



Colorado Nutrient Coalition

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

January 11, 2011

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

Re: Update on CNC Position Regarding Alternative Nutrient Criteria Proposal and Control Regulation Efforts

Dear Steve:

This letter follows our November 8, 2010, correspondence to you regarding Colorado Nutrient Coalition's (CNC) ongoing technical concerns with the Division's approach to nutrient criteria development. Due to these unresolved concerns, the CNC expressed its intent to present an alternative criteria development approach to the Commission, supported the use of an alternative state regulatory approach (control regulation), and also asked that a peer review be scheduled to resolve the complex technical issues that are outstanding. The Division's November 24, 2010, response to the Southwestern Water Conservation District, in our view, further underscored the need for an independent peer review given the significant differences in scientific interpretation. Nonetheless, we now understand that the Division will not be proceeding with adoption of generally applicable nutrient criteria (or table values) and such action will be deferred for 10 years pending implementation of a control regulation. (We rely upon that understanding at this time as we have not heard anything to the contrary since the Division's meeting with EPA in mid-December. If that understanding is in error, please advise us as soon as possible.) In general, CNC supports this alternative approach as a more cost-effective means for achieving meaningful nutrient control without the significant regulatory complications associated with criteria adoption. In view of these recent developments, the CNC will not be submitting an alternative approach, as such an action is no longer necessary. We will continue to focus our efforts on the adoption of a control regulation that will provide for substantial nutrient reduction benefits from a wide range of sources while key water quality assessment issues are under review.

We also understand that the scheduled rulemaking activities on the control regulation are being postponed pending an assessment of costs and benefits by the Colorado Water Resources and Power Development Authority. CNC agrees that the cost impacts and benefits associated with the control regulation and the proposed alternative treatment levels need to be carefully evaluated. We look forward to participating in that process.

Colorado Nutrient
Coalition
c/o Nancy Keller
City of Pueblo
Wastewater Dept.
211 E. D Street
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In recent control regulation and regulation 31 workgroup discussions, a number of important issues have surfaced. As it has been some time since that workgroup has met, the following briefly sets forth our group's current position on these issues:

1. We agree that any table values should be restricted to high quality waters given the ongoing technical differences on the statewide need for certain measures (*e.g.*, TN control, relationship between nutrient concentration and MMI, lake responses to increased nutrient levels).
2. We support establishing additional protection for high quality drinking water supplies, but agree with the comments submitted by Metro Wastewater Reclamation District that the currently circulated draft regulatory language is overly broad. The new provisions should be focused on protecting existing high quality waters; it should not be used to mandate actions for improving water quality in non-high quality waters. Those decisions should be made using site-specific information considering the particular water chemistry of the supply, the need to comply with other federal Safe Drinking Water Act rules and the benefits of nutrient reduction efforts. We look forward to receiving a listing of high quality reservoirs that are intended to be protected by the proposed rule.
3. Regarding the high quality drinking waters, we agree that a 5 ug/l chlorophyll a target is indicative of high quality waters but do not agree that such water quality is universally necessary to protect the public from formation of disinfection byproducts (DBPs). DBP formation is complex and the preliminary New York study identified by Division staff has a number of significant technical limitations that need to be addressed. Under the circumstances, adoption of the 5 ug/l chlorophyll a target should not be justified on public health protection grounds as dissolved organic carbon (not the level of chlorophyll a) controls DBP production. Whether and how these two issues are related is a case specific determination.
4. Implementation of phosphorus reduction over the near term is supported. Phosphorus reduction is straightforward and generally may be accomplished in a very cost-effective manner at most mechanical POTWs. Lagoon systems provide some complications on TP reduction that still need to be addressed. Best Management Practices (BMPs) for particulates in stormwater would be expected to reduce this parameter also.
5. We continue to be concerned that a broadly-based nitrogen reduction mandate is neither technically justified nor economically appropriate. CNC only supports the use of cost-effective measures to reduce total inorganic nitrogen (TIN) where a community is undertaking ammonia reduction efforts and further TIN reduction can be accomplished cost-effectively. In general, we believe that a TIN limit of 10 mg/l would be a reasonable target for mechanical facilities, in these situations. Actual plant performance would be below this number, particularly in the summer months when plant growth is of greatest concern. To avoid excessive capital and operational costs associated with enhanced BNR, it is essential that any TIN limitations be expressed as an annual average. Using a shorter averaging period will force engineers into conservative designs to address extreme weather conditions and such costs are not justified by current information on the benefits of nitrogen control in fresh water environs.

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6. Small communities, particularly those with lagoon systems, should not be required to meet control regulation requirements, unless there is information documenting a nutrient impairment below the discharge and it is apparent that the loading from the small community is a significant contributor to the problem. Reasonable data collection efforts, either individually or as part of a larger group, may be appropriate for smaller communities depending on site-specific conditions and economic considerations. In lieu of specific control requirements, such communities could be required to implement nutrient minimization plans where such opportunities reasonably exist.

7. In 2011, we request that a meeting be held to discuss the scope of the ambient sampling and BMP program requirements to be included in the control regulation. To structure appropriate sampling, it is essential to know how such data will be used to resolve any ongoing technical differences. EPA's latest "stressor-response" guidance document highlights the need to structure appropriate sampling to resolve nutrient impact uncertainties, particularly in stream environments. A menu of BMPs should also be discussed due to the variety of ecoregions throughout Colorado and the water requirements for proper siting and operation.

In closing, we greatly appreciate the considerable efforts the Division has expended to promote an alternative regulatory approach that will produce greater nutrient reduction benefits over a shortened period of time, through collaborative efforts. We look forward to continuing discussions with the Division on the development of a final regulatory approach that may receive broad support from our membership.

Sincerely,

Nancy Keller for
Colorado Nutrient Coalition

cc. Coalition Members