

# Nutrient Work Group Charter

## Purpose

The Nutrient Work Group (NWG) is an advisory work group, convened by the Department of Environmental Quality (DEQ), representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested parties that will advise the department on the implementation of SB 358, transitioning from numeric nutrient water quality standards to narrative standards utilizing an adaptive management process.

## Background

The Montana Department of Environmental Quality (DEQ) has long identified nutrients as a source of impairments to state waters. Beginning in the late 1990s, the DEQ began working on waterbody specific numeric nutrient criteria starting with the Clark Fork River. Working with the statewide Nutrient Work Group, the Board of Environmental Review (board) passed more comprehensive statewide numeric nutrient criteria and a general variance in 2014 covering most state waters except for some of the largest rivers. The variance provided a bridge to reach the standards, while allowing time for technology to catch up. Montana is one of a number of states in the nation to adopt numeric nutrient criteria, and the state was only able to do so after decades of gathering data.

Montana's program has delegated authority from the Environmental Protection Agency (EPA), and EPA must first approve water quality standards for such standards to be effective for federal Clean Water Act purposes. This means the EPA had to approve the general variance as well as the underlying numeric criteria. In 2015, following EPA's initial approval of Montana's general variance for public and private dischargers, EPA adopted a new variance regulation and, based upon EPA's interpretation of its new regulation, Montana's private dischargers were excluded from coverage under the general variance. On-going litigation in federal court then focused only upon the general variance as EPA had approved for public dischargers.

In 2020, EPA issued a letter disapproving Montana's general variance revisions as being inconsistent with on-going rulings from federal court. As a result, the Montana League of Cities and Towns, Montana Mining Association, Montana Petroleum Association, and Treasure State Resources Association proposed SB 358. These organizations contended the Circular DEQ-12A and DEQ-12B framework was no longer workable in Montana. At present, litigation continues in both the Montana federal district court and the Ninth Circuit Court of Appeals concerning the federal approval and related status of the general variance and Montana's numeric nutrient standards.

SB 358 became law on April 30, 2021. The new law immediately repeals DEQ-12B and also requires DEQ (and the BER) to amend state administrative rules and delete all references to DEQ-12A and DEQ-12B. The BER's relevant rulemaking authority will be transferred to DEQ on July 1, 2021. As such DEQ will need to conduct all necessary rulemaking, including the repeal of DEQ-12A. The new law also requires DEQ to adopt new rules related to the implementation of its narrative nutrient standards by March 1, 2022.

## Goals

DEQ's goal is to ensure that Montana's narrative nutrient standards will not only protect state waters but also will be implementable by Montana communities and businesses. Montana law provides the framework upon which our standards are built, and science informs the content. DEQ relies on our stakeholders to advise us as we determine implementation of the standards.

The NWG provides a broad array of perspectives by including fair representation from all interest groups (listed below). The goal of the NWG is for each of the members to advise DEQ about key considerations from the interest group they are representing while also being focused to effectively meet rulemaking deadlines.

NWG meetings will also continue to consistently and transparently serve to inform and educate, while increasing outreach and communication among the interest groups and any members of the public in attendance.

## Deliverables

Deliverables will vary based on issues addressed by the NWG. Some deliverables will be tangible, while some issues may not produce tangible deliverables. The most immediate deliverables are identified as follows:

- Rules to implement Montana's narrative nutrient standards and a transition plan from current numeric nutrient standards and variance approach to a new narrative standards approach.
  - Rulemaking framework will identify the approach, questions that need to be addressed and deadlines over the next six months
- Develop the Adaptive Management Program and Adaptive Management Plans
  - Requirements
  - Content
  - Review process
  - Implementation

## Terms of Membership

Members agree to volunteer until the rulemaking process required under SB 358 is complete. DEQ is not setting term limits for Nutrient Work Group members and will reevaluate the group's structure and goals upon completion of the rulemaking.

A member's position on the Nutrient Work Group may be declared vacant if the member:

- Resigns from the Nutrient Work Group in writing to DEQ
- Fails to attend more than two meetings without prior notice

In a case where a member's position is declared vacant, DEQ may appoint an alternative representative from the same interest group to fill the position. Likewise, if an interest group's designated representative must step down before rulemaking is complete, a replacement representative will be sought by DEQ.

## Interest Groups Represented

That there will be one representative for each of the following interest groups:

- Point Source Discharger: Large Municipal Systems (>1 MGD)
- Point Source Discharger: Middle-Sized Mechanical Systems (<1 MGD)
- Point Source Discharger: Small Municipal Systems with Lagoons
- Point Source Discharger: Non-POTW
- Municipalities
- Mining
- Farming-Oriented Agriculture
- Livestock-Oriented Agriculture
- Environmental Advocacy Organization
- Conservation Organization – Local
- Conservation Organization – Regional
- Conservation Organization – Statewide
- Water or Fishing-Based Recreation
- Federal Land Management Agencies
- Federal Regulatory Agencies
- State Land Management Agencies
- County Water Quality Districts or Planning Departments
- Soil and Water Conservation Districts – East of the Continental Divide
- Soil and Water Conservation Districts – West of the Continental Divide
- Wastewater Engineering Firms
- Timber Industry

If NWG Members are unable to attend a meeting, they should attempt to find alternates to attend in their place.

If necessary, other stakeholders may be invited by DEQ to provide expertise or perspective on specific issues.

## Operating Guidelines

### Convening of Meetings

- Members of the NWG will meet monthly via Zoom or in-person at the DEQ Metcalf building in Helena.
- Monthly meetings are scheduled for 2021 from 9:00 – 11:00 a.m. as follows:
  - May 27, 2021 (convening via Zoom only)
  - June 23, 2021
  - July 28, 2021
  - August 25, 2021
  - September 22, 2021
  - October 27, 2021
- Bi-monthly meetings are scheduled for 2022 from 9:00 – 11:00 a.m. as follows:
  - January 12, 2022

- January 26, 2022
- February 9, 2022
- February 23, 2022
- March 9, 2022
- March 23, 2022
- April 13, 2022
- April 27, 2022
- May 11, 2022
- May 25, 2022
- NWG meetings and related technical subcommittee meetings (described below) will be open to members of the public.
- The above six meetings will lead up to the official rulemaking process. Once the rulemaking process is underway, it is anticipated that the group will meet as needed with notifications posted on DEQ's NWG [website](#) and through the listserv.
- DEQ will make every effort to provide NWG members meeting updates through email two weeks prior to the meeting.

#### Communication

- Meetings will be posted on DEQ's NWG [website](#).
- Relevant documents and notices will be posted on DEQ's NWG [website](#)
- Documents for the NWG's review will be posted on the DEQ Narrative Nutrient Standards Transition Microsoft Teams site
- The NWG members and interested parties will receive email notices via DEQ's email listserv.

#### Conduct of Meetings

- Meetings will be open to members of the public.
- Meetings will be facilitated by DEQ staff.
- Informed alternate representatives are acceptable and encouraged if a Nutrient Work Group member cannot attend.
- Members of the public will be provided an opportunity to share ideas, ask questions, and provide feedback at designated times during meetings and during possible future listening sessions
- Questions can be submitted to DEQ staff through the NWG website or during the Zoom meeting, using the chat feature.
- Questions received may not necessarily be discussed immediately, but may be used to inform agendas and content for future meetings.
- Meetings will end with a clear understanding of expectations and assignments for next steps.
- Meetings are expected to be two hours, and not exceed three hours. Extension of time, in 15-minute increments, will require the consent of the majority of members attending that meeting. Consensus will be indicated with a show of hands.
- DEQ will keep notes of meeting attendees, key issues raised, and actions required. Comments summarized from individual NWG members will be attributed to the speaker. A verbatim record of the meeting will not be prepared.

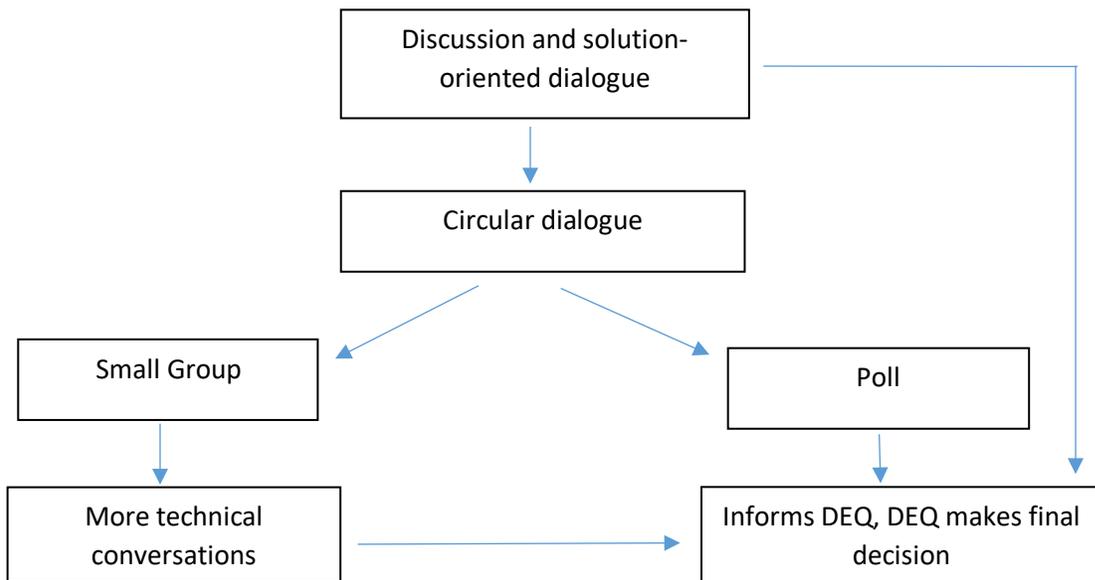
- DEQ will make every effort to provide the previous meeting notes and a meeting agenda to members of the Nutrient Work Group at least two weeks before the next meeting. Any changes to the notes of the past meetings shall be in writing and forwarded to DEQ prior to the next meeting.

Meeting 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.

Decision Making Steps

Throughout the process, decisions will need to be made in order to submit a comprehensive rule package. Productive dialogue with the Nutrient Work Group is important to determine all available alternatives and hear any concerns or ideas. During meetings, as topics are discussed between DEQ and the NWG, the following decision-making tree will be used:



DEQ will consider all alternatives and information discussed in the Nutrient Work Group meetings and weigh the alternatives against the primary requirements of: the intent of state law and Senate Bill 358,

requirements and approval from the EPA, and protection of beneficial uses. DEQ will circle back to the Nutrient Work Group to let the group know a decision has been made and provide reasoning. Should ad-hoc small groups be formed, DEQ suggests they be comprised of one DEQ representative, one EPA representative, and three NWG members that balance interests. Small group meetings to discuss technical details will be organized by DEQ and will be open to the public. The same principles outlined above will apply to these meetings.

#### Guiding Principles/Pillars

The following guiding principles will stand throughout the rulemaking process as the foundation and common understanding prior to starting discussion:

1. DEQ will utilize the existing science of nutrient impacts to Montana's beneficial uses—it is not the intent of these meetings to revisit the science.
2. DEQ will adhere to permitting requirements of anti-backsliding.
3. All water quality standards changes will be submitted to EPA for approval under the Clean Water Act.
4. DEQ will actively engage with the Nutrient Work Group as an advisory body.
5. DEQ's developed and vetted nutrient assessment method will remain in place, with minor changes.

#### **Roles and Responsibilities:**

The Nutrient Work Group is an advisory group to DEQ:

#### NWG 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.

#### DEQ staff agrees to:

- Provide NWG members the opportunity to collaborate with other agencies and groups on making recommendations for the project;
- Keep Nutrient Work Group partners informed of progress;
- Provide documentation to support recommendations;
- Provide technical expertise;
- Provide early notification of Nutrient Work Group meetings and make every effort to provide two weeks to review and comment on technical reports and other documents;
- Manage logistics for meetings;

- Explain the reasons when deviations are taken from Nutrient Work Group recommendations.
- After the rules are drafted, work with interest groups to brief local decision makers and produce briefing materials and reports; and
- After the rules are drafted, conduct public meetings as necessary to inform and engage the public, regulated community, all other stakeholders.

### **Technical Subcommittee**

Nutrient Work Group Interest Groups may each assign one member to the Technical Subcommittee (TSC). The TSC will meet on an as needed basis to discuss specific scientific technical aspects of the rulemaking. Examples of issues that the TSC will address are provided in the SB358 Rulemaking Framework.

### **Conflict Resolution**

When an issue arises that cannot be easily resolved, Nutrient Work Group members agree to:

- Determine if the issue should be resolved within or outside of the Nutrient Work Group and participate however is appropriate.
- Ensure the appropriate decision makers are at the table to resolve the issue.

### **Critical Success Factors and Projected Impact on Stakeholders**

Critical success factors include NWG members dedicated to working together to find solutions to common issues that ensure success for all parties. Members should be cooperative, solution-oriented, and willing to listen to opposing viewpoints. Members will need to work to find common goals and priorities and build on those commonalities to find solutions to issues with opposing viewpoints.

Another critical success factor is to stay on topic during meetings.