AQUALAW

RICHARD H. SEDGLEY
DICK@AQUALAW.COM
PH: 804.716.9021
FX: 804.716.9022

March 21, 2016

By Email

Mr. John Kennedy
Office of Ecology
Department of Environmental Quality
P.O. Box 1105
Richmond, Virginia 23218

Mr. David C. Whitehurst
Virginia Department of Environmental Quality
P.O. Box 1105
Richmond, Virginia 23218

Re: VAMWA
Triennial Review Followup

Gentlemen:

On behalf of VAMWA, and in preparation for the Department's Triennial Review followup RAP meetings, we wanted to provide some initial thoughts on the possible adoption of EPA's new freshwater ammonia-N water quality criteria. First, attached is VAMWA's draft regulatory language addressing criteria implementation. Our proposals are consistent with implementation timing concepts that we have presented throughout the Triennial Review process. The separate ammonia criteria variance provision is drafted to be consistent with EPA's new (2015) Part 131 water quality standards variance rule.

The final proposal attached is our earlier suggested Water Quality Standards Regulation compliance schedule provision, which is also consistent with EPA's 2015 rule.

In terms of permit calculation procedures, we recommend that the RAP consider for the ammonia criteria use of the 90th percentile temperature value and the 50th percentile pH, instead of the current use of the 90th percentile for both. In lieu of a showing that the more extreme pH value is necessary for protection of the designated use, we believe the 50th percentile to be protective.

We further recommend that implementation provide relief from shrinkage of the Tier 2 antidegradation *de minimis* increment. As you may know, for discharges to Tier 2 waters, where the facility was new or expanded some time ago, the standard permit calculation spread sheets look at a "Tier 2 baseline," rather than at the numeric standard itself. Our concern is that the baseline will automatically shrink with the new, lower ammonia criteria, compounding the effects of the more stringent criteria. We see this as unnecessary because water quality is not being reduced (the trigger for an antidegradation analysis), rather the standard against which water quality is judged is being changed.

Finally, we ask that the Department and the RAP consider (1) ending the default use of a 9 mg/l ammonia value in POTW Reasonable Potential determinations, in favor of the actual effluent data; and (2) taking steps to make more consistent determinations of instances in which one nitrogen species permit limit is also protective of criteria for another nitrogen species (e.g. TKN and ammonia), rather than imposing limits for both.

We recognize that all of our issues separate from the Water Quality Standards Regulation proposals are in the nature of permit implementation, rather than being standards adoption points. However, we see these issues as fundamentally linked and we believe this is the time to put in place systems that work and are protective, without needlessly penalizing otherwise compliant facilities.

We will be prepared to describe our proposals in more detail, and we look forward to working with the Department and the RAP on these issues.

Sincerely,

Richard H. Sedgley

Copy: Jamie S. Heisig-Mitchell
VAMWA Board

VAMWA Recommended Water Quality Standards Regulation

Ammonia Criteria Implementation and Variance Language

March 21, 2016 Draft

9 VAC 25-260-155 Ammonia Surface Water Quality Criteria.

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F. Implementation of Revised Freshwater Criteria for Mussel Species Restoration. The ammonia criteria of subsections A through C shall be addressed during VPDES permit issuance and reissuance in accordance with the Department's standard permitting practices except as follows.

1. Dual Purpose Improvements Including Mussel Species Restoration. For existing VPDES permits, if the Department finds at the time of permit reissuance that new or more stringent effluent limits for ammonia are required for restoration of desired mussel species, then the following shall apply. The permittee may establish that (i) it intends to design and construct a future facility hydraulic expansion or non-ammonia related treatment upgrade, (ii) the expansion or upgrade may be accomplished in conjunction with facilities required to implement revised ammonia criteria, and (iii) dual purpose improvements to accommodate both the hydraulic expansion or non-ammonia related upgrade and to meet new or more stringent ammonia limits may be accomplished at one time at a substantial savings in public wastewater utility expense. In any such case, VPDES permit limits required to maintain the criteria of subsections A through C effective on [date] shall be effective at the earlier of (a) the in-service date of the dual purpose facilities or (b) an outside date which shall be 20 years from permit reissuance.

2. For existing VPDES permits, if the Department finds at the time of permit reissuance that (i) new or more stringent effluent limits for ammonia are required for restoration of desired mussel species, and (ii) water quality criteria for total nitrogen or other nitrogen species are in place or the subject of a rulemaking proposal, then the following shall apply. If the permittee establishes that required facility upgrades may be accomplished at one time at a substantial savings in public wastewater utility expense, VPDES permit limits required to maintain the criteria of subsections A through C effective on [date] shall be effective at the earlier of (a) the in-service date of the dual purpose facilities or (b) an outside date which shall be 20 years from permit reissuance.

3. For existing VPDES permits, if the Department finds at the time of permit reissuance that new or more stringent effluent limits for ammonia are required for restoration of desired mussel species, then the following shall apply. **I**f the permittee establishes that (i) a proposed adaptive management program will allow incremental improvements in ammonia treatment and reductions leading to compliance with the criteria, and (ii) such program may be accomplished at

a substantial savings in public wastewater utility expense, VPDES permit limits required to maintain the criteria of subsections A through C effective on [date] shall be effective at the completion of the adaptive management program. Any such adaptive management program may include evaluations leading to a determination of site-specific ammonia criteria that are protective of the aquatic life use, and in the event of such determination the site-specific criteria may be proposed in accordance with subsection G following.

G. Ammonia Criteria Variance. Notwithstanding the provisions of 9 VAC 25-260-140.E or any other provisions of law, a variance to the numeric water quality standards of section 155 for restoration of desired mussel species may be adopted for one or more permittees or a water body or one or more water body segments. Where the Board adopts an ammonia criteria variance, the underlying designated uses and water quality criteria addressed by the variance remain in effect.

1. An ammonia criteria variance, once adopted by the Board and approved by EPA, applies to the extent of its terms and limitations for the purposes of NPDES permitting, determinations of achievement of designated uses and certifications under federal Clean Water Act section 401.

2. The Board will not adopt an ammonia criteria variance if the designated uses and water quality criteria addressed can be achieved by implementing technology-based effluent limits otherwise required by law.

3. An ammonia criteria variance shall not result in any lowering of currently attained water quality.

4. The requirements of an ammonia criteria variance shall reflect and be designed to achieve the highest attainable interim condition of the water body or water body segment(s) to which it applies throughout the term.

a. The highest attainable interim condition shall reflect no less than the greatest pollutant reduction achievable with the pollutant control technologies installed at the time of the adoption of the variance.

b. For discharger(s)-specific variances the highest attainable interim condition shall be (i) the best attainable interim water quality criterion, (ii) the best attainable interim effluent condition(s), or (iii) if no additional feasible interim pollutant control technology can be identified, the interim criterion or effluent condition achievable with the pollutant control technologies installed.

c. For water body or water body segment(s)-specific variances the highest attainable interim condition shall be (i) the highest attainable interim use and criterion, or (ii) if no additional feasible interim pollutant control technology can be identified, the interim use and criterion achievable with the pollutant control technologies installed, and implementation of a Pollutant Minimization Program.

d. If the variance includes the implementation of an adaptive management program, the highest attainable interim condition shall reflect improvements in water quality attainable with the successive steps of adaptive management.

5. The basis for an ammonia criteria variance shall be a practicable inability to implement the criteria because of substantial and widespread adverse economic or social impact or one or more of the other conditions in 9 VAC 25-260-10.H.

6. The proponent of the ammonia criteria variance shall have the burden of demonstrating the basis therefore. Supporting documentation must include:

a. A demonstration of the need for the variance;

b. A demonstration that the term of the variance is only as long as necessary to achieve the nominal ammonia criteria;

c. A demonstration of the highest interim attainable use; and

d. For a variance that applies to a water body or water body segment(s), identification of any cost-effective and reasonable best management practices for nonpoint source control related to ammonia.

7. Public hearing. The Department shall hold one or more public hearings on any proposed ammonia criteria variance. The proposed variance and supporting analyses shall be made available to the public prior to the hearing.

8. Term. The term of an ammonia criteria variance shall be expressed as an interval of time from the date of EPA approval or as a specific date. The term must be only as long as necessary to achieve the nominal ammonia criteria and consistent with the demonstrations required by subparagraph 6 of this section 155.G.

a. For a variance with a term greater than five (5) years, the variance shall include a specified frequency to reevaluate the highest attainable interim condition using all existing and readily available information, and a provision specifying how the Department intends to obtain public input on the reevaluations if such reevaluations are not coincident with permit reissuance.

b. Reevaluations must occur no less frequently than every five (5) years, and the results shall be submitted to EPA within 30 days of the completion of the reevaluation.

VAMWA

Recommended Water Quality Standards Regulation
Schedule of Compliance Language

9 VAC 25-260-__. Schedules of compliance.

Notwithstanding any other provision of law, a permit may, when appropriate, specify a schedule of compliance leading to compliance with new or modified provisions of the Water Quality Standards Regulation.

A. Any schedules of compliance under this section shall require compliance as soon as practicable, but not later than any applicable statutory deadline. Practicability of compliance may consider the pendency and timing of treatment facility expansions pursuant to a higher flow tier in the permit; the pendency and timing of a VPDES permit-required facility treatment upgrade or significant process modification; the capital costs and operations and maintenance costs impact of coordinating the effective dates of permit requirements pursuant to other permit provisions or VPDES regulatory programs; other priorities and resources; and other factors as appropriate.

B. Schedules of compliance may be established in permits for existing sources which are reissued or modified to contain new or more restrictive water quality-based effluent limitations. The schedule shall allow a reasonable period of time for the discharger to attain compliance with water quality-based effluent limitations.

C. If a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

1. The time between interim dates shall not exceed one year.

2. If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

3. The permit shall be written to require that no later than 30 days following each interim date and the final date of compliance, the permittee shall notify the Department in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if subdivision C.2 of this subsection is applicable.