



COLORADO

Department of Public
Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

BRIEFING MEMO

To: Nutrients Work Group

From: Janet Kieler

Date: October 26, 2016

Subject: Regulation #85 Preliminary Effluent Limitations (PEL) Provision for Delayed Implementation of Effluent Limits

Summary

The Water Quality Control Division (division) recommends that Regulation #85 be revised to allow effluent limits to be included in PELs for Site Location and Design Approval with a delayed effective date for certain facilities.

Issue and Background

As part of the 2015 Regulation #85 Triennial Review Informational Hearing, the division proposed that the scope of the rulemaking include the ability for facilities not currently subject to the Regulation #85 effluent limitations to apply for and receive preliminary effluent limits (PELs). Regulation #85 does not allow effluent limits for small and/or disadvantaged communities or effluent limits with a delayed implementation date to be included in PELs for Site Location and Design Approvals. See Section 85.5(1)(a)(i) and (ii). Since July 1, 2013, at least one facility subject to effluent limits with a delayed effective date requested that the Regulation #85 effluent limitations be included in a PEL for Site Location and Design Approvals and the division was not able to accommodate the request.

Discussion

The statement of basis and purpose does not discuss why the restriction on including the Regulation #85 effluent limits in PELs for Site Location and Design Approvals was included in the regulation. One possible explanation is the provision was intended to ensure that small/disadvantaged communities and DWWTWS subject to effluent limits with a delayed effective date would not have to plan and design the facility to meet the Regulation #85 limits.

At this time, the division recommends the following for discussion:

- Regulatory changes in Section 85.5(1)(a)(ii) that would allow a standard practice of including Regulation #85 effluent limits in PELs for the facilities covered by Section 85.5(1)(a)(ii). While some effluent limits will mirror the limits in Sections 85.5(1)(a)(iii) or (1)(b), in the course of evaluating the Regulation #85 limits for PELS, the division would also be evaluating whether any of the additional exceptions from Section 85.5(3)(b) would apply, resulting either in no effluent limit or a less stringent effluent limit than those contained in Sections 85.5(1)(a)(iii) or (1)(b). In addition, the division would propose that the Regulation #85 effluent limits would only be included in PELs with a delayed effective date, so that the facility would not be required to plan and design the facility to meet the Regulation #85 effluent limits, but yet would have the option to do so if the facility desired. In addition, the facility would be able to



obtain Site Location and Design Approval for that design. This type of information would be helpful, for example, in a situation where a facility is planning other DWWTW upgrades or is interested in leveraging funding opportunities.

- No change to the language in Section 85.5((1)(a)(i) regarding small/disadvantaged communities. Note that this would mean that these communities would continue to be unable to request that the Regulation 85 effluent limits be included in PELs for Site Location and Design Approval. No small/disadvantaged community has approached the division with such a request since the regulation has been adopted, so no change to the regulatory language seems necessary at this time.

Proposal

Discuss concepts with stakeholders to obtain feedback and develop possible revised regulatory language at a later date.

Schedule:	Initial discussion	November 1, 2016
	Comments due	December 23, 2016
	Follow-up	January 12, 2017

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