



Down the Pipeline

Freshwater Ammonia - Nitrogen Criteria Update

DEQ's draft regulatory proposal that was approved in December 2016 for public comment by the State Water Control Board has also now cleared Executive Review early in August. Therefore, it is now anticipated to see a *Virginia Register* Notice of Proposed Rulemaking in September, a 60 day comment period, and at least one Public Hearing. Then a final draft for SWCB adoption would happen at the earliest during the December SWCB meeting, and more likely in March 2018.

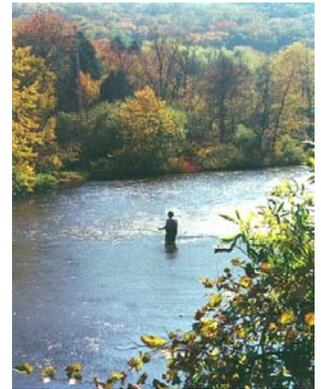
Impacts? All treatment facilities discharging to small streams and that do not currently remove ammonia from the water being treated will have to spend money to begin nitrification in order to remove ammonia. Some facilities

that already nitrify will still need to remove even more ammonia in order to comply with this criteria.

Hopefully with the current atmosphere at EPA there will be a reduced insistence upon Virginia adopting this criteria. If so, this will provide the opportunity to determine the best means of funding implementation of the ammonia criteria. Perhaps the General Assembly will continue to focus itself upon improving economic conditions in Southside/SW VA and give this new criteria a much lower priority.

Perhaps the General Assembly will choose to pro-

vide State funding/oversight? Or provide variances on a case-by-case basis? Perhaps the SWCB will defer adoption and push the criteria to the next Triennial Review Period?



PCB TMDL Update

DEQ continues to develop numerous PCB TMDLs across the region. Work continues on the New River TMDL. The affected segment of the river begins at the I-77 bridge in Wythe County and ends at the West Virginia border. The river is listed as being impaired based upon fish flesh concentrations of PCBs with a resultant Health Department consumption advisory.

The Upper James River study is currently being sampled by DEQ for PCBs. The Tidal James River TMDL is projected to have a draft ready in the spring of 2018.

DEQ reports development of guidance on PCB Pollutant Minimization Plan (PMP) generation should be completed by the department this year. They also have a PMP technical resource guide that may be of value to anyone seeking to locate and reduce/eliminate any legacy sources of PCBs.

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DEQ Review of Proposed Pipelines

The department announced that it would expand its review of the two proposed inter-state natural gas pipelines. It is to require certification of the pipelines under CWA Section 401. The additional certification is to assure the general public that the state intended to “do more” on these two projects.

These additional certifications will add to the existing processes under the Army Corps of Engineers permit to guarantee protection of land disturbed by construction, wetlands, and water bodies.

The expanded scope of review is to also ensure that state water quality standards as well as erosion and sediment controls will be adhered to during construction.

Of concern to wastewater and water treatment departments statewide is the potential spill-over effects on the permitting and construction of sewer and water line projects.

Given that the DEQ Guidance in question is specifically limited to interstate gas pipelines, currently the spill-over effects have been negligible. But environmental groups have become increasingly more aggressive over the past five years in requesting the courts to intervene in any issues that affect water quality or standards that they deem EPA or the states have reneged on.



EPA Dental Amalgam Rule

Signed on June 14, it was published in the *Federal Register*. There is continued uncertainty in terms of what, if anything, will be expected of POTWs regarding dental offices which do not submit notices of compliance with the rule.

Probably the most important concern is what an approved Pretreatment Program requires must be done with Categorical Industrial Users. Under a program, the POTW must know when a dental office changes ownership, moves, etc. What to

do if the one-time compliance report does not show up in time? How will significant non-compliance be applied to these new CIUs? There are three criteria that define SNC that are applicable to dental offices. Must these be applied now?

What about being able to collect enough data to evaluate whether the Dental User is in compliance with the new Dental Rule?

What if the Dental User is not comply-

ing with the Dental BMPs? Are they to be enforced by the Pretreatment Program's Enforcement Response Plan? Will they appear accounted for in the Program's Annual Report to DEQ? Questions for which there are no answers coming forthwith from the halls of EPA.

What if the Dental User is not complying with the Dental BMPs?

Riverkeeper vs EPA

Earlier this year the Potomac Riverkeepers filed suit against EPA's approval of Virginia's decision not to list the Shenandoah River as being “impaired” under the Clean Water Act.

Virginia DEQ is completing the second season of field work on the South and North Branches of the Shenandoah, intending to address the freshwater algae issue as it applies to recreational use of

those forks of the river. DEQ has previously classified the Shenandoah as Category 3S, which suggests water quality problems but not impairment.

Riverkeepers wants to evaluate recreational use of the river based upon aesthetics and odor. DEQ evaluates recreational use based upon bacteria water quality standards alone. The levels of nitrogen and phosphorus have trended at a plateau

or downward. There are already 17 local total maximum daily load (TMDL) restrictions in place for nutrients and sediment that help improve the water quality of the river.

How this suit is resolved could have state-wide cascading impacts upon existing TMDLs, limits, upgrades, and offsets for all of our rivers.

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***“Providing Quality Service to
Everyone”***

Permit language that authorizes “right of entry” does not extend to the point where representatives of the Water Authority can legally kick down the door. Denial of entry activates a process of obtaining a search warrant from a local district court and involving the local police.

Typical Permit language stipulates access to occur at reasonable times whenever possible, and only upon the presentation of issued credentials. The person is to ask to enter the premises, not for permission. There can be no requirements to sign waivers or releases prior to entry. There can be no denial of limiting access or denial to take photographs.

A fairly recent court case involving the City of Los Angeles vs. Patel revolved around legal requirements for inspections without a warrant. The City’s local ordinance required disclosure of guest registers upon police request. Hotel operators refused to comply, arguing that their guest lists were protected by 4th Amendment prohibition of searches without warrant.

The Court held this ordinance to be unconstitutional. The Court held that the 4th Amendment did in fact apply to this type of search. The ordinance was flawed because there was no opportunity to the hotel to have a judge determine if “probable cause” exists.

The search would have been legal if the owner gave consent or if the police had gotten a court-issued search warrant before arriving.

EPA’s Methods Update Rule

On August 7, the EPA Administrator signed the latest Update Rule for publication. This is to update its 40 CFR Part 136 specification of analytical methods approved for NPDES purposes. It covers required preservation procedures, holding times, alternate test procedure requirements, and any other related analytical issues.

This time around the MUR corrects a minor wording problem in the ATP procedures. This MUR emphasizes the required EPA approvals and absence of any mechanism for less formal EPA approvals or through which a state NPDES agency may itself approve or require the use of non-Part 136 methods.

This is important due to the fact that EPA Regional Offices and state agencies often attempt to shortcut the ATP process and require the use of experimental or inaccurate methods that are not in the interests of the Permittee.

This MUR also incorporates changes to the Part 136 Appendix B procedures for laboratory determinations of Method Detection Limits (MDL). An MDL is a method-specific, and frequently lab-specific or instrument-specific, specification of the minimum concentration of an analyte (the substance analyzed) that can be measured and reported with a 99 percent confidence that the substance concentration is greater than zero. The MDL represents the floor below which the result should be reported as either zero or “less than” the stated MDL.

Your in-house or contract laboratory should review and incorporate as appropriate the MUR changes that affect its Standard Operating Procedures and Quality Manual.