Message

From: Schwartz, Jerry [Jerry_Schwartz@afandpa.org]
Sent: 8/25/2017 5:51:29 PM
To: Fotouhi, David [fotouhi.david@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]
CC: Noe, Paul [Paul_Noe@afandpa.org]; James Tupper [tupper@tmw-law.com]
Subject: FW: Follow Up Material from Yesterday's Meeting
Attachments: HDR Cost Report Aug 08[1] copy.pdf; HDR Press Release 12.5.13[2].docx; AWB - HDR Toxics Technology Report - Final 11-7-2013[2] copy.pdf; Larry Walker WQBudgetLegReport2016.pdf; AFPA Meeting with EPA on HHWQC.pptx

Dear David and Justin,

Thank you for taking the time to meet with us yesterday and for assembling the team working on this issue. As I didn't catch the names of all those attending, I am sending this to you; I assume that you can distribute it as needed.

Just so you know, this is the same information we sent to Lee to respond to his request for additional information after our meeting with him (except for the PowerPoint). It includes issues that were not part of your request, but we thought you would find it helpful, nonetheless.

We do not have data on the drop off in permits issued in Oregon after the adoption of the HHWQC in that state. We will continue looking, but in the meantime EPA's Office of Water permits group may have the data.

I. Costs for Compliance with Maine Human Health Water Quality Criteria (HHWQC). You are correct that Maine dischargers did not conduct their own cost study, as was the case in WA and OR (discussed below). However, we note that the EPA cost study for Maine HHWQC compliance was extremely limited in terms of the pollutants for which cost estimates were derived. For example, the study did not consider PCB compliance costs at all and the only pollutant examined for the relevant pulp and paper mill was mercury (EPA assumed virtually no compliance costs for the mill, assuming it would only have to undertake a pollutant minimization plan). We think it is likely that dischargers could exceed permit limits for other pollutants based on the more stringent HHWQC included in the final EPA federal rule. Moreover, we note that other aspects of the federal rule for Maine (e.g., bacteria criteria) would impose costs on dischargers.

II. Cost study in OR: The attached "August 08" file documents costs for pulp and paper mill compliance with the Oregon HHWQC. Note that we have focused our discussion on costs for PCBs, as that is the pollutant that is largely responsible for the significant costs we have documented. We should make clear, however, that PCBs are NOT an issue unique to the pulp and paper industry. The industry doesn't use PCBs in the manufacturing process, but they enter the process from outside sources (wood, water, recovered paper, etc.) because of ubiquitous legacy contamination. Essentially, all ambient waters in the U.S. will exceed the federal Washington rule criterion of 7 parts per quadrillion (ppq) using Method 1668, and this level is not achievable in any effluent/runoff from any source. Indeed, even many laboratory blanks contain PCBs above that level.

Here is the key point from the summary of the study on page 3:

> Costs [in the table on page 3] provided above represent only four of the eight large mills located in Oregon. The cost related to simply installing technology to meet revised HHWQC at increased FCRs is significant and *would cost the Oregon pulp and paper industry in excess of $500 million*. In addition, *annual costs to operate these technologies would cost Oregon pulp and paper mills in the range of $30 to $90 million annually*. (Emphasis added).

III. Cost Study in WA: In December 2013, a broad-based coalition of industry and local government entities issued a new HDR report, based on the same methodology as the OR report, documenting

their members' compliance costs with the *state's* proposed HHWQC (see attached AWB report and press release). Importantly, those criteria were less stringent than the final EPA federal criteria and thus compliance costs for the EPA final rule would be *even greater* than those outlined in the HDR evaluation. Table 1 on page ES-3 provides the cost estimate in the billions of dollars for various treatment technologies, but as we stated, even those expenditures would not guarantee compliance.

Note that in contrast, the EPA cost analysis projected virtually no compliance costs on the assumption that dischargers would simply obtain variances or compliance schedules. This is an unfounded assumption as those implementation tools are costly and difficult to obtain (as you heard from the Wisconsin example), and only delay the inevitable cost expenditure, as compliance is required at the termination of the variance or compliance schedule. Furthermore, variances, extended compliance schedules and other unproven implementation tools leave municipal and industrial permittees and state agencies open to costly and resource-intensive litigation.

IV. Permitting Status in OR: We can state unequivocally that the industry is not "living with" the OR criteria. No pulp and paper mill NPDES permits have been issued based on the OR HHWQC and we believe that is the case for all major dischargers in the state. Indeed, NPDES permitting in OR has slowed considerably and caused significant backlogs for a variety of reasons, including the HHWQC. This prompted the legislature to require the state environmental agency to commission a study to examine the problem. That report (see "Larry Walker..." file attached) found a variety of problems contributed to the backlog, including, '[t]he difficulty for some dischargers to meet water quality standards, requiring complex regulatory solutions and/or expensive engineering." (Report, page 2).

An earlier draft of the Walker report included an even more direct statement regarding permitting status that we believe better reflects the current permitting status in Oregon:

"A number of the stakeholders indicate the adoption of new water quality standards or changes to existing standards as a result of either litigation or EPA disapprovals has had an ongoing disruptive effect on the renewal of wastewater NPDES permits in Oregon. These events, and, in some cases, the absence of an effective response to these events in terms of direction to NPDES permit writers, has contributed to significant delays in NPDES permitting, and increased NPDES permit backlog. After analysis it became clear that, despite the recognition of this problem, effective strategies or processes are not in place to deal with the long term effect of current and future water quality standards, 303-d listings and resulting TMDL wasteload allocations on the NPDES permitting program.

In addition, indications that the NPDES permitting process is not consistently aligned with EPA and DEQ legal requirements are illustrated in a recent document and in feedback received from various stakeholders. Failure to address such deficiencies affects the NPDES permit renewal backlog, as rework is required to meet legal requirements while an NPDES permit remains incomplete."

V. Risk Slides (discussed individually)

a. Risk Comparison (slide 8): This slide compares various risks of dying versus the hypothetical risk of contracting cancer under several EPA policies and rules. The key point for Washington is that by overriding the 2000 Methodology and protecting high consuming tribes at the 10^{-6} risk level, the criteria protect the general population of Washington at 10^{-8} — resulting in incredibly stringent, expensive, and unachievable permit limits. Moreover, those risks are much more remote than those in other EPA rules and programs, and those of other agencies.

b. Compounded Conservatism/EPA HHWQC Exposure Assumptions (slide 6): The slide demonstrates the extremely conservative nature of the national HHWQC. The equation deriving the criteria assumes everyone has ALL of the characteristics in the second column in the slide. It is not likely that anyone has all these characteristics, yet this is the basis for the

national HHWQC. The WA and ME criteria are even more conservative, assuming higher fish consumption rates.

c. Risk Choices (slide 7): This slide demonstrates there is no measurable human health benefit of insisting on protecting the tribes at a 10^{-6} risk level, as the EPA now requires. Because the risk levels look at *excess* risk over the baseline, the theoretical risks of cancer from implementation of HHWQC based on various risk levels differ by decimal points, and are certainly not measurable. Yet, as discussed, these risk level decisions have a dramatic impact on the cost of compliance for both state agencies and permitted industrial and municipal sources.

KEY POINT: We understand that tribal treaty rights raise complicated legal issues. The Washington petition we filed and the Maine amended complaint provide well-reasoned arguments why those treaties don't require EPA's new policies that override cooperative federalism, and reject state HHWQC.

Even if one believes that those treaties do require special protection of tribal treaty rights (which we don't), there is no basis for EPA to determine that this requires the EPA-mandated HHWQC (including setting a 10^{-6} risk level for high consuming subpopulations such as the tribes) to protect those rights. As these slides demonstrate, the national HHWQC are incredibly protective as they are based on extremely conservative assumptions. Further, there is no measurable benefit from criteria based on the different risk levels depicted. Finally, our WA petition for reconsideration demonstrates that EPA has always viewed risks resulting from criteria set at 10^{-6}, 10^{-5} and 10^{-4} to be de minimis, and a new policy determining that only a 10^{-6} risk level is protective would be a radical change in policy with implications for other risk programs in EPA and in other agencies.

VI. Additional Reading: Finally, here is a link to a blog and an article I wrote that was published in BNA Bloomberg. It is based on a lot of work by NCASI and others. It is rather lengthy, but it provides a (hopefully) easy to understand explanation of the issues involved.

Thanks again for your time yesterday, and we would be happy to provide any additional information. Jerry

Jerry Schwartz
Senior Director
Energy and Environmental Policy
Jerry_Schwartz@afandpa.org
(202) 463-2581
AMERICAN FOREST & PAPER ASSOCIATION
1101 K Street, N.W., Suite 700
Washington, D.C. 20005