



## Montana Legislative Services Division

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**TO:** Water Policy Interim Committee Members  
**FROM:** Cori Hach, Staff Attorney  
**RE:** Administrative Rule Review Report  
**DATE:** December 17, 2019

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On October 22, 2019, the Department of Environmental Quality (DEQ) held a public hearing to consider the proposed amendment of ARM 17.30.660, pertaining to nutrient standard variances.<sup>1</sup> On November 12, the DEQ certified a Notice of Amendment to the Secretary of State to describe a change to the amendment and respond to comments received.

The amendment was necessary after the United States District Court for the District of Montana issued an order in *Upper Missouri Waterkeeper v. U.S. EPA*, Case No. CV-16-52-GF-BMM, on July 16, 2019. Prior to the order, the DEQ had maintained that it had until 2027 to achieve the Table 12B-1 treatment requirement values. However, the Court found that this approach violated the federal Clean Water Act and that the general variance must instead begin with the 12B-1 values. Addressing this timeline concern required the DEQ to adopt a revised general variance timeline.

The revised general variance timeline is found in Department Circular DEQ-12B, so the DEQ amended Circular 12B to include Section 2.3, which describes the process for reviewing and amending the Table 12B-1 treatment requirements, and how the department and eligible facilities will proceed as the treatment requirements are modified through the triennial review procedure. If treatment requirements are not modified, then Section 2.3 requires submission and implementation of a revised “optimization/pollutant minimization program” for facilities already achieving the base standards. The Department asserts that this change will ensure that all facilities continue to make progress toward attaining the base numeric nutrient standards.

In response to public comments received, the DEQ added a subsection to ARM 17.30.660 to clarify which version of Department Circular DEQ-12B would control in the event that *Upper Missouri Waterkeeper* was overturned on appeal.

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<sup>1</sup> The Public Hearing was properly noticed in the September 6, 2019 issue of the Montana Administrative Register.