

EPA Gives Guidance, Seeks Comments on Numerical Limits in Stormwater Permits

In light of stakeholder response, the U.S. Environmental Protection Agency (EPA) announced March 17 that it is seeking comments on the November 2010 memorandum that revises stormwater rules to include numeric effluent limitations. The Association of State and Interstate Water Pollution Control Administration, the National Association of Clean Water Agencies and the Environmental Council of the States were among several parties troubled by the lack of opportunity to offer comment. (See March 2011 *Newsletter*, p. 2).

“A number of stakeholders expressed concern that they did not have the opportunity to provide input before the memorandum was issued and have asked questions about the substance of the memorandum. EPA is soliciting comments on the 2010 memorandum and will accept comments until May 16, 2011,” the EPA announcement stated.

Stakeholders’ main concern is the shift from the use of best management practices to numerical effluent limits. The 2010 guidance advises National Pollutant Discharge Elimination System (NPDES) permitting authorities to utilize numeric effluent limitations to regulate stormwater discharges. (See January 2011 *Newsletter*, p. 3). “Numeric effluent limitations should be viewed as a significantly broader term than just end-of-pipe limitations,” EPA clarified.

Numeric Limitations Are No Longer Novel

“The guidance provided in the 2010 memorandum recognizes developments over the past eight years and reflects current use of numeric limitations in stormwater

permits. EPA has found that the use of numeric effluent limitations no longer is a novel or unique approach to stormwater permitting,” EPA wrote. “As such, the 2010 memorandum reflects EPA’s view that there has been an incremental evolution of the stormwater permits program and the Total Maximum Daily Load program that has been occurring since 2002, such that numeric effluent limitations are no longer as rare as they were in 2002.

“EPA now recognizes that where the NPDES authority determines that MS4 discharges and/or small construction stormwater discharges have the reasonable potential to cause or contribute to water quality standards excursions, permits for MS4s and/or small construction stormwater discharges should contain numeric effluent limitations where feasible to do so. EPA recommends that NPDES permitting authorities use numeric effluent limitations where feasible as these types of effluent limitations create objective and accountable means for controlling stormwater discharges,” the agency wrote in the November 2010 memo.

EPA cites not only the feasibility but also the utility of implementing numeric effluent limitations to address key water quality issues. “These issues include a lack of numeric criteria for nutrients in state water quality standards and permitting procedures that focus on fast-acting, toxic pollutants rather than pollutants such as nutrients, which typically have longer-term and, often, far-afield effects,” the agency said. Nutrient pollution, tied to stormwater runoff from agricultural and municipal sites, is a topic of particular concern and one of the issues EPA’s revised rule addresses.

States Don’t Like Numeric Standards

While state and municipal water officials have generally opposed numeric nutrient standards, Jon Devine, an attorney with the Natural Resources Defense Council, hopes the guidance will become a mandate. “EPA needs to be more aggressive with the states,” Devine said.

An initial framework for reducing two particular nutrients, phosphorous and nitrogen, was released March 16, 2011, as a planning tool for states and stakeholders. The overabundance of phosphorous and nitrogen, caused in part by urban stormwater runoff, has escalated significantly and caused degradation of drinking and environmental water. The framework urges states to develop numeric criteria for a minimum of one class of waters within three to five years.

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See *EPA Numerical Limits*, p. 3