

the September decision applied to interim TP/TN implementation locally through the Arkansas River Basin Reg. 32 revision currently scheduled in 2023. See adjacent timetable slide.

The EPA decision to take no action was based on EPA's determination that these interim values lack scientific validity as do the statistical procedures used by the Water Quality Control Division for setting these recommended Reg. 31.17 interim water quality standards for TP and TN in 2012 for future implementation in 2022 for state rivers and streams. These values could only be reached if and when technology emerges that could meet them, but none has appeared to date. In September, the EPA also stated it could not defend these Water Quality Control Commission interim TP/TN values for 2022 in court, Kendrick summarized.

Kendrick had previously reported these long-deferred EPA "no action" decisions to the JUC, saying that WQCC Administrator and state attorney Trisha Oeth's

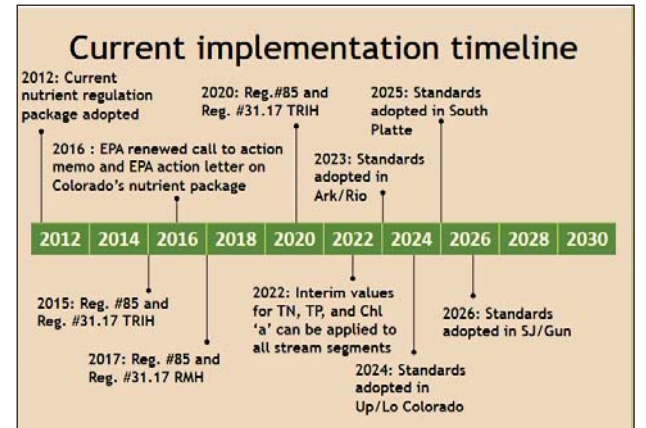
statement at the Nov. 1 nutrient stakeholder workgroup meeting was that Reg. 31.17 had no scientific validity and would not be supported by the EPA. www.ocn.me/v17n1.htm#tlwtfjuc.

However, the opposite became apparent Jan. 9 at the Colorado Water Quality Control Commission meeting. CDPHE Clean Water Program Manager Nicole Rowan told the WQCC that the "interim values" of Reg. 31.17 have not gone away despite the EPA's memo and might even be implemented sooner than the division had said before. Kendrick summarized that because of a separate Sept. 22 EPA national nutrient program memo from Joel Beauvais, the deputy assistant administrator for the Office of Water at the EPA, the division was now scrambling to find other ways to "show progress" to the EPA. See www.epa.gov/sites/production/files/2016-09/documents/renewed-call-nutrient-memo-2016.pdf.

Background: At the first WQCC nutrient reduction rulemaking hearing in 2012, the commission first adopted rulemaking that allowed for phased implementation of nutrients and controls (Reg. 85 and 31.17). During that hearing, after long discussions and negotiations between the division and affected stakeholders, the commission reversed its acceptance of the negotiated agreement for an "interim value" for total phosphorus of 2.0 mg/l and imposed on the last day of this three-day hearing, without warning or notice, a recommendation by CDPHE engineer Bret Icenogle to impose a "Phase 1" limit of 1.0 mg/l on "large" WWTFs, to the total surprise of the wastewater stakeholders and operators. "Phase 2" of Reg. 85 will impose this 1 mg/l TP limit on all other facilities in 2022, except a few small facilities that may be exempted for various reasons at that point.

The next WQCC nutrient reduction rulemaking hearing on Reg. 85 and Reg. 31.17 is currently scheduled for October 2017. "Everything is focused on this upcoming October hearing," Kendrick said. That hearing has resulted in a new round of meetings for Reg. 85 Stakeholder Workgroups and subgroups. Stakeholders, such as Kendrick for TLWWTF, and their lawyers speak up at these meetings with concerns, but there is little actual dialogue with the state. Areas of ongoing ambiguity include:

- How, when, and to which wastewater treatment facilities various new and different Reg. 85 as-yet-undetermined permit limits and/or Reg. 31.17 interim TP/TN, and now also selenium, water quality standards will be imposed without new science-based processes as required by the EPA's Water Quality Act.
- How much and for how long effluent and instream nutrient/selenium monitoring will be required.
- Chlorophyll 'a' and total phosphorus and total nitrogen concentration "interim values" for rivers and



Above: This slide shows the Colorado Department of Public Health and Environment (CDPHE) Water Quality Control Division's current schedule of potential modifications to state nutrient regulations for dischargers that were initially adopted in 2012 with CDPHE Nutrient Monitoring Control Regulation 85. CDPHE Clean Water Program Manager Nicole Rowan talked about potential changes to this already tentative implementation schedule at the Jan. 9 Water Quality Control Commission Nutrients Work Group Update meeting, said Jim Kendrick, environmental compliance coordinator for the Monument Sanitation District. Chart courtesy of Colorado Water Quality Control Division, CDPHE.

streams.

- What year these new interim standards will actually be implemented: 2022 as currently imposed, as soon as 2017 as the division now wishes to implement in some basins, or delayed until 2027 to collect enough data for scientifically valid standard setting.
- Whether future rulemaking hearings will revise Reg. 31.17 interim values for lakes and reservoirs one river basin at a time or all at once without regard to varying geography in each basin.

Both state regulators and wastewater plant operators are still struggling with how to evaluate the confusion created in the fall by the EPA's refusal to act upon, much less approve, the WQCD's approved 31.17 interim values for TP, TN, and chlorophyll 'a'.

Current evolving water reuse plans by the town of Monument and WWSA could even be subject to unintended consequences because of the ways dischargers can invite oversight from the state in unforeseeable ways that regulatory definitions and policies are interpreted and then reinterpreted by CDPHE or the EPA, Kendrick said.

These kinds of regulatory uncertainties are why it is important that stakeholder groups like the Arkansas River/Fountain Creek Coalition for Urban/Rural River Evaluation (AF CURE) continue to collect data and help dischargers prepare and pay for coherent evidence and comments for the division toward enactment of discharger specific variance for TLWWTF. "We are doing this as self-defense," Kendrick said.

AF CURE is a sub-group of the Pikes Peak Regional Water Authority (PPRWA) and was created in 2012 in response to the nutrient monitoring requirements contained in Reg. 85 and the need for watershed-wide monitoring plans and programs. AF CURE submitted the Reg. 85 Nutrients Sampling and Analysis Plan to CDPHE in March 2013.

Kendrick said because AF CURE's scope has had to expand since it was formed, its members talked more at the Jan. 3 meeting about more efficient ways of administering the group's six current data sampling contracts through Brown & Caldwell and legal advocacy efforts through environmental attorney Gabe Racz of Vranish & Raisch LLP, who is also the attorney for stakeholder workgroups in Regs. 85 and 31.

The meeting adjourned at 11:57 a.m.

After this meeting, Icenogle stated at the Jan. 12 division nutrients stakeholder workgroup meeting 2 in Aurora, attended by OCN, that progress in developing plausible treatment technologies that could meet either the Reg 31.17 TP or TN interim values has not been evident to date and it is appearing unlikely that it will by 2022.

The next meeting is scheduled for 10 a.m. Feb. 14 at the Tri-Lakes Wastewater Treatment Facility, 16510 Mitchell Ave. Meetings are normally held on the second Tuesday of the month and are open to the public. For information, call Bill Burks at 719-481-4053 or see www.tlwwastewater.com.

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