



TO: Water Policy Interim Committee

CC: Tim Davis, Division Administrator, Water Quality Division; Myla Kelly, Acting Bureau Chief, Water Quality Planning Bureau

FROM: Michael Suplee, Ph.D., Acting Supervisor, Water Quality Standards & Modeling Section

DATE: June 6, 2019

RE: Report on Numeric Nutrient Standards and Nutrient Standards Variances (75-5-313, MCA)

No new base numeric nutrient standards have been developed or adopted since the last update in 2018. Criteria development for the Yellowstone and Missouri rivers is ongoing.

General variances continue to be included in MPDES permits. Currently, 16 facilities have a general variance in their permit. One individual variance (Whitefish) has been adopted and is ready to be incorporated into the MPDES permit.

DEQ, DPHHS, and the A&E Division of DOA are working together on an individual variance for the Montana State Hospital. The 66th Legislature allocated \$4.5 million to the State Hospital to upgrade its aging wastewater lagoons. Planned upgrades will meet most water quality requirements, but won't completely comply with nutrient standards. The individual variance we are crafting addresses this and, when complete, will be incorporated into the State Hospital's MPDES permit. This variance would save the State Hospital approximately \$5.5 million.

DEQ continues to evaluate a novel, low-cost treatment technology for wastewater lagoons at a full-scale municipal wastewater lagoon. Early results indicate ammonia is reduced until the coldest part of winter. DEQ is evaluating a modification which might allow localized temperature stabilization in winter, allowing for year-round ammonia removal.

On March 25th, 2019 U.S. District Court Judge Brian Morris issued a decision regarding EPA's approval of Montana's current nutrient variance rules (Circular 12-B). The decision upheld variances as being consistent with the Clean Water Act. It also upheld Montana's analysis and justification for the need for the nutrient variances. The court wrote that "defendants must demonstrate progress toward attainment of Montana's Base WQS. Defendants must set forth a timeline that ends with the ultimate attainment of Montana's Base WQS rather than simply improving water quality to the level of the relaxed criteria of the Current Variance Standard [otherwise known as Highest Attainable Condition or HAC]." The decision recognized "that dischargers throughout the State of Montana currently stand at different levels of attainment. The Court also recognizes that economic factors may constrain immediate compliance with the Current Variance Standard [HAC] for certain dischargers." The Court directed the parties "to confer in good faith to attempt to reach agreement as to potential remedies that include a timeline to achieve prompt compliance with the Current Variance Standard [HAC]."