


REGULATORY COMPLIANCE

The Update

August/September 2011

 Think Big. Go Beyond.

Montana Adopts Revised Nutrient Standard Variance Legislation

by Judel Buls, PE

The State of Montana has been immersed in numeric nutrient standard rule making for over a decade. With numeric nutrient standards for wading streams and rivers having been identified on an ecoregion basis for several years now, the State's focus has shifted to an implementation plan. With proposed limits that are currently not technically or economically achievable, implementation has been a contentious topic and recently culminated in the adoption of numeric nutrient standard variance legislation, which allows for variances to numeric nutrient standards based on the following:

- A mechanical treatment facility treating one million gallons per day or greater of wastewater flows can apply for a general variance of 10 milligrams per liter total nitrogen and 1 mg/L total phosphorus.
- A mechanical treatment facility treating less than 1 MGD of wastewater flows can apply for a general variance of 15 mg/L total nitrogen and 2 mg/L total phosphorus.
- A lagoon not designed to remove nutrients shall have no increase in nutrient limits.

If affordability is still a challenge, a utility then has the ability to apply for an Individual Variance, which will take into consideration the economic impacts on the community associated with implementing a treatment facility improvement project. A third type of variance, termed an Alternative Variance, is also possible, and would be allowable in circumstances where flows could be shown to be an insignificant contributor to the receiving stream.

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Pressure Continues on States and Stakeholders: USEPA's Nutrient Policies

US House of Representatives Committee on Transportation and Infrastructure

June 24, 2011 Hearing Overview

by Judel Buls, PE

On June 24th, 2011, the US House of Representatives' Committee on Transportation and Infrastructure held a hearing on the United States Environmental Protection Agency's (USEPA's) nutrient policies and continued pressure on States to adopt numeric nutrient standards for the purpose of meeting Clean Water Act (CWA) objectives.

The hearing consisted of testimony from State regulatory representatives across the United States, the USEPA, and a municipal wastewater reclamation facility. The challenges surrounding the implementation of numeric nutrient

standards on a Federal level were acknowledged, emphasizing nutrient standards should be established uniquely for each discharge permit, and implementation processes should remain at the State level to allow for the flexibility and creativity necessary to approach the issue as needed for various watershed conditions.

It is also notable that the USEPA expressed objections to discharge permits based on the "creative" approaches developed by States, despite the USEPA's recent commitment to supporting the States' efforts to establish the need for, and implementation of, numeric nutrient standards. Other issues not new to the nutrient debate and discussed at the hearing included the role of nonpoint sources in the nutrient challenge, the economic impacts of nutrient standards, the need for a variance process, adaptive management, incorporating response indicators into numeric nutrient standards, and the need for site-specific burden of proof.

The collective voices present during the hearing expressed frustration at the USEPA's unwillingness to allow them to take proactive steps without having to move to immediate and full implementation of strict standards over which even the USEPA's own Science Advisory Board has voiced concerns.

A memo completed by Subcommittee Chairman Bob Gibbs, in advance of the hearing, outlined the following recommendations moving forward:

- Greater emphasis must be placed on evaluating the attainability and refinement of designated uses, as necessary, prior to developing and imposing numeric nutrient standards.
- Water quality assessment and monitoring programs must be comprehensive, robust, and provide the information needed to support numeric nutrient standards.
- Numeric nutrient standards must be technically and scientifically defensible.

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The Update

REGULATORY COMPLIANCE

If you have any questions concerning the content of this newsletter, please contact Daron Selvig at 701-364-9111 or Daron.Selvig@ae2s.com. Web site links contained in this issue are posted as clickable links at www.ae2s.com/UpdateLinks.

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(Montana Adopts Revised Nutrient Standard Variance Legislation from first page)

Other key features of the legislation include:

- A May 31, 2016 sunset date on current general standards, followed by a 3-year review of updated limits to make a gradual move toward achieving baseline nutrient criteria.
- A 20-year expiration date on the variance, requiring compliance with baseline criteria at that time.
- The requirement for an operation plan aimed at optimizing nutrient removal with an existing process, and a study of alternatives such as zero discharge, wastewater reuse, nutrient trading, side-stream treatments, etc.

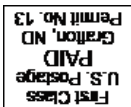
In his testimony at the June 24th, 2011 US Congressional Subcommittee hearing (see main article), Richard Oppen, the director for the Montana Department of Environmental Quality, supported this legislation as a step toward Clean Water Act compliance that is consistent with the United States Environmental Protection Agency's (USEPA's) outline of recommended nutrient management program elements. He touted the program as one that may serve as a template for other States considering an adaptive, step-wise, and gradual approach to implementing numeric nutrient standards. He described the process of gaining USEPA support as tenuous, with USEPA's reaction moving from "antagonistic to tepid." His anticipation is, however, that with continued commitment to collaboration, "common-sense will prevail."

(Pressure Continues on States and Stakeholders from first page)

- Numeric nutrient standards must be based on a demonstrated cause-and-effect relationship and appropriately qualified by the uncertainty in those relationships.
- Numeric nutrient standards should not be imposed unless documented nutrient-caused biological impacts have been confirmed or a technically/scientifically defensible reasonable potential evaluation is conducted to demonstrate potential impact.
- Flexibility is needed to account for uncertainty due to unique ecological interactions between nutrients and designated uses. Examples may include better use of existing CWA tools, like variances or permit expressions, such as longer averaging periods.
- Adaptive, watershed-wide management approaches are necessary to move toward long-term water quality goals.
- Numeric Nutrient Standards must be technically and economically achievable, ensure that required investments are sustainable, and provide measurable benefits to the community.
- Water-quality based State strategies being implemented should not be preempted by the USEPA.
- Cost effectiveness, long-term sustainability, and ease of implementation should be keys to developing a National strategy for nutrient reduction within the nation's watersheds.

A E2S Communications Specialist Daron Selvig takes over as editor of The Update with this issue. If you have any questions about the content of this newsletter, please contact Daron at 701-364-9111 or e-mail Daron.Selvig@ae2s.com.

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