



## **Narrative Nutrient Criteria and Triennial Review of WQS: Regulatory Impact Report Expected Soon, October 2016**

DNR circulated a draft triennial rule review proposal in September. The key driver for this triennial review is the state's proposed numeric nutrient criteria for lakes and reservoirs to replace the 2011 criteria which EPA disapproved. A number of stakeholders, including several AMCA members working with Trent Stober, have assisted DNR in developing the proposed criteria and impact analysis. The current proposal features numeric criteria and then lower threshold values. Lake/reservoirs with instream levels (annual geometric mean which has to be met two out of three years) which exceed the criteria will be deemed to be impaired. Lakes and reservoirs above the screening thresholds but below the criteria will be evaluated using a weight of the evidence approach to determine if they are impaired despite not exceeding the criteria values.

Outside of the nutrient criteria for lakes/reservoirs, AMCA has the following three concerns with the triennial review proposal:

First, DNR has proposed to add into the narrative WQS a statement that waters shall be free from excessive nutrients which would interfere with designated uses.

E. Waters shall be free from nutrients in sufficient amounts to cause harmful algal blooms, high turbidity, offensive odor, reduced aquatic biodiversity, or prevent full maintenance of beneficial uses.

We are opposed to such a statement because nutrient impairment is very complex (almost site-specific) and such a general statement has been misused by EPA and interest groups in other states to impose nutrient limits on POTWs without the development of appropriate numeric criteria. At the October CWC meeting, AMCA representatives asked DNR to remove the narrative criteria and focus on the lake nutrient criteria, which DNR said it would consider but no change has been made to date.

Second, DNR has proposed to add the following language (in bold):

A. Zones of passage must be provided wherever mixing zones are allowed. **Mixing zones and zones of initial dilution shall be designed to avoid negative impacts to species known to be sensitive to the toxic pollutant(s) being discharged.**

Mixing zones are already limited to 1/4 or (at most) 1/2 the stream width so there is no need for the new language. Species which may be at all stressed within mixing zones can simply



move outside of the mixing zone. This language is also inconsistent with federal mixing zone provisions.

The Department's RIR should be published in November, starting a 60-day public comment period. The final proposed rule would be filed with the Secretary of State in January after DNR responds to RIR comments. The proposed rule would then be published for public comment sometime in February and there will be a public hearing before the CWC in early 2017. The final rulemaking step would take 90 days following finalization of the rule, making it likely that the final rule would be published in August 2017.