

NUTRIENT WORK GROUP MEETING SUMMARY

NOVEMBER 30, 2021

1:30 p.m.

Hybrid Meeting: Zoom and DEQ Room 111

ATTENDANCE: NUTRIENT WORK GROUP MEMBERS

Representative & Affiliation	Representing
Louis Engels (sub. for Susie Turner) City of Billings	Point Source Discharger: Large Municipal Systems (>1 MGD)
Shannon Holmes City of Livingston	Point Source Discharger: Middle-Sized Mechanical Systems (<1 MGD)
Rika Lashley Morrison-Maeirle	Point Source Discharger: Small Municipal Systems with Lagoons
Alan Olson Montana Petroleum Association	Point Source Discharger: Non-POTW
Kelly Lynch Montana League of Cities and Towns	Municipalities
Tammy Johnson Montana Mining Association	Mining
Kristin Gardner Gallatin River Task Force	Conservation Organization: Local
Sarah Zuzulock Zuzulock Environmental Services	Conservation Organization: Regional
David Brooks Montana Trout Unlimited	Conservation Organization: Statewide
Guy Alsentzer Upper Missouri Waterkeeper	Environmental Advocacy Organization
Guy Alsentzer (sub. for Wade Fellin) Upper Missouri Waterkeeper	Water or Fishing-Based Recreation
Andy Efta U.S. Forest Service, Northern Region	Federal Land Management Agencies
Tina Laidlaw U.S. Environmental Protection Agency	Federal Regulatory Agencies
Jeff Schmalenberg MT Dept. of Natural Resources and Conservation	State Land Management Agencies
Samantha Tappenbeck Flathead Conservation District	Soil and Water Conservation Districts – West of the Continental Divide
Dan Rostad Yellowstone Conservation District Council	Soil and Water Conservation Districts – East of the Continental Divide
Scott Buecker AE2S	Wastewater Engineering Firms

NOT IN ATTENDANCE: NUTRIENT WORK GROUP MEMBERS

Representative & Affiliation	Representing
Pete Schade Lewis and Clark County Water Quality Protection District	County Water Quality Districts or Planning Departments
John Youngberg Montana Farm Bureau	Farming-Oriented Agriculture
Jay Bodner Montana Stockgrowers Association	Livestock-Oriented Agriculture
Julia Altemus Montana Wood Products Association	Timber Industry

ATTENDANCE: OTHER PARTICIPANTS

Aaron Losing, City of Kalispell
 Alan Olson, Montana Petroleum Association
 Amanda McInnis
 Amelia Flanery, DEQ, Surface Water Discharge Permitting
 Amy Steinmetz, DEQ, Water Quality Division Administrator
 Bill Andrene, City of Butte
 Brian Heaston, City of Bozeman
 Christina Staten, DEQ, Watershed Management Section
 Christopher Dorrington, DEQ, Director
 Christy Meredith, DEQ, Watershed Management Section
 Coralynn Revis, HDR
 Cori Hach, Legislative Services Division
 Darrin Kron, DEQ, Monitoring and Assessment Section Supervisor
 Darryl Barton, DEQ, Compliance Training and Technical Assistance Section Supervisor
 David Clark, HDR
 Ed Coleman, City of Helena
 Eric Regensburger, DEQ, Water Quality Standards and Modeling Section
 Eric Trum, DEQ, Watershed Protection Section Acting Supervisor
 Erik Makus, EPA Region 8
 George Mathieus, DEQ, Deputy Director
 Griffin Nielsen, City of Bozeman
 Haley Sir, DEQ, Surface Water Discharge Permitting
 Hannah New, DEQ, Surface Water Discharge Permitting
 Heather Henry, DEQ, Surface Water Discharge Permitting
 Jane Madison, DEQ, Water Quality Standards and Modeling Section
 Jason Mohr, Legislative Environmental Policy Office
 Jeff Dunn, WGM Group
 Jeff May, DEQ, Surface Water Discharge Permitting
 Joanna McLaughlin, DEQ, Surface Water Discharge Permitting
 John Bernard
 John Esp, State Senator
 Jon Kenning, DEQ, Water Protection Bureau Chief
 Josh Viall, DEQ, Compliance Training and Technical Assistance

Judy Bloom, EPA, Region 8
Katie Makarowski, DEQ, QA Officer
Kayla Glossner, DEQ, Surface Water Discharge Permitting
Kristi Kline, Montana Rural Water Systems
Kristy Fortman, DEQ, Watershed Management Section Supervisor
Kurt Moser, DEQ, Legal Counsel
Logan McInnis, City of Missoula
Matt Wolfe, Sibanye Stillwater
Maya Rao, DEQ, Surface Water Discharge Permitting
Melinda Horne, DEQ, Surface Water Discharge Permitting
Michael Suplee, DEQ, Water Quality Standards and Modeling Section
Mikindra Morin, Northern Plains Resource Council
Michael Kasch, HDR
Moirra Davin, DEQ, Public Information Officer
Myla Kelly, DEQ, Water Quality Standards and Modeling Section Supervisor
Peggy Trenk, Treasure State Resources Association
Peter Scott
Rainie DeVaney, DEQ, Surface Water Discharge Permitting Section Supervisor
Rickey Schultz, HDR
Robin Richards
Ron Kuhler, ExxonMobil
Ryan Koehnlein, DEQ, Water Quality Monitoring and Assessment Section
Scott Mason
Stephanie DeJong, EPA, Region 8
Ted Barber, Meeting facilitator
Tim Burton, Montana League of Cities and Towns
Tom Kuglin, Helena Independent Record
Vicki Watson, University of Montana Watershed Clinic
Vicki Marquis, Holland & Hart

MEETING INITIATION

Ted Barber, meeting facilitator, welcomed everyone to the meeting around 1:35 p.m. and announced that the Zoom chat box would not be in use for this meeting to facilitate better discussion. Ted then went over meeting logistics, the meeting agenda (slide 3 of **Attachment A**), and took a roll call of Nutrient Work Group members present either via Zoom or in Room 111 of the DEQ Metcalf Building in Helena (slide 5 of **Attachment A**).

FRAMEWORK RULEMAKING UPDATE

Mike Suplee, Water Quality Science Specialist for DEQ, stated that on November 19, the Department went in front of the Water Pollution Control Advisory Council (WPCAC) and discussed the framework rule and answered a few questions. WPCAC voted as a body to move that forward for rulemaking. DEQ will be filing with the Secretary of State in December and the rule will publish on December 23. A 45-day public comment period will begin December 24. Mike also stated that around February 7 or 8 there will be a public hearing where people can make formal comments. Then DEQ will complete a response to comments, a review will be completed by legal staff, it will be signed by the Department head and then

published in March 2022. Mike clarified that DEQ will work on the main, comprehensive package simultaneously and that DEQ did not carry forward the Circular DEQ-12A repeal; it was brought forward to WPCAC as an informational item.

THEMES OF NUTRIENT WORK GROUP COMMENTS ON COMPREHENSIVE RULE PACKAGE

Ted Barber went through slides 10 through 13 of **Attachment A** stating that these are summary themes DEQ pulled from all the different comments received from the Nutrient Work Group on the comprehensive rulemaking package. Chris Dorrington, DEQ Director, stated that our objective here is to share a theme and then if Nutrient Work Group members want to add context, DEQ would like to know more about that. George Mathieus, DEQ Deputy Director, added that the key to success is communication.

Theme 1: SB-358 created a new narrative standard; interpreting or translating response variables and associated thresholds into numbers is a violation of SB-358 because the standard is narrative

Theme 1 Discussion

Alan Olson, Non-POTW point source dischargers representative, stated that a lot of this came about prior to Senate Bill (SB) 358. 358 came about because of Judge Morris' decision. We were put between a rock and a hard spot. There are still some issues regarding point sources where EPA said the variance system for industrials was out of scope – that still brings up a problem with the industrial side. When looking at numeric standards that were in the past, they were still adopted and the stringency associated with them precluded a lot of point sources dischargers because they couldn't be met. When this was all adopted over various sessions, the promise was always that we were going to have time. But when EPA said that the point source dischargers on the industrial side were out of scope, that took us out of the mix. We're going to have to address some kind of narrative standard for point source dischargers that don't get the variance standards and that's not going to be done with numeric.

Amanda McInnis, technical representative for municipalities, stated that one thing the League of Cities of Towns put forward during their [September 7, 2021 presentation](#) was the idea of using more of a narrative standard. One single set of numeric values that apply to all streams in an ecoregion has too much variability and that doesn't work as a framework. So we put forward the idea of going back to a truly narrative standard, so we're supportive of this idea.

Tammy Johnson, mining representative, stated she thinks the problem with this section in the new rules was it left permittees with an uncertainty as to what limits will appear. Need to clarify when it will be necessary when you take a narrative standard and translate it to numeric limits. It may not be necessary to do so, but we must consider the question. The rule package doesn't define the process and that was our heartburn about this. One thing we're afraid of is if we end up with the same numeric limits that SB358 did away with.

Alan Olson stated that nobody is looking for a license to pollute. We all realize we have obligations. We all live and recreate in this state. But at the same time, they have to be economical solutions. They can't be standards set to the point to where we can't meet them. Alan also stated he hopes DEQ and participants in this process recognize this. No one wants to ease standards, but they have to be standards that can be met.

Kelly Lynch, municipalities representative, stated that they spent a lot of time on this in their comment letter from the League. From the beginning, DEQ said we're going to stay with the existing science – concerned that means we're going to translate what was the numeric standards by going to that science and creating low instream numeric concentrations, and so we end up in the same place. Kelly further stated she wants to see a starting point for the AMP process be allowing stakeholders in a watershed to go through the process of developing a model and determining beneficial uses and determining impairments based on data gathering that happens at the beginning of the AMP process. A ton of work has been done in terms of how the process might look, but she thinks it's an issue of how we get into response variables and how they're being looked at in a watershed. Let's have that process be part of the beginning of the AMP instead of starting with something that's a model for everywhere across the state.

George Mathieus stated he has a comment regarding the science. We have 20 years of science so it's very applicable and how we use it going forward is what matters. We too are envisioning a narrative standard; DEQ implements them on all kinds of other constituents. They're "free from" standards. Some of the difficulty is the devil is in the details. We have to show EPA we're protecting beneficial uses, and how do we say yes we're protecting beneficial uses? What we need to talk about moving forward is how do we translate it and how does it all fit into a permit and how we're protecting beneficial uses. The dialog today is setting us up for that. We have to be able to defend our narrative standard so we can't lose sight of that.

Samantha Tappenbeck, representative of conservation districts west of the continental divide, stated this theme is one that she commented on. She has learned a lot throughout this process, especially the point of view of point source dischargers. She understands that no one is looking for a license to pollute. The translation of response variables into numbers demonstrates the fact that narrative standards cannot address the ultimate issue. It seems like a more convoluted way to uphold water quality standards. "Is this defensible?" deserves some more thought and consideration. George Mathieus responded that we must keep in mind that we were protecting uses in Montana long before 2014 using a narrative standard.

Kelly Lynch stated that the numeric standards have really never gone into effect. We don't need to get caught up in the idea that we're going back from numerics. The science has certainly been there and we've been using that. A conceptual watershed model, that we walked through in our presentation, is really the idea behind translating that science into how it would look in a particular watershed – to see what responses will be when we take an action in a watershed. One thing I've learned is how complex the nutrients are. Translating them into a number is complex.

Amanda McInnis stated that she agrees with Samantha that this is more complicated, and we think rightly so. We'd like to see that complication captured in the AMP and go back to the beneficial use. That's a public process that will go through pub comment and everyone's a partner in that process.

Chris Dorrington asked for members to tell him what causes fear about their permit limits, regarding the example that was shared in a prior presentation.

Alan Olson stated that his constituents have already spent tens of millions of dollars to reduce their impacts. Some of these are in pretreatment before they go into a local wastewater treatment plant and then on top of that they pay between one half and one million a year in treatment costs. This could turn

into hundreds of millions of dollars with very little addition reduction – it’s economics. Going back to the discussion of when the previous statutes were adopted, they were very forward thinking. Industry supported them. He voted for them when he was in the legislature, with a promise that we would have a variance. We would spend the money upfront to get the ball rolling and we would have time to capture that investment. I don’t see that happening if we go back to a numeric standard that can’t be met. If everything had stayed the same and we hadn’t had the case in federal court, we wouldn’t be here today. But it happened and we’re here because we could not meet the numeric standards. When EPA said our constituents were out of scope that just poured more gas on the fire. Our fear is we’ll end up with standards that can’t be met, so we go on a compliance schedule, which is not acceptable.

Chris Dorrington responded that what seems to be a logical fit is a process by which there’s an interaction for that point source discharge. There’s the heavy hand of the law and then there’s a conversation about any individual’s discharge. You’re worried about a worse case outcome and a “trust me” factor by the agency. You’re worried the agency would advance a set of criteria that couldn’t be met.

Alan Olson responded that that’s part of it, but it’s not that he doesn’t have faith in the agency.

Guy Alsentzer, environmental advocacy organization representative, stated that science-based standards are viewed nationally as the best way to protect water quality. They provide a legally defensible way to protect water quality. A point of clarification: he has heard several parties indicate that there’s unfairness that happens when the industrial section isn’t allowed to use a variance. There is no bad faith from DEQ because industrials never provided economic information. If a sector wants to pursue a variance, they can do that if they provide the required information. This is in fact walking back our standards and is not in our best interest.

Amanda McInnis stated that we agree with Guy that there should be science-based standards. We disagree on where that science should be and where’s the best place to do that. Regarding Chris’s question on what Rainie proposed with a permitting strategy: 1.) it doesn’t go back far enough. That beneficial use conversation needs to be part of the adaptive management plan and it needs to be flexible. 2.) What she remembers Rainie showing is essentially the adaptive management plan; that the actual nutrient limits came from DEQ independent of the AMP process. We think the best place for those numeric values is that those come out of the AMP process itself and aren’t developed independently at DEQ. That takes away the whole purpose of the AMP and turns it into a sampling and analysis plan.

Tammy Johnson stated she doesn’t want to lose sight of when we embarked on SB358; it has become an untenable position for the point source dischargers. Is there is a problem where there’s a point source discharge? Under numerics, we just apply a static number that couldn’t be met, but we didn’t understand whether the discharge was a problem or not. When we talk about translating response variables into numerics it is likely not necessary to have nitrogen as a component of that but that is something the AMP will determine. If we get a handle on the phosphorus limits, we are not going to have detrimental algae growth. It’s an assumption that we would need nitrogen limits in addition to phosphorus – she’s not certain that’s going to be necessary.

Theme 2: The role of the adaptive management program. Examples:

- **Use classification review and confirmation as part of AMP process**
- **Update impairment assessments**

Theme 2 Discussion

Amanda McInnis stated that both of these comments were in the League comment letter. We have already discussed the first bullet. The existing impairment assessment method depends heavily on the numeric values and that should be part of this conversation.

Rika Lashley, small point source dischargers representative, stated she agrees that it's important that these items are and can be part of the AMP process where applicable, but the first step is to determine whether or not they're needed. If it turns out that the stream they're discharging to is not assessed correctly, those things should be options in the toolbox that can be used as part of the AMP process but may not always be needed.

Kelly Lynch stated that she sees moving forward as breaking how the adaptive management program would work into that outline: how do we initiate it, who's involved, who collects the data and how does that happen? What are the roles and responsibilities? Then we create the conceptual watershed model. You can then look at all the actions that can be taken and then make the decision about how reductions happen. Kelly would like to see the next meetings as taking it piece by piece like that.

George Mathieus stated that it was a misinterpretation by me and DEQ that we were going to UAA the entire state. The reality is: what's appropriate for each watershed? We're not going to never look at it, but it's also not something that will happen every time, but we should have that conversation in the process, watershed by watershed.

Dave Clark, technical representative for large point source dischargers, stated that in some cases the assessments and the data upon which they are based is old, the TMDLs are old, and the data is stale. It's important to look at watersheds where we need current data to reflect current characteristics of the watershed; not what it was 20 years ago.

Darrin Kron, Supervisor of DEQ's Water Quality Monitoring and Assessment Section, responded that he agrees with Dave. Darrin also stated that it can be part of the conversation during the AMP process. DEQ has to use all readily available data with a certain quality control and we plan on using information from that process.

Dave Clark responded that we can agree on how the sampling takes place so we have credible data. If we're going to have a science-based assessment, that's the basis for whether you would consider a UAA.

Theme 3: Use of response variables and interpretation of upstream/downstream changes is inefficient and expensive, reactive instead of proactive; various other concerns pertaining to response variables and thresholds**Theme 3 Discussion**

Amanda McInnis stated that we had a narrative standard for a lot of years that worked and municipalities invested hundreds of millions of dollars and we don't see algae blooms in these watersheds and we see that beneficial uses are protected. Amanda further stated that she disagrees that this is reactive instead of protective.

Guy Alsentzer asked "what is the applicable rule framework?" Guy also stated that DEQ is bound at the end of the day to implement requirements of the Clean Water Act. The Clean Water Act does not talk

about economic cost benefit analysis. Effluent limits must attain and maintain water quality standards. That requires a lot of certainty. The numeric approach is the best manner possible to achieve this requirement. Response variables are interpreting the narrative criteria and there's a lot of ambiguities there. We're better off sticking with a tried-and-true approach. We don't want to be in a position to wait for harmful conditions before taking action.

George Mathieus said let's not forget that the same variables are the same ones that were used to develop the numeric standards, so it's not new stuff we're throwing on the table - we've been studying this for 20 years.

Chris Dorrington asked Guy if he felt the numeric standards approach is protective of Montana's water. Guy responded: yes.

Kelly Lynch stated that she's frustrated that Guy's position appears to be that he wants to go back to numeric standards with a variance and not willing to talk about a narrative approach. Guy Alsentzer responded that he doesn't think she's hearing that correctly. He has not seen inclusion of suggestions such as other regulatory approaches such as fertilizer indexes. Why are we not looking at subdivision approvals? Guy stated that we have not meaningfully discussed any of these issues.

Alan Olson stated that he rulemaking on SB358 was outlined by the legislature and does not include nonpoint sources. Discussing nonpoint issues during this is a bad use of our time. Guy Alsentzer responded that this process is setting artificial guidelines that will help us. Alan responded that those avenues need to be pursued at the legislature. Chris Dorrington stated that Alan does not speak on behalf of DEQ.

Kelly Lynch stated that she appreciated Guy's response. She does see the adaptive management program and the individual plans as a way to bring those stakeholders to the table and be part of the discussion about prioritizing actions in a watershed. We will be able to make decisions about funding and implementing things with nonpoint sources.

Sarah Zuzulock, regional conservation organizations representative, stated she's not sure where the group is landing with this dialog. How does DEQ plan to address the feedback? What she's heard so far is that nothing in the standard should reference numeric values, if it does then it shouldn't be based on response variables, if there's a response variable we need a chance to define watershed health. This isn't leaving DEQ with a lot of options the group can support. Where is DEQ landing in responding to the feedback? The AMP needs to account for current end of pipe permit limits that consider anti-backsliding requirements. The basis of a permit limit has to be protective of water quality and be proactive.

George Mathieus stated that our goal today is to have a dialog because we're feeling like we want to make sure we're clearly understanding the concerns so we're better poised and positioned to have specific detailed dialog during workgroups. If you're truly going to do a watershed approach, it's a great opportunity to make progress in a watershed by being able to look at every source in a watershed - some being voluntary and some being regulatory.

David Brooks, statewide conservation organizations representative, stated that while SB358 did not require this process address nonpoint sources, it also didn't preclude it, which is why we've brought up this concern that more language be included in the process.

Tammy Johnson stated that she wants to look at this in a more positive light. To Kelly's point that numeric standards have never been met in this state, and not even sure if highest attainable condition had been put into permits. So while numerics may sound like the only way to protect water quality or comply with the Clean Water Act, it is a bit of a misnomer. Rather than concern of using response variables, this is an opportunity. This is going to provide a wealth of information that will inform the regulatory body and everyone participating in this group, and the point source dischargers will be able to determine how to best take care of the water. It can't be the point source dischargers permit that handles all problems. There are opportunities to address nonpoint source issues and there may be good partnerships but it can't be all on the point source discharger. Let's look at this in a positive way – we're going to have so much information if the AMPs are conducted the way we envision them rolling out. This is going to be good for water quality in the state of Montana and not be reactive.

Theme 4: Too much responsibility for watershed monitoring and cleanup would be transferred to the point source dischargers; this transfer of responsibility is beyond the MPDES authority. Where an adaptive management plan fits into the MPDES process.

Theme 4 Discussion

Kelly Lynch stated that she can't speak entirely to the monitoring point. The small communities aren't going to have the money to do more monitoring. We made the decision that we would take on the additional costs because it would be a lot less than improvements. The real concern is that we were being misunderstood in terms of where the actions would be taken in the AMP and they would somehow just be plopped into an MPDES permit regardless of whether we had any control over doing it. Depending on the issues in a watershed, it might involve actions taken by a point source discharger or to pay for something else, or where somebody else may take or pay for an action. Legally we don't want all of these actions automatically being put into our permit or we're out of compliance with the permit.

Tammy Johnson stated that it is DEQ's duty to monitor the state waters, to assess the quality of those waters, etc. We think they need to make clearer that they are maintaining that authority while allowing the point source dischargers and those involved in crafting an AMP the ability to conduct the research, monitoring, and modeling, while making it clear that it is DEQ that is guiding that and make sure we have scientifically defensible data. This is heading off a future problem that could come up when the package goes to EPA.

Chris Dorrington then asked DEQ staff: where in any AMP development would stakeholders have influence over an outcome? Rainie DeVaney, Supervisor of DEQ's surface water discharge permit program, responded that it depends. In some of our more complex watersheds where we're looking at a modeling approach, there's lots of options for stakeholders to have input. When folks are doing their watershed inventory, they have opportunities to look for sources, identify partners, and that would be on a voluntary basis. We're wanting to look at nutrients at a watershed scale, so inventory hopes to identify all sources, and give flexibility to the regulated community within a watershed to develop relationships with nonpoint sources that are willing to partner.

George Mathieus stated that it's the responsibility of the permittee to develop an AMP and a monitoring plan in coordination with the agency and then we take that and figure out how to put it into a permit. This process is a three-legged stool: rules, circular, and guidance. The guidance drives how all of that works. We might spend time talking about public process so there is inclusion every step of the way.

Kelly Lynch asked: how are we going to ID stakeholders? How do we figure out how to get ahold of them? How does an AMP get initiated? Is there a process for a stakeholder to ask for it?

Darrin Kron asked when in the process will public participation be solicited at a local level? When is the state going to have open public comment periods on an AMP or the permit or both?

Guy Alsentzer stated that he wants to make sure DEQ retains oversight of the process. There are hard and fast federal rules that we have to abide by. We seek to have transparency, accountability, and enforceability for any AMP. Where do we see these things? Why is this not leading us down a path of nutrient trading?

Kelly Lynch stated that she doesn't think we see the actual permit part of it being different and don't see the AMP as being the permit. The AMP is the data and information and implementation of what all the stakeholders in that watershed want to see. Some of that will get translated into the permit, but maybe not all of it. The enforceability still remains as the permit. The AMP process adds to stakeholder participation at the local level.

Regulatory Sideboards

Amy Steinmetz, DEQ's Water Quality Division Administrator, went over slide 14 of **Attachment A**. Amy stated that the Nutrient Work Group has seen this slide before showing the regulatory sideboards. She stated that the conversation today has helped DEQ understand perspectives that have not been clear. As we're moving thru this process for developing rules, we still have the regulatory sideboards that are shown on the slide (the Clean Water Act, state rules and regulations, and SB358). We categorized the comments into themes but there are a few specific things that came out that we're not going to be able to waiver on because of these sideboards. Amy then turned it over to Director Dorrington to go through some of these points; however, Amy stated that this isn't the end of the road on these dialogs.

Chris Dorrington stated that he'd like to address four specific comments that, because of the structure of our current regulatory framework, are outside the scope of what we'll be addressing in the workgroups. He also stated that he appreciates the frankness with which the Nutrient Work Group members have shared perspectives today, and DEQ still welcomes input as we go forward. The first two comments are captured in Theme 1:

- 1) First is the assertion that SB358 created a new narrative standard and that DEQ should not be using ARM 17.30.637. SB358 gives DEQ the authority to adopt rules related to narrative nutrient standards and directs DEQ to repeal the numeric nutrient standards in DEQ-12A. DEQ already has a narrative standard at 17.30.637. We are not creating a new narrative standard; Montana's existing narrative standard will be used to protect and maintain the beneficial uses for waters previously covered by DEQ-12A. The rulemaking effort currently underway describes the *implementation* of the narrative standard for nutrients.
- 2) The second related comment is that interpreting or translating response variables and associated thresholds into numbers is a violation of SB-358 because the standard is narrative. A narrative standard is one that describes the desired conditions of a waterbody being "free from" certain negative conditions. That is what ARM 17.30.637(1) does. DEQ intends on *implementing* the narrative standards in assessments, TMDLs, and permits and will use available science, translating it into wasteload and load allocations, and enforceable limits, when necessary. SB-358 explicitly directs DEQ to adopt related rules that identify appropriate response variables and

associated impact thresholds in accordance with beneficial uses. That is what we are doing through the adaptive management program and that is a non-negotiable part of the final rule package, although we are open to discussing the most appropriate response variables and threshold values.

- 3) Theme 2 is a question about the role of the adaptive management program and there are several components to this. One is the question of beginning each AMP with a review and confirmation of the use class. Each waterbody in Montana has been classified and the use classes and beneficial uses are designated in rule. Removing fishable/swimmable uses requires a very rigorous process called a use attainability analysis and subsequent rulemaking. This is water quality standards change requiring EPA approval. DEQ has said that if AMP monitoring provides sufficient information that the beneficial uses of a waterbody are incorrect, we'll work through the UAA process. However, this will not automatically be a part of every AMP. It is a separate process that will be undertaken only if necessary.
- 4) Theme 4 is regarding MPDES authority. There were questions about in-stream monitoring requirements as well as concern that DEQ is trying to regulate nonpoint sources through the permit process and putting the burden of cleaning up nonpoint sources on dischargers. The Montana Water Quality Act gives DEQ broad authority to require monitoring. SB358 directs DEQ to develop rules providing for an adaptive management program that uses a watershed-scale approach, water quality must be understood (and monitored) on a watershed level.

DEQ is not trying to regulate nonpoint sources or require permittees to clean them up, nor are we requiring point sources to regulate other point sources. The adaptive management program as proposed by DEQ allows permittees the flexibility to reduce nutrients in a waterbody either by lowering the amount of nutrients they discharge or by partnering with nonpoint sources to complete projects in the watershed that will result in equivalent reductions. These partnerships are a consequence of using the watershed approach required by SB358.

Erik Makus with EPA Region 8 then made a few statements regarding the sideboards of the federal Clean Water Act that are important for everyone to understand. Water quality standards are reviewed and approved by EPA, and we must come up with a rule package that EPA can approve. Therefore, EPA wanted to take a few minutes to talk about the 3rd facet of this: Clean Water Act (CWA) requirements. Any rule packages that the state develops will need to meet the requirements of the CWA and be approved by EPA. The CWA is broad in what it covers but we're focused on the way it relates to water quality standards and permits. Erik stated he will talk about permits and the concept of reasonable potential analysis.

Basically, when EPA looks at a permit, they must consider both technology-based effluent limits (TBELs), technologies capable of controlling discharges (secondary treatment standards), and water quality based effluent limits (WQBELs), based on potential impact of the discharge to the receiving stream. For WQBELs, both the CWA and EPA's regulations require permits to meet necessary water quality standards, demonstrating that the permit includes WQBELs for all pollutants that are, or may be, discharged that have the potential to cause or contribute to a water quality exceedance (a reasonable potential analysis). A permit writer will take the more stringent of the TBELs and WQBELs.

Erik then listed a few tools that EPA can exercise when reviewing state permits:

- Can provide comments to the state on the permit

- Can object to the permit
- EPA can take over and issue the permit in a way that meets the requirements of the CWA

Erik stated that there's been some confusion as to what EPA's position was, and he does want to offer the opportunity for EPA to provide an overview of the CWA and EPA's comments on the process at a future NWG meeting and asked if this would be useful to the group.

Dave Clark asked Erik Makus if he could share how EPA would review the reasonable potential analysis for benthic algae level of 125 mg/m² – what would be the allowable exceedances spatially and temporally? Erik responded that right now we may not know exactly what that standard is going to look like. There would be total nitrogen and total phosphorus values associated with that exceedance of the response variables. Tina Laidlaw, federal regulatory agencies representative (EPA Region 8), then stated that in all of our comments, we've reiterated the need for clear transparent process that includes nitrogen and phosphorus levels that protects the beneficial use.

Amanda McInnis stated that there's a broad spectrum of the way reasonable potential analysis is done. It's possible in the AMP that we've decided that nitrogen isn't the limiting nutrient and controlling phosphorus makes the most sense. She is wondering if that whole process can be contained within the AMP, or if EPA has thought about that? Amanda further stated that reasonable potential analysis is done by a permit writer and there is a pretty narrow view of how that's done. If there's a way we can preserve the intent of the reasonable potential analysis but couldn't it be better done within the AMP process and then just the relevant limits brought forward into the discharge permit?

Erik Makus responded that CFR (code of federal regulations) does allow flexibility in how reasonable potential is implemented. It is something that needs to be done by the state as part of the permit process. The CFR clearly says the state needs to do that. It does allow for some flexibility. Generally, EPA has allowed flexibility in reasonable potential interpretation.

WORKING SUBGROUPS

Ted Barber then went over slides 16 and 17 of **Attachment A**, stating that working subgroups are a proposal that DEQ has worked on to figure out how we take all of these comments and what we have in current draft form and move forward. Amy Steinmetz stated that there are a few possible categories that DEQ came up with:

- A group that would address technical questions around response variables and thresholds
- A group that would address the implementation side of things, including where the AMP lives and possibly including the incentive program
- Possibly a group to dig into logistics, based on what Kelly Lynch outlined today

Amy stated that all along DEQ has wanted the interaction we had today, but understandably it took something to digest to have these conversations. Having smaller groups will allow for more dialog and come up with best product possible. Amy then asked if the group saw value in this kind of construct?

Kelly Lynch stated that she doesn't have a problem with the subgroups idea but focusing on themes is a bad idea – will never get down to the nitty gritty. Kelly also stated she is volunteering for the logistics group, and she would be happy to send out an outline that talks about each piece, which seems like a better way to get at the specific of what we need to do.

Amanda McInnis stated that it is her sense is this is all going to be the same people. If you attempt to do all of them at the same time, you'll overwhelm those people.

Tina Laidlaw stated that it might be good to give more specificity of what the other subgroups will cover (outside of response variables and thresholds). Maybe we could all email our thoughts to determine how many subgroups we need?

Amy Steinmetz then stated: let's plan to regroup. Amy requested that Nutrient Work Group members email suggestions and then DEQ will compile and report back to the group.

Mike Suplee stated that whatever these groups do, they have to get it done by May, as that is the end of the road for initiating formal rulemaking for the final package.

Amy then requested that members put their ideas into the Teams channel so everyone can see them. Amanda McInnis stated that a lot of people are uncomfortable using Teams and we'd be better off doing a short 30-minute call. Amy then requested that Nutrient Work Group members either email their ideas or post them into Teams and DEQ will compile regardless of the submittal method. Amy set a deadline of December 3 and stated DEQ will set up a meeting in the following two weeks.

CIRCULAR DEQ-12A REPEAL

Myla Kelly, Supervisor of DEQ's Water Quality Standards and Modeling Section, stated that at the last Nutrient Work Group meeting we talked about going to WPCAC with a DEQ repeal rule package. However, we altered course based on your feedback and allowed additional time to complete the rules. DEQ decided to proceed with the repeal in conjunction with the full rule package.

FUTURE MEETINGS

Ted Barber asked if the dates outlined on slide 20 of **Attachment A** are amenable to the group for future Nutrient Work Group meetings. Amanda McInnis noted that March 23 is the middle of spring break for several school districts and DEQ may want to move that meeting. No other objections were received to the proposed meeting dates of the fourth Wednesday of the month from 9 to 11 a.m. from January to May 2022.

PUBLIC COMMENT

Time was taken at the end of the meeting for public comment, but none was received.

The meeting was ended at 3:59 p.m.

SUMMARY OF ACTION ITEMS

As Nutrient Work Group and Technical Subcommittee meetings have been combined, the action items below now contain those from both previous Nutrient Work Group meetings and Technical Subcommittee meetings. All noted in progress or pending Technical Subcommittee responsibilities now fall to the Nutrient Work Group. One action item was recorded from this meeting in the table below (#4).

In-Progress Action Items			
#	Action	Who	Status
1	Define what P prioritization means	DEQ and TSC	Pending
2	Provide documents in advance of NWG meetings	DEQ	Ongoing
3	Summarize SOPs for sampling nutrients	DEQ	Ongoing
4	Submit ideas for organization of working subgroups	NWG	In-Progress

Complete Action Items			
#	Action	Who	Status
1	Distribute the flowchart and supporting materials to the TSC in a format to provide comments/track changes	Rainie DeVaney, Mike Suplee	Complete
2	Consider other measures that may trigger action (Box 7 of flowchart)	TSC	Complete
3	Clarify in the supporting documents that the narrative standards are those referenced in the Administrative Rules of the Montana of the State of Montana.	Rainie DeVaney, Mike Suplee	Complete
4	Define the overall work for the AMP by the June 23 Nutrient Work Group meeting	TSC	Complete
5	Provide information to the TSC on how to get on the agenda for a future meeting	Rainie DeVaney, Mike Suplee	Complete
6	Schedule two TSC meetings between each Nutrient Work Group	Rainie Devaney, Mike Suplee	Complete
7	Set up Teams TSC collaboration site. Send invite email. Post comments received from TSC members and draft DEQ documents	Moirra Davin, Christina Staten	Complete
8	Update AMP definition based on TSC feedback. Share out to TSC.	Rainie DeVaney, Mike Suplee	Complete
9	Decide whether medium sized rivers should be broken out	TSC	Complete
10	Add the draft approach for determining watersheds to Teams for feedback from TSC	Mike Suplee	Complete
11	Reorganize technical subcommittee Teams folders so they are more intuitive	DEQ	Complete
12	Receive written comments from League of Cities and Towns	Amanda McInnis	Complete
13	Medium rivers definition	Mike Suplee	Complete
14	Create bibliography of nutrient-related literature	DEQ	Complete
15	Provide feedback from the TSC about the time component in the flow chart	TSC	Complete
16	Receive feedback from TSC on time component of each flowchart step.	TSC	Complete
17	Get Microsoft Teams up and running for NWG and TSC members	DEQ	Complete
18	Address the question of nonpoint source participation in the AMP process	DEQ, NWG	Complete

Complete Action Items			
#	Action	Who	Status
19	Consensus opinion of farming and nonpoint source community on this process and what they think is possible or realistic	Nonpoint source representatives	Comment noted
20	Create responsibility chart for adaptive management program	DEQ and TSC	Complete
21	Summarize the process for determining a wadeable stream vs large river	DEQ	Complete
22	Add groundwater to the adaptive management program framework	DEQ and TSC	Complete
23	Provide copy of EPA action letter on Utah's headwater streams	DEQ	Complete
24	Update the AMP flowchart and supporting materials based on TSC feedback	DEQ	Complete
25	Define roles and responsibilities of DEQ and permittees for AMP process	DEQ	Complete
26	Identify and define what is needed to determine how far upstream and downstream monitoring should occur for a point source	TSC	Addressed
27	Add timeframes to the Adaptive Management Program flowchart	DEQ and TSC	Addressed
28	Put together case study of what DEQ thinks is a reasonable minimum of data collection for large rivers	DEQ	Complete

**ATTACHMENT A: NOVEMBER 30, 2021 NUTRIENT WORK GROUP
MEETING PRESENTATION SLIDES**

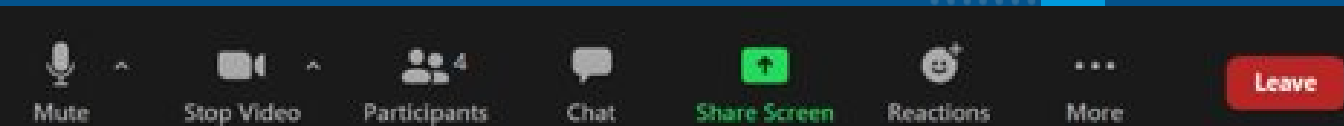
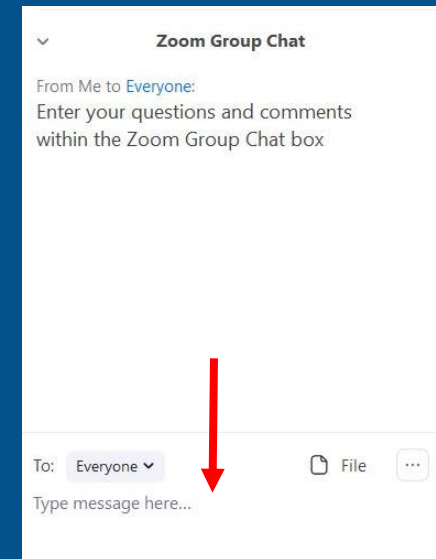
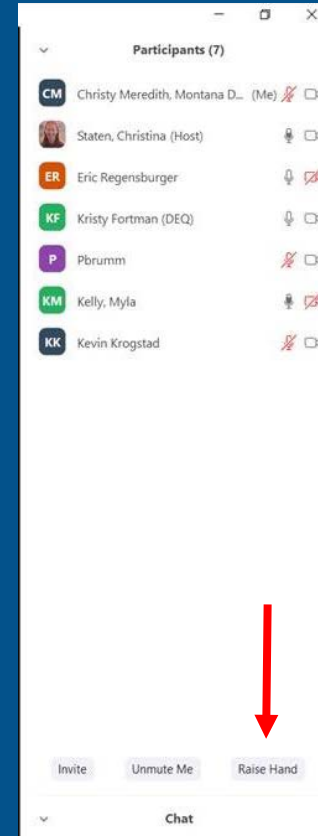
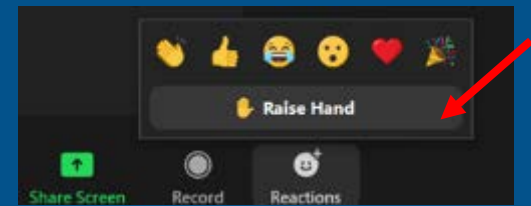


Nutrient Work Group Session Ten

November 30, 2021

Welcome!

- Please keep your microphone muted until called on
- Only NWG Members may participate during discussions
- Please reserve public comment until the end
- *6 unmutes your phone
- State your name and affiliation before providing your comment
- Enter questions in the chat box or raise hand
- Turning off your video feed provides better bandwidth
- Please sign-in to the chat box with name and affiliation



Agenda

Meeting Goal: Discuss themes of Nutrient Work Group member comments on the draft comprehensive rule package

Preliminaries

- Nutrient Work Group Roll Call (Ted Barber, Meeting Facilitator)

Meeting Focus Discussion

- Themes of Nutrient Work Group Comments on Comprehensive Rulemaking Package
- Formation of Technical Subgroups

Public Comment & Close of Meeting

- Schedule for Future Nutrient Work Group Meetings
- Public Comment

Introductions

DEQ Staff

- Christopher Dorrington, Director
- George Mathieus, Deputy Director
- Kurt Moser, Legal Counsel
- Moira Davin, Public Relations
- Amy Steinmetz, Water Quality Division Administrator
- Jon Kenning, Water Protection Bureau Chief
- Rainie DeVaney, Discharge Permitting Section Supervisor
- Galen Steffens, Water Quality Planning Bureau Chief
- Myla Kelly, WQ Standards & Modeling Section Supervisor
- Kristy Fortman, Watershed Protection Section Supervisor
- Darrin Kron, WQ Monitoring & Assessment Section Supervisor
- Michael Suplee, Water Quality Science Specialist

Introductions

Nutrient Work Group Members

Interest Group	Representative	Substitute
Point Source Discharger: Large Municipal Systems (>1 MGD)	Susie Turner	Louis Engels
Point Source Discharger: Middle-Sized Mechanical Systems (<1 MGD)	Shannon Holmes	
Point Source Discharger: Small Municipal Systems with Lagoons	Rika Lashley	
Point Source Discharger: Non-POTW	Alan Olson	
Municipalities	Kelly Lynch	
Mining	Tammy Johnson	
Farming-Oriented Agriculture	John Youngberg	
Livestock-Oriented Agriculture	Jay Bodner	
Conservation Organization - Local	Kristin Gardner	
Conservation Organization – Regional	Sarah Zuzulock	
Conservation Organization – Statewide	David Brooks	
Environmental Advocacy Organization	Guy Alsentzer	
Water or Fishing-Based Recreation	Wade Fellin	
Federal Land Management Agencies	Andy Efta	
Federal Regulatory Agencies	Tina Laidlaw	
State Land Management Agencies	Jeff Schmalenberg	
Water Quality Districts / County Planning Departments	Pete Schade	None
Soil & Water Conservation Districts – West of the Continental Divide	Samantha Tappenbeck	
Soil & Water Conservation Districts – East of the Continental Divide	Dan Rostad	
Wastewater Engineering Firms	Scott Buecker	
Timber Industry	Julia Altemus	

Ground Rules

- Speak one at a time – refrain from interrupting others.
- Wait to be recognized by facilitator before speaking.
- Facilitator will call on people who have not yet spoken before calling on someone a second time for a given subject.
- Share the oxygen – ensure that all members who wish to have an opportunity to speak are afforded a chance to do so.
- Be respectful towards all participants.
- Listen to other points of view and try to understand other interests.
- Share information openly, promptly, and respectfully.
- If requested to do so, hold questions to the end of each presentation.
- Remain flexible and open-minded, and actively participate in meetings.



Roles and Responsibilities

The Nutrient Work Group is an advisory group to DEQ.

Members agree to:

- Provide specific local expertise, including identifying emerging local issues;
- Review project reports and comment promptly;
- Attend as many meetings as possible and prepare appropriately;
- Complete all necessary assignments prior to each meeting;
- Relay information to and from their broader interest group counterparts after each meeting and gather information/feedback from their counterparts as practicable before each meeting;
- Articulate and reflect the interests that NWG members bring to the table;
- Maintain a focus on solutions that benefit the entire state;
- Present recommendations for the rulemaking throughout the planning process.



Framework Rulemaking Update



Themes of Nutrient Work Group Comments on Comprehensive Rule Package

Theme 1

SB-358 created a new narrative standard; interpreting or translating response variables and associated thresholds into numbers is a violation of SB-358 because the standard is narrative

Theme 2

The role of the adaptive management program

Examples:

- Use classification review & confirmation as part of AMP process
- Update impairment assessments

Theme 3

Use of response variables and interpretation of upstream/downstream changes is inefficient and expensive, reactive instead of proactive; various other concerns pertaining to response variables and thresholds

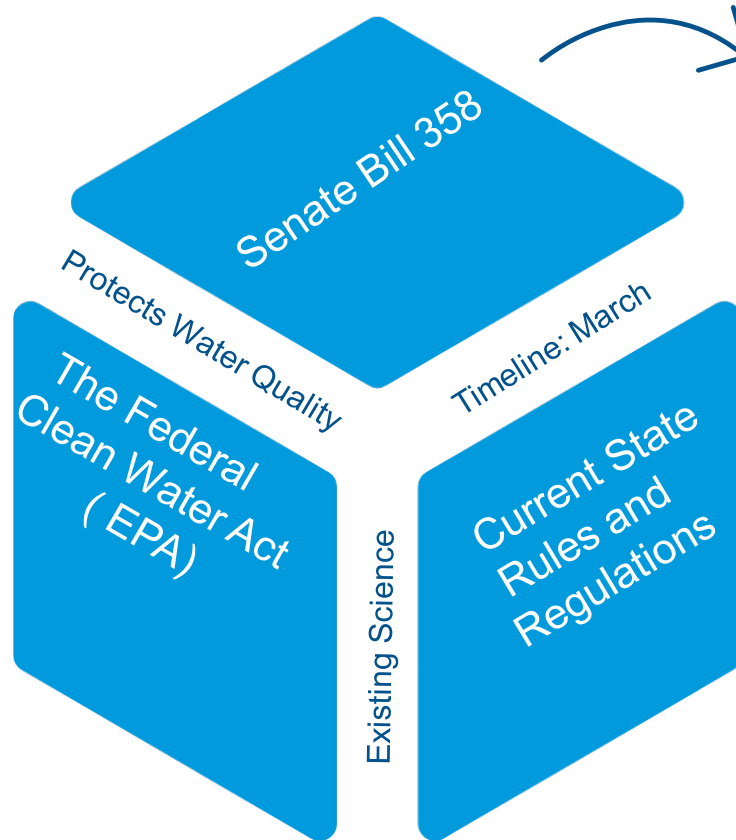
Theme 4

Too much responsibility for watershed monitoring and cleanup would be transferred to the point source dischargers; this transfer of responsibility is beyond the MPDES authority

Where an adaptive management plan (AMP) fits into the MPDES process

Narrative Nutrient Standards

Must meet...



Senate Bill 358:

- Rule provides for AMP
- Balances all factors impacting a water body
- Prioritizes the minimization of phosphorus, taking into account site-specific conditions
- Identifies response variables and associated thresholds
- Considers whether point source is new or existing, and impaired or unimpaired
- Rules adopted by March 1, 2022



Working Subgroups

Working Subgroups Purpose

To provide solutions to the common themes discussed today

- Approvable solutions to protect water quality
- Starting point: address major comment themes
- Timeline: December 2021 – May 2022

Working Subgroups Construct

DEQ Recommends Each Group Contain:

- One DEQ representative
- One EPA representative
- Three NWG representatives that balance interests

DEQ will make final member selections from today's nominations

Expectations:

- Attend every meeting to ensure cohesiveness
- Commitment to meet as needed
- Provide concrete solutions
- Report back to full NWG



Circular DEQ-12A Repeal



Next NWG Meetings

Next Meetings

Next Meeting Potential Dates:

- Fourth Wednesday of each month
9 – 11 a.m.
- January 26
- February 23
- March 23
- April 27
- May 25

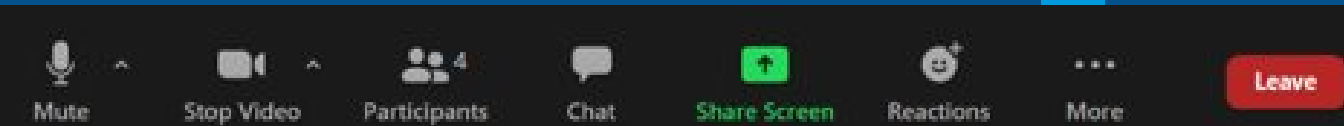
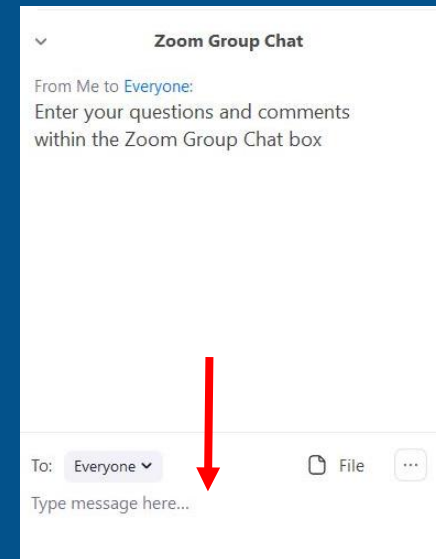
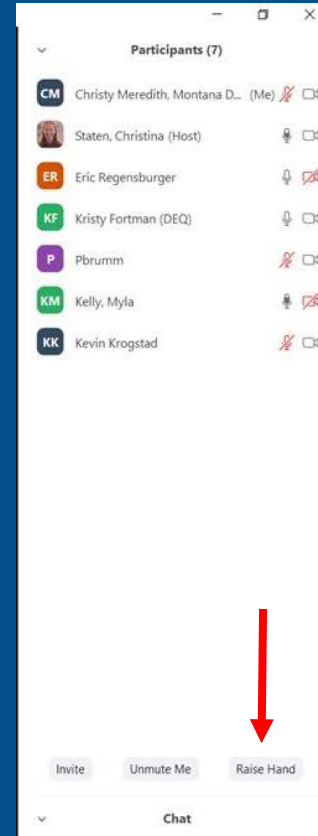
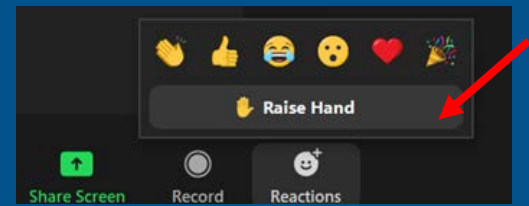




Public Comment

Questions/ Comments

- Raise hand or type questions into the chat
- Please keep your microphone muted until called on
- If calling by phone, press*6 to unmute
- State your name and affiliation before providing your comment



Thanks for Joining Us

Contact:
Christina Staten
CStaten@mt.gov

To submit comments or questions



<https://deq.mt.gov/water/Councils>

