



North Carolina Pretreatment Consortium, Inc.



March 8, 2010

To: N.C. Environmental Management Commission Members

Re: NC-DENR 2010 Triennial Review
Proposed Water Quality Standards Revision

E-Mail Submittal

Dear Sir or Madam:

On January 10, 2010 the North Carolina Pretreatment Consortium, Inc. (NC-PC) and the North Carolina American Water Works Association and Water Environment Association (NC AWWA-WEA) wrote the North Carolina Environmental Management Commission (EMC) Members a letter expressing our concern surrounding the proposed 2008-2010 NC Triennial Review Water Quality Standards.

The NC-PC and NC AWWA-WEA requested a stake holders group be developed with the North Carolina Department of Environment and Natural Resources - Division of Water Quality (DWQ) prior to beginning the process to adopt said standards. Some of the workgroup initiatives requested included:

- Work with DWQ's Environmental Sciences Section to evaluate and identify aquatic species that should be included in a recalculation of EPA's criterion for use in North Carolina to develop water quality standards
- Consider alternative approaches for addressing hardness that provides more flexibility in the application of criteria use for NPDES permit development.
- Work with the NPDES Permitting Staff to determine if overly conservative approaches and policies are in place that will further complicate the permitting process
- Work with DWQ's Pretreatment staff to evaluate policies that do not penalize industrial contributors for WWTP allocation assumptions

It was discussed during the January 13, 2010 EMC Water Quality Committee Hearing that continuing the standards adoption process would allow questions and discoveries to be made and that the fiscal note development and public comment period are the appropriate venues to address concerns with the proposed standards. It was also discussed that the focus of the standards review and adoption process was specific to the standards themselves and not policy associated with the standards.

NC DWQ Dialogue

As a result of our January 10, 2010 letter and the EMC Water Quality Committee Hearing a meeting was established on February 8, 2010 between various sections of DWQ and the NC-PC and NC AWWA-WEA in order to answer questions and begin to better understand DWQs' rationale behind the proposed standards. This follow-up meeting was greatly appreciated and was a good start in beginning dialogue on some of the issues and concerns surrounding the proposed standards.

The overall outcome of our meeting was that DWQ was looking into the issues and evaluating potential situations that may result with the adoption of the proposed standards. DWQ did indicate that they are open to receiving input in the development of the fiscal note if the EMC approves the proposed standards to go to public notice and fiscal note development. DWQ made it clear during the meeting that they would only evaluate fiscal impacts directly associated with the proposed standards and not fiscal impacts affected by current policy, as policy may change with standard adoption and thus fiscal note development on current policy would not be accurate.

The NC-PC and NC AWWA-WEA is concerned that if policy is not solidified and evaluated during the fiscal note development that a true fiscal impact will not be presented during the standards approval process. Looking at the proposed standards with blinders and not evaluating fiscal impacts due to DWQ policy will result in inaccurate estimations. There is concern that if standards are as stringent and expansive as anticipated, DWQ may be placed in a position of having to evaluate policy that has been in place and employed for decades. We are unsure what pressures DWQ may face if placed in such a position.

Over Conservative Standards Approach

The NC-PC and NC AWWA-WEA question the development of the proposed standards and perceives the approach as being overly conservative for the hardness based dissolved metals aquatic life standards. We are not aware that DWQ performed or considered any site specific or scientifically based studies on the larger water bodies within the state. DWQ has instead chosen to adopt pre-established National Water Quality Criterion (NWQC); with exception of the cadmium standard, developed by the EPA in laboratory settings that do not take into account site specific or larger water body characteristics that can affect the toxicity and bioavailability of some metals. The EPA National Toxics Rule indicates for metals criteria development that "*The dilution water used in laboratory toxicity tests is ordinarily low in particulate matter (i.e. suspended solids), and low in organic matter compared to many ambient waters. As a result, laboratory toxicity tests are ordinarily more likely to overestimate the toxicity than underestimate the toxicity of metals in some ambient water, particularly fresh water*" We feel that many of the state's water bodies would have higher suspended solids and organic matter compared to the laboratory water used by EPA and thus the EPA NWQC would likely be an overestimation of toxicity in most NC fresh waters.

Water hardness is another characteristic that has a direct affect on the toxicity of some metals. The softer the receiving water the more toxic a metal may be to aquatic organisms, thus resulting in a lower standard. DWQ has elected to set the entire state hardness value at 25 mg/L which is based on a conservative 10th percentile of data collected between 1969 and 2001.

We feel that DWQ is applying a dual conservative approach by proposing the conservative NWQC and the conservative lowest 10th percentile of hardness data to establish ultra low dissolved metals standards. By not evaluating and considering larger water body site specific conditions in the development of the standards, an immediate burden is placed on NPDES permit holders to prove that the proposed standards are not accurate. This burden will place those permit holders in jeopardy of violation, special order, or perception of harming aquatic life until such studies are completed and approved by DWQ, all of which may be predicated and based on an initial overly conservative statewide approach.

Conclusion

The NC-PC and NC AWWA-WEA are not pushing against the development of more appropriate water quality standards and improvements of our state's waters. We feel that an overly conservative approach may be applied to the proposed standards. We believe that limited outreach to the permitted community, DWQ's lack of exploring alternative approaches to standards development, and compounding of conservative approaches will have far reaching impacts on local communities and industrial users who would have to defend, pay penalty, or prove against what may be an unrealistic overly conservative state standard(s). We feel that there will be a direct and significant impact to our local and state economies with the adoption of the proposed metals standards coupled with the current DWQ policy.

The NC-PC and NC AWWA-WEA feel that there is a preponderance of concern amongst the permitted community that makes re-review of the proposed standards outside of the adoption and approval process most appropriate. We believe that a proposal with less contentiousness will ultimately spare resources spent in the standards adoption process. We would like the EMC to have DWQ review their current metals proposal and policies in how compounding and layered conservative approaches could result in overly stringent standards as well as review statewide hardness standards and other water quality characteristics prior to DWQ proposing standards and the EMC moving any further in the adoption and approval process.

We appreciate the opportunity to express our concerns and your review and consideration of this letter.

Sincerely,

Donald Smith

Donald Smith
2010 NC-PC Chair

Brent Reuss

Brent Reuss
2010 NC AWWA-WEA Chair

Cc: Coleen H. Sullins, NCDENR-DWQ Director
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