provide added opportunity to account for site-specific information and special ecological conditions and exceptions. See also, reasons specified above (NEW RULE I).

17.30.622 A-1 CLASSIFICATION STANDARDS (1) and (2) remain the same.

(3) No person may violate the following specific water quality standards for waters classified A-1:

(a) through (g) remain the same.

(h) Concentrations of carcinogenic, bioconcentrating, toxic, radioactive, nutrient, or harmful parameters may not exceed the applicable standards set forth in Department Circular DEQ-7 ~~and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A.~~

(i) Dischargers issued permits under ARM Title 17, chapter 30, subchapter 13, shall conform with ARM Title 17, chapter 30, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed the applicable standards contained in Department Circular DEQ-7 ~~and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A~~ when stream flows equal or exceed the design flows specified in ARM 17.30.635(2).

(j) and (k) remain the same.

AUTH: 75-5-201, 75-5-301, MCA

IMP: 75-5-301, MCA

REASON: Subsections (3)(h) and (i) have been amended to comply with SB 358 that requires removal of all references to DEQ-12A. With the adoption of this rulemaking package, any reference to DEQ-12A is obsolete. See also, reasons specified above (ARM 17.30.619).

17.30.623 B-1 CLASSIFICATION STANDARDS (1) remains the same.

(2) No person may violate the following specific water quality standards for waters classified B-1:

(a) through (g) remain the same.

(h) Concentrations of carcinogenic, bioconcentrating, toxic, radioactive, nutrient, or harmful parameters may not exceed the applicable standards set forth in Department Circular DEQ-7 ~~and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A.~~

(i) Dischargers issued permits under ARM Title 17, chapter 30, subchapter 13, shall conform with ARM Title 17, chapter 30, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed the applicable standards specified in Department Circular DEQ-7 ~~and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A~~ when stream flows equal or exceed the design flows specified in ARM 17.30.635(2).

(j) and (k) remain the same.

AUTH: 75-5-201, 75-5-301, MCA

IMP: 75-5-301, ~~75-5-313~~, MCA

REASON: Subsections (2)(h) and (i) have been amended to comply with SB 358 that requires removal of all references to DEQ-12A. With the adoption of this rulemaking package, any reference to DEQ-12A is obsolete. See also, reasons specified above (ARM 17.30.619).

17.30.624 B-2 CLASSIFICATION STANDARDS (1) remains the same.

(2) No person may violate the following specific water quality standards for waters classified B-2:

(a) through (g) remain the same.

(h) Concentrations of carcinogenic, bioconcentrating, toxic, radioactive, nutrient, or harmful parameters may not exceed the applicable standards set forth in Department Circular DEQ-7 and, ~~unless a nutrient standards variance has been granted, Department Circular DEQ-12A.~~

(i) Dischargers issued permits under ARM Title 17, chapter 30, subchapter 13, shall conform with ARM Title 17, chapter 30, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed the applicable standards specified in Department Circular DEQ-7 and, ~~unless a nutrient standards variance has been granted, Department Circular DEQ-12A~~ when stream flows equal or exceed the design flows specified in ARM 17.30.635(2).

(j) and (k) remain the same.

AUTH: 75-5-201, 75-5-301, MCA

IMP: 75-5-301, ~~75-5-313~~, MCA

REASON: Subsections (2)(h) and (i) have been amended to comply with SB 358 that requires removal of all references to DEQ-12A. With the adoption of this rulemaking package, any reference to DEQ-12A is obsolete. See also, reasons specified above (ARM 17.30.619).

17.30.625 B-3 CLASSIFICATION STANDARDS (1) remains the same.

(2) No person may violate the following specific water quality standards for waters classified B-3:

(a) through (g) remain the same.

(h) Concentrations of carcinogenic, bioconcentrating, toxic, radioactive, nutrient, or harmful parameters may not exceed the applicable standards set forth in Department Circular DEQ-7 and, ~~unless a nutrient standards variance has been granted, Department Circular DEQ-12A.~~

(i) Dischargers issued permits under ARM Title 17, chapter 30, subchapter 13, shall conform with ARM Title 17, chapter 30, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed the applicable standards specified in Department Circular DEQ-7 and, ~~unless a nutrient standards variance has been granted, Department Circular DEQ-12A~~ when stream flows equal or exceed the design flows specified in ARM 17.30.635(2).

(j) and (k) remain the same.

AUTH: 75-5-201, 75-5-301, MCA

IMP: 75-5-301, ~~75-5-313~~, MCA

REASON: The proposed amendments to (2)(h) and (i) have been amended to comply with SB 358 that requires removal of all references to DEQ-12A. With the adoption of this rulemaking package, any reference to DEQ-12A is obsolete. See also, reasons specified above (ARM 17.30.619).

17.30.626 C-1 CLASSIFICATION STANDARDS (1) remains the same.

(2) No person may violate the following specific water quality standards for waters classified C-1:

(a) through (g) remain the same.

(h) Concentrations of carcinogenic, bioconcentrating, toxic, radioactive, nutrient, or harmful parameters may not exceed the applicable standards specified in Department Circular DEQ-7 and, ~~unless a nutrient standards variance has been granted, Department Circular DEQ-12A.~~

(i) Dischargers issued permits under ARM Title 17, chapter 30, subchapter 13, shall conform with ARM Title 17, chapter 30, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed the applicable standards specified in Department Circular DEQ-7 and, ~~unless a nutrient standards variance has been granted, Department Circular DEQ-12A~~ when stream flows equal or exceed the design flows specified in ARM 17.30.635(2).

(j) and (k) remain the same.

AUTH: 75-5-201, 75-5-301, MCA

IMP: 75-5-301, ~~75-5-313~~, MCA

REASON: Subsections (2)(h) and (i) have been amended to comply with SB 358 that requires removal of all references to DEQ-12A. With the adoption of this rulemaking package, any reference to DEQ-12A is obsolete. See also, reasons specified above (ARM 17.30.619).

17.30.627 C-2 CLASSIFICATION STANDARDS (1) remains the same.

(2) No person may violate the following specific water quality standards for waters classified C-2:

(a) through (g) remain the same.

(h) Concentrations of carcinogenic, bioconcentrating, toxic, radioactive, nutrient, or harmful parameters may not exceed the applicable standards specified in Department Circular DEQ-7 and, ~~unless a nutrient standards variance has been granted, Department Circular DEQ-12A.~~

(i) Dischargers issued permits under ARM Title 17, chapter 30, subchapter 13, shall conform with ARM Title 17, chapter 30, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed the applicable standards specified in Department Circular DEQ-7 and, ~~unless a nutrient standards variance has been granted, Department Circular DEQ-12A~~ when stream flows equal or exceed the design flows specified in ARM 17.30.635(2).

(j) and (k) remain the same.

AUTH: 75-5-201, 75-5-301, MCA

IMP: 75-5-301, ~~75-5-313~~, MCA

REASON: Subsections (2)(h) and (i) have been amended to comply with SB 358 that requires removal of all references to DEQ-12A. With the adoption of this

rulemaking package, any reference to DEQ-12A is obsolete. See also, reasons specified above (ARM 17.30.619).

17.30.628 I CLASSIFICATION STANDARDS (1) remains the same.

(2) No person may violate the following specific water quality standards for waters classified I:

(a) through (i) remain the same.

(j) Beneficial uses are considered supported when the concentrations of toxic, carcinogenic, nutrient or harmful parameters in these waters do not exceed the applicable standards specified in Department Circular DEQ-7 ~~and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A~~ when stream flows equal or exceed the flows specified in ARM 17.30.635(2) or, alternatively, for aquatic life when site-specific criteria are adopted using the procedures given in 75-5-310, MCA. The limits shall be used as water quality standards for the affected waters and as the basis for permit limits instead of the applicable standards in Department Circular DEQ-7.

(k) Limits for toxic, carcinogenic, or harmful parameters in new discharge permits issued pursuant to the MPDES rules (ARM Title 17, chapter 30, subchapter 13) are the larger of the applicable standards specified in Department Circular DEQ-7 ~~and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A~~, site-specific standards, or one-half of the mean in-stream concentrations immediately upstream of the discharge point.

AUTH: 75-5-201, 75-5-301, MCA

IMP: 75-5-301, ~~75-5-313~~, MCA

REASON: Subsections (2)(j) and (k) have been amended to comply with SB 358 that requires removal of all references to DEQ-12A. With the adoption of this rulemaking package, any reference to DEQ-12A is obsolete. See also, reasons specified above (ARM 17.30.619).

17.30.629 C-3 CLASSIFICATION STANDARDS (1) remains the same.

(2) No person may violate the following specific water quality standards for waters classified C-3:

(a) through (g) remain the same.

(h) Concentrations of carcinogenic, bioconcentrating, toxic, radioactive, nutrient, or harmful parameters may not exceed the applicable standards set forth in Department Circular DEQ-7 ~~and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A~~.

(i) Dischargers issued permits under ARM Title 17, chapter 30, subchapter 13, shall conform with ARM Title 17, chapter 30, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed the applicable standards specified in Department Circular DEQ-7 ~~and, unless a nutrient standards variance has been granted, Department Circular DEQ-12A~~ when stream flows equal or exceed the design flows specified in ARM 17.30.635(2).

(j) and (k) remain the same.

AUTH: 75-5-201, 75-5-301, MCA
IMP: 75-5-301, ~~75-5-313~~, MCA

REASON: Subsections (2)(h) and (i) have been amended to comply with SB 358 that requires removal of all references to DEQ-12A. With the adoption of this rulemaking package, any reference to DEQ-12A is obsolete. See also, reasons specified above (ARM 17.30.619).

17.30.635 GENERAL TREATMENT STANDARDS (1) remains the same.

(2) For design of disposal systems, stream flow dilution requirements must be based on the minimum consecutive seven-day average flow which may be expected to occur on the average of once in ten years (7Q10). When dilution flows are less than the above design flow at a point discharge, the discharge is to be governed by the permit conditions developed for the discharge through the waste discharge permit program. If the flow records on an affected surface water are insufficient to calculate a ~~ten-year seven-day low flow~~ 7Q10 low flow, the department shall determine an acceptable stream flow for disposal system design. For total nitrogen, and total phosphorus, and the nutrient parameters identified in DEQ-7, the stream flow dilution requirements must be based on the seasonal 14Q5, which is the lowest average 14 consecutive day low flow, occurring from July through October, with an average recurrence frequency of once in five years.

(3) remains the same.

AUTH: 75-5-201, 75-5-301, MCA
IMP: 75-5-301, MCA

REASON: To improve clarity, (2) adds the acronym of 7Q10 after it is initially defined and removes a second repetitive description of the term 7Q10. In (2), the term "nutrient parameters identified in DEQ-7" is added to the existing parameters (those parameters are total nitrogen and total phosphorus) applicable for use with the seasonal 14Q5 low flow statistic. The added parameters from DEQ-7 include total inorganic nitrogen and inorganic phosphorus. Limiting the use of the seasonal 14Q5 low flow to discharges of total nitrogen, total phosphorus, and the nutrient parameters identified in DEQ-7 is consistent with amendments proposed to ARM 17.30.516. See also, reasons specified above (ARM 17.30.516).

17.30.702 DEFINITIONS The following definitions, in addition to those in 75-5-103, MCA, apply throughout this subchapter (Note: 75-5-103, MCA, includes definitions for "~~base numeric nutrient standards~~," "degradation," "existing uses," "high quality waters," "mixing zone," and "parameter"):

(1) through (18) remain the same.

(19) "Nutrients" means inorganic phosphorus and total inorganic nitrogen.

(19) and (20) remain the same but are renumbered (20) and (21).

~~(24)~~(22) "Required reporting values (RRV)" means the detection level that must be achieved in reporting surface water or ground water monitoring or compliance data to the department unless otherwise specified in a permit, approval, or authorization issued by the department. The RRV is the department's best

determination of a level of analysis that can be achieved by the majority of commercial, university, or governmental laboratories using EPA approved methods or methods approved by the department. The RRV is listed in Department Circular DEQ-7, ~~Department Circular DEQ-12A~~, and in the definition of "total inorganic phosphorus."

(22) through (26) remain the same but are renumbered (23) through (27).

~~(27)~~(28) The department adopts and incorporates by reference:

(a) remains the same.

~~(b) Department Circular DEQ-12A, entitled "Montana Base Numeric Nutrient Standards" (December 2013 edition), which establishes numeric water quality standards for total nitrogen and total phosphorus in surface waters;~~

(c) through (e) remain the same but are renumbered (b) through (d).

AUTH: 75-5-301, 75-5-303, MCA

IMP: 75-5-303, MCA

REASON: The rule introduction, definition (22) and definition (28)(b) have been amended or removed to comply with SB 358 that requires removal of all references to DEQ-12A and base numeric nutrient standards. A definition of "nutrients" is added as (19). The definition is needed to implement nutrient-related water quality standards and nondegradation limits specific to groundwater discharges and subdivision reviews. The parameters listed in the definition, total inorganic nitrogen and inorganic phosphorus, are consistent with the two parameters listed in DEQ-7 as nutrients. New (22) corrects the phrase "Reporting values (RRV)" to "Required reporting values (RRV)" to be consistent with DEQ-7. In new (22), at the end of the definition, the following phrase "...and in the definition of 'total inorganic phosphorus'" is incorrect and has been removed because there is no existing definition of "total inorganic phosphorus" in rule. DEQ-7 includes the parameter "inorganic phosphorus," which has an RRV associated with it; this parameter is functionally the same as "total inorganic phosphorus." To maintain consistency between rules and circulars, reference to "total inorganic phosphorus" has been removed here and changed to "inorganic phosphorus" in the other instance it is used in rule, ARM 17.30.715(1)(e), as part of this rulemaking package. See also, reasons specified above (ARM 17.30.619).

17.30.715 CRITERIA FOR DETERMINING NONSIGNIFICANT CHANGES IN WATER QUALITY (1) The following criteria will be used to determine whether certain activities or classes of activities will result in nonsignificant changes in existing water quality due to their low potential to affect human health or the environment. These criteria consider the quantity and strength of the pollutant, the length of time the changes will occur, and the character of the pollutant. Except as provided in (2), changes in existing surface or ground water quality resulting from the activities that meet all the criteria listed below are nonsignificant, and are not required to undergo review under 75-5-303, MCA:

(a) through (c) remain the same.

(d) changes in the concentration of nitrate in ground water which will not cause degradation of surface water if the sum of the predicted concentrations of

nitrate at the boundary of any applicable mixing zone will not exceed the following values:

(i) through (iii) remain the same.

(iv) 7.5 mg/L for domestic sewage effluent discharged from a conventional septic system in areas where the ground water nitrate level exceeds 5.0 mg/L primarily from sources other than human waste.

For purposes of this subsection (d), the word "nitrate" means nitrate as nitrogen; and

(e) changes in concentration of ~~total~~ inorganic phosphorus in ground water if water quality protection practices approved by the department have been fully implemented and if an evaluation of the phosphorus adsorptive capacity of the soils in the area of the activity indicates that phosphorus will be removed for a period of 50 years prior to a discharge to any surface waters;

(f) changes in the quality of water for any harmful parameter, and total nitrogen and total phosphorus for reaches of the Clark Fork River listed at ARM 17.30.631, and parameters listed in Department Circular DEQ-12A, except as specified in (1)(g), for which water quality standards have been adopted other than carcinogenic, bioconcentrating, or toxic parameters, in either surface or ground water, if the changes outside of a mixing zone designated by the department are less than ten percent of the applicable standard and the existing water quality level is less than 40 percent of the standard;

(g) remains the same.

(h) changes in the quality of water for any parameter for which there are only narrative water quality standards, including those addressed by [NEW RULE I], if the changes will not have a measurable effect on any existing or anticipated use or cause measurable changes in aquatic life or ecological integrity.

(2) and (3) remain the same.

~~(4) If a court of competent jurisdiction declares 75-5-313, MCA, or any portion of that statute invalid, or if the United States Environmental Protection Agency disapproves 75-5-313, MCA, or any portion of that statute under 30 CFR 131.21, or if rules adopted pursuant to 75-5-313(6) or (7), MCA, expire and general variances are not available, then the significance criteria contained in (1)(g) are the significance criteria for total nitrogen and total phosphorus in surface water.~~

AUTH: 75-5-301, 75-5-303, MCA

IMP: 75-5-303, MCA

REASON: Subsection (1)(e) has been amended to replace "total inorganic phosphorus" with "inorganic phosphorus." There is no functional difference in meaning between the two parameters, but inorganic phosphorus is used to be consistent where it is proposed in this rulemaking package for use in ARM 17.30.702(19) and is currently used in DEQ-7. See also, reasons specified above (17.30.702). Subsection (1)(f) has been amended to comply with SB 358 that requires removal of all references to DEQ-12A. The amended language in (1)(f) also clarifies that with the repeal of DEQ-12A, (1)(f) no longer applies to total nitrogen and total phosphorus in surface waters other than those segments of the Clark Fork River described in ARM 17.30.631. Prior to the adoption of DEQ-12A,

total nitrogen and total phosphorus were primarily addressed through the narrative nutrient standards at ARM 17.30.637(1)(e). To be consistent with SB 358, and except where numeric standards are established by rule, water quality changes related to total nitrogen and total phosphorus will be assessed under the narrative standards provision at (1)(h). Notwithstanding compliance with the criteria of (1)(h), the department may determine that the change in water quality resulting from an activity is degradation pursuant to (2). See also, reasons specified above (ARM 17.30.619). Section (4) was adopted in conjunction with DEQ-12A and therefore is also removed as required by SB 358; this contingent voidness provision is now obsolete.

17.30.1304 DEFINITIONS In this subchapter, the following terms have the meanings or interpretations indicated below and shall be used in conjunction with and are supplemental to those definitions contained in 75-5-103, MCA.

(1) remains the same.

(2) "Adaptive management plan" means a watershed-specific plan developed under the adaptive management program to achieve the narrative nutrient standards and address nutrients in a specific watershed. ~~An adaptive management plan includes a watershed monitoring plan and, if required, an implementation plan.~~

(3) through (83) remain the same.

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: The amendments to (2) are being made to match the definition of "adaptive management plan: that is included in Circular DEQ-15 and to be more concise. The components of an Adaptive Management Plan are described in greater detail in Circular DEQ-15 and are not necessary in the definition.

5. The department proposes to repeal the following rules:

17.30.660 NUTRIENT STANDARDS VARIANCES

AUTH: 75-5-313, MCA

IMP: 75-5-313, MCA

REASON: This is an administrative update to remove a rule that was directly repealed by SB 358.

17.30.1388 DEVELOPMENT OF AN ADAPTIVE MANAGEMENT PROGRAM IMPLEMENTING NARRATIVE NUTRIENT STANDARDS

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-321, 75-5-401, MCA

REASON: This rule was adopted as an interim step between adoption of SB 358 and development of a comprehensive rule package related to narrative nutrient

standards to meet the statutory deadline of March 1, 2022 set forth in SB 358. This rule is being repealed as it is now unnecessary and redundant upon the adoption of the new rules proposed in this notice.

6. A copy of the proposed Circular DEQ-15 may be viewed at the department's website using the following web address:
<https://deq.mt.gov/public/publiccomment>.

7. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to the Department of Environmental Quality, at 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; telephone (406) 444-1388; fax (406) 444-4386; or e-mail DEQMAR17-434@mt.gov, and must be received no later than 5:00 p.m., June 10, 2024.

8. Kurt Moser, attorney for the department, or another department attorney, is designated to preside over and conduct this hearing.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 7 or may be made by completing a request form at any rules hearing held by the department.

10. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sosmt.gov/ARM/Register>.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on November 6, 2023.

12. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption, amendment, and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Nicholas Whitaker
NICHOLAS WHITAKER
Rule Reviewer

/s/ Christopher Dorrington
CHRISTOPHER DORRINGTON
Director
Department of Environmental Quality

Certified to the Secretary of State April 16, 2024.