



Water Policy Interim Committee

68th Montana Legislature

PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

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May 17, 2024

TO: Water Policy Interim Committee
FROM: Alexis Sandru, Staff Attorney
RE: Administrative Rule Report – May 2024 Meeting (MAR Issues 6 through 9)

This report summarizes administrative rules concerning the quality or quantity of water that have been proposed or adopted by the Department of Environmental Quality (DEQ), the Department of Fish, Wildlife, and Parks (FWP), and the Department of Natural Resources and Conservation (DNRC) since WPIC's March 2024 meeting. Rule notices are available at <https://rules.mt.gov>.

PROPOSAL NOTICES

MAR Notice Number: 17-434 (proposed Issue 8, April 26, 2024)

Subject: Translation of narrative nutrient standards and implementation of the adaptive management program

Summary: Citing SB 358 (2021)¹, the DEQ is proposing to adopt two new rules pertaining to the translation of narrative nutrient standards and implementation of the adaptive management program. The DEQ notes that the proposed rules are meant to protect beneficial uses of water and to achieve federally mandated nutrient standards.

New Rule I provides that the narrative standard that applies to nutrients is contained in ARM 17.30.637(1)(e), which requires that state surface waters “be free from substances attributable to municipal, industrial, agricultural practices or other discharges that will . . . (e) create conditions which produce undesirable aquatic life.” The DEQ is also proposing to adopt and incorporate by reference Circular DEQ-15, Translation of Narrative Nutrient Standards and Implementation of the Adaptive Management Program (March 2024), which provides procedures and methodologies for translating narrative nutrient standards into actionable waterbody assessment and pollution permit limits.

New Rule II, implements the adaptive management program (Program), and does the following:

- provides that an owner or operator of a point source that applies for or holds a Montana Pollutant Discharge Elimination System permit may choose to enter the Program, which

¹ “AN ACT ELIMINATING NUTRIENT CRITERIA FROM MONTANA WATER QUALITY STANDARDS; ELIMINATING VARIANCES AND COMPLIANCE SCHEDULES FOR NUTRIENTS; DIRECTING ADOPTION AND AMENDMENT OF ADMINISTRATIVE RULES; PROVIDING FOR A TRANSITION FOR NUTRIENT STANDARDS; PROVIDING RULEMAKING AUTHORITY [. . .]”.

requires that an adaptive management plan (AMP) be provided to DEQ for review and approval;

- sets forth requirements for AMPs for wadable streams, medium rivers, and large rivers, including monitoring for total phosphorus and total nitrogen; monitoring and reporting of response variables affected by nutrients (such as amount of dissolved oxygen, macroinvertebrate tolerance, and algal cover) and corresponding impact thresholds; examining pollutant minimization activities that may reduce nutrient concentrations in the effluent and watershed; documenting nutrient reduction activity; prioritizing phosphorus reduction; reporting annually to the DEQ; and measuring compliance with narrative nutrient standards and other water quality standards at a point or points downstream of a facility;
- provides that permittees under the Program aren't precluded from pursuing other regulatory compliance options, such as discontinuing participation or obtaining a variance or a compliance schedule; and
- incorporates by reference Circular DEQ-15, which provides additional procedures for implementing the Program and addressing nutrients in a specific watershed.

The DEQ is proposing to include an application fee of \$5,000 for Program participation and an annual fee of \$3,000 for permittees who are approved to participate in the Program. The DEQ notes that fees are necessary to implement the Program and for enforcement and compliance monitoring; however, because of statutory fee caps, the fees proposed are not likely to cover the estimated costs associated with the Program implementation.

The DEQ is also proposing to amend numerous other existing rules to delete references to Circular DEQ-12A, as directed by SB 358 (2021), and is also including amendments to improve clarity and consistency throughout the rulemaking.

Finally, the DEQ is proposing to repeal two existing rules: 17.30.660 (Nutrient Standards Variances), which DEQ was directed to repeal by SB 358; and 17.30.1388 (Development of an ADP Implementing Narrative Nutrient Standards), which was an interim rule adopted after SB 358 that is not necessary if the proposed rulemaking is adopted.

Notes/Hearing: A public hearing is scheduled for June 10, 2024, at 10 a.m. (in-person and electronic participation options available – see proposal notice). Written public comment is due by 5 p.m. on June 10, 2024.

ADOPTION NOTICES

None