

From: Laidlaw, Tina Laidlaw.Tina@epa.gov 
Subject: Follow-up
Date: August 13, 2021 at 9:31 PM
To: Guy Alsentzer guy@uppermissouriwaterkeeper.org
Cc: Todd, Andrew Todd.Andrew@epa.gov, Fish, Tonya Fish.Tonya@epa.gov



Guy,

I appreciate your interest in meeting with EPA to discuss our perspective on the implications of SB 358. I wanted to share the following email that EPA sent to MDEQ management on August 11th. We are also preparing technical comments on the state's proposed response variables and associated thresholds and would be happy to share those comments when they are finalized next week.

We would welcome the opportunity to discuss this information with you. Please let us know if you would be available to meet around the end of August/ early September and we will send suggestions on a possible meeting time/day.

Look forward to hearing from you.

Tina

From: Garcia, Bert
Sent: Tuesday, August 10, 2021 3:51 PM
To: Amy Steinmetz <asteinmetz@mt.gov>
Subject: Montana Nutrient Water Quality Standards

Amy, when we spoke of this topic last week I'd promised to follow up in writing.

This email is intended to clarify how EPA will assess revisions to Montana's WQS that result from Montana removing its numeric nutrient criteria (or "NNC" for short) from Department Circular DEQ 12-A per legislative direction. In short, EPA's review will focus on determining whether the narrative approach is scientifically defensible and protects the designated uses. We hope Montana can use this information and the details below to develop a rule package that complies with the Clean Water Act (CWA) and EPA's regulations.

The record accompanying MDEQ's 2014 adoption of the NNC and EPA's 2015 CWA section 303(c) approval indicates the NNC are scientifically defensible and protective of designated uses, and that both total nitrogen (TN) and total phosphorus (TP) need to be addressed and limited to protect the applicable designated uses. EPA will review MDEQ's replacement rule consistent with EPA's regulatory requirements, including 40 CFR § 131.11(a)(1) which specifies that criteria must contain sufficient parameters or constituents to protect the designated uses.

Because MDEQ is removing numeric criteria that are still scientifically defensible and protective, EPA expects an adequate level of assurance that MDEQ can identify protective levels of both TN and TP for implementation in CWA programs. One way to provide such assurance would be to adopt a numeric translator for the narrative criterion in rule or to incorporate a numeric translator by reference. For example, MDEQ could adopt protective thresholds for response variables, that are scientifically defensible and protective of the applicable designated uses, in rule and incorporate by reference the technical documents that provide a reliable process for deriving TN and TP levels associated with response variable thresholds.

If MDEQ chooses another approach, it should include a procedure that establishes a transparent, reliable, and consistent mechanism for assessing waters; developing TMDLs; evaluating discharges for reasonable potential to cause or contribute to exceedances of translated nutrient levels; and developing water-quality based effluent limitations for those permits where they're needed to protect the designated use. EPA also recommends MDEQ review EPA's 2013 guiding principles on development of combined nutrient criteria, *Guiding Principles on an Optional Approach for Developing and Implementing a Numeric Nutrient Criterion that Integrates Causal and Response Parameters* (<https://www.epa.gov/sites/default/files/2013-09/documents/guiding->

[principles.pdf](#)). This document offers specific guidance that may be helpful in development of a narrative criterion translator approach.

EPA welcomes the opportunity to work with MDEQ on draft rule language and supporting technical documents so that Montana's replacement WQSs meet CWA statutory and regulatory requirements. Until revisions to MDEQ's water quality standards regulations are approved by EPA pursuant to CWA section 303(c) and EPA's implementing regulations, the water quality standards currently approved by EPA remain in place for all CWA purposes. CWA purposes include implementation of approved standards for purposes of developing water quality based effluent limits in MPDES permits as part of MDEQ's permitting program authorized under Section 402 of the CWA. Thus, the current EPA-approved standards will continue to serve as a basis for EPA review and oversight of state MPDES permits.

I hope this email is helpful to you and your staff. Please let me know if you have any questions. Thanks.

Bert Garcia
Acting Division Director
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U.S. EPA Region 8