

New Rule 17.30.2101: Definitions

“General Narrative Standard” means the narrative water quality standards found in ARM 17.30.637.

“Nutrient Reasonable Potential Analysis” means a reasonable potential analysis conducted for permitting purposes pursuant to Part 4 of the WQA using a dilution allowance of 100% of the average flow occurring from July 1st through September 30th. The analysis will be a narrative analysis that considers the use most sensitive to nutrients, size of the discharge relative to the receiving water, sensitivity to algae growth (including stream characteristics such as stream bottom, depth, channel, water clarity, and field observations), relevant impairment listings, nutrient mechanisms such as nitrogen uptake and attenuation, and other causes of undesirable algae growth, including temperature, flow patterns, light levels, and grazing on algae and plants by fish and aquatic insects. For prairie streams, the existence of response variable impacts (such as a change in dissolved oxygen levels), and whether nutrients cause those impacts, will be considered.

“Protective Range” for purposes of nutrient regulation means a range of values/narrative impact threshold levels for the chosen response variable(s), along with spatial and temporal boundaries, that protect the use most sensitive to nutrients, all as documented in the AMP and approved by DEQ.

New Rule 17.30.2110: Water Quality Assessments

For nutrients only, a waterbody will be considered a High Quality Water or an Impaired Water Body as those terms are defined in § 75-5-103, MCA if, on average over five years and under average flow conditions for the period July 1 through September 30, it supports or does not support its designated use that is most sensitive to nutrients. Absent credible data evidencing otherwise, the designated use most sensitive to nutrients in western Montana waterbodies is recreation and the designated use most sensitive to nutrients in prairie streams and eastern Montana waterbodies is fish and aquatic life. Water quality assessments pursuant to Part 7 of the WQA will be completed considering the relevant Use, Protective Range, and other information in the approved AMP or, if no approved AMP exists, the General Narrative Standard. A narrative-based assessment methodology will be used that looks at response variables and impact thresholds without reliance on general numeric concentrations.

New Rule 17.30.2111: Nutrient Considerations During Permitting Pursuant to Part 4 of the WQA

(1) Effluent limitations in permits only apply during the time period beginning July 1 and ending September 30 of each year, unless another nutrient season has been identified by MDEQ.

(2) The Nutrient Reasonable Potential Analysis is the operative reasonable potential analysis employed for permitting purposes.

(3) If neither a TMDL based on narrative nutrient standard nor an AMP has been approved for the watershed, permitting will be implemented using the appropriate nutrient effluent standard

developed pursuant to § 75-5-304(1), MCA. If a nutrient effluent standard has not been developed pursuant to § 75-5-304(1), MCA, a Nutrient Reasonable Potential Analysis will be conducted by considering the point source discharge's impact on the watershed's water quality in relation to the General Narrative Standard.

(4) If a Nutrient Reasonable Potential Analysis results in a finding of reasonable potential, then the all of the following factors will be considered when developing nutrient effluent limitations:

- (a) the condition of the facility, including the type of facility and treatment, recent upgrades, age of treatment employed, completed optimization work, and compliance history;
- (b) recent, relevant information and data applicable to the specific uses and the watershed;
- (c) the limits of technology available to treat discharges to the watershed;
- (d) whether the economic impact that would result from requiring additional treatment outweighs the improvement in water quality;
- (e) whether the environmental benefits to be achieved by requiring treatment are outweighed or negated by the environmental harm caused by requiring treatment;
- (f) evidence indicating the need to change, downgrade, and/or alter the designated uses within the watershed; and
- (g) other factors as appropriate.

(5) If reasonable potential is found based on the Nutrient Reasonable Potential Analysis and no approved AMP exists, effluent limitations will be developed that prioritize phosphorus and:

- (a) protect the use most sensitive to nutrients and are generally narrative; or
- (b) maintain existing nutrient concentration levels in an existing permitted discharge; or
- (c) maintain existing nutrient loading levels in an existing permitted discharge.

(6) If a TMDL based on narrative nutrient criteria or an AMP has been approved for the watershed, the TMDL or AMP must inform permitting decisions. An AMP-based permit may include requirements to implement high-priority actions identified in the approved AMP that are within the jurisdiction of the MPDES permit and the legal authority of the permittee. This may include, but is not limited to, facility optimization and monitoring, and requirements to submit annual reports that identify the permittee's implementation actions from the previous year and document any progress in achieving water quality goals and measures in the AMP.

(a) If a waste load allocation is provided in the TMDL or AMP, a water quality based effluent limit for nutrients may be derived consistent with the load developed within an approved AMP. This AMP-based load must be expressed as a seasonal average and may be included in the permit in addition to, or in lieu of, other adaptive management actions.

(b) If no waste load allocation is provided in the TMDL or AMP, a Nutrient Reasonable Potential Analysis, if required, will consider the point source discharge's impact on water quality in relation to the Use and Protective Range, including response variables, impact thresholds, and spatial and temporal boundaries, provided in the AMP.

(7) Nothing in these rules prevents or limits a permittees ability to seek a variance from any nutrient standard.