Cook, Sheridan

From: Laidlaw, Tina
Sent: Tuesday, November 19, 2013 4:06 PM
To: 'Suplee, Mike'
Subject: RE: EPA Comments on MDEQ's Nutrient Rule Package

Yes—can you email me the latest version please?

From: Suplee, Mike [mailto:msuplee@mt.gov]
Sent: Tuesday, November 19, 2013 4:04 PM
To: Laidlaw, Tina
Subject: RE: EPA Comments on MDEQ's Nutrient Rule Package

Hi Tina;

Your recommendations for New Rule I (3) are a bit confusing. Would it be possible for you to do strike through (text to delete) and underline (new stuff) on the original rule language? It will be a lot easier for us to see how you want this worded.

Thanks, Mike

From: Laidlaw, Tina [mailto:Laidlaw.Tina@epa.gov]
Sent: Tuesday, November 19, 2013 3:13 PM
To: Mathieus, George
Cc: Suplee, Mike; Urban, Eric; Perkins, Erin; Moon, Dave; Coate, Carson; North, John
Subject: EPA Comments on MDEQ's Nutrient Rule Package

George,

Thank you for the opportunity to provide comments on DEQ's draft Nutrient Rule Package. Our comments to DEQ Circular-12 are attached. Since we did not have a word version of the Nutrient Standards Rule language, our suggested changes are included below.

Feel free to give me a call if you have any questions or concerns. We look forward to working with DEQ as you move forward with rulemaking.

Tina

Tina Laidlaw
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phone: (406) 457-5016

EPA Comments on the Nutrient Standards Rules (Version 7.8)

<u>New Rule 1(3)</u> :

Language submitted from DEQ and reviewed by EPA -

The department may approve the adoption of an individual variance that specifies interim effluent limits different from what would apply under an updated (i.e., more stringent than 75-5-313(5)(b), MCA) general variance where water quality modeling demonstrates that greater emphasis on the reduction of one nutrient may achieves ~~equivalent~~ similar water quality and biological improvements as would the equal reduction of both nitrogen and phosphorus. Such effluent limits must reflect the lowest effluent concentration that is feasible based on achieving the highest attainable condition for the receiving water. A person shall submit the proposed effluent limits and supporting data in any demonstration they make for an application for an individual nutrient variance under paragraph (2).

(a) The person who has effluent limits in their individual variance based on paragraph (3) shall collect and submit water quality data to demonstrate in each subsequent triennial review that the biological status of the receiving water continues to justify those effluent limits.

EPA suggested edits to New Rule 1(3) are below.

"The department may approve alternate interim effluent limits in cases where the water quality modeling demonstrates that greater emphasis on the reduction of one nutrient may achieve comparable water quality and biological improvements as would the equal reduction of both nitrogen and phosphorus and would result in unnecessary economic expense. Such effluent limits must reflect the lowest concentration that is feasible based…"

New Rule 1(5):

Language submitted from DEQ and reviewed by EPA -

If, after consultation with the applicant, the department determines that no reasonable alternative to an individual variance exists, the department shall determine whether the information provided by the applicant pursuant to (2) adequately demonstrates that attaining the base numeric nutrient standards is not feasible. If the department finds that attaining the base numeric nutrient standards is not feasible, the department shall approve an individual variance, which will become effective and incorporated into the applicant permit only after adoption by the department in a formal rulemaking proceeding. ~~Like any variance, such variances must be adopted as revisions to Montana standards, reviewed on a triennial basis and submitted to EPA for approval.~~

EPA suggested edits to New Rule 1(5) are below.

Option 1: If, after consultation with the applicant, the department determines that no reasonable alternative to an individual variance exists, the department shall determine whether the information provided by the applicant pursuant to (2) adequately demonstrates that attaining the base numeric nutrient standards is not feasible. If the department finds that attaining the base numeric nutrient standards is not feasible, the department may/ could approve an individual variance, which will become effective and incorporated into the applicant permit only after adoption by the department in a formal rulemaking proceeding.

Option 2: If, after consultation with the applicant, the department determines that no reasonable alternative to an individual variance exists, the department shall determine whether the information provided by the applicant pursuant to (2) adequately demonstrates that attaining the base numeric nutrient standards is not feasible. If the department finds that the individual variance meets the requirements of this rule and the federal requirements at 40 CFR 131.10, the department shall approve the individual variance, which will become effective and incorporated into the applicant permit only after adoption by the department in a formal rulemaking proceeding.

Option 3: If, after consultation with the applicant, the department determines that no reasonable alternative to an individual variance exists, the department shall determine whether the information provided by the applicant pursuant to (2) adequately demonstrates that attaining the base numeric nutrient standards is not feasible. The department will pursue approving an individual variance if the department finds that attaining the base numeric nutrient standard is not feasible. This individual variance will become effective and incorporated into the applicant permit only after adoption by the department in a formal rulemaking proceeding.