

**WESTCAS 2011 Annual  
Conference**

# **Nutrient Regulatory Issues**

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# Key Nutrient Issues

- ▶ **US EPA Approach to State Criteria**
- ▶ **Precedents in States**
- ▶ **Petitions and Litigation by Enviro Groups**
- ▶ **US EPA Position as to Use of Narratives**
- ▶ **Permitting Actions in States**
- ▶ **Relief Mechanisms**



# US EPA Approach to State Criteria

- ▶ **US EPA settled suit in FL by agreeing to issue Federal criteria**
- ▶ **US EPA now will have to consider many requests for site-specific FL criteria**
- ▶ **US EPA has issued Framework for state nutrient programs**
  - **Very oriented toward management actions, but still requires states to set criteria within 3-5 years**



# State Criteria Actions

- ▶ WI adopted stringent criteria, only for P (0.075 – 0.1 mg/L) – approved by US EPA
- ▶ WI permitting procedures awaiting approval – 3 permit terms to comply
- ▶ KS doesn't want to issue criteria – focused on tech-based standards and watershed programs for nonpoints
- ▶ MT – adopting criteria, with affordability variance – approval unclear



# Environmental Petitions

- ▶ **Enviro groups filed petitions with US EPA to require nutrient controls for all POTW, and to require Federal WQS and TMDLs for nutrients throughout MS River basin**
- ▶ **Groups recently sent letter to EPA stating that would sue if MS/Gulf petition not acted on soon**
- ▶ **US EPA plans to issue response shortly – not expected to grant petition, and not expected to start work on one big TMDL, but could announce set of measures that will result in reduced loadings to MS River and Gulf, including use of water quality model to assess nutrient contributions in basin and figure out reductions needed**



# US EPA Position on Narratives

- ▶ **US EPA does not want states to wait for WQS to put nutrient limits in permits**
- ▶ **Recent letter to Illinois EPA said that US EPA expects state to start using narrative criteria to evaluate nutrients and determine if permit limits needed**
- ▶ **So N and P numbers will be developed in permit process instead of in rulemaking**



# Permitting in Other States

- ▶ **Upper Blackstone (MA) – US EPA Region 1 issued permit, based limits on narratives: 0.1 mg/L P, 5.0 mg/L N**
- ▶ **Permit appealed to EAB, which deferred to US EPA on limits**
- ▶ **Permit now being appealed to First Circuit Court of Appeals – stayed by court for now**
- ▶ **US EPA now wants to issue HQ guidance using Region 1 approach as model**



# Relief Mechanisms

- ▶ **Compliance schedules**
- ▶ **Site-specific criteria**
- ▶ **Variances**
- ▶ **Use attainability analyses (UAAs)**
- ▶ **Total maximum daily loads (TMDLs)**
- ▶ **Trading programs**



# Questions?

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