From: Richard Mylott/R8/USEPA/US
To: Ed Kemmick <EKemmick@billingsgazette.com>
Date: 09/07/2011 05:51 PM
Subject: RE: rich mylott

Ed-- appreciate your interest and your patience. Here are responses to your questions, along with a general statement in case useful. Please let me know if you have any follow up Qs.

Also, per your last Q about effluent reductions.

EPA recognizes that discharge permits are one aspect of addressing point and nonpoint sources of nutrients. EPA supports a holistic approach to reducing nutrients that includes waste stream reductions. Some of the approaches listed below may be viable ways for facilities to minimize discharge volumes.

Many of these building code and zoning approaches fall into the category of local decisions that are best made between citizens and local governments. Also, my understanding is that reducing inflow to treatment plants doesn't necessarily translate into reduced nutrient concentrations in discharges from WWTPs. A wastewater engineer is the best person to answer questions about the impacts of specific measures. Also, I'm not exactly certain of the mechanism, but I believe SB 367 or an accompanying bill? includes a ban on phosphorus in dishwashing and laundry detergents, which also gets to the heart of the prevention issue Jim is raising.

(See attached file: BillingsGazetteQuestions.pdf)

Thanks!

Richard Mylott
Public Affairs Specialist
Office of Communications and Public Involvement
U.S. Environmental Protection Agency, Region 8
Phone: 303-312-6654

Ed Kemmick ---09/07 /2011 02:51:10 PM---Rich, Thanks. Here's one more thing I'd like to hear some reaction to. I finally spoke this afternoo

From: Ed Kemmick <EKemmick@billingsgazette.com>
To: Richard Mylott/R8/USEPA/US@EPA
Date: 09/07/2011 02:51 PM
Subject: RE: rich mylott

Rich,

Thanks. Here's one more thing I'd like to hear some reaction to. I finally spoke this afternoon with Jim Jensen, who is on the nutrient standards council and is director of the Montana Environmental Information Center. He said the one great failures of the council, and by extension of the DEQ and EPA, has been to completely ignore prevention.

Rather than talking solely in terms of how much point sources can discharge and how much it will cost to meet the new standards, he said, there should be a discussion of smaller, simpler changes that could greatly reduce the amount of effluent flowing into the municipal systems. He mentioned building codes that require low-flow fixtures and zoning or other regulatory changes that would encourage and/or require zero-scaping, so people stop dumping fertilizer and other chemicals on their lawns.

What is the EPA's response to that? Why isn't that approach given more emphasis, or, from Jensen's perspective, any emphasis at all?

Yours,

Ed

-----Original Message-----
From: Mylott.Richard@epamail.epa.gov [mailto:Mylott.Richard@epamail.epa.gov]
Sent: Wednesday, September 07, 2011 2:36 PM
To: Ed Kemmick
Subject: RE: rich mylott

Thanks Ed. Working on these with Tina and others. This is a topic where statements have been misconstrued in the past, want to make sure we're clear and accurate. Hope to have responses soon

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From: Ed Kemmick <EKemmick@billingsgazette.com>
To: Richard Mylott/R8/USEPA/US@EPA
Date: 09/06/2011 04:47 PM
Subject: RE: rich mylott

Rich,

Thanks for the phone call. Here are some of my questions or areas of interest:

1) In the most general terms, I'm interested in hearing the procedural history of the nutrient standards, as they apply to Montana. I don't entirely understand how Montana became one of the first states in the West to begin seriously working on implementation of the nutrient standards. As part of this, I'd like to hear about the national history of this -- including the Florida lawsuit and any other milestones on the path to dealing with nutrient pollution.

2) As I'm sure you all are aware, the big concern among municipal authorities is the cost of improvements. According to city of Billings officials, under the EPA's economic hardship standards, Billings could spend up to $300 million to meet the nutrient standards, which would mean raising monthly wastewater fees from $18-$20 to about $90 a month. Again, according to city officials, the EPA has said that is an acceptable figure and that no variances could be granted until that kind of spending takes place. City officials say that much an an increase would be an enormous burden, inhibiting growth and/or forcing people to build outside the city, on septic systems. How does the EPA respond to those kinds of statements?

3) Another big point of contention has to do with the difference between point sources and non-point sources. Cities say they are being asked to bear the burden of almost all the costs of compliance, but that they contribute only 10, 20 or 30 percent of the nutrients in various streams (I've heard different percentage estimates from different Montana cities).

4)Specifically in regard to Montana, what is the EPA stance on Senate Bill 367, which was passed by the Montana Legislature earlier this year? Does the EPA intend to abide by some of the variances granted by SB 367? Are the temporary discharge limits in SB 367 too lenient? What is the role of the state Legislatures in implementing EPA standards?

5) Are there concerns if cities choose alternative effluent discharges, like piping the effluent and using it to irrigate leased farmland? Does the EPA worry about reduced stream flows, or is that not something the EPA would get involved in?

6) I understand that proposed standards have been drawn up for wadeable streams, and the city of Billings tells me the standards for the Yellowstone River should be pretty close to those numbers. But wouldn't the situation on the much deeper Yellowstone differ from those on wadeable streams, considering how much less sunlight gets to the bottom of the Yellowstone?

I know you didn't ask for detailed questions, but writing these out actually clarified a few things for me, so there you are. Thanks again. Please let me know who I can call tomorrow to talk about all this.

Yours,
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-----Original Message-----
From: Mylott.Richard@epamail.epa.gov [
mailto:Mylott.Richard@epamail.epa.gov]
Sent: Tuesday, September 06, 2011 4:25 PM
To: Ed Kemmick
Subject: rich mylott

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Phone: 303-312-6654

General Statement

Montanans, and the Billings community in particular, understand the importance of clean rivers and streams. We all just endured a significant oil spill on the Yellowstone River this summer, an event that clearly underscored the importance of Montana's waters and the state's world-class recreational economy.

As in many parts of the country, nutrient pollution is a chronic problem that affects many of Montana's waters. The State's most recent assessment of water quality identifies nitrogen and phosphorous loading as a source of impairment for more than 330 stream segments in the state. The Yellowstone River downstream of Billings is currently listed as impaired due to nutrient-related impacts. Nutrients degrade surface water and drinking water quality, contribute to algae growth, deplete oxygen levels, impair recreational uses, and harm aquatic life.

EPA is committed to partnering with states to accelerate progress in reducing the amount of nitrogen and phosphorous that enters our nation's waters. The State of Montana has responded to this problem, and its effort to address nutrient pollution is an investment in the long-term health of surface waters across the state. EPA will continue to work with the State as they develop numeric criteria and an overall approach to managing nutrient pollution from both point and nonpoint sources.

EPA recognizes that the State's draft numeric criteria will be challenging for some dischargers to achieve in the near-term. We are working closely with the State as they develop the details of how the variance program authorized by SB 367 will be implemented. Our goal is to help identify solutions that are right for Montana.

Responses to Billings Gazette Questions

1) *In the most general terms, I'm interested in hearing the procedural history of the nutrient standards, as they apply to Montana. I don't entirely understand how Montana became one of the first states in the West to begin seriously working on implementation of the nutrient standards. As part of this, I'd like to hear about the national history of this -- including the Florida lawsuit and any other milestones on the path to dealing with nutrient pollution.*

<u>EPA Response</u>:

Nutrients are a significant water quality problem nationally. EPA has been encouraging states to adopt numeric nutrient criteria since 1998 when the Agency released a *National Strategy for the Development of Regional Nutrient Criteria.* To support state efforts, EPA produced guidance documents on criteria development and developed tools to provide technical supports to states to derive criteria. The ongoing litigation in Florida is focused on the pace of Florida's efforts to develop standards for nutrients. In 2010, the Agency developed nutrient criteria for Florida's streams, rivers and lakes. In 2011, the Agency also issued a "Nutrient Framework Memo" outlining steps and tools that all states can employ to make progress on reducing nutrients. To date, 25 states

have adopted nutrient criteria for individual waterbodies or certain classes of waters (e.g., streams, lakes). In the West, WA, OR, CA, NV, UT, AZ, CO and NM all have some nutrient criteria in their water quality standards.

Montana has worked hard to develop numeric nutrient criteria. Since 2000, MDEQ has focused on identifying data gaps and completing the necessary studies that would allow the state to develop science-based nutrient criteria for wadeable streams. As you know, Montana is planning to move forward with rulemaking to adopt numeric nutrient criteria in 2012.

More on the national context can be found here:

March 16 EPA Memo on working with States to Address Nitrogen and Phosphorous Pollution:
http://water.epa.gov/scitech/swguidance/standards/criteria/nutrients/upload/memo_nitrogen_framework.pdf

EPA's Nutrients Page:
http://water.epa.gov/scitech/swguidance/standards/criteria/nutrients/index.cfm

2) *As I'm sure you all are aware, the big concern among municipal authorities is the cost of improvements. According to city of Billings officials, under the EPA's economic hardship standards, Billings could spend up to $300 million to meet the nutrient standards, which would mean raising monthly wastewater fees from $18-$20 to about $90 a month. Again, according to city officials, the EPA has said that is an acceptable figure and that no variances could be granted until that kind of spending takes place. City officials say that much an an increase would be an enormous burden, inhibiting growth and/or forcing people to build outside the city, on septic systems. How does the EPA respond to those kinds of statements?*

EPA Response:

EPA has specific guidance for determining variances and economic impacts. Currently, MDEQ is developing a statewide assessment of economic hardship for all public facilities. EPA has not made any determinations about the City of Billings and its eligibility for a variance. However, if eligible for a variance, EPA expects that compliance costs will be substantially less than complying with nutrient criteria.

3) *Another big point of contention has to do with the difference between point sources and non-point sources. Cities say they are being asked to bear the burden of almost all the costs of compliance, but that they contribute only 10, 20 or 30 percent of the nutrients in various streams (I've heard different percentage estimates from different Montana cities).*

EPA Response:

The amount of nutrients contributed to waters from point sources and nonpoint sources varies based on the specific watershed. In some situations, nonpoint sources do contribute the majority of the nutrient load. In other situations, such as small, low- flow streams, point sources may comprise the majority of the nutrient load. Discharge permits are just one tool for addressing nutrients. EPA and the State also provide education, technical assistance, and loans to support voluntary land stewardship practices that reduce nutrients from nonpoint sources. Nutrient standards adopted by Montana would apply to both point and nonpoint sources, but there are different tools, authorities and programs under the Clean Water Act for achieving pollution reductions.

4) *Specifically in regard to Montana, what is the EPA stance on Senate Bill 367, which was passed by the Montana Legislature earlier this year? Does the EPA intend to abide by some of the variances granted by SB 367? Are the temporary discharge limits in SB 367 too lenient? What is the role of the state Legislatures in implementing EPA standards?*

EPA Response:

EPA's is working closely with the State to identify an approach to reducing nutrient pollution that's right for Montana and consistent with the requirements of the Clean Water Act. We believe that goal is readily attainable. EPA continues to collaborate with MDEQ on the State's rulemaking package associated with SB 367 to ensure consistency with the Clean Water Act. Some details associated with the State's approach are still being resolved. Specifically, EPA is working closely with MDEQ and stakeholders on the details regarding variances and temporary discharge limits. To be clear, while we are currently engaged in productive discussions with the State and stakeholders, nothing has been submitted or determined. When MDEQ submits their nutrient standards or variances to EPA, EPA will make decisions on approvability.

5) *Are there concerns if cities choose alternative effluent discharges, like piping the effluent and using it to irrigate leased farmland? Does the EPA worry about reduced stream flows, or is that not something the EPA would get involved in?*

EPA Response:

EPA encourages dischargers to consider alternatives to discharging-- such as land application, seasonal retention, and trading-- that are protective of land and water resources. There are situations where land application of treated effluent makes sense.

6) *I understand that proposed standards have been drawn up for wadeable streams, and the city of Billings tells me the standards for the Yellowstone River should be pretty close to those numbers. But wouldn't the situation on the much deeper Yellowstone differ from those on wadeable streams, considering how much less sunlight gets to the bottom of the Yellowstone?*

EPA Response:

MDEQ is preparing to release detailed documentation describing the basis for the proposed criteria for the Yellowstone River. As EPA has not yet seen the report, this question is one for MDEQ.