

## **Statewide Phosphorus Variance Summary**

Establishes a process to potentially allow WPDES permittees to apply for and implement variances for phosphorus water quality based effluent limitations using a statewide analysis for determining whether compliance with water quality based effluent limitations for phosphorus is not feasible because it will cause substantial and widespread adverse social and economic impacts.

### **Determination of Social and Economic Impacts**

- The Department of Administration (DOA), in consultation with the Department of Natural Resources (DNR), must make a determination whether compliance with water quality based effluent limitations for phosphorus is not feasible because it will cause substantial and widespread adverse social and economic impacts on a statewide basis
  - DOA may make this determination for all point sources in the state or on the basis of categories of point sources.
  - DOA must make this determination within 240 days of the effective date of the statute.
- If the determination is made, DNR must seek approval for the statewide variance approach from the US Environmental Protection Agency.

### **Determination Review**

- If the variance determination is in effect, every three years DNR must determine if a review of the variance determination should be undertaken. If so, DOA and DNR must relook at the determination in light of a number of factors including the availability and cost-effectiveness of new technology.
- In any case, a review of the determination must be made in 2024 and a report issued as to whether the determination remains accurate.

### **Availability of the Variance**

- If the determination of substantial and widespread adverse social and economic impacts is made, and it applies to an existing source, to be eligible for a variance under this authority a permittee must:
  - Certify that they cannot achieve compliance without a major facility upgrade
  - Agree to comply with interim phosphorus effluent limits and an implementation requirement.
- Point sources may apply for individual 283.15 or NR 217.19 variances for phosphorus regardless of the statewide variance determination.

## Variance Requirements

If the permittee applies for and receives a variance under this statewide approach, the permittee must agree to:

1. Comply with the following interim and final phosphorus limits:
  - First permit – 0.8 milligrams per liter (mg/L)
  - Second permit – 0.6 mg/L
  - Third permit – 0.5 mg/L
  - Fourth permit – must comply with the water quality based effluent limit

(Note that a permit term is 5 years, all limits must be achieved by the end of each permit term and all are expressed as a monthly average)

2. Agree to implement one of the following three options:
  - a. Enter into an agreement with DNR to implement a plan or project designed to result in an annual reduction of phosphorus from other sources in the HUC 8 basin in an amount equal to the difference between what they discharge and a target value (see target value below).
  - b. Enter into an agreement with a third party and approved by DNR to implement a plan or project designed to result in an annual reduction of phosphorus from other sources in the HUC 8 basin in an amount equal to the difference between what they discharge and a target value.
  - c. Make payments to counties in the same HUC 8 basin of \$50 per pound times the number of pounds of phosphorus their discharge exceeds the target value. Payments are capped for any one point source at \$640,000 per year.

## Target Values

For each of the three implementation options, the following target values will apply during the first three permit terms.

- If the basin has an approved total maximum daily load analysis (TMDL) the wasteload allocation for the point source.
- If the basin does not have an approved TMDL analysis in effect, 0.2 mg/L.

### **County Requirements Under Payment to County Option**

- Counties receiving payments under the variance must use them to provide cost-sharing (and staffing) for projects to reduce phosphorus entering waters of the state from nonpoint sources. At least 65% of the payments must be used for cost-sharing practices with a maximum of 35% of payments for staffing.
- Counties must develop a plan for using the payments by March 1 of each year and submit a report by May 1 of the following year describing the projects they implemented and the amount of phosphorus reduced.