MEMORANDUM

SUBJECT: EPA's Multiple Discharger Variance Frequently Asked Questions and Montana's August 2014 Nutrient Water Quality Standards Submission

FROM: Martin Hestmark, Assistant Regional Administrator
Ecosystems Protection and Remediation Program

TO: The File

DATE: February 26, 2015

In 2011, Montana's legislature passed Senate Bill 367 which authorized multiple discharger variances (general variances) for three categories of dischargers: 1) facilities greater than 1 million gallons per day (MGD); 2) facilities less than 1 MGD; and 3) lagoons. Senate Bill 367 stated that all dischargers would face economic hardship if required to meet the numeric nutrient criteria.

To comply with the EPA's regulation in 40 CFR § 131.10(g)(6), Montana prepared an economic analysis for public and private dischargers demonstrating that it is infeasible to meet a water quality-based effluent limit (WQBELs) "end-of-pipe" based on the numeric nutrient criteria (and by extension infeasible to attain the designated use). The state's analysis showed that if all dischargers subject to the numeric nutrient criteria would have to meet such WQBELs, the result would be substantial and widespread social and economic impact on a statewide basis. Following the EPA's 1995 economic guidance (U.S. Environmental Protection. 1995. Interim Economic Guidance Workbook. Washington, DC: U.S. Environmental Protection. Report EPA-823-B-95-002), Montana completed their preliminary economic analyses for publicly owned treatment works (POTWs) and private sector facilities in Fall 2011. In December 2011, Montana requested written feedback from the EPA regarding whether Montana's variance process complied with the Clean Water Act Montana's variance process. In January 2012, the EPA responded to the state stating that Montana's variances were in compliance with the CWA, as the EPA understood based on the information provided thus far. Montana finalized the economic analysis for POTWs in April 2012 and, in December 2012, Montana finalized the private sector economic analysis. Montana originally intended to initiate rulemaking on nutrients in Summer 2012; however, this timeframe was delayed to explore options for addressing concerns with variances for new dischargers. The state did, however, request informal public comment on their draft rule language in July/ August 2012.

To provide clarification regarding the use of multiple discharger variances under 40 CFR Part 131, the EPA developed a set of Frequently Asked Questions on Multiple Discharger Variances. These FAQs were published in March 2013.

Because Montana's general variance approach and associated economic demonstration were in large part finalized prior to availability of the EPA's FAQs on MDVs, the EPA recognizes that Montana did not have the benefit of the EPA's views expressed in the FAQs regarding the use of multiple discharger variances during the development of the state's general variance approach. Therefore, while the EPA

considered the MDV FAQ when reviewing Montana's submission, the EPA did not evaluate Montana's variance in comparison to the MDV FAQ. If in the future, Montana were to modify and/or adopt another general variance process, the EPA fully expects Montana to consider the EPA's FAQs on multiple discharger variances.