



Colorado Nutrient Coalition

Representing
Wastewater * Stormwater * Water Conservation * Agriculture * Home Builders

May 23, 2011

Mr. Steven Gunderson
Executive Director
Water Quality Control Division
4300 Cherry Creek Dr. South
Denver, CO 802476-1530

Re: Request for Meeting to Discuss Key CNC Concerns

Dear Steve:

As you know, for the past few months we have been participating in both the small and large workgroup process in an attempt to resolve concerns with the draft regulation 31 and 85 proposals. We understand that the Division is looking to redraft the proposed rules soon, based on the input received to date. While some progress has been made on resolving key issues, our group believes that there are a number of key concerns that need to be addressed (1) to ensure cost-effective municipal expenditures, (2) to obtain broad-based support from our membership and (3) to avoid unnecessary federal entanglements that could undo this entire approach. As these issues have been covered in prior correspondence and in verbal comments at various meetings, we have included only a very short rationale regarding the need to address the concern.

We would like to meet directly with you to discuss the attached issues in greater detail to see if some meeting of the minds on these issues can be achieved to the benefit of all involved in the process. Please let us know when your schedule can accommodate this request.

Sincerely,

Nancy Keller for
Colorado Nutrient Coalition

Attachment

cc. CNC Membership

Colorado Nutrient
Coalition
c/o Nancy Keller
City of Pueblo
Wastewater Dept.
211 E. D Street
Pueblo, CO 81003

Key Areas Requiring Resolution in the Regulation 31 and 85 Development Process

1. Written confirmation that the proposed interim numeric values are not to be used to define waters as impaired or to serve as a default value for narrative criteria interpretation for waters below point sources. **(This ensures that EPA will not apply these values as a narrative translator – believe WQCD already confirmed this position verbally in the work group meetings)**
2. Development of a state narrative nutrient criteria translator, to be issued in conjunction with Regulation 31 adoption, that will be used to (1) identify waters as nutrient impaired or (2) serve as the basis for identifying nutrient concentrations necessary to address nutrient impacts in specific waters. The Regulation 31 proposal should refer to this narrative criteria implementation guidance as controlling until the Commission formally adopts specific numeric criteria for waters impacted by point sources. **(EPA has informed several states, including Colorado, that narrative standards will be applied to nutrients, absent numeric criteria; EPA has begun development of a narrative translator guidance document for permitting and it will be applied if WQCD does not have some form of narrative translator policy; CNC believes the narrative translator should incorporate aspects of Regulation 85 as meeting narrative goals absent more specific analyses.)**
3. Amend Regulation 31 to require that a workgroup process and a Commission hearing will be held to review any updated scientific information available indicating whether the interim numeric values should be amended prior to application to areas impacted by point sources. **(This addresses the CNC concern that the interim values are not simply presumed to be the best scientific approach without further review or consideration based on data developed in the intervening years.)**
4. Move any new public water supply protection provisions to a Control Regulation context such that Clean Water Act compliance and EPA approval is not implicated by these new state requirements, not otherwise required by the Clean Water Act. **(The CWA does not require this new designation or subcategory and it is expected that the adopted protections will seek to balance various costs and uses that are not easily done under the CWA – site specific protection plans developed outside of the CWA would be a far more effective way to address these issues and achieve desired results; federal approval to modify plans would not be required.)**
5. Modify the Regulation 85 to require implementation on a priority basin approach or where major upgrades/replacement is otherwise occurring so that engineering design and state funding resources are not unduly stressed. **(A reality of the Regulation 85 proposal is that it will have a very high price tag; implementation in all locations at once is not feasible or recommended. Even in Chesapeake Bay, phased implementation was used to spread out the economic impact and ensure**

sufficient engineering services could be provided. The state's limited funding resources should be first targeted to the areas of greatest need.)

6. Include a water quality-based "off ramp" provision that supplements the current use of the interim numeric values and allows deferral of either nitrogen and/or phosphorus removal where (1) compliance with the narrative criteria guidance for nutrients is demonstrated with site-specific information or (2) the water quality improvements associated with achieving the Regulation 85 limitations are documented to be negligible. **(Provision 85.5(3)(b) currently presumes that the interim numeric values are the only valid water quality basis to defer application of this rule; that position is not consistent with how Regulation 31 intends these values to be applied; there should be another "no impairment" off-ramp that allows the community to document that the receiving waters are not exhibiting nutrient impairment, such as acceptable MMI, or low MMI but not caused by nutrients or, for larger rivers, no diurnal DO problems or excessive algal growth; for areas with existing control regulations, the need for more restrictive nutrient requirements (e.g., TN reduction) should be assessed separately as the additional water quality benefit may be negligible.)**
7. To assist in implementing the variance provision, support Regulation 85 implementation on waters designated as impaired and allocation under the TMDL process, develop a state policy for fairly apportioning responsibility for nutrient reduction where non-point sources are the main cause of nutrient impairment and point source controls will not meaningfully improve the situation to provide a basis for granting variances. **(For waters that are highly non-point source dominated and show some level of nutrient impairment, some type of variance procedure should apply that promotes NPS reduction efforts in lieu of costly point source measures. Under these circumstances it may be appropriate to classify certain point sources as *de minimis* and defer application of Regulation 85 requirements in lieu of other NPS reduction measures)**