August 1, 2014

Via email: uwqcomments@utah.gov

Dear Division of Water Quality staff,

Thank you for the opportunity to comment on the proposed rule changes to section R317-1-3 related to technology-based limits for controlling nutrient pollution. I submit these comments on behalf of River Network, a national alliance of river and watershed organizations with an office here in Utah.

First and foremost, we would like to express our support for the concept of establishing technology-based effluent limitations for nutrients, and in this case specifically for phosphorus. The technology-based effluent limitations concept is a small – but truly meaningful – step forward in Utah's efforts to address nutrient pollution in Utah's rivers, lakes, and wetlands. We support this concept, and strongly encourage the Division of Water Quality to move forward quickly to finalize the proposed rule (with changes noted below) and implement the new requirements.

The idea of applying uniform technology-based nutrient limitations to point source discharges is by no means new or radical. For example, since the early 1990s the Great Lakes states have applied a technology-based effluent limit of 1.0 mg/L has applied to the majority of dischargers in the Great Lakes Basin. In another example, in Wisconsin technology-based effluent limits have been the norm statewide since the 1990s and water-quality-based effluent limits are now being developed as a result of the state's numeric phosphorus criteria. The limits imposed in the Great Lakes have dramatically reduced the point source contributions of phosphorus to the Lakes.[1]

And the application of technology-based effluent limitations for phosphorus is not limited to the Great Lakes basin. Recent policy developments – most notable US EPA's request that states develop nutrient reduction strategies – have led to other states adopting the approach into rule. For example, Iowa's recent Nutrient Reduction Strategy proposes to – for the first time – include phosphorus limits for major dischargers based on a technology-limit of 1.0 mg/L.[2]

In short, we support the proposal to apply uniform, technology-based effluent limitations for phosphorus to point source dischargers. We thank the Division for taking this important step forward to protect and restore our rivers, lakes, and wetlands threatened by phosphorus pollution. However, we also have some concerns about the proposal and suggested changes for your consideration. These include:

- ***The use of an annual mean as the time period for the non-lagoon treatment work limits is inappropriate.*** The use of an annual mean for the time period on the phosphorus limit is far too long, and out of step with what other states are doing. For example, technology based limits in Wisconsin, Minnesota, and Indiana use a monthly time step. The annual mean is a problematic

[1] De Pinto, Joseph V. et al. *Great Lakes water quality improvement: the strategy of phosphorus discharge control is evaluated.* Environ. Sci. Technol., Vol. 20, No 8. (1986)

[2] Iowa Department of Agriculture and Land Stewardship, et. al. *Iowa Nutrient Reduction Strategy: A science and technology-based framework to assess and reduce nutrients to Iowa waters and the Gulf of Mexico.* May 2013.

time period because nutrients can vary significantly in the discharge and their impact in the stream can vary significantly over time (e.g., seasonally). We request that the Division modify the proposed rule to require an effluent limit of 1.0 mg/L as a monthly mean.

- ***The "exception" described in 3.3(C)(2) is outside the structure of technology based effluent limits and generally unworkable.*** This exception contemplates an exemption for anyone claiming they will not increase the total phosphorus concentration the in receiving water by more than 10 percent. Problems with this concept include: 1.) it is entirely out of step with technology based effluent limits, 2.) as written it is functionally meaningless and hence dangerous to water quality, and 3.) even if better written would prove impossible to implement.

  First, the entire legal concept of technology based effluent limits from the Clean Water Act is focused on the idea that the limits establish a level technology playing field regardless of instream water quality. This makes the limits fair to industry (and in this case, municipalities), easier than water-quality-based approaches to implement, and clear to all parties. There is simply no legal rationale for introducing a water quality off-ramp for a technology based effluent limit.

  Second, the exemption as written is truly a nightmare. As the Division will remember from similar debates around the Division's antidegradation rule, the de minimus idea begs numerous questions not addressed in the proposed language. How is the baseline concentration established – using one data point or a hundred? Does this exception give the discharger up to a 10% increase each time it renews its permit? If other dischargers in the watershed want to use this exemption, can they too receive up to a 10% increase? For how many dischargers? Over what geographical area? Is there ever a cap on how many times the concentration can be increased by 10%? As written the rule is meaningless because it doesn't address any of these real world concerns. It cannot be finalized as written, and should simply be removed. (Dischargers that truly will have a de minimus impact will still be free to prove that fact using exception at 3.3(C)(4).)

  Thirdly, even if the proposed language was rewritten to address some of the questions raised above, it would simply prove unwieldy for the Division and dischargers to manage. This reality was finally accepted after years of discussion around the antidegradation rule – establishing a baseline and then tracking the reduction or the relation to any sort of "cap" that might be established is well beyond the current monitoring, technical, and other resources of the Division. Again, this exemption and should simply be removed. (Dischargers that truly will have a de minimus impact will still be free to prove that fact using exception at 3.3(C)(4).)

- ***The "exception" described in 3.3(C)(3) should be limited to cases where the Water Quality Board funding package still results in a median adjusted gross household income (MAGI) over 1.4 percent.*** This exception needs to be modified to reflect an important reality – many treatment works will or should approach the Water Quality Board for funding support for costs

associated with complying with the new limits. This exception must explicitly state that the 1.4 percent threshold applies AFTER the effects of any grants, low-interest loans, etc. from the Water Quality Board are applied to the financial package for the discharger. The exception should also require any entity seeking to use this exception to first apply for the support from the Water Quality Board. Lastly, just because a 1 mg/L limit would drive a facility above the 1.4 percent MAGI, there's no reason to completely remove ANY limits on phosphorus – for example, a 2 mg/L limit might be totally achievable under the 1.4 percent threshold.

Appropriate language might look like this:

If the owner of a discharging treatment works can demonstrate that imposing a technology-based limit or loading cap for phosphorus would result in an economic hardship for the users of the treatment works, the 1 mg/L limit as an annual mean will not apply. "Economic hardship" is defined as sewer service fees, as a result of implementing ta technology-based limit or loading cap for phosphorus, being great than 1.4% of the median adjusted gross household income of the service area based on the latest information compiled by the Utah Tax Commission after inclusion of any grants, loans, or other financial support provided by the Utah Water Quality Board or other entities. Any owner claiming this exception must first apply for support from the Utah Water Quality Board, so that the impacts of such support – if any – can be considered. If the exception is granted, the treatment works shall still receive a phosphorus discharge limitation within the parameters of the economic hardship.

The rule should also be modified to note that the 1.4 MAGI exemption does not apply if the receiving water is impaired for issues related to nutrient pollution (e.g., algal blooms, dissolved oxygen). The 1.4 percent threshold is a relatively arbitrary number, and as such the agency should reserve the right to review situations where a water is impaired and determine if action must be taken even when costs exceed the 1.4 percent threshold. This is in keeping with US EPA's position on economic determinations, which defines "mid-range" impacts as 1-2 percent of median household income while more than 2 percent is seen as substantial.[3]

- ***The "exception" described in 3.3(C)(4) will require extensive documentation and must include a public process for review.*** It goes without saying that the exemption relying on claims that the limits are "unnecessary" must require a high threshold of proof on the part of the discharger. While likely not appropriate for inclusion in the rule language, we would like to better understand the process staff will use to evaluate these claims. In addition, any claim for this exception must allow for public review of the discharger's claims. This review will most likely occur through the permit public notice and comment period, but this rule should explicitly state that dischargers will be required to submit written information in support of their claims and that the information will be made publicly available through the permit public notice period.

[3] See for example: http://water.epa.gov/scitech/swguidance/standards/economics/chaptr2.cfm.

- ***The monitoring requirements, particularly for smaller facilities, must be improved.*** The proposed rule proposes the treatment works with flows less than 1 mgd monitor annually and that those with flows between 1 mgd and 5 mgd monitor quarterly. Even if the agency stays with the annual mean measure for the limit, these monitoring frequencies are meaningless. To take one, 24-hour composite sample once a year to calculate an annual mean is mathematically meaningless and will lead to inappropriate monitoring times, etc. At a minimum, facilities of less than 1 mgd should be required to monitoring quarterly and those between 1 mgd and 5 mgd should monitor monthly. The the rule should also note that the monitoring should be done during "critical seasons or loading periods" to allow permit writers the ability to direct monitoring to address the timing question.

Again, we support this rulemaking and encourage the Division to finalize the rule with the changes suggested here. Thank you for the opportunity to comment, and thank you for taking this important step forward for clean, healthy rivers, lakes and wetlands in Utah. I look forward to discussing these comments and solutions with you at any time – please feel free to contact me.

Sincerely,

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