



Ammonia-Nitrogen Criteria Comment Phase Completed December 8 December 2017

DEQ's draft regulatory proposal that was approved in December 2016 for public comment by the State Water Control Board was finally published in the *Virginia Register* as a Notice of Proposed Rulemaking on September 18. Public hearings were held in Richmond on October 24 and in Roanoke on November 28. The second public hearing, which was not originally scheduled by DEQ, was held at the request of a number of VAMWA Members and the Virginia Rural Water Association, and in response to concerns that a hearing only in Richmond was insufficient, particularly for POTWs in western and southwest Virginia, many of whom will be particularly affected by the new ammonia-N criteria. Three VAMWA Members spoke at the Richmond hearing. At the Roanoke hearing, VAMWA President Mike McEvoy presented VAMWA's comments and a number of individual Members commented as well.

To recap the evolution of this important issue, at VAMWA's urging the SWCB separated and deferred the ammonia criteria changes from other Triennial Review of Water Quality Standards elements because of the high projected implementation costs, and to allow a more thorough consideration of implementation procedures and options. DEQ convened a follow-up Regulatory Advisory Panel (RAP) process that addressed ammonia-N as well as other topics, including EPA's new 2015 cadmium criteria, EPA's 2012 recreational (bacterial) criteria, and EPA's 2015 revised numbers for 94 human health criteria. VAMWA's Water Quality Committee submitted comments on those issues last fall. VAMWA submitted final comments on the rulemaking proposal on December 8, 2017.

Application of EPA's 2013 ammonia-N criteria changes will especially impact facilities without nitrification discharging to streams with minimal dilution, and small facilities with treatment technologies that are not readily upgraded for nitrification. However, we have recommended to the Membership that impacts be evaluated by **all POTWs** regardless of existing treatment technology at the plant, because it appears that many others could be impacted too. VAMWA's 2015 Triennial Review comments and corresponding Member comments focused on the ammonia-N criteria and the related issuance of VPDES permit compliance schedules for any necessary upgrades. Following up on VAMWA's suggestions for specific regulatory language, DEQ staff drafted freshwater ammonia compliance schedule and implementation language.

In terms of assessment of impacts of the ammonia-N criteria, we note the Department of Planning and Budget's (DPB) June 16 *Economic Impact Analysis*. The DPB document noted VAMWA's earlier estimate of \$512 million in capital costs, and \$34 million per year O&M (in 2014 dollars). The principal point of disagreement between our projections and



DPB is the number of POTWs affected, DPB relying on lower DEQ estimates (370) than the numbers VAMWA believes to be impacted (590).

Ammonia-N criteria are and will be quite controversial. We are hopeful that EPA may not insist on immediate Virginia adoption and implementation, and that EPA may accept implementation policies that will mitigate the impact of the new criteria. In the 2017 General Assembly, the legislature took special note of the economic plight of South Side and Southwest Virginia, which are areas likely to be particularly affected by ammonia-N. As a consequence, we expect significant statewide interest or even pressure on DEQ and the SWCB to consider a range of options as to ammonia-N criteria and implementation policies. The combined regulatory/legislative approach that the VAMWA Board has decided upon and that is being implemented includes the following:

- Legislative Oversight & Funding –The legislative process for any such bill could provide significant attention to the challenges of implementation, and lead to deliberation of the relative priority of mussel habitat restoration versus other environmental and non-environmental priorities of the affected communities. Water Quality Improvement Fund grants should be used to cover a substantial portion of necessary POTW capital improvements to address the new ammonia-N criteria.
- Long-Term Phased Implementation Program – VAMWA has proposed a Phased Implementation Program, based on a proposed DEQ/SWCB finding of significant adverse statewide economic and social impact from any short-term implementation of the new criteria, and allowing a more phased approach. Our proposal, if adopted, would provide that unless a municipality fell outside of the economic norm, implementation of the new ammonia-N criteria would occur later in conjunction with implementation of (1) remaining Chesapeake Bay nutrient upgrades, future aquatic life nutrient criteria, etc.; (2) other planned POTW facility upgrades; (3) planned facility expansions; and/or (4) WQIF funding. In the interim, the current criteria would apply, with a re-examination every five years.
- Case-Specific Variances – These should be available for appropriate cases that do not fall within the parameters of the Phased Implementation Program or that need more relief. This could be based on further unreasonable adverse economic impacts, insignificant instream water quality improvement, or time for mussel habitat determinations and restoration planning. This would be tied in with a concept of Highest Achievable Condition (discussed below).

Under EPA's recent 40 CFR Part 131 Water Quality Standards Regulation amendments, any variance, and likely the Phased Implementation Program as well, would require a demonstration of meeting the Highest Achievable Condition (HAC) (either the permit limits or the instream condition), re-evaluation of the HAC at no less than five-year intervals,



and a demonstration that the designated use and criteria cannot be achieved by implementing technology-based effluent limits (i.e., secondary treatment for POTWs).

At the Member Meeting, we will discuss the three-part strategy including (1) comments on the rulemaking and appeals to DEQ management and the Administration; (2) potential legislation promoting a combination of state funding and regulatory flexibility in any transition to the new, more stringent criteria; and (3) continued work with DEQ staff on permit flexibility issues. SWCB action on the ammonia-N criteria could occur as early as the March 2018 SWCB meeting, although that timing could also be delayed as a result of any actions that the General Assembly takes.