

WQCC decisions, this EPA time limit has been largely ignored by the EPA in the past several years. The impact of any potential EPA disapproval remains to be determined.

The commissioners complied with Hickenlooper's directions in his long-delayed letter on changing the applicability of the new Reg. 85 limits to about 40 percent fewer large capacity wastewater treatment facilities. The commissioners also received a guidance letter from EPA Region 8 administrator James Martin that they used to shape their final arguments in support of the state Water Quality Control Division's recommendations, even though Martin's letter never stated that there was a specific federal mandate to create specific stringent nutrient regulations for total phosphorus, total nitrogen, and chlorophyll a.

Hickenlooper's letter stated that Martin's letter was a clear statement of a federal mandate to create and enforce nutrient restrictions, which exempts these regulations from Hickenlooper's own Executive Order 5 that prohibits the state government from imposing unfunded mandates on local governments like wastewater special districts.

These two letters to the WQCC and the commission staff's advice regarding them are available at: [www.cdphe.state.co.us/op/wqcc/Hearings/Rulemaking/31\\_85nutrients/05142012Actions/WQCCactions.html](http://www.cdphe.state.co.us/op/wqcc/Hearings/Rulemaking/31_85nutrients/05142012Actions/WQCCactions.html).

All the rest of the hundreds of official documents that were provided to the WQCC during the nutrients rulemaking process are available at: [www.cdphe.state.co.us/op/wqcc/Hearings/Rulemaking/31\\_85nutrients/Nutrients.html](http://www.cdphe.state.co.us/op/wqcc/Hearings/Rulemaking/31_85nutrients/Nutrients.html).

Wicklund noted that no one from the cities, towns, and special districts affected by the directions in the Hickenlooper and Martin letters was allowed to present oral testimony during the June 11 hearing, even though this new evidence was allowed to be entered into the record, an unprecedented proscription on the right of state discharge permit holders to testify.

Representatives from EPA Region 8 made no statements at

the June 11 hearing regarding the further changes directed by the governor and the numerous additional editing changes made by each of the commissioners to the very complex technical language of these regulations and their lengthier individual supporting documents called Statements of Basis and Purpose, even though they had no such restrictions imposed on them.

Some of the changes made by the commission on June 11 from the Water Quality Control Division's final Regulation 85 proposal were:

- The effective date for including the new nutrient discharge limits in Regulation 85 in new discharge permits has been further delayed another year at Hickenlooper's direction until June 30, 2013.
- The governor further expanded the division's most recent proposed expansion of the exclusion in Regula-

tion 85 of all treatment facilities with a maximum rated capacity of 1.0 million gallons per day (mgd) was increased to 2.0 mgd or less. The division's original proposed exclusion was for facilities with a rated capacity of only 0.5 mgd or less.

- The total inorganic nitrogen discharge limit for existing treatment facilities was increased from an annual median of 10 milligrams per liter (mg/L) to 15 mg/L.
- A stream segment can now be kept off of the list of new impaired segments due to nutrient enrichment under Regulation 303(d) if the discharger is complying with Regulation 85 limits.
- A wastewater treatment facility can use the water quality-based effluent limits for the interim nutrient values in Regulation 31 if they are less restrictive than those for Regulation 85.



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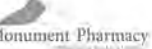
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