

Schaben, Darlene

From: Calamita, Paul <paul@aqualaw.com>
Sent: Friday, September 20, 2013 11:45 AM
To: Hoke, John; Rustige, John
Cc: Madras, John
Subject: RE: AMCA Comments on Proposed Amendments to WQS Rule

I hope you all are doing well.

Our final comment on the Effluent Regulations questioned a sentence describing WET testing. We now better understand the Department's approach to WET testing and are okay with the sentence in question.

Thanks and have a great weekend.

Paul

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From: Calamita, Paul
Sent: Wednesday, September 18, 2013 7:02 AM
To: Hoke, John; 'Rustige, John'
Cc: Madras, John; Steve Meyer; 'smyers@stlmsd.com'; Morel, Meghan
Subject: AMCA Comments on Proposed Amendments to WQS Rule

John, John, and John:

I hope you all are doing well.

Attached please find brief comments by AMCA on the proposed amendments to the WQS rule and Effluent Regulation.

Please let me know if you would like to discuss our comments or should you require additional information.

Best,

Paul

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ASSOCIATION OF
MISSOURI CLEANWATER AGENCIES

September 18, 2013

Mr. John Hoke (john.hoke@dnr.mo.gov)
Water Protection Program
Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102

RE: Comments on Proposed Amendments to 10 CSR 20-7.0131 - Water Quality Standards Rule

Dear Mr. Hoke,

On behalf of AMCA, please find our comments on the proposed amendments to 10 CSR 20-7.031 (Water Quality Standards). AMCA has provided input previously to the Department on this rulemaking. At this late stage of the WQS Rule revisions we will limit our comments to the following three issues:

Sections (2)(G)(3) and (4). UAAs. These sections reference the November 6, 2013 UAA protocol for aquatic habitat use. As we stand at the September 18 comment deadline we obviously don't know what the final (November 6) version will say. Accordingly and to maintain the Department's flexibility, we strongly recommend that the Department adopt one of the following three approaches:

- (1) Revise this language to allow the Department to accept a proposed use change which is supported by information differing from that which is contemplated in the final protocol. There is no downside to the Department to this approach. It will simply allow the Department to consider a UAA proposal that does not entirely follow the final protocol. The information would still have to satisfy all State and federal legal requirements; or
- (2) Include "savings language" in the final November 6, 2013 protocol itself. Under this approach the proposed incorporation of the November 6 version into the rule can remain as written. AMCA has separately submitted comments to the Department on the proposed UAA protocol suggesting the incorporation of language allowing stakeholders to submit UAA proposals which depart from the protocol while still providing adequate information for the Department to make a decision on the proposed UAA; or

- (3) Promulgate the November 6 UAA protocol separately (and revise the WQS rule language to require compliance with any separately promulgated UAA protocol).

Section (2)(G)(4) General Criteria Are Not Applicable to Mixing Zones. This section is incorrectly written and inconsistent with a later section to the extent that it suggests the General Criteria are applicable to designated mixing zones. The general criteria do not apply to mixing zones. Mixing zones are small areas of the receiving water where WQ criteria can be exceeded. That is the whole point of a mixing zone. This section has a clerical error that must be corrected as follows:

“The following water quality criteria shall be applicable to all waters of the state at all times ~~in~~excluding mixing zones...”

A similar correction must be made in Section (4)(I) as follows:

“Water ~~in mixing zones and waters~~ lacking designated uses shall be subject to the following requirements:”

That paragraph goes on to require toxicity testing in mixing zones which is completely illogical given that that acute and chronic toxicity is expressly allowed/intended in these small instream areas. The idea being that if the aquatic community is bothered by conditions in the isolated mixing zones, they will simply swim away/around them. Of course, mixing zones are based on extremely conservative assumptions that rarely, if ever occur (such as full POTW discharge flow during instream drought conditions – the two conditions are mutually exclusive). But, nonetheless, WET testing in mixing zones is illogical and should be removed from the rule.

Finally, the objectionable provisions above are inconsistent with Section (5)(A)(4) which (correctly) exempts mixing zones from meeting both acute and chronic toxicity requirements as well as numeric criteria. The Department should correct these clerical inconsistencies as part of this rulemaking. We have made these comments previously and don't understand why the corrections remain outstanding.

Section 12: Variances. Section 12(A)(3) must be deleted. This provision states:

“3. A variance shall not be granted for actions that will impact water quality and general criteria conditions protected by 10 CSR 20-7.031(4).”

This sentence makes no sense. It is impermissibly vague (what are “actions that will impact”?). Moreover, a variance by definition allows discharges in excess of water quality criteria (numeric and narrative, if necessary). For example, a discharger who can't afford to comply may get a socio-economic variance from any or all water quality requirements of concern. Accordingly, this sentence is vague and makes no sense. It must be deleted.

Thank you for considering our comments. Please let me know if you have any questions.

AMCA Comments on Proposed Revisions to WQS Rule

September 18, 2013

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Sincerely,

/s/

Paul Calamita
AMCA General Counsel

C: AMCA Members
Ms. Sara Parker Pauley
Ms. Leanne Tippett Mosby
Mr. John Madras