

NUTRIENTS UPDATE

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Nutrient Issues

- EPA Standards for Florida
- NGO/EPA Activities in Other States
- State Rulemakings
- SAB Review of EPA Criteria Approach
- New Ammonia Criteria
- Chesapeake Bay Requirements
- NGO Petition for Mississippi/Gulf
- NGO Petition on Secondary Treatment
- Climate Change Impacts



EPA Florida Standards

- EPA agreed to issue Federal criteria
- Proposal issued 9/14/09, comments submitted 4/28/10
- NODA issued 8/3/10, comments submitted 9/2/10
- Final rule signed 11/14/10
- Stressor/response and reference condition approaches
- New formulas for downstream values
- Averaging times – annual, once in 3 years
- Detailed implementation discussion, including restoration standards



State Activities

- NGOs filed notices of intent to sue in WI and KS, using same basic arguments as in FL
- Same claims could be filed in almost any State
- Some States have done criteria or are moving ahead to develop criteria, using available information
- Other States are not sure what to do
- KS is refusing to set numeric criteria; instead, doing tech-based approach for POTWs and aggressive nonpoint measures through watershed programs
- MT is working on “affordability variance”



SAB Review of EPA Approaches

- EPA used “conditional probability” to set nutrient TMDLs in PA – a stressor/response approach
- After significant pressure, EPA agreed to have SAB committee review its efforts
- EPA gave SAB new draft guidance on stressor/response approaches to review
- Final SAB report is highly critical of draft guidance – stressor/response OK for lakes, but should not be used by itself to develop criteria for rivers
- SAB will now do review of EPA’s Florida criteria for coastal and estuarine waters



New Ammonia Criteria

- 1999 ammonia criteria from EPA – pretty good
- Unresolved issue – impacts on freshwater mussels
- Those mussels are VERY sensitive to ammonia (and to metals too)
- EPA has proposed new criteria – two parts: mussels present and mussels absent
- If mussels present, new limits are 2-5 times stricter than current limits
- So when are mussels present? Do you have to prove that they're not in order to be “mussels absent”?
- Comments submitted, final criteria expected Jan. 2011



Chesapeake Bay Requirements

- EPA is doing a TMDL for Chesapeake Bay – draft issued 9/24/10, final to be issued by 12/31/10
- TMDL work being done in unique order – goals first, then implementation plans, then TMDL
- EPA has also issued Strategy and series of regulatory reports as to Bay efforts – expanding Federal role significantly, assuming new authority over States
- Legislation has also been introduced – Cardin/Cummings – goes beyond EPA Strategy
- EPA viewing this as a model for elsewhere in country



NGO Petitions

- Group of NGOs has submitted petition to EPA, demanding that EPA set Federal nutrient WQS and TMDLs for entire MS River/Gulf watershed
- No action yet by EPA on that petition
- NGOs have also submitted a petition to EPA demanding that Agency change definition of “secondary treatment” for POTWs to include nutrient removal – says that 3.0 mg/l TN and 0.3 mg/l TP are attainable with current technology
- EPA working on series of actions to respond



Climate Change Impacts

- Climate change can affect CWA requirements for nutrient controls in two ways
- NGOs are arguing that due to climate change, TMDLs and permits have to consider and plan for more frequent and more intense storm events
- That issue being tested in Vermont case
- Dischargers can argue that in developing CWA requirements, EPA and States must consider adverse climate change/energy impacts of additional controls



CONCLUSION

- Need to consider all of these issues comprehensively in formulating long-term plans for municipalities
- Questions?
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