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September 24, 2024

Courtney Cswercko
Iowa Department of Natural Resources
6200 Park Ave
Des Moines, IA 50321

RE: Iowa DNR Regulatory Analysis – Chapter 63

Dear Ms. Cswercko:

The Iowa Environmental Council (IEC) offers the following comments on the proposed revisions to 567 Iowa Administrative Code Chapter 63. These comments represent the views of the Iowa Environmental Council, an alliance of more than 100 organizations, at-large board members from business, farming, the sciences and education, and over 500 individual members. IEC’s members hike, fish, paddle, swim, and recreate in and around wetlands, lakes, rivers, and streams throughout the state.

We are concerned that DNR’s regulatory analysis and the associated changes will reduce monitoring requirements and thereby increase risks to Iowans from water pollution.

Regulatory Analysis

The Regulatory Analysis states that DNR will maintain the requirements for National Pollutant Discharge Elimination System (NPDES) permits to ensure that the state retains its delegated authority to issue permits. The review states that “Monitoring frequencies were slightly revised to account for only the number of samples the Department needs to reissue a permit and ensure proper treatment.”¹ IEC is concerned that the reduced monitoring frequency proposed in the rules would increase risks to Iowans without sufficient benefits (i.e. cost savings) to justify the change.

63.7(5), Submission frequency.

DNR proposes to allow variations in the frequency of operations records submissions. The proposed rule states that “The department may vary the submission frequency in certain cases. Variation from the monthly interval shall be made only under such conditions as the department may prescribe in writing to the permittee.” IEC recommends that DNR identify the criteria by

¹ Regulatory Analysis at 1.

which it will determine that submissions can be less frequent and include those in the rule; otherwise, changes to the submission frequency may be made arbitrarily.

63.10, Table II.

DNR proposes to eliminate the column of this table requiring daily monitoring for large facilities. The associated justification in the redline document is that “Column is being removed because almost all of the monitoring waiver requests are for the reduction of daily monitoring, and there is a justifiable hardship component to daily monitoring.”²

IEC reviewed all waivers (variances from rule) DNR has granted under chapter 63 since 2019. DNR has granted only four waivers to reduced monitoring frequency during that time period, which covers more than one full NPDES permit cycle.³ This equates to granting less than one waiver per year out of DNR’s 1,594 NPDES permits,⁴ so monitoring frequency is not a widespread issue.

More importantly, DNR has provided no evidence that the monitoring presents a hardship for all facilities, which it should provide to justify a rule change. The Regulatory Analysis did not provide any such justification. And DNR’s own treatment of waiver requests shows that it did not always find that a hardship existed. In one case, for example, DNR stated that “The reduced frequency would not provide substantially equal protection of public health, safety, and welfare due to the risk of missing effluent limit violations and the facility’s compliance history.”⁵ IEC agrees with DNR’s rationale in denying the waiver – not every facility faces hardship from daily monitoring, and it can increase risks.

Monitoring at a reduced frequency as proposed in Table II could harm downstream water users if a treatment upset is not discovered for days. DNR should evaluate the risks of increased pollution that could result from an extended upset. Those risks must be weighed against the cost to conduct monitoring. A case-by-case approach to reduce monitoring, where DNR can consider those costs and benefits, is more reasonable than a universal rollback. That approach is authorized under the existing rule, rather than DNR’s proposed change. We urge DNR not to reduce the monitoring frequency as proposed in Table II.

Conclusion

We appreciate DNR’s efforts to evaluate the need for rules and to make the rules more accessible consistent with Executive Order 10, but that effort cannot undermine the protection of the state’s

² “Chapter 63 Proposed Changes (as of 9/4/2024),” Iowa DNR, available at [https://www.iowadnr.gov/Portals/idnr/uploads/water/npdes/WOB%20Rule%20WP/Pub%20Reg%20As/567.63%20redline-strikeout%20\(2024-9-11\).pdf?ver=x1sj5wOltWOGdeYjNjNVgg%3d%3d](https://www.iowadnr.gov/Portals/idnr/uploads/water/npdes/WOB%20Rule%20WP/Pub%20Reg%20As/567.63%20redline-strikeout%20(2024-9-11).pdf?ver=x1sj5wOltWOGdeYjNjNVgg%3d%3d) (last accessed Sept. 23, 2024).

³ DNR approved reduced monitoring frequency for variances 22cpw240 (unknown), 20cpv229 (Denison), 22npw226 (Cargill), and 23cpw215 (Bayer).

⁴ Iowa DNR, “Permit Listing Spreadsheet,” available at https://www.iowadnr.gov/Portals/idnr/uploads/water/npdes/website_file.xlsx (last accessed Sept. 23, 2024).

⁵ Variance request 23cpw252.

water quality. Maintaining adequate monitoring is critical for understanding the effects of discharge on downstream waters. We encourage DNR to adopt IEC's recommended changes.

Sincerely,

/s/ Michael R. Schmidt

Michael R. Schmidt
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Iowa Environmental Council