Nutrient Standards Issues from the Mining Industry

One of the primary regulatory programs affecting the mining industry in Montana is the MPDES permit system for water discharges. Mining uses explosives and all explosives result nitrogen residual that may enter mine and runoff water. As an industry we are effectively addressing nutrient loading in our discharges under the current narrative standards. Montana's mines are spending significant resources on nutrient treatment and are frequently utilizing sophisticated and very expensive treatment technologies to manage nutrients.

Limits of Technology - There is general agreement that current water treatment technologies cannot reliably achieve the nutrient levels that DEQ indicates it will propose. Particularly in mountainous areas of western Montana, end of pipe discharge standards at these levels could mean the end to existing and new mining operations.

Variance - The site specific variance process as originally envisioned by DEQ was problematic for industry. The "affordability" component looked to be unmanageable. We need a greater degree of certainty. We need to know what to expect from the permit process. Industry wide or general category variances are one possibility that should be considered.

Trading policy – Industry sees a widely applicable trading policy as a useful tool to allow responsible development and result in general improvements in water quality on a watershed basis. Nutrient loads are particularly suited to being managed on a watershed basis and efficient coordination of both point and non point sources in a watershed may provide the greatest benefit at the least overall cost.

Site Specific vs. Discharge Category Approach - The broad-brush use of these low level nutrient standards is not necessarily appropriate on the eco-region basis proposed by DEQ. Different streams will respond differently to various nutrient levels. While a site specific approach may be too burdensome for general permitting, this option needs to be maintained. Additionally, it is important that the DEQ have the ability to establish state-wide and categorical "interim" standards, variances or technology based effluent limits. If DEQ does not have this authority, this may require additional legislation.

DEQ "Package" Approach – Industry strongly supports DEQ's stated intention of providing nutrient standards as part of a package that would clearly indicate how permits would incorporate the standards, a trading policy and addressing technology limitations in establishing "interim standards" or permit limits.

Economic Impact Analysis – DEQ needs to broaden the scope of its mandated economic analysis to more than a simple cost/benefit accounting which shows a significantly greater cost than benefit. The analysis needs to include the impacts of the standards on industry's willingness to invest in existing and new projects in the State. The intent of SB 95 is surely more than a simple summation of theoretical costs and benefits.

Setting the Numeric Values - Establishing water quality standards at levels lower than existing treatment technology is problematic. Additionally, the contention that the "science" is settled on these low levels is an over simplification. There is clearly a wide variation in nutrient levels that support designated uses and both establishing levels of impact to aquatic systems and making the connection from numeric levels of nutrients in surface waters to aquatic life impacts is not clear cut. The science indicates that there is a range of values that DEQ could justifiably propose as numeric standards and EQC and the BER need to understand the implications of choosing standards at the upper or lower level of these ranges.

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