

SENATE BILL 367

MPA POSITION: SUPPORT

Background Facts:

The State of Montana is under no legal compulsion to adopt numeric nutrient standards. Current discharge permits rely on narrative standards where they are incorporated into existing discharge permits.

Nutrient loading (specifically Nitrogen and Phosphorus) to Montana's lakes and streams is not a public health threat but has been known to affect aquatic species and aesthetics during summertime conditions.

Nutrients are routinely found in treated effluents from municipalities, industry, and commercial enterprises. Non-point sources also contribute significantly to nutrient loads from septic tanks, agriculture and domestic sources (fertilizers).

The affects of Nutrient loading are manifested in different ways in different types of water bodies.

Montana DEQ has done extensive research and analysis to develop proposed base numeric nutrient levels for the different classes of water bodies in the state.

These base numeric criteria levels are extremely low. In fact, they are so low that there are only a handful of facilities in the state that even approach this level of treatment. Even these facilities cannot reliably meet the proposed new water quality standards for nitrogen and phosphorus. Quite simply, affordable technology does not exist at this time to meet these new proposed levels.

The 2009 legislature, through SB 95, sought to establish criteria that would assist the state in meeting the beneficial uses of all classifications of water bodies, while striving towards proposed base numeric standards for nitrogen and phosphorus. SB95 brought together many stakeholders, including industry, to engage in this discussion, now commonly known as the Nutrient Advisory Work Group (a.k.a. the NUT Group).

NUTIRENT WORKING GROUP ACTIVITY

The NWG has spent the interim period working towards the agreement on proposed base numeric criteria and the method of implementing them, without draconian and disastrous costs to municipalities and commerce in the state. These discussions have involved:

- Reviewing the science related to base criteria.
- Reviewing the limits of current treatment technology.
- Studying the cost and benefits of strict criteria.

Economic analysis presented to NWG indicates that the cost to municipalities and the private sector, of even near-compliance with these numeric standards, would greatly exceed the suggested incremental benefits, even allowing for hard-to-define aesthetic benefits.

Future adoption of rules establishing the proposed base water quality standards would most certainly be incompatible and unaffordable to both the public and private sector sources; who by default would then be at risk for non-compliance with these criteria. This would subject them to an uncertain possibility of obtaining a variance from the standards after a costly case-by-case demonstration of their respective issues.

This concern is further accentuated by the Montana's DEQ's acknowledged (legal) inability to assure protection of confidential financial information likely required to demonstrate "unaffordability" under EPA's past guidance for variances. It is crucial that DEQ and potentially affected dischargers know beforehand what will be required for compliance under rules up-front in permitting, and that such compliance be reasonably achievable before base numeric standards are imposed.

SB 367

SB 367 suggests categorical numeric standards based on size and type of treatment that represent an improvement to discharge across the state (beginning on page 13, line 17)

SB 367 directs the NWG to work toward adoption of base numeric standards by 2016 (page 14 line 3)

SB 367 recognizes the extreme costs implications of the base criteria and recognizes the difficulty with proving affordability for both private and public sources. SB 367 establishes a state wide general variance based on the fact they cannot be met today based on limits of technology (page 3 line 22; and in section three beginning on page 13 line 17)

SB 367 defines and grants a statewide variance based on wide spread economic impacts and technological limits (page 9 line 5 definition, and implements in section 3, paragraph 5 beginning on page 13, line 17)

SB 367 establishes individual and alternate variances (page 14 line 10)

SB 367 encourages alternate ideas like trading and other management tools (page 14, line 23)

The amendment corrects a mistake in our collective haste to get this bill done and ensures that DEQ will issue the variances as described.

- In consultation with DEQ should develop a comprehensive framework of compliance steps and options, including nutrient levels achievable with commercially available technology over time. Programmatic options for "trading" or "off-sets" that protect water quality in the most efficient way possible should also be considered.