

Issues/Comments Regarding February 2011 drafts of Regulation #85 and Section 31.17

March:

- Monitoring
 - City and County of Denver propose language for 85.6(3)(v) regarding use of existing data; also expresses concern regarding monitoring cost for MS4s and compliance with new Executive Order
 - Numerous stormwater monitoring issues raised by City of Golden, including the use of existing data and other questions about monitoring plans and use of data (this may be appropriate for discussion in May)
 - SP CURE propose language for 85.6(2)(b)(ii) regarding sampling locations: below mixing zone but above next inflow
 - Xcel and Tri-State have “no objection” to earlier hearing
 - DeBeque says monitoring cost would exceed \$10 per month, per account
 - Metro: favors robust and transparent monitoring program; consider independent contractor to manage process; require downstream monitoring at end of the mixing zone
 - Southwestern favors focusing on monitoring provisions only at this time
 - Colorado Stormwater Council proposes collecting existing data and working within watersheds to identify priorities, areas of possible impairment, and data gaps; exclude non-standard MS4s
 - CNC proposes that the purpose of monitoring include the formulation of site specific standards and the quantification of nonpoint sources
 - CNC proposes that point sources be required to sample for chlorophyll *a*
 - CNC proposes language regarding optional sampling and watershed based monitoring plans
 - CNC proposes that monitoring not be required to begin until March 2013
 - CNC proposes that small and disadvantaged communities be exempt from monitoring requirements if they discharge to an ephemeral stream, the ratio of discharge to low flow is greater than 20:1, or the discharge does not result in undesirable plant growth

- Effluent Limits in Reg 85 (basis for numbers and averaging periods)
 - CNC proposed modifications to averaging periods for the instream fixed algal growth level; CNC also proposes that averaging be only a calendar year average
 - CNC requests discussion on the limits of technology for BNR and enhanced BNR, and supports 1 mg/l TP and 10 mg/l TIN as the effluent limits based on BNR
 - CNC requested discussion on the basis for imposing nitrogen limits, and a delayed effective date for TIN
 - Metro and Boulder question basing on national best-performing plants

- Metro recommends seeking agreement on reasonable annual averages, with monthly limits a 3x multiple
- Boulder concern re rolling average accounting for variability
- Boulder questions the basis for TIN limits
- Metro and Boulder: consider P and N treatment tradeoffs
- Black Hawk and ERWSD question ability to meet proposed limits with BNR
- ERWSD says cost will be roughly \$40 million to meet because BNR alone will not be sufficient to meet the limits
- ERWSD expressed concern that the regulation does not allow for watershed based management strategies
- PWSR (universe affected)
 - Black Hawk proposed two additional factors, related to existing site-specific standards or agreements
 - CNC proposes to delete the factor related to increased drinking water treatment costs as a basis for impairment determination; CNC later proposes to delete all factors except (a) – waters upstream of point sources with significant nutrient concentrations
 - CNC’s “adaptive management” proposal
 - Metro concern re overly broad application, many reservoirs not meeting standard, overriding control regulation, POTW uncertainty
 - Southwestern concern re potential application to irrigation reservoirs
 - FRICO supports current language
 - Water Utility Council notes that maintaining existing quality must be minimum standard; treatment is not a substitute for high quality source water
 - Water Utility Council proposes to delete language regarding high levels of DBPs as an indication of impaired water quality.

April:

- Effluent Limits in Reg 85 (who is affected, exemptions, what is the “cutoff” date between existing and new facilities)
 - Xcel and Tri-State propose language for intake credits
 - DeBeque and Nucla propose that an exemption apply to all facilities less than 2 mgd
 - CNC proposes that “small community” be defined as those with a population less than 5,000
 - CNC proposes that facilities not be required to meeting effluent limits based on BNR until the plant is upgrading or expanding, unless data confirms DO sags, pH noncompliance, algae above 150 mg/m², or RP to cause excessive algae
 - CNC proposes compliance schedules be authorized up to 20 years
 - CNC requests clarification regarding how RP determinations will be made

- CNC proposes that after 2022, effluent limits not apply to small or disadvantaged communities unless the Division demonstrates undesirable plant growth, and that small and disadvantaged communities be exempted where the stream is in nonattainment due to upstream nonpoint sources
 - CNC proposes variance provisions based on discharges to ephemeral streams, where the discharge to low flow ratio is greater than 20:1, where criteria of 40 CFR 131.10G are present, or where the discharge has not been demonstrated to result in undesirable plant growth
 - CNC proposes that Reg 85 be implemented on a basin prioritization basis
 - Metro proposes 2017 date to define “new” facilities
 - Southwestern and CNC propose a 1 MGD threshold for small facility exemption
 - FRICO: clarify goal of meeting criteria in the future and not interfering with requirements of TMDLs for DO and pH
 - FRICO question re “availability of funding” as a compliance schedule consideration
 - FRICO concern regarding 85.5(3)(b)
 - Implications for NPDES permitting:
 - EPA argument that Reg. #85 technology limits do not protect uses
 - EPA argument that compliance schedules not allowed for technology-based requirements
 - Colorado Stormwater Council supports exemption for construction dewatering
 - Colorado Stormwater Council proposes that exceptions and variances apply to both DWWTW and MS4s
- Interim Values in Reg 31.17 (how are they going to be used)
 - EPA concern with lack of broader application to adopt standards
 - Metro proposes requiring data showing compliance before adopting standards
 - Metro: further delay TN values effective date
 - Southwestern argues standards may be adopted broadly and would apply automatically in ten years; apply only to Outstanding Waters; should use a site-, class- or ecoregion-specific approach
 - FRICO: don’t delay general implementation of phosphorus and chlorophyll values beyond 2017
 - Water Utility Council supports the limited use of numeric criteria as site-specific standards; supports nitrogen criteria, especially in light of anticipated federal standards regarding nitrosamines
 - CNC comments that the limitations of use must be clearly articulated with respect to interpreting narrative criteria, site specific standards, 303(d) listing, and TMDL targets
 - CNC proposes a discussion on the use of narrative standards relevant to nutrients (this is also a major issue in EPA’s comments)
 - CNC argument again “independent applicability”
 - CNC requested discussion of the “other unique circumstances” criteria
 - Use of nutrient values for 303(d) listing and TMDLs:

- Metro argument against “independent applicability”; concern re extensive listing, especially if PSWR broadly applied
- EPA argument that the values should be broadly applied to list waters as impaired for nutrients

May:

- Stormwater
 - City of Golden posed numerous questions that could be covered in this discussion (or above under Monitoring)
 - Colorado Stormwater Council proposes alternative language regarding public education and pollution prevention, including option of contribution to a collaborative program; would delete evaluation and identification of nutrient sources
- Nonpoint sources
 - Metro concern with nutrient control “equity”
 - Southwestern supports proposed approach; would also support trading
- USGS presentation

August:

- Proposed 31.17 numerical values
 - CNC requested a discussion of the basis for the chlorophyll *a* value – particularly for PWSR, and proposes to delete this value
 - Water Utility Council requests that this discussion include the Final Report for the Disinfection By-Product/Algal Toxin Study and also references data provided on the 5 ug/L standard and the potential for site specific standards requests
 - Metro questions 5 ug/L “one size fits all”
 - EPA concerns with proposed values
 - Southwestern opposes state-wide standards/criteria; questions scientific rigor of proposed values
 - Water Utility Council proposes changes to footnotes on mixed layers of lakes to match 303(d) listing language