



United States Department of the Interior

FISH AND WILDLIFE SERVICE

TESTIMONY OF MARK HERSH, U.S. FISH AND WILDLIFE SERVICE ON PENNSYLVANIA'S REVISIONS TO ITS WATER QUALITY REGULATIONS

OCTOBER 20, 1998

Good afternoon. My name is Mark Hersh and I am an Environmental Contaminants Specialist in the Pennsylvania Field Office of the U.S. Fish and Wildlife Service. Our office has been actively involved in Pennsylvania's water quality standards program for some time, as clean water is the basis for protection of the fish and wildlife resources under our jurisdiction. We will be submitting written comments on the entire regulatory package; my testimony this afternoon concerns a few aspects of the water quality standards.

The Department of Environmental Protection has been in the process of reviewing all of its water quality regulations under a directive from Secretary Seif known as the "Regulatory Basics Initiative." This effort involves comparing existing State regulations to a number of criteria, most notably benchmarks concerned with clarity, pollution prevention, and the federal regulatory analogue. These benchmarks spoke more to the needs of dischargers than they did to an agency like the Service, who is dependent on the standards to help protect federal trust resources. Only recently has the Department publicly stated that the Regulatory Basics Initiative review of the standards also constitutes the Triennial Review of water quality standards. This seems to us to have been an afterthought, because there are certain required elements to a Triennial Review that are absent from this regulatory package, such as a review of all waters of the Commonwealth where Clean Water Act Section 101(a)(2) goals are not designated. More importantly, one central purpose of a Triennial Review is to ensure that the standards extend adequate protection to existing and designated uses of waterbodies. Our understanding is that the Regulatory Basics Initiative never mentioned as a goal, the adequacy of regulations from the standpoint of protection of fish and wildlife and their habitats. Aside from examining certain numeric water quality criteria in light of new scientific information, this Triennial Review does not address the question of the protection afforded to fish and wildlife. To that end, my testimony this afternoon will discuss some additions to Pennsylvania's standards that we believe are necessary to protect fish and wildlife resources.

We believe that the protected water use, "wildlife water supply," needs to be revised. Currently, this use is considered a "water supply" use, similar to "potable water supply" and "livestock water supply." Wildlife is a natural resource similar to aquatic life and is afforded protection in both the Clean Streams Law and the Clean Water Act. However, the definition of "wildlife water

supply" as defined in Pennsylvania's water quality standards, "use for waterfowl habitat and for drinking and cleansing by wildlife," limits the protection extended by both laws.

For example, consider a waterbody with fish contaminated with a bioaccumulative chemical that is not detected in the water column. It could be argued that the eating of those fish by mink is not protected by the "wildlife water supply" use. Mink are certainly not "waterfowl" and if the water quality was simply sufficient for their "drinking and cleansing," then the "wildlife water supply" use would be attained. However, if because of the bioaccumulative nature of the contaminant, the reproduction of the mink is impaired, both the spirit and letter of the Clean Streams Law and the Clean Water Act would be violated.

Waters of the Commonwealth are used by wildlife for essential life functions--food, habitat, migration, as well as for drinking and cleansing. We have drafted language for a revision of the "wildlife water supply" use. First of all, we believe that the protected water use for wildlife belongs with the "aquatic life" protected water uses, and removed from the "water supply" category of uses. Just as the proposed rulemaking changes the "recreation" heading to "recreation and fish consumption," we believe that the "aquatic life" heading should be changed to read "aquatic life and wildlife." The new "wildlife" protected water use in Chapter 93.3 would simply read:

W *Wildlife*--Use by wildlife for habitat or life cycle functions.

The new wildlife use would become a "statewide water use" as is the "wildlife water supply" use is currently in Chapter 93.4. Three new definitions are necessary, for "habitat," "life cycle functions," and "wildlife." Those definitions are as follows:

Habitat --The area which provides direct support for a given species, population, or community, including important food, shelter, migratory or overwintering areas, or breeding areas for aquatic life and wildlife, due to plant community composition and structure, hydrologic regime, substrate or other characteristics.

Life cycle functions--Includes, but is not limited to, spawning, breeding, incubation, setting, molting, hibernacula, refuge, brooding, nursery, feeding, pupation, territory establishment and defense, and migration for breeding, spawning, temperature regulation, feeding, dispersal, and other life cycle functions.

Wildlife---Terrestrial flora and fauna that are wholly or partially dependent on waters of the Commonwealth for habitat or life cycle functions.

Other areas where new water quality standards are needed are narrative criteria protecting hydrologic regimes and habitat. The Environmental Protection Agency's Water Quality Standards Handbook mentions that a Triennial Review of water quality standards should take into account, among other things, "legal decisions involving applications of standards." Since Pennsylvania's last Triennial Review, at least two important court cases have clarified the relationship between water quality standards and hydrologic and biological integrity. In 1994 the U.S. Supreme Court decided that the employment of water quality standards to protect designated and existing uses also extended to water quantity issues (*P.U.D. #1 of Jefferson County v. Washington Department of Ecology* 114 S.Ct. 1900 (1994)). In 1996, the Pennsylvania Environmental Hearing Board ruled that biological alteration of wetlands through groundwater withdrawal constituted "pollution" as defined in Pennsylvania's Clean Streams Law (*Oley Township, et al. v. Commonwealth* EHB Docket 95-101-MG).

On at least two recent occasions, Pennsylvania has supported the contention that water quantity and hydrological and biological integrity are related and can be regulated through water quality standards. Pennsylvania joined 43 other States in filing an *amicus curiae* brief in the *Jefferson County* case, agreeing with the position of the State of Washington, which prevailed. Citing *Jefferson County* extensively, Pennsylvania also used the concept that water quality standards included the protection of biological and hydrological integrity in a Memorandum of Law seeking that a denial of Section 401 Water Quality Certification be upheld (June 30, 1994 Memorandum of Law, *City of Harrisburg v. Commonwealth, et al.* EHB Docket No. 88-120-W).

While biological integrity is afforded some protection through the aquatic life protected water uses, there is no regulatory language protecting habitat. It follows, then, that Pennsylvania's water quality standards should include provisions protecting the habitat and hydrological integrity of surface waters of the Commonwealth. This would entail modifying one and adding two sub-sections to "Chapter 93.6. General water quality criteria." The modifications to sub-section "(a)" follow the definition of "pollution" in the Pennsylvania's Clean Streams Law:

(a) Water may not contain substances attributable to point or nonpoint source [waste] discharges in concentration or amounts sufficient to be, **nor shall waters be altered such that the alteration is inimical or harmful to [the water] designated or existing uses [to be protected] or to human, [animal, plant or] aquatic life or wildlife.**

The new sub-section "(c)," would simply read:

(c) **Human-induced alterations in hydrologic regime, including instream flow, shall not be inimical or harmful to designated or existing uses, including recreation and aquatic life and wildlife. Natural seasonal and daily variations shall be maintained.**

The new sub-section "(d)" protects habitat:

(d) Human-induced alterations in habitat shall not be inimical or harmful to designated or existing aquatic life and wildlife uses.

Three new definitions are needed in Chapter 93.1 in order to support these additions.

Aquatic life--Desirable aquatic flora and fauna that are wholly or partially dependent on waters of the Commonwealth for habitat or life cycle functions.

Flow--A hydrologic regime to which aquatic life have naturally adapted.

Hydrologic regime--The regular pattern of occurrence, circulation, and distribution of water in surface waters.

All these additions to Pennsylvania's standards reflect the existing State and federal laws, and simply bring the standards in compliance with the existing laws. We appreciate the opportunity to present our views on these proposed regulatory changes, and will present other suggestions in our written comments. Thank you.

Margaret Mansell 711-429-0797
317 5th St
St Clair, Pa. 17970

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Although dredging is an EPA remedy for Delaware River contamination, the Environmental Quality Board is proposing to exclude discharges from dredge and fill material from NPDES permit requirements. (Section 92.4 Subsection (a)(1) p. 4434 Pa. Bulletin) This is part of regulatory basics initiative that is purported to revue existing water management. Pennsylvania has already declared dredge "beneficial" and has contracted to import material dredged from heavily polluted river beds. Briefly, PCBs contains as many as 209 chemicals, degrades very slowly, mimics dioxin, adheres to everything and accumulates up the food chain. An EPA spokesman. David Sternberg has said the EPA would certainly acknowledge that dredge and its toxins are a problem and does need to be dealt with. Anytime the mass preponderance of scientific data suggests that something causes cancer we need to take that very seriously and regulate it as such.

In answer to the Board's solicitation for comments, I strongly endorse that protection of potable water supply should continue to be a State Wide Use. We need more protection not less. Water seeks its own level not the Board's/ (Section 93.1 Chapter 93) Hold the comment, according to Sectio Section 93.7 , the state wide water criteria and statewide water uses have been reformatted "more clearly set forth " in proposed revisions to 93.4. That's speed polling!

This section informs us that all Delaware River Basin Commission criteria are proposed to be deleted from table 3 and referenced where applicable. The DRBC criteria will be deleted because they are not Department derived or sponsored and the Department is

unable to modify the criteria. It is necessary to ask DRBC for such a deletion. The DRBC has been very helpful to our organization in the past and since Pennsylvania is a member of the Commission, cooperation is necessary. *Keep the DRBC criteria!*

Section 92.83 proposes to clarify that the documents submitted by those seeking NPDES general permits are "NOI" not "applications" Instead of the "NOI" demonstrating that the point source meets the requirements (current requirement), it is now proposed that the discharger "certify" that the point source meets the requirements. (Now that's tough) Currently DEP provides notice of each NOI for ~~for~~ a general permit and each approval by Bulletin publication. This subsection now proposes that DEP have three options one of which is to provide no notice of intent or approval. *No to NOI* Section 92.5a) A new section is proposed to provide permit-by-rule in certain types of ~~concentrated~~ animal feeding operations. It is proposed that operators of feeding farms will be deemed to have a NPDES general permit by rule if the operator has a nutrient plan approved by county conservation district , implements, maintains according to DEP regulations, is in compliance and the operations do not have or is not proposing a discharge to surface waters. With 1000 ^{animals} why wouldn't there be a discharge? Why would a NPDES general permit be needed if there is no discharge to surface waters? Imagine the horrors of 1000 concentrated animals as neighbors and to think ~~think~~ they all by passed DEP without a ^{hearing} ~~hearing~~. But if the operator has more than a 1000 animals. ~~He~~ He would need a permit on a case to case basis. So now it is

deemed that even one little piggy can break the rule of the discharge elimination system.

Another proposed change in the current system that precludes the issuance of NPDES general permits to point sources which discharge toxic or hazardous pollutants or other other substances which may cause or contribute to increased mortality or ~~or~~ morbidity or pose a substantial hazard to health or environment, is proposed to be revised to provide that dischargers under a general permit ~~permit~~ must satisfy any effluent limitations established in the general permit for toxic or hazardous substances, which may be discharged. This should definitely not be allowed.

There is nothing general about toxic waste Why bother to define or regulate waste-- just permit any nuclear or poisonous waste generally and Pa. will glow.

With regard to Chapter 93 it was stated that the aluminum acute criteria development is being revised to match the FEderal EPA, while the Federal chronic aluminum criteria is not proposed for adoption because it is based on dubious science. Is there an explanation for this cafeteria science? Is one EPA criteria accepted ^{because} it allows Pa. ~~to~~ to lower its standards and another EPA criteria rejected because it would increase the standards? Either way is selective science and is not one of the factors in the multi step process of regulatory basics initiatives to evaluate Pa. regulations. No science is bad science because science is a theory until it is proven or demonstrated. My home regiofn is harmed not by science but by mitigation,

remediation, or lack of enforcement. It is an area where homes are being obviously destroyed by blasting within the legal limits. Where whole families are ailing with serious diseases from odors emanating from an operation operating according to regulations. Where dubious regulations, not science told town people well water was safe, just take a shower with the windows open. Where residents ^{were told} not to spend time in their basements when inversions or odors were heavy. Obviously some legal limits are not reaching ^{the} primary goals of the DEP -- protecting Pa. citizens and ^{of} their environment.

In keeping with Gov. Ridges interest in encouraging pollution prevention EQB has deleted the existing mandatory pollution prevention language and replaced it with language that does not require but suggests and encourages pollution prevention. Pa environment needs enforcement not encouragement.



Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building

P. O. Box 2063

Harrisburg, PA 17105-2063

August 1, 2000

Original: 1975

The Secretary

717-787-2814

Mr. Robert C. Nyce
Executive Director
Independent Regulatory Review Commission
14th Floor, Harrisstown II
333 Market Street
Harrisburg, PA 17101

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2000 AUG - 1 PM 12: 11
INDEPENDENT REGULATORY REVIEW COMMISSION

Re: Withdrawal of Final Rulemaking – Water Quality Amendments
(Chs. 92, 93, 95, 96 & 97) (#7-338)

Dear Bob:

To address a numbering error and pages that were inadvertently missing from the July 11, 2000, submittal of final-form regulation #7-338, I hereby withdraw the regulation from the Commission's August 10 public meeting agenda.

A corrected copy of the final-form regulation will be transmitted separately today for consideration at the Commission's August 24 public meeting. The deadline for the Senate and House Environmental Resources and Energy Committees to act will be August 21.

Please call me or Sharon Freeman, Regulatory Coordinator, at 783-1303 if you have any questions concerning this withdrawal.

Sincerely,

James M. Seif
Secretary

cc: The Honorable Mary Jo White
The Honorable Raphael J. Musto
The Honorable Arthur D. Hershey
The Honorable Camille George
Thomas A. Hutton, Esq.
David J. DeVries, Esq.

FAX



Pennsylvania Department of Environmental Protection

Date/Time: 10/14 - 11:00

Number of pages including cover sheet: 5

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From: Shara J...

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REMARKS: Urgent For your review Reply ASAP Please Comment

*Advisory Committee membership lists
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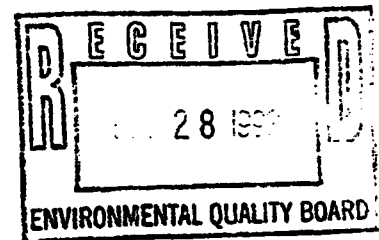
Yvonne Widman RN, MHS
1602 Buttonwood Rd
Flourtown, Pa. 19031

Environmental Quality Board
PO Box 8477
Harrisburg, Pa. 17105

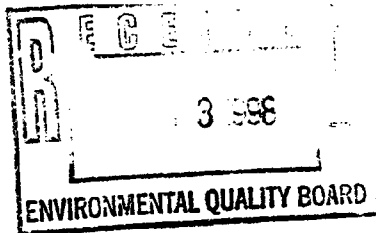
I am writing to voice my opposition to the newly proposed water quality standards and toxics strategy.
The DEP's proposed toxics strategy is too weak and will allow even more toxic discharges into our waters.
I want these new standards stopped! I urge you to strengthen the standards that protect our water, not weaken them.

Sincerely,

Yvonne Widman RN MHS
Yvonne Widman RN, MHS



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981021 10 AM 3:55
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900 Melrose Avenue
Melrose Park, PA 19027
October 8, 1998

Environmental Quality Board
PO Box 8477
Harrisburg, PA, 17105

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Dear Sirs:

We urge you to strengthen, not weaken the standards that protect our water. Please do not roll back the standards and make it easier to discharge toxins into our water or allow quick general permits for toxic releases.

The strategy proposed by the DEP is too weak and we urge you to stop these new standards.

Sincerely,

Joseph Falso
Joseph Falso
Katherine Falso

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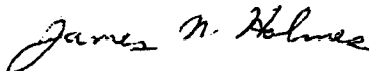
Dear Sirs,

I am writing this letter as a response to your proposed changes in the standards you place on Pennsylvania's waterways. It concerns me greatly that you would give a "free pollution ticket" to people just because you don't know the exact levels in which known toxins become dangerous. Please don't wait for the bureaucracy of the Federal Government to establish guidelines that you can use to protect Pennsylvania residents.

I understand that the toxins you will no longer regulate include cobalt and formaldehyde, along with some 18 other chemicals plus an additional 50 that you propose to reduce your restrictions on. Don't let this state become another New Jersey where my wife and I lived with an uncertainty as to the quality of our environment. Our 3 month old son does not need anymore challenges than what already exist!

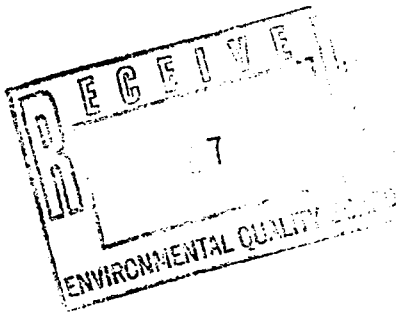
Please reconsider and at the very minimum, delay the proposed changes to the water regulations. Something of the severity which you propose to do might best be brought before the voting people of Pennsylvania. If you, the *Environmental Protection Agency*, do not maintain and place limits on these pollutants, *Who will?*

Sincerely,



James N. Holmes

James N. Holmes
55 E. Crestlyn Dr.
York, PA 17402



GPU Generation, Inc.
1001 Broad Street
Johnstown, PA 15907
Tel 814-533-8111

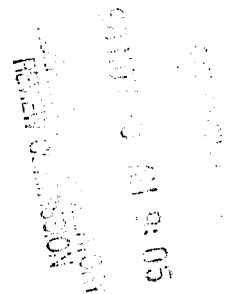
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October 26, 1998

OVERNIGHT MAIL

Environmental Quality Board
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Harrisburg, PA 17101-2301



**RE: Comments on Proposed Amendments
Chapters 92, 93, & 96 Water Quality Regulations
Regulatory Basics Initiative**

Dear Environmental Quality Board:

The following are comments related to the subject's proposed RBI amendments from GPU Generation, Inc. GPU Generation, Inc. is the electric generating operating company of GPU, Inc. GPU Generation Inc. operates 87 generating units producing around 10,000 megawatts of electricity in Pennsylvania, Maryland and New Jersey. Most of these facilities are in the Commonwealth.

Chapter 92:

- In regards to the definition of "Natural Quality", the intent is clear that this relates to conditions that have not been influenced by human activity. However, many Pennsylvania streams have had Acid Mine Drainage problems for over 100 years, and there has been limited corrective action to mitigate a large percentage of those problems. In situations where the prospects of any improvements on an AMD impacted stream are negligible over the permit discharge period, consideration should be given in recognizing that this is a background condition that is analogous to a natural occurring condition.
- In regards to 92.2(d)(3), the citation requires a BAT of .5 mg/l for total residual chlorine. This limit is more restrictive than the BAT limit of 1.2 mg/l recently established by the Department for small sewage treatment plants under 10,000 gpd. It is assumed that the Departments intention is to consider small sewage treatment plants as 'facility specific'.

- We support 92.13(a), and its restriction on only opening permit issues directly related to a permit modification.
- In regards to 92.21(b)(3), the citation requires newspaper notice for permit applications. This should be limited to major permit modifications only.
- We support 92.41(g) and its requirement to monitor "Stormwater Associated with Industrial Activity" on a case-by-case basis.

Chapter 93:

- In regards to 93.3 Table -1, its continuation of the statewide potable water use, and addition of fish consumption as a statewide use. The recent changes to Chapter 93 related to the Great Lakes Initiative added the ability to have site-specific human health criteria. This would enable a discharger to account for the lack of a potable water withdrawal on their stream segment. However, the addition of fish consumption as a statewide use could negate site-specific human health criteria as an option. Also, fish consumption is already a component of the human health criteria, and the EPA has proposed increasing the consumption value in their "Draft Water Quality Criteria Methodology Revisions," contained in the August 14, 1998 Federal Register. These changes will result in even lower human health criteria, thus making the affect of the potable water and fish consumption uses more profound.

Chapter 96:

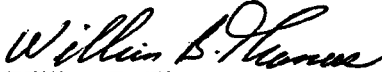
- In regards to 96.5, and Total Maximum Daily Loads. First, the department needs specific guidance on the development, allocation, and trading of TMDL's. It is our understanding that the EPA is working on such guidance, but it would still need to be adopted by the Department in a timely and open fashion. Second, the use of 'steady state' models and Q_{7-10} flow conditions as the regulatory pre-approved method for TMDL's is not the optimum scientific approach. Non-point sources are typically problems during wet weather conditions, and many point source flows increase significantly during wet weather. Water Quality Based Effluent limits are already based on low flow conditions, so this would create a TMDL that is even lower. It also is not applicable to the typical case where non-point sources play a significant role. We support the ability to use alternate methods, but by listing a methodology that is inappropriate for most situations, the Department is just putting off the inevitable argument as to what is the applicable science.

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October 26, 1998
Page 3

- In regards to 96.6(b) & (c), and the 2 °F per hour thermal shock criteria and the 316(a) thermal variance contained in the Clean Water Act. This citation is separating the 2 °F criteria from a 316(a) variance. This contradicts the language of the CWA 316(a) variance, the EPA guidance on the application of the variance, and one of the primary objectives of the Regulatory Basic's Initiative.

We appreciate the opportunity to provide comments on these amendments.

Sincerely,


William B. Thomas
Engineer Sr. II

cc: R. P. Lantzy
K. M. Kunkel - GPU Energy
I.R.R.C.
Reg/Leg file

w:\wbth20regcomm.wpd

10/26/98
Chairman James M. Seif
Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

Cannan Family
102 Black Friar Rd.
Rosemont, PA 19010
Phone/Fax: 610-525-3755
Email: davecannan@aol.com

Dear Mr. Seif:

As concerned citizens, regular voters, and watershed advocates, our family is commenting on the proposed changes to the water quality regulations as described in the August 29, 1998, Pennsylvania Bulletin.

Chapter 92: NPDES Permitting, Monitoring, and Compliance.

92.2d(3) The technology-based limit (0.5 mg/l) for total residual chlorine is proposed to be retained.

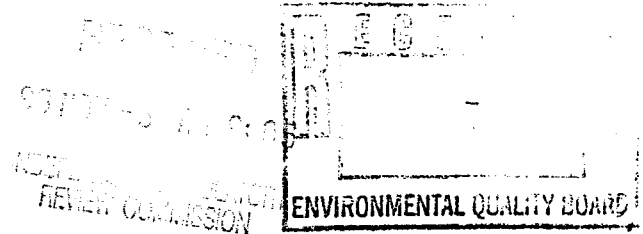
We support keeping the cap, since chlorine, although needed for disinfection purposes, is so toxic to aquatic life. Its discharge should be limited even if plenty of dilution exists.

92.51(6) **We recommend this "narrative criterion" standard condition needs to be strengthened, stating simply that dischargers should not be permitted to violate water quality standards by their discharges.**

92.61 **We suggest an additional public comment period is needed when an applicant intends to submit an NPDES (discharge permit) application, as recommended by the Water Resources Advisory Committee. We believe it is important to know about specific public water quality concerns before all the calculations have been done and a draft permit published.**

92.81 **We feel this is a VERY BAD SECTION. "General" permits (permits with little or no oversight) would be allowed in High Quality streams, waters that are already "impaired," and would allow the discharge of toxic materials while loosening the documentation requirements.**

We feel very strongly that DEP needs to retain the documentation provision to ensure water quality standards will not be violated by the use of general permits and the proposed changes should be dropped!



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Chapter 93: Water Quality Standards.

93.4 DEP presently protects all our waters as potential "potable water" sources. However, DEP proposes deleting warm water fishes as a statewide water use. DEP states that aquatic life will be protected for each stream listed in the stream list, but this leaves no basement protection for any stream that for one reason or another doesn't get on the list. It just makes sense that a basement level of protection should be afforded, and warm water fishes should be retained as a statewide water use.

Because it gives our waters additional protection, we recommend the provision should be retained.

93.5(e) The current wording of this section spells out that there will be no mixing zones - "Criteria necessary to protect other designated uses shall be met at the point of wastewater discharge." This section was moved to Chapter 96, but this mixing zone statement was deleted. DEP currently allows mixing zones for every discharge, but this policy has never come under public scrutiny.

We recommend DEP should retain and implement this language, or if DEP wants to institute a mixing zone policy, then it should go out to public comment and be incorporated into policy.

93.6 One area not covered by Pennsylvania regulations is instream flow and habitat.

Because PA has no comprehensive water resources management, we recommend DEP develop instream flow and habitat criteria and incorporate them into this chapter of regulation. We also recommend that DEP include language here protecting instream flows and instream habitat.

Other states have such protection, and the U.S. Supreme Court has ruled that states are permitted to protect instream flows.

Chapter 96: Water Quality Standards Implementation.

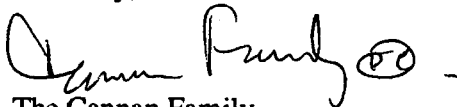
96.4 This section gives DEP authority to approve effluent trading, with only minimal requirements. DCVA's position is that trading cannot be permitted until there is a mechanism to enforce it. Since we don't have enforceable controls on nonpoint pollution in PA, a trade whereby pollution reductions are allocated to nonpoint sources from point sources cannot be inserted into permit conditions and enforced. DCVA feels this section on Total Maximum Daily Loads (TMDLs, which deal with how clean up will occur on waters determined to be impaired) completely ignores nonpoint source problems. The design conditions (for calculating discharge limits) are listed for low flow conditions, but are silent on how modeling will be done for rain-induced pollution. In addition, it is unclear whether the design flows apply only for impaired waters.

We recommend that DEP should include a separate section for modeling done on waters that are not impaired, should incorporate nonpoint sources into their modeling in particular for impaired waters, and should include how clean up activities dealing with nonpoint source pollution will be implemented.

The Cannan family is dedicated to working with government agencies and local environmental groups to protect and preserve our valuable watershed resources. We know firsthand that high quality water resources means clean water for more economic growth and protection of human health in Pennsylvania.

Thus, we hope that the EQB will make the above and any other changes to improve our water quality, and not relax protection of it.

Sincerely,

A handwritten signature in cursive script that reads "The Cannan Family" followed by a circled "E" and a dash.

The Cannan Family
Edward
Grace
Jane
David
Paul
John
Marc

cc: Greg Vitali, State Representative
Delaware County Commissioners

Summary of comments from Cannan family concerning proposed changes to the water quality regulations as described in the August 29, 1998, Pennsylvania Bulletin.

Chapter 92: NPDES Permitting, Monitoring, and Compliance.

92.2d(3): We support keeping the cap, since chlorine, although needed for disinfection purposes, is so toxic to aquatic life. Its discharge should be limited even if plenty of dilution exists.

92.51(6): We recommend this "narrative criterion" standard condition needs to be strengthened, stating simply that dischargers should not be permitted to violate water quality standards by their discharges.

92.61: We suggest an additional public comment period is needed when an applicant intends to submit an NPDES (discharge permit) application, as recommended by the Water Resources Advisory Committee. We believe it is important to know about specific public water quality concerns before all the calculations have been done and a draft permit published.

92.81: We feel very strongly that DEP needs to retain the documentation provision to ensure water quality standards will not be violated by the use of general permits and the proposed changes should be dropped!

Chapter 93: Water Quality Standards.

93.4: Because it gives our waters additional protection, we recommend the provision should be retained.


93.5(e): We recommend DEP should retain and implement this language, or if DEP wants to institute a mixing zone policy, then it should go out to public comment and be incorporated into policy.

93.6: Because PA has no comprehensive water resources management, we recommend DEP develop instream flow and habitat criteria and incorporate them into this chapter of regulation. We also recommend that DEP include language here protecting instream flows and instream habitat.

Chapter 96: Water Quality Standards Implementation.

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Cannan Family (Edward, Grace, Jane, David, Paul, John, Marc)
102 Black Friar Rd.
Rosemont, PA 19010
610-525-3755

 10/24/98

10/26/98
Chairman James M. Seif
Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

RECEIVED
98 OCT 27 AM 10:10
SECRETARY'S OFFICE
REVENUE COMMISSION

David Cannan
Vice-President
Darby Creek Valley Association (DCVA)
P.O. Box 732
Drexel Hill, PA 19026
Phone/Fax: 610-789-1814

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Dear Mr. Seif:

On behalf of our 135 members, I am commenting on the proposed changes to the water quality regulations as described in the August 29, 1998, Pennsylvania Bulletin.

Chapter 92: NPDES Permitting, Monitoring, and Compliance.

92.2d(3) The technology-based limit (0.5 mg/l) for total residual chlorine is proposed to be retained.

DCVA supports keeping the cap, since chlorine, although needed for disinfection purposes, is so toxic to aquatic life. Its discharge should be limited even if plenty of dilution exists.

92.51(6) **DCVA recommends this "narrative criterion" standard condition needs to be strengthened, stating simply that dischargers should not be permitted to violate water quality standards by their discharges.**

92.61 **DCVA suggests an additional public comment period is needed when an applicant intends to submit an NPDES (discharge permit) application, as recommended by the Water Resources Advisory Committee. DCVA believes it is important to know about specific public water quality concerns before all the calculations have been done and a draft permit published.**

92.81 **DCVA feels this is a VERY BAD SECTION. "General" permits (permits with little or no oversight) would be allowed in High Quality streams, waters that are already "impaired," and would allow the discharge of toxic materials while loosening the documentation requirements.**

DCVA feels very strongly that DEP needs to retain the documentation provision to ensure water quality standards will not be violated by the use of general permits and the proposed changes should be dropped!

Chapter 93: Water Quality Standards.

93.4 DEP presently protects all our waters as potential "potable water" sources. However, DEP proposes deleting warm water fishes as a statewide water use. DEP states that aquatic life will be protected for each stream listed in the stream list, but this leaves no basement protection for any stream that for one reason or another doesn't get on the list. It just makes sense that a basement level of protection should be afforded, and warm water fishes should be retained as a statewide water use.

Because it gives our waters additional protection, DCVA recommends the provision should be retained.

93.5(e) The current wording of this section spells out that there will be no mixing zones - "Criteria necessary to protect other designated uses shall be met at the point of wastewater discharge." This section was moved to Chapter 96, but this mixing zone statement was deleted. DEP currently allows mixing zones for every discharge, but this policy has never come under public scrutiny.

DCVA recommends DEP should retain and implement this language, or if DEP wants to institute a mixing zone policy, then it should go out to public comment and be incorporated into policy.

93.6 One area not covered by Pennsylvania regulations is instream flow and habitat.

Because PA has no comprehensive water resources management, DCVA recommends DEP develop instream flow and habitat criteria and incorporate them into this chapter of regulation. DCVA also recommends that DEP include language here protecting instream flows and instream habitat.

Other states have such protection, and the U.S. Supreme Court has ruled that states are permitted to protect instream flows.

Chapter 96: Water Quality Standards Implementation.

96.4 This section gives DEP authority to approve effluent trading, with only minimal requirements. DCVA's position is that trading cannot be permitted until there is a mechanism to enforce it. Since we don't have enforceable controls on nonpoint pollution in PA, a trade whereby pollution reductions are allocated to nonpoint sources from point sources cannot be inserted into permit conditions and enforced. DCVA feels this section on Total Maximum Daily Loads (TMDLs, which deal with how clean up will occur on waters determined to be impaired) completely ignores nonpoint source problems. The design conditions (for calculating discharge limits) are listed for low flow conditions, but are silent on how modeling will be done for rain-induced pollution. In addition, it is unclear whether the design flows apply only for impaired waters.

DCVA recommends that DEP should include a separate section for modeling done on waters that are not impaired, should incorporate nonpoint sources into their modeling in particular for impaired waters, and should include how clean up activities dealing with nonpoint source pollution will be implemented.

DCVA is a non profit volunteer organization. Our members are dedicated to working with government agencies to protect and preserve our valuable watershed resources. We know firsthand that high quality water resources means clean water for more economic growth and protection of human health in Pennsylvania.

Thus, we hope that the EQB will make the above and any other changes to improve our water quality, and not relax protection of it.

Sincerely,

A handwritten signature in black ink, appearing to read "David Cannan", followed by a long, horizontal, wavy line that extends to the right.

David Cannan, Vice-President

Summary of comments from 135-member Darby Creek Valley Association (DCVA) concerning proposed changes to the water quality regulations as described in the August 29, 1998, Pennsylvania Bulletin.

Chapter 92: NPDES Permitting, Monitoring, and Compliance.

92.2d(3): DCVA supports keeping the cap, since chlorine, although needed for disinfection purposes, is so toxic to aquatic life. Its discharge should be limited even if plenty of dilution exists.

92.51(6): DCVA recommends this "narrative criterion" standard condition needs to be strengthened, stating simply that dischargers should not be permitted to violate water quality standards by their discharges.

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David Cannan
Vice-President
Darby Creek Valley Association
P.O. Box 732
Drexel Hill, PA 19026


10/24/98

ORIGINAL: 1976
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E-MAILED: Wilmarth
ewett
Sandusky
Legal

From: wbthomas@gpu.com
Sent: Monday, October 26, 1998 2:25 PM
To: IRRRC
Cc: jlocher@gpu.com
Subject: Water Reg. Comments

Attached are comments on the proposed rulemaking for Chapters 92, 93 & 96 from GPU Generation, Inc. These comments were sent to the EQB today by overnight mail. The document is in Word 7.0 format.

William B. Thomas
Engineer Sr. II

(See attached file: h20regcomm.doc)



h20regcomm.doc

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REVIEW COMMISSION

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REVIEW COMMISSION

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E-MAILED: Wilmarth
Jewett
Sandusky
Legal

Writer's Direct Dial Number
814-533-8583

October 26, 1998

OVERNIGHT MAIL

Environmental Quality Board
15th Floor, Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17101-2301

**RE: *Comments on Proposed Amendments
Chapters 92, 93, & 96 Water Quality Regulations
Regulatory Basics Initiative***

Dear Environmental Quality Board:

The following are comments related to the subject's proposed RBI amendments from GPU Generation, Inc. GPU Generation, Inc. is the electric generating operating company of GPU, Inc. GPU Generation Inc. operates 87 generating units producing around 10,000 megawatts of electricity in Pennsylvania, Maryland and New Jersey. Most of these facilities are in the Commonwealth.

Chapter 92:

- In regards to the definition of "Natural Quality", the intent is clear that this relates to conditions that have not been influenced by human activity. However, many Pennsylvania streams have had Acid Mine Drainage problems for over 100 years, and there has been limited corrective action to mitigate a large percentage of those problems. In situations where the prospects of any improvements on an AMD impacted stream are negligible over the permit discharge period, consideration should be given in recognizing that this is a background condition that is analogous to a natural occurring condition.
- In regards to 92.2(d)(3), the citation requires a BAT of .5 mg/l for total residual chlorine. This limit is more restrictive than the BAT limit of 1.2 mg/l recently established by the Department for small sewage treatment plants under 10,000 gpd. It is assumed that the Department's intention is to consider small sewage treatment plants as 'facility specific'.

Environmental Quality Board

October 26, 1998

Page 2

- We support 92.13(a), and its restriction on only opening permit issues directly related to a permit modification.
- In regards to 92.21(b)(3), the citation requires newspaper notice for permit applications. This should be limited to major permit modifications only.
- We support 92.41(g) and its requirement to monitor "Stormwater Associated with Industrial Activity" on a case-by-case basis.

Chapter 93:

- In regards to 93.3 Table -1, its continuation of the statewide potable water use, and addition of fish consumption as a statewide use. The recent changes to Chapter 93 related to the Great Lakes Initiative added the ability to have site-specific human health criteria. This would enable a discharger to account for the lack of a potable water withdrawal on their stream segment. However, the addition of fish consumption as a statewide use could negate site-specific human health criteria as an option. Also, fish consumption is already a component of the human health criteria, and the EPA has proposed increasing the consumption value in their "Draft Water Quality Criteria Methodology Revisions," contained in the August 14, 1998 Federal Register. These changes will result in even lower human health criteria, thus making the affect of the potable water and fish consumption uses more profound.

Chapter 96:

- In regards to 96.5, and Total Maximum Daily Loads. First, the department needs specific guidance on the development, allocation, and trading of TMDL's. It is our understanding that the EPA is working on such guidance, but it would still need to be adopted by the Department in a timely and open fashion. Second, the use of 'steady state' models and Q₇₋₁₀ flow conditions as the regulatory pre-approved method for TMDL's is not the optimum scientific approach. Non-point sources are typically problems during wet weather conditions, and many point source flows increase significantly during wet weather. Water Quality Based Effluent limits are already based on low flow conditions, so this would create a TMDL that is even lower. It also is not applicable to the typical case where non-point sources play a significant role. We support the ability to use alternate methods, but by listing a methodology that is inappropriate for most situations, the Department is just putting off the inevitable argument as to what is the applicable science.

Environmental Quality Board
October 26, 1998
Page 3

- In regards to 96.6(b) & (c), and the 2 °F per hour thermal shock criteria and the 316(a) thermal variance contained in the Clean Water Act. This citation is separating the 2 °F criteria from a 316(a) variance. This contradicts the language of the CWA 316(a) variance, the EPA guidance on the application of the variance, and one of the primary objectives of the Regulatory Basic's Initiative.

We appreciate the opportunity to provide comments on these amendments.

Sincerely,

William B. Thomas
Engineer Sr. II

cc: R. P. Lantzy
K. M. Kunkel - GPU Energy
I.R.R.C.
Reg/Leg file

w:\wbth20regcomm.wpd

OVERNIGHT MAIL

Electric Generation Association
301 APC Building
800 North Third Street
Harrisburg, PA 17102
October 26, 1998

Environmental Quality Board
15th Floor, Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17101-2301

***RE: Comments on Proposed Amendments
Chapters 92, 93, & 96 Water Quality Regulations
Regulatory Basics Initiative***

Dear Environmental Quality Board:

The Electric Generation Association (EGA) appreciates the opportunity to provide comments in response to the Environmental Quality Board's proposal to amend the Water Quality regulations, as published on August 29, 1998 in 28 *Pennsylvania Bulletin* 4431 (*attached is a one page summary of our comments*).

EGA is the trade association of seven electric generating companies that provide electric power to the mid-Atlantic region. Our member companies are:

Allegheny Power
Duquesne Light Company
FirstEnergy Corp
GPU Generation, Inc.
PECO Energy Company
PP&L, Inc.
UGI Utilities, Inc.

Together, these companies generate approximately ninety-four percent of Pennsylvania's electric power needs.

In general, EGA supports the efforts of the Department to update and streamline the Commonwealth's Water Quality regulations. Our comments will focus on those issues of specific interest to our organization. The comments are segregated by chapter and are as follows:

Chapter 92:

- The EGA would like to comment on the definition of "Natural Quality", contained in 92.1. The intent is clear that this relates to conditions that have not been influenced by human activity. However, many Pennsylvania streams have had historical Acid Mine Drainage problems going back in some cases over 100 years. There also has been limited corrective action to mitigate a large percentage of those problems. In situations where the prospects of any improvements on an AMD impacted stream are negligible over a permit discharge period, consideration should be given in recognizing that this is a background condition that is analogous to a natural occurring condition.
- The EGA is concerned with the required BAT limit of .5 mg/l for total residual chlorine contained in 92.2(d)(3). This limit is more restrictive than the default BAT limit of 1.2 mg/l, recently established by the Department for small sewage treatment plants with flows below 10,000 gpd. The EGA hopes that the Departments intention is to continue to consider the special case of small sewage treatment plants in their 'facility specific' evaluations that use the 1.2 mg/l limit for Best Professional Judgement.
- The EGA supports 92.13(a) and its restriction on only opening permit issues directly related to the scope of the requested permit modification.
- The EGA would like to comment on 92.21(b)(3), suggesting that the PaDEP limit newspaper publication requirements to major modifications only. Permit renewals for facilities that have not substantively changed their operations/discharges should not be required to publish special notices in the local papers

Chapter 93:

- Chapter 93.3 Table -1, continues to include the statewide potable water use, and in addition, adds fish consumption as a statewide use. The EGA is concerned with the compound effect of too many safety factors, and their relationship to the overall risk. The December 1997 changes to Chapter 93 related to the Great Lakes Initiative added the ability to have site-specific human health criteria. This enables a discharger to account for the lack of a potable water withdrawal on their stream segment. This was a change that the EGA strongly supports, since it enables the use of risk assessment in the application of human health discharge limits. However the addition of fish consumption as a statewide use creates an additional factor in obtaining a site-specific standard for human health criteria. A factor that needlessly complicates an already complicated process.

These two statewide designated uses add additional levels of conservatism to a process that already contains a number of conservative safety factors, such as criteria calculation methodology, and the low flow conditions used to calculate permit limits. In addition the Department must recognize the future impact of lower human health criteria resulting from the EPA proposed increase in the fish consumption value and use of bioaccumulation factors, which adds further conservatism and environmental protection to the process. These changes are contained in EPA's "Draft Water Quality Criteria Methodology Revisions," found in the August 14, 1998 Federal Register.

Chapter 96:

- The EGA is concerned that Section 96.4(h) as proposed will result in extremely conservative and unrealistic TMDLs that are likely to impose severe economic hardship in certain watersheds where they are developed and implemented. This section specifies that "steady state modeling at the design flow conditions listed in Table 1 shall be used to develop TMDLs, WLAs and LAs when it is determined that continuous point sources are the primary cause of a violation of the water quality protection levels specified in section 96.3, unless an alternate method is approved by the Department under subsection (g)" (pollution trading). Steady state modeling is unrealistic because it applies one design flow condition that occurs less than one percent of the time to model a dynamic system whose flows are continually changing. The mass of a constituent is calculated by multiplying the volume of water to the concentration of chemical of concern. By contrast a dynamic or probabilistic model assumes that both volume and concentration change over time. Clearly, no river system maintains a steady state flow condition, therefore a dynamic model which incorporates changing flow conditions and calculates the probability of the worst case conditions occurring simultaneously is more predictive of actual conditions.

EGA understands that a steady state model is much easier and less expensive to apply than a dynamic model. However, we do not believe accuracy should be compromised merely for the sake of minimizing complexity and administrative costs. The Department is obligated to develop the most realistic and accurate TMDLs possible in light of the potential economic burden the TMDL program will have on the Commonwealths' regulated community. We therefore strongly urge the Department not to restrict TMDL development to steady state modeling but to use a dynamic approach in accordance with EPA's Technical Support Document for Water Quality-Based Toxics Control (TSD).

Environmental Quality Board
October 26, 1998
Page 4

The EGA appreciates this opportunity to provide comments on these important regulatory changes, and respectfully request your consideration of them.

Sincerely,

William B. Thomas
Chairperson
EGA Water Quality Subcommittee

cc: I.R.R.C.

**ELECTRIC GENERATION ASSOCIATION
CHAPTER 92, 93 & 96
COMMENT SUMMARY**

Chapter 92:

1. The EGA believes that background water quality conditions resulting from long term Acid Mine Drainage (AMD), should be analogous to "Natural Background" conditions when there is no near term prospects of correcting the AMD.
2. The EGA believes the .5 mg/l Total Residual Chlorine limit should not apply to small sewage treatment plants below 10,000 gpd. The current 1.2 mg/l limit or Best Professional Judgement limits should continue to apply.
3. The EGA supports the limitation on what issues can be addressed during a permit modification.
4. The EGA believes that a newspaper notice should only be required for major permit modifications.

Chapter 93:

1. The EGA believes the addition of a statewide designated use for "Fish Consumption," adds unnecessary conservatism to an already conservative criteria process, that will be even more conservative when EPA modifies the human health criteria methodology. This will also complicate the ability to receive the new site-specific human health standard, which was added in the December 1997 final rulemaking.

Chapter 96:

1. The EGA believes that basing TMDL's on unrealistic steady-state models at low flow conditions is inappropriate. Although a dynamic model is complex and costly to administer, it provides the most accurate representation of a watershed's condition, and should therefore be the basis for TMDL calculations.

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Environmental Quality Board:

I would like to tell you that we need your help to oppose the new proposed water quality standards and toxics strategy. You must strengthen the standards that protect our water, not weaken them. DEF proposed toxics strategy is too weak and will allow even more toxic discharges into our water. I want these new standards stopped.

Please Help!

Sincerely
Mary Lou Biedrzycki
177 Mc Alester Dr.
Pittsburgh, Penna. 15223
412-372-4322

Please let me know what you are going to do about our clean water.

Thank you



Tracy Koontz
Julie Koontz
114 Parkview Rd
Cheltenham PA 19012-1310

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98 OCT 27 PM 1:48

INDEPENDENT REGULATORY
REVIEW COMMISSION

Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105

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To Whom It May Concern,

I am writing to tell you that I oppose the new proposed water quality standards and toxics strategy from the Department of Environmental Protection. I urge you to strengthen the standards that protect our water, not weaken them. The DEP's proposed toxics strategy is too weak and will allow even more toxic discharges into our water. I feel that these new standards should be stopped.

Could you please write to me and let me know what your plans are? Thank you.
I appreciate your time.

Julie Koontz

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INDEPENDENT
REVIEW COMMISSION

To,
Dept. of Environmental Protection and
Environmental Quality Board,

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This letter is to voice that I OPPOSE
the new proposed water quality standards
and topics strategy. You need to strengthen
the standards that protect our water, not
weaken them!

The DEP's proposed topics strategy is
too weak and it will allow even more
toxic discharges into our waters. I as a
tax paying citizen want these new standards
STOPPED!

I request a response to this letter with
the reason why you want to poison our voters
and in turn poison our children and wildlife
We are slowly destroying our world for the
sake of money!

Concerned Citizen
Lisa Caputo

Send response to:
Lisa Caputo
206 Bryant Drive
Pittsburgh PA 15235

Freeman, Sharon

From: estevens(SMTP:estevens@postoffice.ptd.net)
Sent: Tuesday, October 27, 1998 11:19 PM
To: REGCOMMENTS
Subject: comments on water quality regulations

ORIGINAL: 1975
MIZNER
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FROM: League of Women Voters of Pennsylvania
226 Forster Street, Harrisburg, PA 17102

TO: Environmental Quality Board
P.O. Box 8477, Harrisburg, PA 17105-8477

DATE: October 27, 1998

RE: Proposed Amendments to Chapters 92, 93, 95 and 97 and new Chapter 96
(Regulatory Basics Initiative for Water Quality)

Dear Board Members:

The Department of Environmental Protection has proposed extensive amendments to Pennsylvania's water quality protection program as part of the "Regulatory Basics Initiative." Those amendments were published in the PA Bulletin on August 29 with a comment deadline of October 28.

Because of the complexity of the changes and the short time period available for public comment, the League of Women Voters of Pennsylvania finds it necessary to limit its comments to an area of the regulations that has long concerned us, the need for improved public involvement in Department decisions that affect water quality.

First, we would like to go on record as requesting an extension of the time period for comment and some effort on the part of the Department to better explain these proposed changes to the public. The water quality program is a complex one. Many of these changes improve it, but some may weaken protection. The public needs to understand what those changes are, and why they are made.

The League of Women Voters has long called for improved public participation in this program. The water quality program has what may be the weakest public involvement program of any of the Department's programs, probably because the federal Clean Water Act and PA's Clean Streams Law were the first major environmental programs to be developed. Public participation requirements have been improving over the years, the water protection program needs to catch up.

During the review of earlier drafts of these regulations, the Water Resources Advisory Committee discussed using the Regulatory Basics Initiative process to improve on the regulations to provide better opportunity for public involvement in the water quality program. As a result of that discussion, the introduction to the proposed regulations asked specifically for public comment on "an additional opportunity for public comment during the NPDES permitting process." Although this is a very narrow description of the discussions that took place at the WRAC meetings, we will address this specific area.

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The only public notice requirements for NPDES permitting can be found in Chapter 92, section 92.61 and are unchanged from present requirements. The present, and future, requirement is that public notice of a NPDES permit application shall be published by the Department in the PA Bulletin and posted by the applicant "near the entrance to the premises ... and in nearby places."

The public notice must include "a statement of the tentative determination to issue or deny an NPDES permit..."

This means that no public notice is given until after DEP has made a "draft" decision on the permit. Therefore the only opportunity the public may have to provide information that might affect the Department's decision will occur after the Department has made a preliminary decision. This assumes that the Pa Bulletin is part of everyone's weekly reading, since the comment period mandated by the regulations is 30 days. It also assumes that permit reviewers will be open to new information after a "draft" decision has been made.

There is no notice published locally other than that "posted at the premises ..and in nearby places."

The Department may say that the public is informed of plans for proposed NPDES permits during the municipal sewage facilities planning phase (commonly known as Act 537 plans). However, this is such a misunderstood process that it cannot be construed as a true opportunity for public involvement. In addition, sometimes years can pass between Act 537 plan development and the actual NPDES permit application. Communities may change, technologies change, and environmental goals may change in those ensuing years. In addition, industrial waste discharges are not included in Act 537 plans.

Many communities have found, to their dismay, that their land use planning is being done, not by their planning commissions or their elected officials, but by authorities or private entities, building treatment plants and extending utility lines. Frequently, suburban sprawl is the result of these actions. With land use and sprawl issues topping the political agenda, it is time to improve the decision making processes that affect those issues.

During the Department's "Reg-Neg" process, (on the anti-degradation program) all parties agreed to the need to improve public notice and participation in the NPDES permitting process. One of those recommendations proposed that notice of the intent to apply for a NPDES permit be placed in a local newspaper, much as is required for many other permit applications. Other recommendations called for opportunities for public meetings and hearings prior to a tentative decision being made and longer periods for public comment (presently only 30 days).

The LWVPA believes that better public involvement in the NPDES permitting process will better protect our waterways and improve our communities.. We urge you to review the recommendations of the Reg-Neg committee (endorsed by both the "conservation" and "regulated community" stakeholders) and make a commitment to meaningfully involve the public in NPDES permitting decisions. We also urge you to extend the public comment period and better inform the public about the effects of these regulations on the waters of the Commonwealth.

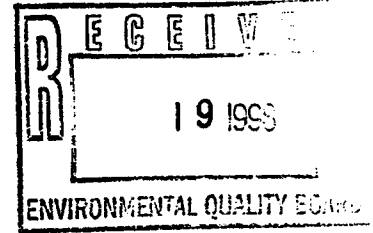
Very truly yours,

Mary Etezady
President

Edith D. Stevens
Water Specialist

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96 OCT 27 PM 1:48
STATE OF PENNSYLVANIA
REVIEW COMMISSION



Edward Brezina
PA DEP
PO Box 8555
Harrisburg, Pa 17105

Dear Edward,

I am writing to urge to strengthen our standards that protect our clean water. As a concerned taxpayer and fellow human being, who wishes to pass a clean environment on my children, I ask you to support a stronger strategy to clean up our water.

Thank you.

Sincerely,

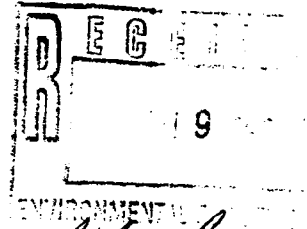
A handwritten signature in cursive script that reads "John D. McGrann".

John D. McGrann

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INDEPENDENT INDUSTRY
REVIEW COMMISSION



To the environmental quality board

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I am opposed to the new proposed water quality standards because it will make it easier to discharge toxics into ~~our~~ water, among weakening standards for 70 toxic chemicals. Please reconsider this! I will anxiously await your reply.

Thank you sincerely

James C. Barrett

DEAR SIR,

YOU MUST STRENGTHEN THE STANDARDS THAT PROTECT
OUR WATER, NOT WEAKEN THEM. I BECAME ILL
FROM DRINKING TAP WATER, DOCTORS TOLD ME NOT
TO DRINK TAP WATER ANY MORE. PLEASE SEND RESPONSE.

OS: ZIWA HANN'S
13086 M-DRIVE
98 OCT 15 PM 12:50
1401 FRANKLIN AVENUE
DOWNSBORO, PA.
19012

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Environmental Quality Board

PO Box 8477

Harrisburg, PA 17105

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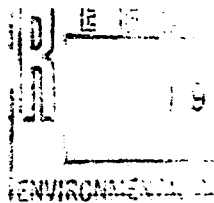
I am against the new proposed
water quality standards and toxic strategy.
I strongly urge that you strengthen
the standards that protect our water.
The DEP's proposed strategy is too
weak.

Thank you for your attention in this
matter.

Sincerely,

Eileen Connolly

yc



99 OCT 27 PM 1:11 Dear the environment Quality Board.

INDEPENDENT QUALITY
REVIEW COMMISSION

ORIGINAL: 1975
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Sandusky
Legal

My name is Donniel Ramsey.
My Address is 125 Poplar Ridge Dr.
15235. I AM writing because of the
weakening of the laws that regulate
the dispense of toxics substances
in our water. Don't you know what
you are doing to people and there family?
I think you are making a big mistake
Please strengthen this laws so our
water will not be polluted no more
then what they are. Please I don't
want to be sick.

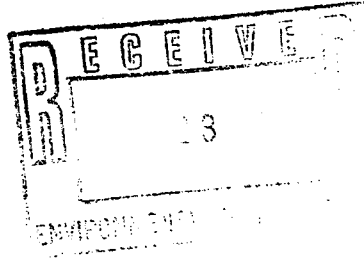
Sincerely
yours,
Donniel Ramsey
Thank you

P.S
Please
Respond
w/B



CITY OF PHILADELPHIA

Law Department
5th Floor Aramark Towers
1101 Market Street
Philadelphia, PA 19107
(215) 685-6118 -Phone
(215) 685-4915 - Fax



October 27, 1998

Environmental Quality Board
Rachel Carson State Office Building
15th Floor
400 Market Street
Harrisburg, PA 17101-2301

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Re: Comments on the Proposed Water
Quality Regulations Appearing in
the Pennsylvania Bulletin,
August 29, 1998

Dear Sir and/or Madam:

Attached please find the comments of the City of Philadelphia's Water Department to the proposed rulemaking regarding water quality issues published in the August 29, 1998 edition of the Pennsylvania Bulletin.

Should you require any additional information regarding these comments I can be reached at (215) 685-6118; fax (215) 685-4915. Thank you for your time and attention.

Sincerely,

DAVID A. KATZ
Counsel to the City of Philadelphia's
Water Department

DAK:bs

10/28/98
MIZNER

City of Philadelphia's Water Department's
Comments on Proposed Water Quality Regulations

The City of Philadelphia Water Department hereby offers the following comments on the proposed water quality regulations published in the August 29, 1998 edition of the Pennsylvania Bulletin:

1) **Section 92.41(b) Monitoring**

The section has two provisions that are extremely objectionable.

The third sentence of this section states that where monitoring detects pollutants not specifically limited by the permit, the permittee shall state how it will eliminate the pollutant from the discharge within the permit term. Nowhere in the present Clean Water Act (CWA) is the elimination of non specifically permitted substances required.

This provision seems to reflect a fundamental misunderstanding of how the entire CWA regulatory scheme works. The application process identifies the vast array of pollutants that are being discharged. If the discharger is subject to nationally promulgated Effluent Limit Guidelines (ELGs) under CWA §306, or secondary treatment standards for POTWs under CWA §301(b)(1)(B), the discharger, of course, complies with these national technology based limits. (Also, if DEP has created any additional state technology effluent limitations of general applicability (total residual chlorine for example) all dischargers will again comply.)

Where the discharger is not subject to ELGs, the permit writer will, using best professional judgment, establish what the permit writer considers to be Best Available Technology Economically Achievable (BAT) for toxic and nonconventional pollutants and Best Conventional Control Technology (BCT) for conventional pollutants. Further, if the stream is impaired, and the permit writer believes that the discharger has the reasonable potential to cause or contribute to the impairment, the permit writer may seek to place into the permit a water quality based effluent limit (WQBEL) for the pollutant causing the impairment.

Thus all the pollutants which can be controlled through the implementation of BAT/BCT and WQBELs are properly regulated. They are not eliminated, but rather they are regulated and controlled. Those pollutants not specifically controlled are allowed to be discharged until such time that an appropriate technological or WQBEL limitation is identified.

Again, the CWA requires that pollutants first be controlled through the application of technologically and economically achievable controls. Going beyond this limit is only authorized when necessary to protect and maintain water quality standards in a stream. Without such a rational structure, hundreds of billions of dollars would be spent, businesses closed, enormous economic and social disruption would occur - for nothing.

While one of the objectives of the CWA, at Section 101(a)(1), was to eliminate the discharge of pollutants by 1985, everyone now realizes that, while an admirable goal, it will clearly not be achieved in our lifetime or probably our children's lifetime. However,

City of Philadelphia's Water Department's
Comments on Proposed Water Quality Regulations

with that said, the CWA has still been the most successful bit of environmental legislation ever passed. It has improved the quality of the nation's waters enormously over the past 26 years and will continue to do so over the next 26 years as we move into total maximum daily loads (TMDLs) and WQBELs. Let's continue in Pennsylvania to follow its recipe for success, and not deviate from its course by adopting requirements which are costly, may be technologically impossible and which are of little or no benefit since they do not address the site specific water quality concerns of Pennsylvania's waterways.

Next, the provision destroys the permit shield. CWA Section 402(k) establishes an absolutely vital permit shield for all NPDES dischargers. Where the discharger identifies pollutants present in its discharge during the application process, those discharged pollutants, even if not specifically controlled by the permit, are deemed in compliance with all discharge requirements of the CWA. This was confirmed by the Court in Atlantic States Legal Foundation, Inc. v. Eastman Kodak Co., 12 F.3rd 353(2nd Cir.), cert. denied, 115 S. Ct. 62(1994) and by EPA guidance memorandum dated July 1, 1994, entitled "Policy Statement on Scope of Discharge Authorization and Shield Associated with NPDES permits" authored by Robert Perciasepe, EPA Assistant Administrator for Water.

Further, technologically and economically speaking, this provision could never be satisfied. It could very well be technologically or fiscally impossible to accomplish the elimination of every minute trace of non-specifically permitted pollutants in a discharge. A POTW probably discharges hundreds or thousands of compounds - virtually every chemical used by every home and industry in the City. What would we then do? Have a technology based permit limit for a thousand compounds? Who would calculate them? Should we eliminate these compounds by telling our citizens they can no longer discharge to the POTW?

Lastly, this provision is not only contrary to the Regulatory Basics Initiative but is contrary to plain good common sense. Spend money, time and effort where it makes sense - on those pollutants which we need to reduce to achieve the designated uses of the water body. Don't waste billions on the noble concept of "eliminating pollution" unless the elimination of the pollution has a real tangible benefit to the waterbody. (As it is, Pennsylvania lacks the necessary resources to accomplish its TMDL program. The TMDL program, which will result in tangible water quality benefits, will be extremely costly for everyone—businesses, citizens and political subdivisions)

Also, while not as objectionable as the third sentence of this paragraph, the first sentence reflects a lack of respect for the permitting process and the due process rights of the discharger. It requires dischargers to monitor all pollutants as frequently as requested by the Department. This essentially amounts to a unilateral permit modification. The discharger has no rights - it simply must comply with DEP's request no matter how costly or onerous the requests may be. This violates due process, DEP's permit amendment procedures and fundamental fairness.

Also, when dischargers receive their permits, they commit resources (money, manpower and time) necessary to fulfill its requirements. We have budgets and

City of Philadelphia's Water Department's
Comments on Proposed Water Quality Regulations

authorized expenditures. We, therefore, need to be able to rely on the permit, or the permit amendment process, for budgeting necessary to meet all lawful permit requirements.

2) 92.21(a)(g)(vi) Combined Sewer Overflows (CSO)

This provision is so bad, and so contrary to federal law and CSO guidance, that we can only assume that the word "and" was mistakenly included in place of the word "or".

The provision reads that as part of the NPDES application the CSO discharger shall submit:

"(vi) A description of a long-term plan to minimize and eliminate the CSO discharge" (emphasis added)

No where, under any federal law or guidance document, are CSOs required to be eliminated. It is contrary to law and good common sense.

CSOs are like any other point source. They are to be controlled through technology based limits, and where necessary to meet designated uses, water quality based limits.

The federal CSO guidance acknowledges this fundamental principle of point source control. CSO dischargers were to first submit their Nine Minimum Controls (i.e., their technology based limits) and then submit a Long Term Control Plan designed to ensure that CSOs do not impair water quality standards of the stream. Thus, under the CWA, CSO controls, like other point sources, are controlled by technology first, and the needs of the stream second. In the vast majority of cases, CSOs, because they are intermittent and of limited duration, have little or no contribution to stream impairment. If they would contribute to stream impairment then they would receive WQBELs as part of a TMDL process that would equitably apportion the loading reduction across the impaired stream segment. Elimination would only be required where the CSO could not achieve the WQBEL, a situation that is difficult to envision.

To require their automatic elimination would result in the spending of billions of dollars statewide for absolutely no reason. Further, if there ever was a provision contrary to the Regulatory Basics Initiative - this one is it.

The state should allow the CWA to work as written, requiring CSO controls above the Nine Minimum Controls only where necessary to achieve a stream's designated use.

3) §92.2(a) and (c) Incorporation of Federal Regulations by Reference

Two objections. First, this provision violates the state law regarding how regulations are to be enacted. Second, regulations should be clear and precise since violations subject the discharger to both civil and criminal penalties under the Clean Streams Law (CSL) and CWA. These regulations confuse and obfuscate - thereby placing the discharger in needless jeopardy.

First, it is the Commonwealth that makes state law - not the federal government. It is questionable, at best, as to whether the Commonwealth can give up this power by simply incorporating everything federal by reference. Also, the mechanism for enacting state regulations gives the public certain fundamental rule making rights. For example, the proposal gets published in the Pennsylvania Bulletin, where comments are solicited, and then gets reviewed by the EQB and IRRC. These are fundamental rule making rights that every interested citizen in Pennsylvania should retain.

Second, confusion will reign where clarity once stood. Only those federal regulations which "are applicable and not contrary to Pennsylvania law" will be automatically adopted. What does that provision mean? Who can guess as to when a federal regulation is "applicable and not contrary to Pennsylvania law". It is somewhat ironic to note that the one federal regulation which under federal law must apply - the federal antidegradation regulations for Pennsylvania which replaced the state's antidegradation regulations - would arguably not apply since the federal antidegradation regulations are contrary to Pennsylvania law.

Also 92.2(c) states that any new or amended federal regulation which creates a variance to existing substantive or procedural NPDES permitting requirements is not incorporated by reference. When does something "create a variance"?

As the CSL and the CWA move into difficult and complex permitting arenas such as the creation of water quality based effluent limits, total maximum daily loads, interpretation of existing antidegradation requirements, etc., - more than ever clarity is needed in the regulations and their implementation. This "incorporation by reference" idea will do nothing but cause confusion, frustration, litigation and an enormous waste of time and resources.

4) 92.2b and 92.4(a)(6)(i) Pollution Prevention

While no one can disagree with the concept of pollution prevention, this regulation is completely unclear as to what is expected from dischargers and does not belong as part of the NPDES regulations.

Section 92.2b(b) states that the pollution load (in terms of mass) of wastes generated should be reduced to the maximum extent practical. First, what does "should

City of Philadelphia's Water Department's
Comments on Proposed Water Quality Regulations

be" mean? Is this mandatory or optional? The word "should" is inherently ambiguous and can be construed as either mandatory or permissive.

Second, if this is mandatory, we are now going far beyond the CWA requirements and placing a whole new level of waste control on NPDES dischargers. The CWA requires BAT/BCT technology controls for all point source discharges (secondary treatment for POTWs) and, only where necessary, water quality based effluent limits to protect existing and designated stream uses. Now, on top of these requirements, dischargers are to engage in pollution prevention to the maximum extent practicable. For what purpose? The CWA already has created the mechanism to address water quality concerns. If a discharger is discharging into a stream meeting all of its water quality standards must it still engage in further reductions to the maximum extent practicable (whatever that means) even where no discernible stream benefit will occur? A lot of money could be spent with no appreciable improvement in water quality.

Again, the idea is good but it does not belong buried in the water quality regulations. The concept of requiring liquid waste generators to engage in mandatory pollution prevention is something for the legislature to separately consider and for there to be public debate on its costs and benefits.

Also note that this is going way beyond the governor's Regulatory Basics Initiative directive.

Section 92.4(a)(6)(i) states that an indirect discharger may require "a permit under the State Act" where the State believes the indirect discharger has failed to take adequate pollution prevention measures. First, since the State has not accepted delegation for pretreatment (the control of indirect dischargers) it seems unusual that they now seek to regulate them for pollution prevention purposes. Second, it is unclear what "a permit under the State Act" means? Indirect dischargers do not get NPDES permits, but rather receive local discharge permits directly from the POTW with EPA acting as the oversight agency. This system of local control, with EPA oversight, has worked well, at least in Philadelphia, and we see no reason why this basic dynamic should be changed. All it would do is add another level of bureaucratic control and confusion to industries discharging into POTWs. Third, it is unclear when an indirect discharger fails to take "adequate measures" thus triggering this new state permit requirement. Lastly, since POTWs protect their interest through their pretreatment program, it is unclear what the ultimate state interests are. Again, if it is to protect water quality, the CWA already has that mechanism in place.

5) 92.2c(b)(4) Minimum sewage treatment requirements

POTWs now seem to have an additional burden, over and above that placed on all dischargers by proposed section 92.2(b) (see previous comments). After POTWs apply pollution prevention techniques to the maximum extent practicable, (92.2b(b)), the POTW must then reduce the discharge of the remaining pollutants to the maximum extent practicable.

City of Philadelphia's Water Department's
Comments on Proposed Water Quality Regulations

First, this definition goes way beyond the federal definition of secondary treatment contained in 40 CFR Part 133. It imposes duties on Pennsylvania's POTWs that are not federally required and probably not required by other states.

Second, as previously mentioned (See paragraphs numbered 1 and 4 of this document) this pollution prevention approach is not consistent with the current regulatory structure of the CWA and does not belong in these amendments but rather in separate legislation where the legislature can consider the costs and benefits of this type of pollution prevention mechanism.

Third, it is unclear as to what constitutes maximum extent practicable regarding the discharge of these various pollutants.

Fourth, the financial impacts on POTWs could be quite significant. What would it cost a POTW to reduce toxics to the maximum extent practical (MEP)? POTWs were never designed to treat toxic wastes, so where does that leave us?

Lastly, as previously stated, what purpose does this provision serve? Secondary treatment, as federally required under 40 CFR Part 133, defines the technology based standards for POTWs. Where needed for specific pollutants, WQBELs will be developed based on the needs of the stream in order to return it into compliance with its designated use. These MEP controls do nothing other than require the POTW to spend additional funds to reduce pollutants for no readily identifiable water quality reason. Let's spend public dollars to achieve well-articulated and useful goals - the attainment of water quality criteria sufficient to return the stream back into compliance with its designated use. Let's not spend money on ill-defined general concepts - no matter how noble these concepts might be. And further, the expenditure of additional dollars should be done on an equitable basis, with all point and nonpoint sources sharing proportionally in their requirements to reduce pollution loadings.

6) 92.8(a) Changes in treatment requirements

This provision states that where DEP determines that additional treatment is required, the permittee must submit a plan to modify its treatment facilities to meet the newly imposed DEP requirements.

This provision violates all due process protections that a discharger possesses. There is no permit modification, with the attendant opportunity for comment and appeal. There is no final order from DEP that would then allow the right of appeal to the EHB. This regulation is completely one sided; more stringent than federal regulations regarding permit amendments; contrary to DEP's own procedural requirements for permit amendments; and arguably beyond the power vested in DEP by the CSL. (While this provision currently exists - the arguments are still valid).

7) Section 92.92 Method of seeking civil penalty

This section is contrary to the requirements of the Clean Stream Law and denies the discharger some basic due process rights.

The Clean Streams Law, Section 691.605(a), states that, after hearing, DEP may assess a civil penalty. Under the proposed regulations, DEP is assessing the penalty prior to any hearing. Also, the regulation requires the discharger to request a hearing or forever waive its rights. Again, under the CSL, a pre-penalty hearing is a right, not just a privilege that DEP can waive under its regulations.

Finally, while 92.92(c) authorizes an informal hearing, it is completely lacking as to the requirements of the hearing. At a minimum, the discharger should be given the right to examine DEP's evidence prior to the hearing, the right to question relevant DEP officials about their findings, the hearing should be on the record and the findings of the hearing examiner should be based on the record and presented in writing. While I do not advocate a full trial, we believe these requirements are the minimum which due process would require.

8) §92.4(g)(3) TMDLs

I commend the Department for adopting the concepts of effluent trading. In a TMDL environment, it is absolutely critical in order to achieve the most cost-effective solution to addressing the impairment. However, I would not limit effluent trading by waiting for and by establishing specific procedures. TMDLs and effluent trading are inherently site specific. Let the dischargers on the water quality limited segment (WQLS) apply their creativity and work out an effluent trading strategy. As long as the strategy appears reasonably achievable, DEP should approve it. Keep the regulations regarding effluent trading as limited as possible so as to encourage new strategies and approaches.

9) §96.4(L) TMDLs

This provision improperly shifts the burden of proof to the permittee to prove that DEP did not meet the requirements of this TMDL section. There are several problems here.

First, it is DEP's obligation to develop TMDLs for those waters still impaired after the application of point source technology control. CWA 303(d). Since DEP is required to develop the TMDL, and since it is DEP that will be calculating the wasteload allocations (WLA) and WQBEL for the permit, it is DEP that must demonstrate its compliance with this section and that it acted reasonably, based on sound science and a sufficient quantity and quality of monitoring data.

City of Philadelphia's Water Department's
Comments on Proposed Water Quality Regulations

Second, shifting the burden to prove DEP did not comply with §96.4(e) (developing TMDLs, WLAs, and LAs) would be virtually impossible since that section does not require DEP to do anything. All §96.4(e) says is that DEP will or may consider various factors. DEP could be absolutely wrong regarding numerous issues, but as long as they considered the general topic, they have complied with §96.4(e).

Lastly, the real problem here has to do with the general vagueness of §96.4(e). There are numerous critical issues in listing a WQLS as impaired under 303(d) and then calculating a TMDL, WLA and WQBEL which are completely unaddressed by the regulation. For example, some of the issues which have been discussed nationally include: (1) what WQLS should be listed under 303(d)(1)(A) requiring TMDLs, as opposed to 303(d)(4) or 319; (2) how can a water be listed based on narrative water quality criteria; (3) how much data is required before a listing takes place; (4) when does a discharger have "reasonable potential"; (5) if there is incomplete mixing, how is the mixing zone calculated; (6) what assumptions did DEP make regarding stream hardness, pH, etc.; (7) what assumptions were made regarding the metals dissolved/total ratio; (8) how is the loading reduction to be apportioned, etc.?

These are the kind of discretionary judgments that DEP, lacking specific regulatory requirements, should justify.

10) §96.4(f)(2) TMDLs

This provision states that wasteload allocations for "significant pollutant sources" shall be made more stringent if the cumulative loading determined after the application of paragraph (f)(1) exceeds the TMDL.

If the situation does arise, which dischargers will be considered "significant pollutant sources"? If there are several "significant pollutant sources" in the WQLS, how exactly will the reduced loadings be apportioned? Unfortunately, the definition of the term contained in §96.1 is vague and does not provide useful guidance.

Also, how will the expected load allocations and any necessary further reductions be calculated for the nonpoint sources?

11) §92.21a(f) Additional application requirements for classes of dischargers

This provision requires POTWs to perform an evaluation of the need to revise local limits as part of the POTW's NPDES application. We have no problem with the local limits evaluation itself, however, current EPA interpretation of this federal provision requires the evaluation to be done after the permit is issued, not as part of the application procedure. This could lead to confusion where the POTW would be required to do two

City of Philadelphia's Water Department's
Comments on Proposed Water Quality Regulations

local evaluations. Therefore, this provision should be made consistent with the federal interpretation - since the state has no direct involvement in pretreatment matters.

12) §92.57 Effluent Limitations

This section authorizes DEP to impose instantaneous maximum limits, "as necessary". What does "as necessary" mean? When, and under what circumstances, does DEP believe that such instantaneous maximum limits are justified? When do instantaneous maximum limits further the purpose of the CWA and how would they be calculated?

13) §92.1 Definitions

The definition of "Bypass", as currently set forth in the regulations, would encompass an authorized CSO discharge. The definition should specifically state that authorized CSO discharges shall not constitute a bypass.

Freeman, Sharon

From: Daphne Minner(SMTP:ddm107@psu.edu)
Sent: Tuesday, October 27, 1998 10:57 PM
To: REGCOMMENTS
Subject: PA (DEP) proposed changes to Chap. 92, 93, 95, 96 and 97 (water quality standards and permitting)

<RegComments@A1.dep.state.pa.us>
Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

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To Whom It May Concern:

This responds to your request for comments regarding the PA Department of Environmental Protection's (DEP) proposed changes to its regulatory chapters (Chapters 92, 93, 95, 96 and 97) dealing with water quality standards and permitting as published in the PA Bulletin (August 29, 1998). The proposed revisions are part of Gov. Ridge's much publicized state-wide review of all regulations in order to remove the ones that are deemed more stringent than the federal minimum. As such, I am deeply concerned that the subject proposed changes will significantly weaken current protections to our waterways.

I am deeply concerned that the proposed regulatory changes will violate all our rights under Pennsylvania's Constitution to clean water and will allow increased discharges of toxic chemicals to waterways; eliminate regulation of 20 toxic chemicals; ignore the regulation of non-point source pollution in impaired waters; allow general permits to be issued for discharge of toxic chemicals; and allow general discharge permits to be issued in high-quality watersheds.

These changes could negatively effect the health of our local waterways such as Spring Creek and its tributaries. I strongly urge you to stop this roll-back of water pollution regulations!

MAJOR REGULATORY CHAPTERS, CHANGES, AND GENERAL CONCERNS

Chapter 92, NPDES Permitting, Monitoring, and Compliance

- * 92.25(3): For total residual chlorine, the technology cap of 0.5mg/l is proposed to be retained. I support keeping the cap, since chlorine, although needed for disinfection purposes, can be extremely toxic to aquatic life if discharged in high concentrations.
- * 92.51(6): This "narrative criterion" language which is in every discharge permit is good, but needs strengthened. DEP should add that compliance with all water quality standards is required.
- * 92.61: Additional public comment should be solicited, in particular when an application is filed. It is important to know about specific public water quality concerns before all the calculations have been done and a draft permit published.
- * 92.81: This section on general permits is greatly expanded and therefore weakens protection. Specific proposals include:
*for the first time allowing general permits to include limits for toxic chemicals. Since there is no easy way to track who uses these permits, DEP

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should not allow toxics in general permits.

*for the first time allowing general permits to be issued in high quality waters with no indication of how water quality will be maintained. Once again, due to the nature of general permits, the use of these permits needs to be followed closely, which is very difficult. DEP in general should not allow the use of general permits in high quality waters.

*deleting the requirement for documenting that the general permit will not violate water quality standards. Right now, there is a requirement that all permits must document that they will not cause a violation of water quality standards. Because this is a difficult task for a general permit, where the use of the permit is not tracked or followed, DEP proposes to delete it and reduce protection of PA waters. DEP needs to retain the documentation provision to ensure water quality standards will not be violated by the use of general permits.

*not including in the proposal a prohibition of the use of general permits in impaired waters. Because these waters have water quality problems, the use of general permits should not be allowed in impaired waters.

Chapter 93 Water Quality Standards

* 93.4: DEP currently protects all our waters as potential "potable water" sources, and is soliciting comments on whether to retain this protection. Because of the extra protection it gives our streams, this provision should be retained.

* 93.4: DEP proposes deleting warm water fishes as a statewide water use. DEP states that aquatic life will be protected for each stream listed in the stream list, but this leaves no basement protection for any stream that for one reason or another doesn't get on the list. It just makes sense that a basement level of protection should be afforded, and warm water fishes should be retained as a statewide water use.

* 93.5(e): The current wording of this section spells out that there will be no mixing zones - "Criteria necessary to protect other designated uses shall be met at the point of wastewater discharge." This section was moved to Chapter 96, but this mixing zone statement was deleted. DEP currently allows mixing zones for every discharge, but this policy has never come under public scrutiny. DEP should retain and implement this language, or if DEP wants to institute a mixing zone policy, then it should go out to public comment and be incorporated into policy.

* 93.6: One area not covered by Pennsylvania regulations is instream flow and habitat. Because PA has no comprehensive water resources management, the DEP should develop instream flow and habitat criteria and incorporate them into this chapter of regulation.

Chapter 96 Water Quality Standards Implementation

* 96.4: This section on Total Maximum Daily Loads (TMDLs, which deals with how clean up will occur on waters determined to be impaired) completely ignores nonpoint source problems. The design conditions (for calculating discharge limits) are listed for low flow conditions, but are silent on how modeling will be done for rain-induced pollution. In addition, it is unclear whether the design flows apply only for impaired waters. DEP should include a separate section for modeling done on waters that are not impaired, should incorporate nonpoint sources into their modeling in particular for impaired waters, and should include how clean up activities dealing with nonpoint source pollution will be implemented.

* 96.4: This section also gives DEP authority to approve effluent trading, with only minimal requirements. Blanket authority is premature, and should not be given without the opportunity to comment on the procedure. In addition, due to the potential problems with trading, the procedure should be incorporated into these regulations.

These changes could negatively effect the health of our local waterways such as Spring Creek and its tributaries. Again, I strongly urge you to stop this roll-back of water pollution regulations!

Sincerely,

Daphne D. Minner, Ph.D.
326 West Prospect Avenue
State College, PA 16801-4616

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INDUSTRIAL POLLUTION
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Mr. Aaron Haber
61 Tookany Creek Pkwy.
Cheltenham, PA 19012-1716

SIR.

I OPPOSE THE NEW PROPOSED WATER
QUALITY STANDARDS + TOXIC STRATEGY
THE PROPOSED TOXIC STRATEGY IS
TOO WEAK. I WANT THESE NEW
STANDARDS STOPPED

Aaron Haber

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19 88
ENVIRONMENTAL QUALITY BOARD

Environmental Quality Board

P.O. Box 8477

Harrisburg PA 17105

Gentlemen:

DEP proposed regulations to roll-back standards protecting streams & rivers to allow for discharge of toxic chemicals is not acceptable.

As the second state in the nation for toxic discharge into water, Pennsylvania should strengthen, not weaken the regulations.

Sincerely
Barbara McFall



106 Clay Dr
Pgh PA 15235

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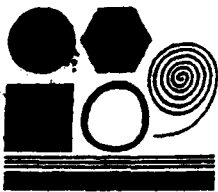
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SPECIALTY STEEL INDUSTRY OF PENNSYLVANIA

Address correspondence to: Allegheny Ludlum Corporation, 1000 Six PFG Place, Pittsburgh, PA 15222
Phone: (412) 394-2836 Facsimile: (412) 394-3010

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Affiliated with:

Specialty Steel Industry of North America

Environmental Quality Board
15th Floor
Rachel Carson State Office Building
P. O. Box 8477
Harrisburg, PA 17105-8477

Gentlemen:

On behalf of the Specialty Steel Industry of Pennsylvania (SSIPA), enclosed are our comments on the proposed amendments to Chapters 92, 93, 95 and 97, and the addition of Chapter 96 to the Water Quality Regulations.

We are available, at your convenience, to discuss our comments.

Sincerely,

Richard B. Hoyt, Chairman
SSIPA Technical Committee

cc: IRRC
Senate Env. Resources & Energy Comm.
House Env. Resources & Energy Comm.
SSIPA Technical Committee

SSIPA Comments
Proposed Water Quality Amendments
Published August 29, 1998

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REVIEW COMMISSION

§ 92.1. Definitions

A) Average Monthly Discharge Limitations

The PADEP defines the Average Monthly Discharge Limitation in Section 92.1 as the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges (A minimum of 4 daily discharge sample results is recommended for toxics; 10 is preferred) measured during a calendar month divided by the number of daily discharges measured during that month.

This is the only discharge limitation definition in which PADEP incorporates guidance on sampling frequently. SSIPA members are concerned that the Agency has arbitrarily recommended that a minimum of 4 (10 preferred) daily discharge samples be collected during each calendar month. Experience has shown that there are a number of instances when less than 4 samples collected during the Month is more than sufficient to accurately monitor discharges to the waters of the State.

Sampling frequency is routinely specified in discharge permits. Including generic sampling guidelines in a discharge limitation definition introduces an unnecessary rigidity to permit decision-making and could impose unnecessary costs on the permit holder. When determining the number of samples to be collected during monthly monitoring a number of factors should be considered by the permit writer. These factors include the potential for the parameter to be present (based upon previous sampling data and permit application), location (difficulty in collection) of samples, Toxicity (chemical and physical properties) of the chemical parameter in question, characteristics of the discharge (consistent vs. intermittent flows and concentrations), normal concentration of parameter in the wastestream, etc.. In short, the determination of how many samples to collect in a month should be based upon all of the factors involved at the permitted site and not on a generic recommendation by the PADEP. Such a recommendation is more appropriate in guidance documents for permit writers rather than in a regulation applicable to all permit holders. As such SSIPA strongly urges that the Agency delete the following statement from the proposed regulation: "(A minimum of 4 daily discharge sample results is recommended for toxics; 10 is preferred)".

B) BAT

The PADEP has expanded the definition of Best Available Technology (BAT) to include “the engineering aspects of the application of various types of control techniques and process changes (including in-plant controls)”. Expansion of the definition of BAT is confusing and unnecessary.

SSIPA members are specifically concerned with the PADEP’s broadening of the definition of BAT to include any reference of process changes. The definition as proposed by the PADEP would potentially require facilities to constantly modify their existing treatment technology to meet changes in the process which have no effect upon the quality or quantity of the discharge. Even worse, this confusing language could be misconstrued as allowing PADEP to mandate process changes within facilities. SSIPA believes it is beyond the scope of PADEP’s authority to determine how products are to be manufactured within a facility. PADEP should delete the extraneous and confusing language used in the definition.

The goal of the Regulatory Basics Initiative (RBI) was to reduce and simplify the PA regulations, not to increase and broaden them. In accordance with the RBI principles the definition of BAT should be simplified to read as follows: “The maximum degree of effluent reduction attainable through the application of the best treatment technology economically achievable within an industrial category or subcategory, or other category of discharger”

C) Complete Application

The definition as proposed reads, in part, “...standard reports and forms required by the Department to process a permit and any other data required by the Department.” This definition is far too broad and open-ended. The Department does not have unlimited authority to collect data from businesses in the state. This definition should be revised to state, “...standard reports and forms required by the Department to process a permit, and any other data required by the regulations.”

D) Contact Cooling Water

The definition as proposed reads “cooling water that comes into contact with any raw material, intermediate product, finished product, byproduct or waste product, or which otherwise has the potential to become contaminated.”

It seems patently illogical that water that may become contaminated be considered contaminated. Such waters should be considered contact cooling water only if and when they become contaminated. Therefore, the definition should be changed to read “cooling water that comes into contact with any raw material, intermediate product, finished product, byproduct or waste product.”

F) Facility or Activity

Again, this definition is overly broad by stating in part "...or are associated with an NPDES discharge." This could be interpreted to include inactive property, such as a ten acre field owned by an industrial entity, that could bring such property into the N.P.D.E.S. Program. This is certainly not what was intended and the language quoted above should be deleted.

§ 92.2d(3)(ii). **Technology-based standards**

This sentence requires facilities utilizing chlorine to dechlorinate their effluents or discontinue the use of chlorine. First, a facility could utilize chlorine in a water system and still have no detectable residual chlorine in the discharge due to the effective use of the chemical. This type of facility should not be required to install a dechlorination system.

Secondly, some minimal discharge level of chlorine must be essentially harmless. The Department should set a maximum acceptable total residual chlorine limit and allow dischargers to meet the limit in whatever manner makes sense for them.

§ 92.2d(4)(b). **Technology-based standards**

(i)(B)

This section reads, in part "at no time contain more than 15 milligrams of oil per liter as a daily average value , no more than 30 milligrams of oil per liter at any time, or whatever lesser amount the Department may specify for a given discharge or type of discharge as being necessary for the proper protection of the public interest...". The latter phase is extraordinarily open-ended and arbitrary. The Department should follow appropriate rule-making procedures in setting any lower discharge limitations and in those proceedings should demonstrate how and why such lower values are necessary to protect the public interest and analyze the feasibility of attaining such specified reduced values.

(ii)

This section states that pollution prevention approaches are "encouraged". Businesses are encouraged by cost reduction goals and good business practices to reduce material usage by recycling and reuse of materials. However laudatory the goals of pollution prevention are, it should not be included as a regulation. Too often the focus of such programs switches to compiling documentation for agency review rather than on allowing cost effective innovation in addressing pollution prevention opportunities. Again, the purpose of the Regulatory Basics Initiative was to simplify regulations, not expand them into new areas.

§ 92.8.a(b). Changes in treatment requirements

This section requires a permittee to submit a report to the D.E.P., within 90 days of a request from the Department, that states whether the permittee's existing treatment facility can attain newly established water quality permit limits. In many cases, it will be literally impossible to perform treatability studies in this period of time, yet alone determine what new treatment equipment will be required to meet the new standard and a schedule to install and troubleshoot such equipment. This timeframe should be increased to a minimum of 180 days, with a proviso that the Department may grant an extension for more complicated systems.

§ 92.21c(3)(4)(5). Applications

Section 92.21 of the proposed regulation sets forth the requirements for applying for and receiving NPDES permits for new discharges. Section 92.21(c) states in clear detail that in addition to the information required in section (b) the Department may require the applicant to submit "any other information or data the Department may need to assess the discharges of the facility and any impact on receiving waters []". The information which the Department may request is further described in subsections (c) (1) – (6). SSIPA believes that further description of information which the Permit Writer may request is confusing, unnecessary, and contrary to the goals of the RBI initiative. Section 92.21(c) clearly states that the Department may request additional information as needed. SSIPA is especially concerned with the information listed under subsections (3) – (5).

Sections (3), (4), and (5) indicate that the Department may request the Permittee to provide the results of a Waterbody Assessment, Whole Effluent Toxicity Testing, and Additional Quantitative data and Bioassays to determine the effect of the discharges upon aquatic life. SSIPA must point out that submittal of this information for new discharges is not only infeasible but inaccurate, and unwarranted.

SSIPA members have found the results of bioassay testing for existing discharges to be highly variable and extremely unreliable. Based upon the experience with existing discharges it would be essentially impossible for facilities to somehow determine in advance (prior to discharge) the toxicity of the resultant effluent from a specific industrial process. In addition SSIPA members fail to see any benefit in using speculative results of estimated toxicity from a proposed discharge as part of an overall assessment of the effect the discharge will have upon the discharge stream (upstream and downstream of the discharge point). As collection of toxicity data and correlation of this data into a meaningful assessment of the discharge stream is not feasible for new discharges, SSIPA requests that the PADEP remove Sections 92.21 (c)(3),(4), and (5) from the proposed RBI regulations.

§ 92.41. Monitoring

Section 92.41(a) states that the "Department may impose reasonable monitoring requirements on any discharge. Contrary to Section 92.41(a) and the principals of the RBI initiative, section 92.41(b) indicates that "If the monitoring results indicate the

existence of pollutants which are not limited in the Permit, the Permittee shall separately identify the pollutants, and their concentration, on the Monitoring Report, with an explanation of how the Permittee will prevent the generation of the pollutant, or otherwise eliminate the pollutant from the discharge within the permit term. If the pollutant cannot be eliminated from the discharge, the permittee shall seek a permit amendment.”

In most NPDES permits, the Permit Writer does not include all of the parameters which are determined through analytical testing to be present at levels above the detection limit. The current NPDES permit process is designed to allow the Permit Writer to utilize all of the data (chemical analyses, historical compliance, site location, discharge stream quality, etc.) when determining the parameters to include in the NPDES permit. Section 92.41(b) of this regulation would greatly expand the scope of regulation under the NPDES program and make it needlessly complex by requiring attention to every substance which was determined to be present in the discharge, regardless of the concentration or whether the parameter is a concern for the discharge stream.

This proposed regulation is in direct conflict with the RBI goals the Agency has espoused. It would also unnecessarily increase the burden upon the Permittee by requiring facilities to either remove, or request a permit modification for any pollutant which is deemed to exist in the discharge stream. This requirement does not take into account the concentration of the parameter, nor does it consider the effect or lack of effect the pollutant may have upon the discharge stream.

This section should be modified to read, in part, “if the monitoring results indicate the existence of pollutants which are not limited in the permit, the Department may do any of the following:

- A) Determine that the parameter at that concentration is not of concern and call for no further action
- B) Establish a limit for the parameter as necessary to protect the quality of the surface water
- C) Require a toxic reduction evaluation for parameters of concern, where the permittee is not likely to meet the appropriate limit.

§ 92.52a. Site specific permit conditions

This section begins “the Department may establish and include in any NPDES permit, any permit condition, as needed on a case-by-case basis, to assure protection of surface waters.” This statement is incredibly broad with little or no responsibility for the Department to base such conditions on sound science. While we recognize that the Department needs flexibility to write appropriate permits on a case-by-case basis, the proposed regulation appears to give the Department unlimited authority in imposing requirements on permittees. Such a sweeping and standardless assertion of authority is unlawfully vague and could be abused with no effective recourse for the permittee. We suggest the provision should read “the Department may establish and include in an

NPDES permit, reasonable permit conditions, demonstrated to be necessary on a case-by-case basis, to protect surface waters.”

§ 92.57. Effluent limitations

The new language found at 92.57 is overly broad and should be modified to read “...and may include instantaneous maximum limits, best management practices, or other limitations necessary to protect water quality.”

§ 92.72a. Cessation of discharge

This section requires 180 days notice to the Department of cessation of a discharge. Facilities that are going to shut down rarely, if ever, know 180 days in advance that they are going to shut down. This requirement should be reduced to the state mandated employee notice requirement (90 days).

§ 92.73 (7). Prohibition of certain discharges

This section could be interpreted to imply that no new discharges can be permitted for a stream that is not currently attaining a water quality standard. It should be made clear that this refers only to new discharges that would add significant load of the parameter or parameters for which the stream is not currently meeting the water quality standard.

§ 92.93. Procedure for civil penalty assessments

- a.) The civil penalty assessment should be delivered to the address set forth in the permit or to the permittee’s registered agent. “Delivery at an address where the discharger is located” is unnecessarily vague. Permittees should not be subject to enforcement action if the PADEP delivers mail to an address the permittee would not expect to receive it, especially, if it is an address where “mail is not collected.”
- b.) This section should be revised to clarify the PADEP’s authority to hold informal hearings even if they are not requested. The last sentence should be rewritten as: “If no timely request for an informal hearing is submitted, the failure to submit a timely request shall operate as a waiver of the opportunity for an informal hearing , and the proposed assessment will become a final assessment of the department upon the expiration of the 30 day time period. The Department may, at its own discretion, determine to hold an informal hearing on such proposed assessment pursuant to the procedures set forth in (c) even if no timely written request has been received.
- c.) Informal hearings should be held within 6 weeks of the request, unless the requester agrees to a longer period of time.

§ 92.94. Disbursement of funds pending resolution of appeal

The preclusion of permit issuance and renewals should be imposed on the specific facility with an unpaid final assessment. As written, it would impose a disproportionately severe hardship on any company with more than one facility in Pennsylvania.

§ 93.7 (b). Specific water quality criteria

This section states that “the Department may develop a criterion for any substance not listed in Table 3 that is determined to be inimical or injurious to existing or designated water uses using the best available scientific information, as determined by the Department.” Such criterion should be subject to notice and comment and it should be so stated.

§ 96.4 (h) and (j). TMDLs

In Section 96.4(h) of the Draft regulation, the Department indicates that “Steady State Modeling at the design flow conditions listed in Table 1 shall be used to develop TMDLS, WLAS, and LAS where it is determined that continuous point sources(s) are the primary cause of a violation of the water quality protection levels specified in Section 96.3, []”. In addition Section 96.4(j) states “Where mathematical modeling techniques are used to determine TMDLs, WLAS, and LAS the techniques should be generally accepted in the scientific community.” In both of these sections the Department refers to the use of Models in determining TMDLS, WLAS, and LAS. However; the PADEP fails to indicate what models are proposed for use and what process will be in place to determine what is considered to be an acceptable model by the Scientific Community. SSIPA requests that the Draft regulation be modified to include clarification of these issues. Furthermore, it should be stated that any models adopted should be available to the permittee.

§ 96.5 (a). Nutrient discharges

This section requires the employment of land disposal of wastewater under specified circumstances without consideration of appropriate alternatives. This could result in a lack of flexibility for certain discharges that could be counterproductive. This language should be altered to indicate that land discharge must be considered along with other appropriate alternatives under the circumstances outlined. Land disposal should not be mandated.

Freeman, Sharon

ENVIRONMENTAL QUALITY BOARD

From: TERRY MORROW(SMTP:tmorrow@MAIL.CLARION.EDU)
Sent: Tuesday, October 27, 1998 4:10 PM
To: FREEMAN SHARON
Subject: Comments on proposed water quality amendments, 25 Pa Code Chapters 92,93,95,96 and 97
ORIGINAL: 1975

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Mr. James M. Seif, Chairman
Environmental Quality Board
P. O. Box 8477
Harrisburg, PA 17105-8477

RE: Proposed Water Quality Amendments, 25 Pa Code Chapters 92,93,95,96 and 97

Dear Mr. Seif,

These comments are submitted by the Environmental Committee of Pennsylvania Trout; A Council of Trout Unlimited (PA Trout) representing 56 chapters and nearly 9000 members statewide. The mission of PA Trout is to protect, restore and enhance the cold water fishery resources of Pennsylvania.

There are a number of items contained in the proposed amendments together with some omissions that we believe will weaken or provide inadequate protection for our surface waters and their aquatic life. The recommendation by the Pennsylvania Fish and Boat Commission to add 13 candidates to the list of threatened fish species in Pennsylvania (bringing this list, if approved, to over 1/3 of the native fish species in the Commonwealth) was a troublesome reminder that we need to augment protection, not reduce it.

Please accept these comments as constructive criticism of the proposed amendments aimed at improving water quality and aquatic habitat in Pennsylvania:

Chapter 92. National Pollution Discharge Elimination System Permitting, Monitoring and Compliance

92.2d(3) PA Trout supports the proposed retention of the technology-based limit (0.5 mg/l) for total residual chlorine. Because chlorine is so toxic any upward shift of this limit would be unacceptable.

92.51(6) This "narrative criterion" standard condition language seems to us to be unnecessarily vague and weak. We suggest simpler and stronger language as follows: "Dischargers should not be permitted to violate water quality standards by their discharges".

92.61 PA Trout is very supportive of the public comment process. We support the recommendation of the Water Resources Advisory committee that public notice and comment be solicited when an applicant plans to submit an NPDES discharge permit application. Public participation at this time would reduce complications later in the permitting process.

92.81 PA Trout vigorously opposes provisions in the proposed

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amendments that would allow general permits rather than individual permits in High Quality Watersheds and the issuance of general permits for the discharge of toxics. Further, general permits should not be available for use in impaired watersheds. In our view these proposed general permit provisions would remove adequate permit reviews, adequate public participation as well as oversight and monitoring. These safeguards, threatened by the proposed general permit provisions, are essential to assure the protection, restoration and enhancement of water quality in the Commonwealth. We request these proposed changes be dropped.

Chapter 93. Water Quality Standards

93.4 PA Trout understands that PADEP presently protects all waters of the Commonwealth as potential potable water sources. Because this designation affords our waters additional protection, the provision should be retained.

93.5 (e) The proposed amendments moved most of this section to the new Chapter 96. A key sentence, however, which limits mixing zones (areas where protection of aquatic life is reduced) failed to survive the move. It is PA Trout's position that mixing zones be allowed in only limited circumstances, if at all. For example, mixing zones for persistent chemical pollutants or those that bioaccumulate should never be permitted. We request the deleted sentence be restored to the proposed amendments.

93.6 PA Trout is disturbed to see no language here designed to protect instream flows and instream habitat. We are aware that other states have such protective measures and the U. S. Supreme Court has ruled that states are permitted to protect instream flows. Since water quantity and aquatic habitat are critical to comprehensive water quality protection and the enhancement of healthy streams, rivers, lakes and reservoirs it is, in our view, imperative that language addressing these issues be included in Pennsylvania's water quality standards. PA Trout supports and requests that the language proposed by Mr. Mark Hersh of the U. S. Fish and Wildlife Service in oral testimony on October 20, 1998 be adopted. That language is included in the following quote from Mr Hersh's oral testimony.

"This would entail modifying one and adding two sub-sections to "Chapter 93.6. General water quality criteria." The modifications to subsection"(a)" follow the definition of "pollution" in the Pennsylvania's Clean Streams Law:

(a) Water may not contain substances attributable to point or nonpoint source [waste] discharges in concentration or amounts sufficient to be, nor shall water be altered such that the alteration is inimical or harmful to [the water] designated or existing uses [to be protected] or to human, [animal, plant or] aquatic life or wildlife.

New sub-section '(c)' would simply read:

(c) Human-induced alterations in hydrologic regime, including instream flow, shall not be inimical or harmful to designated or existing uses, including recreation and aquatic life and wildlife. Natural seasonal and daily variations shall be maintained.

New sub-section "(d)" protects habitat:

(d) Human-induced alterations in habitat shall not be inimical or harmful to designated or existing aquatic life and wildlife uses.

Three new definitions are needed in Chapter 93.1 in order to support these additions. They are:

Aquatic life--Desirable aquatic flora and fauna that are wholly or partially dependent on waters of the Commonwealth for habitat or life cycle functions.

Flow--A hydrologic regime to which aquatic life have naturally adapted.

Hydrologic regime--The regular pattern of occurrence, circulation, and distribution of water in surface waters.

All these additions to Pennsylvania's standards reflect the existing State and Federal laws, and simply bring the standards in compliance with the existing laws."

Chapter 96. Water Quality Standards Implementation

96.4 Pennsylvania is required to identify impaired waters and develop TMDL's to bring their water quality to water quality standards. We can see no mention of nonpoint sources of pollution in meeting these requirements. This is particularly distressing since nonpoint sources from agriculture are reported to be the second most important source of water impairment in the Commonwealth and should be considered together with additional nonpoint sources from urban and suburban storm water runoff and poor land use practices. Nonpoint source pollution needs to be addressed in this regulatory proposal.

96.4(g) PA Trout sees no justification at this time for including effluent trading in the regulatory amendments. This concept is too embryonic to be given regulatory status. We ask that this subsection be dropped.

Thank you for the opportunity to comment on these proposals.

Sincerely for PA Trout

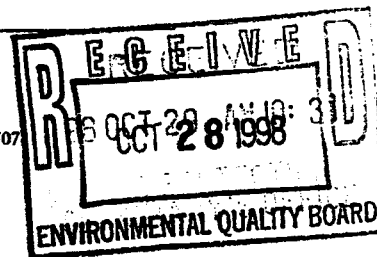
Terry Morrow
Jack Williams
Co-chairs PA Trout Environmental Committee

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Clarion, Pa 16214

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October 28, 1998

HAND DELIVERED

Hon. James M. Seif
Chairperson
Environmental Quality Board
16th Floor, Rachel Carson State Office Building
P. O. Box 8477
Harrisburg, PA 17105

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Re: Comments on Proposed Changes to 25 Pa. Code Chapters 92, 93 and 95-97.

Dear Mr. Seif:

On behalf of the Connaught Laboratories, Inc. ("Connaught"), we appreciate the opportunity to provide the following comments to the Environmental Quality Board with respect to the proposed amendments to 25 Pa. Code Chapter 92, 93 and 95-97, as published at 28 Pa. Bull. 4431 (August 29, 1998).

Section 92.61. Public notice of permit application and public hearing.

The preamble to the proposed rulemaking notes that the Water Resources Advisory Committee ("WRAC") recommended that the public notification process provided in section 92.61 be revised to require publication of a notice of intent to submit a permit application once a week for four weeks, to be followed by a 60-day pre-application comment period. See 28 Pa. Bull. at 4432. This pre-application comment period would be in addition to the 30-day comment period already afforded by section 92.61 following the Department's tentative determination to issue or deny a permit. Projects in the Delaware River Basin also must submit to extensive, independent review by the Delaware River Basin Commission.

Connaught is concerned that the additional pre-application comment period suggested by WRAC will create a burdensome and difficult procedure adding unnecessary delay to the permit application process without adding any value to the evaluation of a permit application by the Department or the public. Under the current rule, public comment is taken after the Department has prepared a tentative determination to issue or deny a permit. The

Hon. James M. Seif, Chair
Environmental Quality Board
October 28, 1998
Page 2

Department's tentative determination provides a focus for public comment. Comments solicited in advance of a permit application will not have the benefit of this focus, and the delay that will attend to this additional, preliminary stage of comment will unnecessarily discourage economic development. The review of a permit application is already a long, extensive process, particularly in the Delaware River Basin. Additional pre-application comment simply is not needed.

Section 93.7. Specific water quality criteria (Table 3).

Connaught is supportive of the proposed deletion of the Delaware River Basin Commission ("DRBC") criteria. See 28 Pa. Bull. at 4441. Because DRBC varies its standards, problems can arise if a DRBC standard is expressly stated in a permit issued by the Department. If such a standard subsequently is modified by DRBC, the permittee may face multiple, perhaps inconsistent standards, and the difficulty of needing to modify its NPDES permit to conform to the revised DRBC standard. Moreover, as highlighted by the standard for total dissolved solids, some of the DRBC standards are not supported by current technical literature and reflect old and out-dated analyses. See, e.g., *Connaught Laboratories, Inc. v. DEP*, EHB Docket No. 94-106-C.

Connaught agrees that the standard for TDS₂ (Max. 1,500 mg/l, see 28 Pa. Bull. at 4474) should be deleted. The osmotic pressure criterion is the more appropriate measure. See 28 Pa. Bull. at 4442.

Proposed Section 96.3 Water Quality Protection Levels.

Connaught supports the concept that potable water supply use criteria for total dissolved solids, nitrite-nitrate nitrogen, and fluoride should be applied at the point of withdrawal for existing or planned surface potable water supply systems (i.e., at the point of downstream use), as stated in proposed section 96.3(d), see 28 Pa. Bull. at 4498. Additionally, however, Connaught believes that the water supply use criteria for iron (Fe₂, Max. 0.3 mg/l as dissolved, see 28 Pa. Bull. at 4470) also should be applied at the point of downstream use. Application of the iron standard at the point of discharge is troublesome given what the standard is designed to protect against (discoloration of water). This is particularly so, for example, when iron is present in a stormwater discharge because it is naturally occurring in area soils. Application of this standard at the point of downstream use would be much more rationale.

* * *

KIRKPATRICK & LOCKHART LLP

Hon. James M. Seif, Chair
Environmental Quality Board
October 28, 1998
Page 3

Thank you for your consideration of these matters.

Very truly yours,



R. Timothy Weston

Freeman, Sharon

ORIGINAL: 1975

From: Charles R Marshall(SMTP:CGMARSHALL1@prodigy.net)
Reply To: CGMARSHALL1
Sent: Wednesday, October 28, 1998 9:36 AM
To: REGCOMMENTS
Subject: Public Comment on Water Quality Regulations

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October 28, 1998

Submitted via email
RegComments@A1.dep.state.pa.us

Secretary James M. Seif
Department of Environmental Protection
P.O. Box 8477
Harrisburg, PA 17105-8477

RE: Public Comment on Proposed Revisions to PA Water Quality Regulations

Dear Secretary Seif:

In my role as Chair of the Pennsylvania Environmental Defense Foundation I am submitting public comments on the above-referenced regulations. A summary of these comments is as follows:

No existing or renewed NPDES permit issued in PA should be allowed to relax the rate of discharge of toxic chemicals, especially if the source has been meeting those limits. By their meeting the toxic chemical limits it shows that they are technologically capable of achieving those limits.

The discharge of toxic chemicals under general permits is too risky from a human and ecological health viewpoint. The level of these risks warrants that an NPDES permit is used to control such discharges.

Water quality standards should also include in-stream flow requirements. For example, in Chester County's built-up areas, small tributaries to EV streams are being robbed of baseflow because of a lack of recharge plus dry conditions.

Eliminating toxic chemicals from any water quality standards should only be undertaken if it can be shown that the present quantity of discharge is de-minimis.

General permits with toxic chemical discharges should not be allowed in high quality or exceptional value streams.

The limit of 0.5-mg/l total residual chlorine should be maintained. Trout species, in particular, are very susceptible to harm from chlorine discharges.

The relationship of these water quality standards to the mixing zone requirements should be clearly specified.

Non-point source pollution should be regulated in impaired waters.

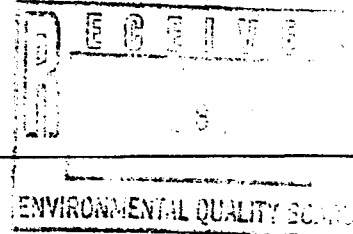
Cordially,

CHUCK MARSHALL, QEP
Pa. Environmental Defense Foundation
32 Wistar Road
Paoli, PA 19301

93 OCT 29 11 09 AM '98
DEPARTMENT OF ENVIRONMENTAL PROTECTION
REGULATORY COMMISSION

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Freeman, Sharon



From: Chris Wilson(SMTP:beitmen@bellatlantic.net)
Sent: Wednesday, October 28, 1998 4:58 PM
To: regcomments
Subject: Water Quality

I do not wish to live in the U.S. state with the highest discharge levels toxic chemicals into streams, and rivers. Please continue to use "aquatic life criteria" standards.
Thank You.
Christopher A. Wilson
P.O. Box 186
Glenmoore, PA

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ENVIRONMENTAL QUALITY BOARD
OCT 28 1998 4:58 PM

CHESTER COUNTY WATER RESOURCES AUTHORITY

Government Services Center, Suite 270

601 Westtown Road

P.O. Box 2747

West Chester, PA 19380-0990

(610) 344-5400 telephone

telefax (610) 344-5401

VIA ELECTRONIC MAIL

October 28, 1998

Mr. James M Seif, Chairman
Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

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Subject: Proposed Rulemaking - Water Quality Standards (to amend Chapters 92, 93, 95 and 97 and add to Chapter 96)

Dear Chairman Seif:

The Chester County Water Resources Authority wishes to express its serious concerns regarding the proposed changes to the water quality standards referenced above. We are particularly concerned with the intention to allow general permits to be used in the Exceptional Value and High Quality watersheds, as well as in impaired waters. Chester County is fortunate to have nearly 50% of our approximately 1,200 stream miles included in EV or HQ watersheds. Our success at achieving and maintaining such high quality of waters and aquatic resources is in large part due to the detailed permitting requirements for discharge of toxics and pollutants to our streams. We believe strongly that allowing the use of general permits will be directly detrimental to the ability of our streams' stakeholders to maintain the EV and HQ quality standards.

We are also concerned with the numerous water quality criteria that are being relaxed. We understand the need to base regulations on sound science and we strongly encourage using sound science to establish policy. However, we are concerned that relaxing certain individual toxic criteria (i.e., chloride, volatile organics, etc.) will lead to additional cumulative impairments to streams that are currently holding a delicate balance of water quality and aquatic biota.

We are very concerned at the elimination of aquatic life criteria standards. The citizens, users and stakeholders of our watersheds have worked hard for decades along side our many watershed associations to improve the quality of our streams to support diverse aquatic biota and habitats, and we are concerned that complete elimination of these standards can only serve to adversely impact these important resources over years to come.

These proposed regulations are complicated, cumbersome, and very difficult for stakeholders to interpret and digest. CCWRA strongly supports any effort that can be made to provide for additional public dissemination, interpretation and discussion of these new regulations prior to promulgation to allow for our very active and dedicated stakeholders throughout our 19 watersheds to be better informed and more involved in such important regulatory changes.

Thank you for consideration of our comments and concerns.

Sincerely,

/s/

Janet L. Bowers, P.G.
Executive Director

CC: Senator C. Bell
Senator R. Thompson
Senator J. Gerlach
Representative A. Hershey
Representative T. Hennessey
Representative R.C. Schroeder
Representative E. Taylor
Representative C. Rubley

Freeman, Sharon

From: Schuylkill Riverkeeper(SMTP:srk2@worldlynx.net)
Sent: Wednesday, October 28, 1998 4:19 PM
To: REGCOMMENTS
Cc: maya
Subject: Water Quality Protection/Regulatory Basics Initiative

RE: Water Quality Protection/Regulatory Basics Initiative

I serve as Director for Schuylkill Riverkeeper, a field office of the Delaware Riverkeeper Network. Riverkeeper is a private, non-profit organization with over 5000 members throughout the Delaware Watershed. From our Schuylkill office, Riverkeeper works to protect and restore the Schuylkill River, its tributaries and habitats. We empower our members and volunteers to protect their local streams through advocacy, enforcement and citizen action.

On behalf of our members and volunteers, I wish to express concern for the water quality impacts that will result should the sweeping changes proposed to the state's water quality protection regulations be approved. Approval of the proposed changes will result in negative impacts to Pennsylvania's streams and runs contrary to the Department of Environmental Protection's (DEP's) role as trustee for clean water. Riverkeeper urges the DEP to extend the comment period on these proposed changes to ensure that the citizens of the Commonwealth have truly had adequate time and opportunity to comment on these very complex proposals. Further, we urge the DEP to provide a broader and more public forum for comment than that which has been conducted to date.

Under its Regulatory Basics Initiative, sweeping changes have been proposed to the state's water quality protection regulations. The purpose of the Regulatory Basics Initiative is supposedly "to create a new environmental partnership which allows the Commonwealth to succeed environmentally and economically", however, the proposed changes raise concerns as to just how the DEP proposes to balance environmental and economic interests. Rolling back regulations, which have resulted in improved water quality throughout much of Pennsylvania, is certainly not the direction the DEP should be heading.

In a review of these proposed changes one reads again and again that existing regulations result in "disproportionate costs to Pennsylvania dischargers". The ability to discharge effluent to the waters of the Commonwealth is a privilege. Citizens of the Commonwealth should be able to have confidence that the DEP is not going to grant this privilege lightly. Dischargers should not derive undue economic benefit for releasing toxic chemicals into the state's streams, rivers and lakes.

The Schuylkill Watershed continues to suffer impacts from past discharges. Toxins like PCBs, DDT and chlordane remain in the sediments in the Schuylkill. The Pennsylvania Fish & Boat Commission discourages the consumption of certain species of fish from Reading on down to Philadelphia. The Delaware River Basin Commission has recently released a study expressing concern over the amount of PCBs moving into the Delaware from the Schuylkill as well as other tributaries. This contamination, much of which results from past abuses, should serve to guide the DEP in its role as trustee of clean water.

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One intended outcome of the Regulatory Basics Initiative is to ensure that Pennsylvania's environmental regulations are "no more stringent than standards imposed by Federal law". In the course of the Regulatory Basics Initiative review, the Bureau of Water Quality Management asserted the right to require more stringent regulations than Federal law: "the Department must maintain the authority to establish site-specific water quality criteria and discharge limits for substances that may pose a threat to human health or aquatic life (Section 92.1)". But in reviewing Section 92.81 the Bureau of Water Quality Management is willing to relax conditions under which General Permits may be issued, potentially allowing little or no oversight and loose reporting requirements for discharges in "Special Protection" watersheds. The DEP has the responsibility to protect the waters of the Commonwealth and must not let political pressures result in the degradation of "Special Protection" waters or the Special Protection Waters program.

The Regulatory Basics Initiative seeks to assure that environmental regulations and guidances are clear and understandable. Riverkeeper applauds this effort. We work with private citizens who, though motivated to protect their local streams, are often frustrated by complex regulations that can be confusing and, at times, inhibit public participation.

Unfortunately, though the Regulatory Basics Initiative has been an ongoing process, it has not been much before the public eye. I must therefore, restate the need for DEP to extend the comment period on the proposed water quality regulation changes.

Clean water for future generations should not be sacrificed to an administrative timetable. The citizens of the Commonwealth deserve the opportunity to consider carefully the changes being proposed to the state's water quality regulations. After all, it is for these very citizens that the waters of the Commonwealth are held in trust.

Unless extended opportunity for more indepth comment is offered, unless a broader and more public forum for comment is made available, Riverkeeper must oppose the proposed changes on the grounds that they would be detrimental to water quality, do not fully reflect the public's interest in clean water, and are not in keeping with the our members' and volunteers' desires to protect and restore the Schuylkill, its tributaries and habitats.

Thank you for your time and consideration of these comments. Should you have any questions regarding these comments, you may contact me at (610) 469-6005.

Sincerely,

Chari Towne
Director, Schuylkill Riverkeeper
P.O. Box 459
St. Peters, Pennsylvania 19470

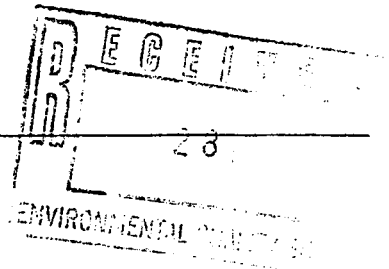
The human race is challenged more than ever before to demonstrate our mastery -- not over nature but of ourselves.

Rachel Carson

Schuylkill Riverkeeper 610-469-6005
PO Box 459 610-469-6025 (fax)
St. Peters, PA 19470-0459 srk@worldlynx.net

Freeman, Sharon

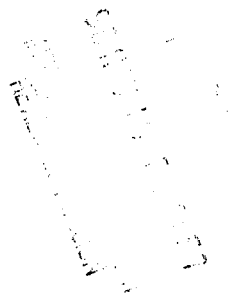
From: Carol Catanese(SMTP:catanese@voicenet.com)
Sent: Wednesday, October 28, 1998 5:14 PM
To: regcomments



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28 October, 1998

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Glenn Maurer
Bureau Of Water Quality Protection
11th Floor
Rachel Carson Bldg.
P.O. Box 8465
Harrisburg, PA 17105-8465

Dear Mr. Maurer;

As a representative of the White Clay Watershed Association (WCWA), I would like to express my concern with DEP's recent proposed changes to rules governing discharge of toxic chemicals into Pennsylvania streams and rivers that I read about in the Philadelphia Inquirer.

The WCWA is a community based organization dedicated to preserving the quality of life and natural resources in the White Clay Watershed. We have recently completed a River Management Plan with a grant from DCNR. Using both GIS and 6 years of stream monitoring data we have noted the detrimental effects that certain land uses and discharges have on the stream.

There are several specific areas of the new regulations which need serious reconsideration.

As I understand it, the new regulations would require that a company obtain "general permits" for release of toxic chemicals, and furthermore, DEP would not deny these general permits to companies with a history of violations. This proposed rule change will hinder DEP's ability to monitor toxic discharge while further jeopardizing the quality of surface water supply.

One of the most deleterious rule changes is to remove the aquatic life criteria standards. It has been widely acknowledged in environmental science publications that all aspects of the food chain are important for maintenance of a healthy and viable ecosystem. Allowing toxic chemicals into the streams at levels suggested by the new proposal will kill off certain species, orders and families of aquatic life.

DEP was recently quoted as describing part of the rationale for the rule changes as "...to ease the bureaucratic burden for industries, manufacturers and developers" (Philadelphia Inquirer, 10/28/98). It is my understanding that DEP's mission is to protect the environment. I have mentioned only two ways in which the proposed changes will have a deleterious effect on the environment. While these rule changes have been open to public comment for 60 days it was not widely published. In fact, I spent 45 minutes on the DEP web site and found only one reference to the proposed regulation changes. This was found under "news articles" (Philadelphia Inquirer's, 10/28/98). I request an extension of the public

commentary period for an additional 30 days and also that you send me a copy of the proposed changes within the next several days.

I request that you reconsider the rule changes that result in increased discharges of pollutants to streams and rivers in order to increase protection of aquatic resources and human health.

Sincerely,
Carol Catanese
Water Quality Chair
182 Hilltop Road
Avondale, PA 19311

Cc: hard copy to follow
catanese@voicenet.com
610-268-3308

Freeman, Sharon

From: Pamela Shea(SMTP:mawa@champion.org)
Sent: Wednesday, October 28, 1998 1:08 PM
To: REGCOMMENTS
Subject: Comments to water quality reg. changes

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Date: Tuesday, October 28, 1998

The Mountain Watershed Association, Inc., a community-based watershed group working on water quality issues in the Indian Creek watershed, Fayette and Westmoreland Counties, vehemently opposes the weakening, or watering down if you will, of Pa.'s water quality standards. The new Toxics Management Strategy would allow "general permits" which do not adequately address cumulative impacts on already taxed water resources. They also do not have the citizen input requirements of other permitting. General permits are a slick way for industry to circumvent the Clean Streams Law and the Clean Water Act.

Pennsylvania already suffers from over 3,200 miles of degraded streams. Why should our water quality protections be removed to meet the minimum required by federal law? Instead of striving for improvement, passage of these regulations would continue the downward spiral of our already sorely taxed resources. I heard someone say we are experiencing the "DUHing" of America. This is the "DUHing" of our environmental quality in Pennsylvania.

DEP is asking watershed groups to network and partner with it to improve mine drainage problems. Where is the incentive to do this if you will roll back standards that protect our water? We have asked this question before.

The citizens of Pennsylvania do not want their water quality standards lessened. They do not want their children swimming in "mixing zones." They want their children protected. Please do so. It is part of your job description.

As a group that is trying to protect the healthy parts of our streams and rehabilitate the degraded parts, we adamantly oppose ANY regulations allowing general permits to discharge additional toxic chemicals into our waterways, any additional discharges into our high quality streams, elimination of the requirement that all streams and rivers be protected as potable water sources, mixing zones, and easing of restrictions on violators. All permit violations should be looked at, not just water discharge permits.

We further oppose lifting of limitations on toxic chemicals. Pennsylvania already is second in the nation for toxic discharges to the waters of the Commonwealth. We dumped 23 million pounds of toxics into our rivers and streams in 1996 alone. Give us incentives to clean up. Do not give industry incentives to pollute.

Sincerely,
Beverly Braverman, Executive Director of Mountain Watershed Association

~~RD #2, Box 354~~

~~Acme, PA 15610~~

P.O. Box 408

Melcroft, PA 15462

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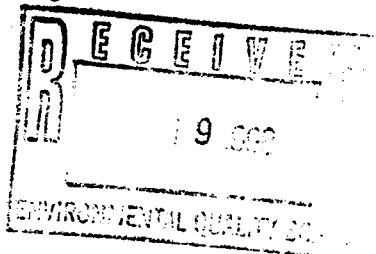
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Dear Quality Board,
the new proposed toxics
strategy is too weak and
will allow even more
toxic discharges into our
waters. I want new
standards stop.

Believe + John Brenner

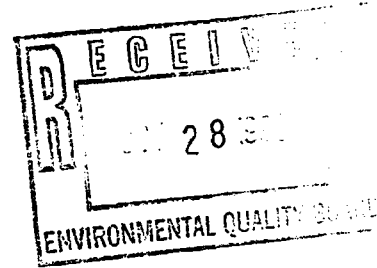


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
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Philadelphia, Pennsylvania 19103-2029

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October 27, 1998

Mr. James M. Seif, Chairman
Environmental Quality Board
P.O. Box 8477
Harrisburg, Pennsylvania 17105-8477



Dear Mr. Seif:

The purpose of this letter is to submit comments by the U. S. Environmental Protection Agency Region III's (Region III or EPA) regarding our initial review of the proposed amendments to water quality regulations set forth in 25 Pa. Code Chapters 92, 93, 95, and 97, and the addition of Chapter 96. This proposed rulemaking was public noticed in the *Pennsylvania Bulletin* on August 29, 1998. EPA understands that this proposal is part of the Commonwealth's Regulatory Basics Initiative (RBI), which is a process to evaluate regulations considering several factors including whether requirements: are more stringent than Federal regulations without good reason; impose economic costs disproportionate to the environmental benefit; are prescriptive rather than performance-based; inhibit green technology and pollution prevention strategies; are obsolete or redundant; lack clarity; or are written in a way that causes significant noncompliance. EPA's comments are included as Enclosure 1 to this letter.

While all the proposed regulations in this package regard changes to Pennsylvania's water program, the proposal amends two distinct categories of regulations that are reviewed in somewhat different ways by EPA. The first set of regulations contained in 25 Pa Code Chapters 92, 95 and 97 constitute Pennsylvania's National Pollution Discharge Elimination System (NPDES) program regulations. The second set contained at present in Chapters 16, 93 and a portion of 95 comprise Pennsylvania's water quality standards. The proposed Chapter 96 contains some water quality standard regulations and some NPDES permitting regulations and will be reviewed accordingly.

The proposed regulations in Chapters 92, 95, portions of Chapter 96 and 97, if adopted as final regulations, would modify Pennsylvania's current NPDES permit program. EPA will consider those changes as a substantial modification of Pennsylvania's authorized program to administer the NPDES permit program in Pennsylvania under Section 402 of the Clean Water Act (CWA). As you know, pursuant to Section VI.B. of the 1991 NPDES EPA-Pennsylvania Memorandum of Agreement and 40 CFR 123.62(b), no revision to the NPDES program becomes effective until approved by the Administrator. Procedurally, once Pennsylvania adopts the modification(s) as final regulations and submits a modified program description, Attorney General's statement (or Regulatory Counsel), and other necessary documents to EPA, EPA will

seek additional public comment on that NPDES program revision pursuant to 40 CFR 123.62(b)(2). Based on EPA's review of Pennsylvania's submission, any public comments, and the requirements of the CWA, EPA would then approve or disapprove the NPDES program revisions. Only once EPA approves any NPDES program modifications, do those approved regulations become effective.

The proposed changes to Chapter 93 and portions of Chapter 95 and 96, if adopted as final regulations, will constitute revisions to Pennsylvania's water quality standards. Once Pennsylvania adopts and submits those final water quality standards to EPA, pursuant to Section 303(c) and 40 CFR 131.21, EPA must approve all or part of that proposal within sixty days or disapprove all or part of that proposal within ninety 90 days. Even if EPA disapproves any water quality standard, that standard remains in effect until EPA promulgates a rule superseding that state standard.

EPA understands that the Commonwealth intends the revisions to Chapters 16, 93, and the addition of Chapter 96, to constitute the Commonwealth triennial review of its water quality standards regulation. Section 303(c)(1) of the CWA requires that from time to time, but at least once each three year period, states hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. Since we are unaware of any previous public participation prior to publication of this proposed rulemaking, EPA expects that the Commonwealth will take into consideration public comment, and make appropriate modifications, before finalizing this rule. EPA is also providing comments on the proposed revisions to Chapter 16. Those comments are being provided to Mr. Edward Brezina, but our specific comments on Chapter 16 are being included as Enclosure 2 for your information. Also, we are including, as Enclosure 3, a copy of the national water quality standards program priorities for FY 1997-1999. The Commonwealth should assure that these goals have been met in this proposal.

For your information, pursuant to Section 7 of the Endangered Species Act, EPA will be consulting with the U.S. Fish and Wildlife Service on EPA's decision regarding modifications to Pennsylvania's NPDES program and water quality standards to ensure the protection and continued existence of threatened and endangered species.

We request that EPA's comments be evaluated, addressed, and appropriate changes made, before these revisions are finalized by Pennsylvania and submitted to EPA for review and

approval. We plan to arrange to meet with PADEP staff to discuss these comments. If you have any questions, please contact me at (215) 814-5717. Thank you again for the opportunity to comment.

Sincerely,

Evelyn S. MacKnight, Chief
PA/DE Branch (3WP11)
Office of Watersheds

cc: Hugh Archer, PADEP
Stuart Gansell, PADEP
Edward Brezina, PADEP
David Densmore, USFWS

Enclosures (3)

ENCLOSURE 1

EPA'S COMMENTS ON PENNSYLVANIA'S PROPOSED REVISIONS TO CHAPTERS 92, 93, 95, 97 AND PROPOSED NEW CHAPTER 96 PUBLISHED IN THE PENNSYLVANIA BULLETIN ON AUGUST 29, 1988.

Chapter 92. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEMS

General - As stated in the cover letter, these revisions, when adopted, will be subject to EPA's formal approval process as a major modification to the Commonwealth's NPDES Program. Additional comments may arise during that process as part of the required public participation process and as a result of EPA's consultation with the U. S. Fish and Wildlife Service. These revisions will not become effective in Pennsylvania until they are approved by EPA and, as such, should not be used in the development of NPDES permits until that time.

§ 92.2.(b). Incorporation of Federal regulations by reference.

Incorporating the Federal regulations by reference is commended. We understand that all the regulations listed at 40 CFR 123.25(a) may not be required in Section 92.2.(b) if the Commonwealth decides to impose more stringent requirements or includes the regulatory requirements in the language of the state regulations. However, there are several 40 CFR regulations that need an explanation as to why they were omitted from § 92.2.(b) and/or what proposed state regulation would impose more stringent requirements:

- § 122.7(c) - Information required by NPDES application forms may not be claimed confidential;
- § 122.21(I) - Application requirements for new and existing Combined Animal Feeding Operations (CAFOs) and aquatic animal production facilities (also see comments on § 92.21a. below);
- § 122.21(m)(1) thru (5) - Does this mean that the only variance request Pennsylvania will accept from non-POTWs is for thermal discharges?
- § 122.21(n) - Does this mean that Pennsylvania will not accept any variance requests from POTWs?
- § 122.21(p) - How long will application data be required to be kept? This data is different from the monitoring records required in § 92.41;
- § 124.57(a) - Public notice of CWA Section 316(a) requests must be provided;
- § 124.59 - Comments and conditions requested by other government agencies must be considered during permit development;

- § 124.62 - If Pennsylvania is accepting variance requests, this regulation on the decision of those variances must be incorporated; and
- §§ 125.30 thru 32 - This regulation must be incorporated if Pennsylvania wants to allow a variance from newly promulgated effluent guidelines based on fundamentally different factors.

§ 92.5.a. Confined animal feeding operations [CAFO]

This section needs to be coordinated with the Pennsylvania proposed CAFO Strategy and EPA's previous comments to that Strategy (copy enclosed).

- The use of "animal equivalent units" (AEUs) is not the same as the Federal definition for "animal units" (AUs). We cannot accept the language in § 92.5a. As a basis for when an NPDES permit is required based on the Commonwealth's definition of an animal equivalent unit. Subsections (a)(1) and (b)(1) should use the 40 CFR Part 122, Appendix B, criteria for determining an operation as a CAFO.
- For operations between 301 and 1000 AUs with a potential to discharge, the proposed CAFO strategy requires coverage under a General NPDES Permit. The "NPDES general permit by rule" statement in § 92.5.a.(a) should delete the words "by rule".

§ 92.13. Reissuance of Permits.

The requirement for submitting an application for reissuance of a permit at least 180 days prior to the permit expiration seems to be in conflict with the Commonwealth's Money-Back Guarantee (MBG). For example, a discharger could submit its application 180 days prior to permit expiration but the MBG allows up to 230 days (major renewals) and 290 days (minor renewals) for the Department to issue the permit. If the full MBG timeframe were exercised, permits would expire up to 110 days before the permit is reissued. A more stringent requirement for submitting renewal applications based on the MBG should be considered.

§ 92.21.(a) Applications

The requirement for submitting a permit application for a new discharge at least 180 days before the date in which the discharge will commence also seems to be in conflict with the MBG. A discharger could submit its application 180 days prior to discharging but the MBG allows up to 200 days for the Department to issue the permit. A more stringent requirement for submitting these applications based on the MBG should be considered.

§ 92.21a. Additional application requirements for classes of dischargers

If § 92.2.(b) does not incorporate 40 CFR 122.21(I) by reference, § 92.21a. should have a section which describes or incorporates, at a minimum, the application requirements for new and existing CAFOs and aquatic animal production facilities as found in § 122.21(I).

§ 92.81. General NPDES permits.

§ 92.81.(a)(5) We have concerns that the general permit language appears to have been modified to generally allow water quality-based effluent limits in general permits that were previously prohibited. EPA's NPDES Permit Writers Manual notes that permitting authorities should consider general permits only where a small percentage of the facilities have the potential for water quality standards violations. Where reasonable potential exists to violate water quality standards, water quality-based and/or technology-based effluent limitations should be placed in an individual NPDES permit.

§ 92.81.(a)(8) We have concerns with regards to allowing a discharger in High Quality waters to be covered under a general permit. If this were allowable, Antidegradation requirements would need to be fully addressed either at the development of the general permit or during the application for coverage of the individual discharger. Addressing Antidegradation during development of the specific general permit would require an analysis demonstrating that ANY discharge covered in the specific category would not cause degradation of the receiving waters below existing quality or that ALL such discharges have met the criteria necessary for degradation of a High Quality water. These criteria include:

- necessary to support important social or economic growth in the area in which the waters are located;
- the State insures that existing uses will be maintained and protected;
- the highest statutory and regulatory requirements shall be achieved for new and existing point sources; and
- all cost-effective and reasonable best management practices shall be in place for nonpoint source controls.

Addressing Antidegradation requirements during the Notice of Intent for coverage period would require a similar analysis as a discharger applying for an individual permit.

In addition, the Federal Antidegradation Policy (40 CFR 131.12) which EPA promulgated for the Commonwealth remains in effect and applies to all waters of the

Commonwealth, whether they are identified in Pennsylvania's Special Protection Waters Program or designated in Chapter 93 as High Quality or Exceptional Value.

§ 92.83.(b)(8) Same comment as for § 92.81.(a)(8).

CHAPTER 93. WATER QUALITY STANDARDS

General Comments:

- (1) For many years, the Commonwealth has allowed for "criteria compliance times." EPA believes that the compliance times are essentially mixing zones. EPA defines mixing zones as areas where an effluent discharge undergoes initial dilution.

EPA believes that the Commonwealth should take the RBI as an opportunity to adopt appropriate mixing zone regulations into Chapter 93. Federal regulation at 40 CFR 131.13 indicates that states may, at their discretion, include in their state standards, policies generally affecting their application and implementation, such as mixing zones, low flows and variances. In the preamble to the water quality standards regulation (48FR51400), it is stated that general policies (such as mixing zones) if adopted by a state, are to be included in a state's water quality standards and are subject to EPA review and approval.

- (2) The Department mentions in an editor's note that sections 93.4(c) and 93.4(d)(1) and (2) are proposed to be amended and moved to a new §93.4a in proposed regulations published in the Pennsylvania Bulletin on March 22, 1997. We would refer the Department to our comments on this proposal submitted to the Environmental Quality Board on May 19, 1997.

Table 3. Specific Water Quality Criteria

Aluminum

On June 6, 1994, EPA disapproved Pennsylvania's Aluminum criteria found in Table 3. We indicated that in order to remedy this disapproval, the Commonwealth must adopt EPA's recommended acute and chronic aquatic life criteria values of 0.087 mg/L and 0.75 mg/L, respectively. Or, alternately, the Commonwealth could supply supporting information consistent with EPA's guidelines for derivation of criteria that indicates that the existing criterion, as implemented, is scientifically defensible and protective of aquatic life. On September 2, 1994, the Department replied to our disapproval. They indicated that they would propose to adopt EPA's acute aquatic life criterion for aluminum. For the chronic criteria, they expressed their concern with EPA's recommended chronic criterion for aluminum, but committed to continue to pursue development of a scientifically defensible chronic criterion. To that end, they indicated their intent to conduct a thorough review of the appropriate toxicity data and the criteria development procedures with EPA-ORD scientific staff and others, as appropriate.

EPA is pleased to see that the Commonwealth is proposing to adopt EPA's recommended acute aquatic life criteria for aluminum, however, EPA's chronic aquatic life criteria is not proposed for adoption, and Pennsylvania gives no other rationale than to state "because the toxicity data used in its development are ambiguous." The Commonwealth should provide the results of its pursuit of a scientifically defensible chronic criterion. These comments are repeated in EPA's comments to Edward Brezina on the proposed changes to Chapter 16.

Ammonia

Pennsylvania should update its criteria for ammonia based on the 1998 Update of Ambient Water Quality Criteria for Ammonia. This document has been provided to the Department.

Bacteria

Current EPA criteria for protection against pathogenic microorganisms in recreational waters, found in *Ambient Water Quality Criteria for Bacteria - 1986*, rely on the use of E. coli and enterococci as indicators of potential risk from acute gastrointestinal disease. Pennsylvania still relies on the use of fecal coliform. Over the next few years, EPA will be encouraging states to adopt the current recommendation, or a scientifically defensible alternative. Where states fail to adopt the appropriate criteria, EPA will promulgate federal standards. At this point, the Commonwealth may continue to use fecal coliform as an indicator, but in order to be consistent with former EPA guidelines, the following must be adopted:

"Based on a minimum of not less than five samples taken over a 30-day period, the fecal coliform bacterial level should not exceed a log mean of 200 per 100 ml, nor should more than 10 percent of the total samples taken during any 30 day period exceed 400 per 100 ml.

In addition, Pennsylvania has historically not used bacteria for monitoring for use attainment for the minimum CWA use for swimming for purposes of use attainment in Section 305(b) Reports or for Section 303(d) lists. While we understand that there are resource constraints, swimmer safety is a priority and bacteria assessments should be used to identify risks and require TMDLs to be completed where needed.

Chloride

The Commonwealth should also consider adopting EPA's aquatic life criteria recommendations of 860,000 µg/L for acute exposures, and 230,000 µg/L for chronic exposures.

Dissolved Oxygen

There seems to be discrepancies in PA's dissolved oxygen standard in lakes utilized for trout stocking. The DO standard for cold water fisheries (CWF), high quality warm water fisheries (HQ-WWF) and high quality trout stocking fisheries (HQ-TSF) list the DO standard for lakes as for the epilimnion a minimum daily average of 5.0 mg/l, minimum 4.0 mg/l. This is not mentioned for TSF waters. Since many of the lakes are used for trout stocking, a minimum of 4.0

mg/l will be applied throughout the water column instead of just the epilimnion causes the lake to be listed inappropriately under s.Section 303(d) of the Clean Water Act (CWA). In lakes, the DO standard for TSF should only be applied to the epilimnion.

§93.7(c)

EPA had previously disapproved Pennsylvania's regulation at 25 PA Code 93.5(c) (ambient concentrations). This new provision does address some of EPA's concerns, however, the changes will not fully satisfy our disapproval.

Since our disapproval, EPA has issued national guidance for establishing site-specific aquatic life criteria equal to natural background. In a memo from the Director of the Office of Science and Technology dated November 5, 1997, EPA laid out the requirements a state needs to satisfy in order to establish site specific aquatic life criteria equal to natural background. Based on our review of this guidance and the Commonwealth's proposed regulation, the Department has established an adequate definition of natural background, a provision in water quality standards that site specific criteria may be set equal to natural background, and provides for public notice and comment on the site specific numeric criteria derived from this provision. This section lacks a procedure for determining natural background, or alternatively, a reference to another document describing a binding procedure that will be used. This procedure needs to be specific enough to establish natural background concentrations accurately and reproducibly. If the Department chooses to go with the binding procedure, that procedure must be made available for public notice and comment.

The Commonwealth's natural quality provision must not apply to human health uses. As stated in EPA guidance, where the natural background concentration exceeds an established human health criteria, this information should be used, at a minimum, to re-evaluate the human health use designation. Where the natural background concentration does not support a human health use, it may be prudent for the Commonwealth to change the human health use to one the natural background will support.

These comments are repeated in EPA's comments to Edward Brezina on the proposed changes to Chapter 16.

§93.8(e) Development of site-specific water quality criteria for the protection of aquatic life

This section indicates that water quality criteria for toxics shall be applied in accordance with Chapter 96. Chapter 96 indicates that acute aquatic life criteria is applied at 7Q10 and threshold human health criteria is applied at 7Q10. This is incorrect. It is EPA's position that acute criteria is applied at 1Q10, and non-carcinogens are applied at 30Q5. This recommendation has been reinforced whenever EPA has promulgated criteria [see 40 CFR 131.36(c)(2)(ii)].

§93.9 Designated water uses and water quality criteria

The Commonwealth is proposing to downgrade the current practice of protecting all waters of the Commonwealth for drinking water purposes. The CWA at Section 101(a) does not require that all waters of the United States be protected as public water supplies. As such, EPA would not formally object to narrowing the scope of streams protected for drinking water purposes. However, the "swimmable" use, including primary contact recreation where water ingestion is likely must be protected for all waters unless it is demonstrated that the swimming use is not attainable on a stream segment-by-segment basis. In all cases where the public water supply use is removed, the Department must also, at a minimum, supply an analysis to support that the fishable/swimmable uses will not be adversely impacted in the waterbody and that all downstream uses will be protected fully. Also, the public water supply use can not be removed if it qualifies as an existing use. Any analysis should include that information as well. Without this analysis, EPA would be unable to approve the deletion of the public water supply use from the streams in question.

Chapter 95. Wastewater Treatment

We request that you clarify whether § 95.4 (Extensions of time to achieve water quality based effluent limitations) and § 95.5 (Treatment requirements for discharges to waters affected by AMD) will remain intact. There is no mention of modification or deletion of these sections except on page 4494 of the August 29, 1998, PA Bulletin which states "§§ 95.2-95.9. (Reserved)." and "The Department is proposing to delete §§ 95.2-95.9 as they currently appear in the *Pennsylvania Code* ...".

We request that you clarify where in the state regulations are variances from water quality standards addressed and also whether Commonwealth will allow such a variance?

Chapter 96. WATER QUALITY STANDARDS IMPLEMENTATION

§96.1 Definitions

LA (Load allocation) - The proposed definition is not consistent with the Federal definition of LA at 40 CFR 130.2 (g). Federal regulations, policy or guidance does not provide for a narrative description of any load allocation. A load allocation must be quantifiable and expressed in terms consistent with the federal definition of a load allocation 40 CFR 130.2(g). This Federal definition consistently refers to loads: receiving water's **loading** capacity, best estimates of **loading**, techniques for predicting the **loading**, etc. A narrative description of a load allocation is not an appropriate measure. The definition at 96.1 should reflect the Federal definition and delete the narrative description as an acceptable means of defining a LA. The definition for a load allocation should refer to "an existing and future nonpoint source" not source[s] since the definition is for a single load allocation.

WLA (Wasteload allocation) - The definition for a wasteload allocation should refer to "an existing or future point source" not source[s] since the definition is for a single wasteload

allocation.

TMDL (Total Maximum Daily Load) - We suggest that this definition include a discussion of the terms in which a TMDL can be expressed, consistent with the Federal regulations: "A TMDL can be expressed in terms of mass per time, toxicity or other appropriate measures."

§96.3 Water quality protection levels

Throughout this section, Pennsylvania indicates that criteria will be achieved at least 99% of the time. Pennsylvania must demonstrate that the use of "99% of the time" will be as protective as the frequency and duration specified for EPA's acute and chronic criteria. Also, 99% is not valid for the Commonwealth's general water quality criteria. Narrative water quality standards must apply at all times.

§96.3(b)

This language is unacceptable. The Antidegradation requirements in Chapters 93, 95 and 105 must apply to all tiers of Antidegradation protection, that includes existing uses as well as high quality and exceptional value waters.

§96.3(e)

Please refer to EPA's comments on §93.7(c) earlier in this enclosure.

§96.3(f)

The Commonwealth needs to clarify in this section that the estimated stream flow includes discharges into the stream. In other words, if the zero flow condition in the stream can be compensated for by the discharge of sufficient volume from effluent discharges, EPA would require that the uses be protected. Also, the Commonwealth's general water quality criteria would apply at all times. This section should be modified to indicate that the applicable NUMERIC water quality criteria is what will be achieved at the first downstream point where uses are supported. Narrative criteria must apply at all times.

§96.3(g)

The Commonwealth includes wetlands in its definition of "Surface Waters" in Chapter 93. Therefore, this section should indicate that the functions and values of wetlands shall be protected under Chapters 93 AND 105.

§96.4 Total Maximum Daily Loads (TMDLS)

We suggest that this entire section be more clearly written so that the factors and consideration for nonpoint source impacts (and the need to develop TMDLS for waters that are mainly impacted by nonpoint sources) are treated equally with the point source discussion. Nonpoint

sources (NPS) are the predominant cause for nonattainment as listed in Pennsylvania's Section 303(d) list and, as such, will drive most of the TMDLs calculated in the future. As written, the proposed TMDL regulation is inconsistent with EPA regulations regarding the considerations and treatment of nonpoint source impacts.

§96.4 (a) - Is this the only subsection that apply to nonpoint source impacted waters? We recommend adding more discussion of nonpoint source impacts.

§96.4 (b) - - Does this only apply to waters that are mainly impacted by point sources? While subsection (b) directly discusses point source impacts, nonpoint source impacted waters are not discussed except through some muffled references. Please add an NPS discussion.

§96.4 (c) - Please address the factors related directly to nonpoint sources, such as flow variations as it relates to wet weather conditions by adding appropriate language.

§96.4 (d) - This section discusses only WLAs and how they will be implemented and does not address how the LAs will be considered. Where appropriate, LAs may also affect the determination of water quality- based effluent lifts (WQBELs). Please add the LA discussion.

§96.4 (e) - This does not include in (1) the flow variation due to wet weather conditions or other variations associated with nonpoint source loadings.

§96.4 (f) - This relates only to point source controls, such as (1) the authorized discharge under applicable technology-based requirements (there are no authorized technology-based requirements for nonpoint sources - if there are then the state should refer to the regulatory reference). Nutrient loading refers to 96.5 which is point source oriented (96.5(a) refers to land disposal of wastewater and 96.5(c) refers to discharges from point sources). Please add a discussion of LA procedures.

§96.4 (g) - Another requirement should be added for considering effluent trading: a TMDL exists for the water body (including relevant Las).

§96.4 (h) - This refers to the modeling considerations for those waters impacted by point sources only and does not address the design considerations in any table for wet weather considerations (as table 1 does for point source low flow impacts) nor the modeling considerations for nonpoint source impacted waters. Please add additional discussion and/or tables to address the modeling considerations and assumptions for Las. Also, the discussion on how a LA portion of the TMDL can be allotted must be consistent with Federal regulations at 40 CFR 130.2(g) which state that LAs are best estimates of the loading, which range from reasonably accurate estimates to gross allotments, depending on the availability of data and the appropriate techniques for predicting the loading. EPA requires the nonpoint source allocations to be as specific as possible, i.e., if estimates are available on land use runoff coefficients, these estimates should be used to allocate to specific land uses within the watershed. Gross allotments can also be made to land use types. Unless data does not exist to support individual allocation to categories or sources of nonpoint

source loadings, EPA will not accept LAS that are merely a number assigned to all of the nonpoint sources. Also, whenever possible, natural and nonpoint sources must be distinguished.

Chapter 97. Industrial Wastes

Our review of the Proposed Rulemaking deals with the deletion of the provisions of Chapter 97; specifically the pretreatment of industrial wastes. The troubling statement appears on page 4445 of the Pennsylvania Bulletin, which states:

"The Department has not received delegation from the EPA to administer an industrial waste pretreatment program and does not intend to seek delegation to administer this program." The problem is that a State cannot "*not intend to seek*" a program; this is grounds for withdrawal of the entire NPDES program, as stipulated in 40 CFR §403.10© of the General Pretreatment Regulations which references 402(c)(3) under the Clean Water Act.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

July 28, 1998

Dr. Hugh V. Archer
Deputy Secretary
Office of Water Management
Pennsylvania Department of
Environmental Protection
Rachel Carson State Office Building
P.O.Box 2063
Harrisburg, Pennsylvania 17105-2063

Dear Dr. Archer:

The purpose of this letter is to transmit comments on the draft final version of the Pennsylvania Department of Environmental Protection (PADEP) Concentrated Animal Feeding Operation (CAFO) Permitting Strategy, public noticed on June 12, 1998. We congratulate you and your staff for designing a strategy to provide greater water quality protection from feedlot operations across Pennsylvania and we thank you for the opportunity to provide comments.

EPA's comments stem from the perspective that Pennsylvania's program must be as stringent as federal requirements for CAFOs. We also expect to see a high level of consistency between Pennsylvania's CAFO Strategy and the draft national Animal Feeding Operation Strategy once it is made final by EPA.

In this letter, we reiterate several issues that we believe must be resolved before Pennsylvania's CAFO policy is made final:

1. PADEP must ensure that CAFO designations are consistent with federal requirements.

Under the NPDES regulations, animal feeding operations that meet certain criteria automatically fall under the definition of a CAFO. Designation of CAFOs becomes complicated when Pennsylvania's Animal Equivalency Units (AEUs), based on the Nutrient Management Act, are used in place of Animal Units (AUs), as defined by the federal regulations. In most every instance, AEUs and AUs do not calculate to be equal numbers. We understand that AEUs are based on actual animal weights and actual time animals spend on the farm each year, making the AEU a more specific calculation than what is stated in the federal regulations. It is appropriate to use AEUs for the purpose of designating state Concentrated Animal Operations (CAOs.) Until the federal regulations are amended, however, it will continue to be our joint responsibility to use AUs for the purpose of designating CAFOs.

2. PADEP should ensure its CAFO policy is consistent with Clean Water Act Section 502 and implementing regulations at 40 CFR Part 122.23 and 40 CFR 122, Appendix B.

To verify where the state AEU and the federal definitions were consistent, EPA prepared calculations to determine whether an NPDES permit would be required consistent with federal regulations under both definitions. The tables show that in certain circumstances, AEU's are less stringent than AUs (i.e. a permit would be required by federal definition but not by state calculation methods.)

Here are three examples:

# finishing pigs, averaging 145 lbs, on farm 11 month/yr	AU (multiply by 0.4)	AEU
2,500	1000	332.3

# large layers, averaging 4.47 lbs, on farm 365 days/yr	AU (multiply by 0.0333)	AEU
30,000	990	134.1

# finishing beef cows, av 850 lbs, on farm 365 days/yr	AU (multiply by 1.0)	AEU
1000	1000	637.5

According to the June 12, 1998, version of the PADEP CAFO policy, using AEU's to define CAFO's in these situations most probably will not result in NPDES permit issuance and may not even result in consideration for coverage under the NPDES permit-by-rule for medium size farms having the potential to discharge. Using AUs in these situations would result in NPDES permit issuance. For detailed calculations comparing AEU's to AUs for dairy, swine, beef and poultry operations, please see the attached tables.

EPA sent a comment letter to you dated May 29, 1998, which suggested that you explain how the issues associated with simultaneous use of both state and federal feedlot regulations will be reconciled. Until your policy adequately addresses this problem, CAFO's should be defined consistently with Clean Water Act Section 502 (14) and implementing regulations at 40 CFR 122.23 and 40 CFR 122, Appendix B.

We suggest that you refer to AUs instead of AEU's in the Part II permit application, the instructions for completing/submitting a NPDES permit application for new CAFO's, the NPDES permit application for CAFO's, the Long-Term Strategy and any other document to be made a part of the CAFO policy package.

3. Reconciling issues related to using the state Nutrient Management Act and the federal regulations to issue NPDES permits for feedlots

We are asking you to use AUs to designate CAFOs. In doing so, we do not want to discourage you from using your existing state regulatory program to designate Concentrated Animal Operations (CAOs.) Both AUs and AEUs should be calculated to determine if a farm in Pennsylvania is a federal CAFO and/or a state CAO. We suggest the conservation districts first calculate AUs to determine if the farm is a CAFO. We also suggest the conservation districts then calculate AEUs to determine if the farm is a CAO. In certain circumstances, the Nutrient Management Act can fill a gap where the federal regulations fall short, as in the case of non-mature dairy cows, swine weighing less than 55 pounds, and use of nutrient management plans and balance sheets for off-site land application of animal waste.

4. NPDES permits are required for new and existing farms with 301-1000 AUs having the potential to discharge

As stated in our comment letter to you dated May 29, 1998, both new and existing farms with 301 to 1000 AUs will require NPDES permit coverage if pollutants are discharged into navigable waters (through a manmade ditch, flushing system or other similar man-made device), or if pollutants are discharged directly into US waters which originate outside of and pass over, across or through the facility or otherwise come into direct contact with the animals confined on the operation.

5. Clarify conditions of NPDES permits; clearly state the differences between an individual NPDES permit, a general NPDES permit and the NPDES permit by rule for CAFOs.

My staff received several phone calls from citizens who are concerned that compliance with a nutrient management plan is not a condition of the NPDES permit for CAFOs. Compliance with a nutrient management plan is the cornerstone of water quality protection for CAFOs. Please confirm that compliance with a nutrient management plan is a condition of the NPDES permit.

If more than one NPDES permit category is to be used to issue CAFO permits in Pennsylvania, we suggest a clarification between them be incorporated into the Long-Term Strategy. If you still plan to use the NPDES permit by rule for farms with 301-1000 AUs having the potential to discharge, please submit the permit by rule language for EPA to review as soon as possible.

6. Clearly state the process and intended schedule for issuing NPDES permits to new and existing CAFOs.

Please describe the process and schedule that the PADEP, the Pennsylvania Department of Agriculture and the Conservation Districts will adopt to ensure permits are issued for all CAFOs in Pennsylvania. What is your schedule for annual permit issuance during the next five years?

How do you plan to integrate resources from the State, EPA and USDA which can be used to expedite permit issuance and compliance with the PA CAFO Strategy? Please add this information to the Long-Term Strategy.

7. Provide clear directions for the public to report violations or complaints.

Based on the volume and content of calls that we are receiving, it appears that citizens in Pennsylvania are concerned about the lack of clear directions to follow in the case of a suspected violation or complaint. A clear process is needed. If the facility to be reported is a CAFO and has obtained NPDES permit coverage, please say which agency should be contacted if a problem is suspected. If the facility is not a CAFO and does not have NPDES permit coverage, please clarify if a different agency should be contacted (A conservation district? The Department of Agriculture? PADEP?) Describe the process for how each complaint will be addressed.

8. Clearly state the process for minimizing impacts from spills and other accidents.

It is unclear whether Pennsylvania's CAFO policy requires spill contingency planning for nutrients. Do spill plans only apply to chemicals on the farm or do they apply to all pollutants, including nutrients? Also, what type of technical assistance will conservation districts provide to farmers to ensure a spill or other accident is not repeated in the future? Please clarify.

9. Pennsylvania's Plan to Address High Phosphorus Loading

In areas of high phosphorus loading, PADEP and the conservation districts must comply with the provisions of the USDA NRCS Nutrient Management Policy once it is made final or an appropriate State-level equivalent policy for phosphorus application rates. Please include a discussion about phosphorus-based management in the Long Term Strategy. The NRCS Policy can be accessed at the USDA Internet web site: www.nhq.nrcs.usda.gov/CCS/Nutrpost.html.

With respect to phosphorus, the Policy provides specific guidance for situations when animal manure or other organic by-products are land applied. The Policy provides guidance for instances when soil specific phosphorus threshold data is and is not available for use in the development of the nutrient management plan. (Page 5) The Policy also calls for nutrient management plans to enable a switch from nitrogen to phosphorus based management if needed, as well as field-by-field assessments of the potential risk for phosphorus runoff using a Phosphorus Index. (Page 6) The Policy discusses progressive plan development with producers who do not have adequate land resources to implement a phosphorus-based plan. (Page 6)

10. Clarify issues related to nutrient management, land application and animal waste transport (importing and exporting) from CAFOs

During the past couple of months, my staff received a number of phone calls from citizens in Pennsylvania who are concerned about issues related to land application of animal waste. We suggest that you address the following questions in the Long-Term Strategy:

- a) If a CAFO operator decides to export 100% of the animal waste generated on the farm, will he or she be required to obtain a nutrient management plan as part of the NPDES permit? Will monitoring wells still be installed and water quality monitoring still be required as specified in the Part II permit?

b) Please clarify when land application of animal waste generated by a CAFO is required and is not required to be spread in accordance with a nutrient management plan. What is the process for updating nutrient management plans for CAFOs importing waste from other CAFOs? What is the process for issuing nutrient management plans for non-CAFOs importing waste from CAFOs?

c) All CAFOs with NPDES permit coverage are required to manage on-farm animal waste consistent with a certified nutrient management plan. In the NPDES permit, there is mention of a nutrient balance sheet as well as a nutrient management plan. Is the nutrient balance sheet part of the overall nutrient management plan? Or is there a case when a nutrient balance sheet would substitute the need for a nutrient management plan?

d) What type of nutrient management and tracking requirements will be placed on "brokers" who make a business of transporting and land applying animal waste generated by CAFOs?

e) Are issues related to disposal of dead animals a part of the nutrient management planning process? If not, how does Pennsylvania intend to address this issue?

f) What type of tracking will be used to ensure animal waste exported from CAFOs is applied at agronomic rates in accordance with a nutrient management plan?

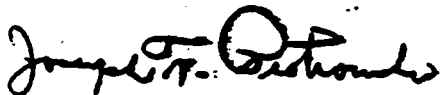
11. Protection of drinking water intakes

According to the current strategy, monitoring is not required to protect drinking water sources that are in close proximity to a feedlot. Based on phone calls we received from concerned citizens, new farms are being constructed as close as 200 feet from drinking water wells. We suggest that monitoring be conducted on the farm to detect leaks from lagoons and stormwater runoff flowing in the direction of a drinking water well or intake.

If you would like to discuss these comments, please contact me at (215) 814-5715 or have your staff contact Sarah Blackman at (215) 814-5720.

Thank you again for the opportunity to comment.

Sincerely,



Joseph T. Piotrowski
Director, Office of Watersheds

cc: Carol Young, PADEP
Bill Adams, Pennsylvania Farm Bureau
Jolene Chinchilli, Chesapeake Bay Foundation

Comparison of Animal Units (AU) and Animal Equivalency Units (AEU)
for the purpose of designating CAFOs with more than 1000 AUs

DAIRY

Dairy cows stay on the farm 365 days per year

Issue: federal regulations say 700 mature dairy cows equals 1000 animal units (need clarification on definition of mature)

# cows (dairy)	AU (*1.4)	AEU	AEU	AEU	AEU	AEU	AEU	AEU	AEU	AEU	AEU	AEU	AEU
		1300 lb holstein	900lb	375lb	1500 lb	1100lb ayrshire	800lb	338lb	1250lb	900lb jersey	600lb	225lb	1000lb
		cow	heifer	calf	bull	cow	heifer	calf	bull	cow	heifer	calf	bull
200	280	260	180	75	300	220	160	67.6	250	180	120	45	200
300	420	390	270	112.5	450	330	240	101.4	375	270	180	67.5	300
500	700	650	450	187.5	750	550	400	169	625	450	300	112.5	500
700	980	910	630	262.5	1050	770	560	236.6	875	630	420	157.5	700
1000	1400	1300	900	375	1500	1100	800	338	1250	900	600	225	1000
1500	2100	1950	1350	562.5	2250	1650	1200	507	1875	1350	900	337.5	1500
2000	2800	2600	1800	750	3000	2200	1600	676	2500	1800	1200	450	2000

NPDES permit required by CWA

NPDES permit required by NMA/PA CAFO policy

PA AEU less stringent than federal AU

Comparison of Animal Units (AU) and Animal Equivalency Units (AEU)
for the purpose of designating CAFOs with more than 1000 AUs

SWINE

Nursery pigs stay on the farm 11 months out of the year
 Finishing pigs stay on the farm 11 months out of the year
 Gestating sows stay on the farm 10 months out of the year
 Sow with litter stay on the farm 2 months out of the year
 Boar stay on the farm 365 days out of the year

# of pigs	AU (* 0.4)	AEU	AEU	AEU	AEU	AEU
	for pigs over 55 lb	nursery 30 lbs	finishing 145 lbs	gestating sow 400 lbs	sow and litter 470 lbs	boar 450
250	100	6.875	33.2	83.3	19.58	112.5
500	200	13.75	66.46	166.7	39.16	225
750	300	20.625	99.69	275	58.75	337.5
1500	600	41.25	199.38	550	117.5	675
2500	1000	68.75	332.3	916.6	195.83	1125
3500	1400	96.25	507.5	1283.3	274.16	1575
5000	2000	137.5	664.58	1833.3	391.66	2250

NPDES permit required by CWA

NPDES permit required by NMA/PA CAFO policy

PA AEU less stringent than federal AU

**Comparison of Animal Units (AU) and Animal Equivalency Units (AEU)
for the purpose of designating CAFOs with more than 1000 AUs**

BEEF

Feeder cattle breeding herd (calves and bulls) stay on the farm 365 days of the year
Fattening and finishing herds stay on the farm 9 months of the year

PA policy less stringent

# of beef cows	AU (*1)	AEU	AEU	AEU
		300 lb calves	1150 lb bulls	850 lb finish/fattening
300	300	90	345	191.25
700	700	210	805	446.25
1000	1000	300	1150	637.5
1500	1500	450	2250	956.25

NPDES permit required by CWA

NPDES permit required by NMA/PA CAFO policy

PA AEU less stringent than federal AU

Comparison of Animal Units (AU) and Animal Equivalency Units (AEU)
for the purpose of designating CAFOs with more than 1000 AUs

POULTRY

Laying hens are on the farm 365 days a year
Broilers are on the farm 42 weeks out of the year

PA policy less stringent

# of birds	AU (*0.033)	AEU	AEU	AEU	AEU
		3.37 lb layers	4.47 lb layer brown	1.42 lb pullets	2.65 lb broilers
9000	297	30.33	40.23		19.26
15000	495	50.55	67.05		32.10
30000	990	101.1	134.1		64.21
60000	1980	202.2	268.2		128.42

NPDES permit required by CWA

NPDES permit required by NMA/PA CAFO policy

PA AEU less stringent than federal AU

ENCLOSURE 2

Comments on Chapter 16

§16.21

The Department has added language to this section that indicates that the frequency of occurrence is accounted for through the specification of water quality protection levels or a design stream flow condition. We believe that the or may be an error, otherwise the Department should indicate how water quality protection levels are equal to design flows.

§16.22(3)

The Department's use of the term "guidance values" is confusing. While we do not disagree with the decision to remove these numbers from the criteria chart, but we are curious as to what happens if WET tests are failed, and the toxic identification evaluation reveals that the parameter of concern is supported only by a guidance value. Also, this section indicates that exceedances of a guidance value may trigger the use of WET tests. If the exceedance itself does not trigger the use of WET tests, please describe other factors that are considered.

§16.24(d)(e) & (g)

The Department should formalize the process by which site-specific criteria derived by Water-Effect Ratios (WERs) are established. In the February 22, 1994 EPA guidance memo from the Director of the Office of Science and Technology, EPA stated that there are two options by which the review of a WER can be accomplished. One was that a state may derive and submit each individual WER determination to EPA for review and approval. This would be accomplished through the normal review and revision process used by a state.

The other option stated the following:

"A State can amend its water quality standards to provide a formal procedure which includes derivation of water-effect ratios, appropriate definition of sites, and enforceable monitoring provisions to assure that designated uses are protected. Both this procedure and the resulting criteria would be subject to full public participation requirements. Public review of a site-specific criterion could be accomplished in conjunction with the public review required for permit issuance. EPA would review and approve/disapprove this protocol as a revised standard once. For public information, we recommend that once a year the State publish a list of site-specific criteria."

In order to meet the requirements of the second option, the Department should include in Chapter 16 the procedure for deriving WERs (this could be a reference to the EPA guidance or some other process approved for use by the Commonwealth), the appropriate definition of sites and enforceable monitoring provisions. Chapter 16 should also detail the Commonwealth's process

for public participation in the adoption of the WER (this should be in the regulation, even if the Commonwealth prefers to stay with the first option). Finally, the policy should state where the public can find the list of site-specific criteria that the state has approved.

§16.32(c)

The Department deletes the provision that allows criterion to be established based on taste and odor. While we do not disagree with this decision, in the rationale document it is stated that if a problem involving taste and odor arises, the general narrative criteria in §93.6 can be used to address it. What values will be used should the Department find the narrative needs to be invoked?

§16.32(c)(2)

The Department should add language to the first sentence of this section so that it reads, “If the EPA criteria have been evaluated, and have been determined to be inadequate to protect designated uses, or when no criteria have been developed for a substance identified, OR LIKELY TO OCCUR in a discharge....” to encompass those parameters with impacts lower than the detection levels.

§16.32(d)(3)

The Department should add to this section language that indicates that other Federally published criteria (not just those found in the National Toxic Rule) will also be considered as a source to obtain relevant risk assessment values for protection of threshold level toxic effects to human health.

§16.33

We support the Department’s decision to delete the extraneous discussion. However, is the basis for the Department’s risk management decisions found elsewhere in regulation?

§16.33(f)(2)

The Department should add language to this section so that it reads, “For toxics for which (cancer potency) slope factors have been developed as evidenced by listing on IRIS, the Department will either use the EPA developed criteria OR METHODOLOGIES, or will develop...”

§16.51(A)

This subsection indicates that the criteria listed in Table 1 is used in the development of TMDLs and NPDES permit limits. It should also include a statement that indicates that these criteria must be used for the purposes of 305(b) and 303(d) assessments.

Also in this subsection, it is stated: "The human health criteria, which include exposure from drinking water and fish consumption, are further defined as to the specific effect (that is cancer or health). The "or health" seems rather vague, perhaps it would be better to include some examples of threshold effects.

§16.51(B)

EPA had previously disapproved Pennsylvania's regulation at 25 PA Code 93.5(c) (ambient concentrations). This new provision does address some of EPA's concerns, however, the changes will not fully satisfy our disapproval.

Since our disapproval, EPA has issued national guidance for establishing site specific aquatic life criteria equal to natural background. In a memo from the Director of the Office of Science and Technology dated November 5, 1997, EPA laid out the requirements a state needs to satisfy in order to establish site specific aquatic life criteria equal to natural background. Based on our review of this guidance and the Commonwealth's proposed regulation, the Department has established an adequate definition of natural background, a provision in water quality standards that site specific criteria may be set equal to natural background, and provides for public notice and comment on the site specific numeric criteria derived from this provision. This section lacks a procedure for determining natural background, or alternatively, a reference to another document describing a binding procedure that will be used. This procedure needs to be specific enough to establish natural background concentrations accurately and reproducibly. If the Department chooses to go with the binding procedure, that procedure must be made available for public notice and comment.

The Commonwealth's natural quality provision must not apply to human health uses. As stated in EPA guidance, where the natural background concentration exceeds an established human health criteria, this information should be used, at a minimum, to re-evaluate the human health use designation. Where the natural background concentration does not support a human health use, it may be prudent for the Commonwealth to change the human health use to one the natural background will support.

This comment is also included in comments on revisions to Chapter 93. These comments were submitted directly to the Environmental Quality Board.

§16.102(a)(3)(ii)

The Department should delete "generally" from this section.

Appendix A, Table 1

Aluminum

On June 6, 1994, EPA disapproved Pennsylvania's Aluminum criteria found in Table 3. We indicated that in order to remedy this disapproval, the Commonwealth must adopt EPA's

recommended acute and chronic aquatic life criteria values of 0.087 mg/L and 0.75 mg/L, respectively. Or, alternately, the Commonwealth could supply supporting information consistent with EPA's guidelines for derivation of criteria that indicates that the existing criterion, as implemented, is scientifically defensible and protective of aquatic life. On September 2, 1994, the Department replied to our disapproval. They indicated that they would propose to adopt EPA's acute aquatic life criterion for aluminum. For the chronic criteria, they expressed their concern with EPA's recommended chronic criterion for aluminum, but committed to continue to pursue development of a scientifically defensible chronic criterion. To that end, they indicated their intent to conduct a thorough review of the appropriate toxicity data and the criteria development procedures with EPA-ORD scientific staff and others, as appropriate.

EPA is pleased to see that the Commonwealth is proposing to adopt EPA's recommended acute aquatic life criteria for aluminum, however, EPA's chronic aquatic life criteria is not proposed for adoption, and Pennsylvania gives no other rationale than to state "because the toxicity data used in its development are ambiguous." The Commonwealth should provide the results of its pursuit of a scientifically defensible chronic criterion.

This comment is also included in comments on revisions to Chapter 93. These comments were submitted directly to the Environmental Quality Board.

Other Specific Criteria

The following criteria are not as stringent as EPA's 304(a) recommendations. There are also some Pennsylvania criteria that are more stringent than EPA values, we can discuss these numbers. All values are expressed as µg/L:

Parameter	PA CMC*	EPA CMC*	PA CCC*	EPA CMC*	PA HH*	EPA HH*
Arsenic	360	340 ¹	190	150 ¹		
Chromium III	N/A	570 ^{1,2}	N/A	74 ^{1,2}		
Copper	17 ³	13 ^{1,3}	11 ³	9 ^{1,3}	N/A	1300
Mercury	2.1	1.4 ¹			0.14	0.050 ⁴
Nickel	1400 ⁵	470 ^{1,5}	160 ⁵	52 ^{1,5}		
Selenium					N/A	170
Zinc					N/A	9100
Pentachloro-phenol	20 ⁶	19 ^{1,6}				
1,2-Dichloro-					N/A	0.52 ⁷

propane						
1,3-Dichlorobenzene					3000 ⁷	400
1,4-Dichlorobenzene					3000 ⁷	400
Isophorone					700	36
gamma-BHC (Lindane)	2	.95 ¹				
Dieldrin	2.5	0.24 ¹				
Endosulfan sulfate					N/A	110 ⁴
Endrin	0.18	0.086 ¹				
Endrin Aldehyde					N/A	0.76 ⁴
Heptachlor Epoxide			0.1	0.0038		

* CMC = Criteria Maximum Concentration
CCC = Criteria Continuous Concentration
HH = Human Health

1 This recommended criteria is based on a 304(a) aquatic life criteria that was issued in the *1995 Updates: Water Quality Criteria Documents for the Protection of Aquatic Life in Ambient Water*, (EPA-820-B-96-011, September 1996). This value was derived using the GLI Guidelines (60FR15393-15399, March 23, 1995; 40 CFR 132 Appendix A); the difference between the 1985 Guidelines and the GLI Guidelines are explained on page iv of the 1995 Updates. None of the decisions concerning the derivation of this criterion were affected by any considerations that are specific to the Great Lakes.

2 The freshwater criterion for chromium III is expressed as a function of hardness (mg/L) in the water column. The value given here corresponds to a hardness of 100 mg/L. It was calculated from the following:

$$\text{EPA CMC (dissolved)} = 0.316 \times \text{Exp}(0.8190 \times \ln[\text{H}] + 3.7256)$$

$$\text{EPA CCC (dissolved)} = 0.860 \times \text{Exp}(0.8190 \times \ln[\text{H}] + 0.6848)$$

3 The freshwater criterion for copper is expressed as a function of hardness (mg/L) in the water column. The value given here corresponds to a hardness of 100 mg/L. It was calculated from the following:

PA CMC (dissolved) = $0.960 \times \text{Exp}(0.9422 \times \ln[H] - 1.464)$
EPA CMC (dissolved) = $0.960 \times \text{Exp}(0.9422 \times \ln[H] - 1.700)$
PA CCC (dissolved) = $0.960 \times \text{Exp}(0.854 \times \ln[H] - 1.465)$
EPA CCC (dissolved) = $0.960 \times \text{Exp}(0.8545 \times \ln[H] - 1.702)$

4 This criteria has been revised to reflect the EPA q1* or RfD, as contained in the Integrated Risk Information System (IRIS) as of April 8, 1998. The fish tissue bioconcentration factor (BCF) from the 1980 Ambient Water Quality Criteria document was retained in each case.

5 The freshwater criterion for nickel is expressed as a function of hardness (mg/L) in the water column. The value given here corresponds to a hardness of 100 mg/L. It was calculated from the following:

PA CMC (dissolved) = $0.997 \times \text{Exp}(0.846 \times \ln[H] + 1.1645)$
EPA CMC (dissolved) = $0.998 \times \text{Exp}(0.8460 \times \ln[H] + 2.255)$
PA CCC (dissolved) = $0.998 \times \text{Exp}(0.846 \times \ln[H] + 3.3612)$
EPA CCC (dissolved) = $0.997 \times \text{Exp}(0.8460 \times \ln[H] + 0.0584)$

6 Freshwater aquatic life values for pentachlorophenol are expressed as a function of pH. Value displayed in this chart correspond to a pH of 7.8. It was calculated from the following:

PA CMC = $\text{Exp}(1.005[\text{pH}] - 4.830)$
EPA CMC = $\text{exp}(1.005(\text{pH}) - 4.869)$

7 ...for dichlorobenzene

The following human health criteria are also less stringent than EPA's recommendation. This may be due to an error in the Department's rounding. We would like to discuss this further. These criteria are:

Thallium
Pentachlorophenol
Acrylonitrile
Carbon tetrachloride
Chlorobenzene
Chloroform
Dichlorobromomethane
1,2-Dichloroethane
1,1-Dichloroethylene
Methyl bromide
Methylene chloride
1,1,2,2-Tetrachloroethane

Toluene
Trichloroethylene
Anthracene
Bis(2-ethylhexyl)phthalate
2-Chloronaphthalene
1,2-Dichlorobenzene
Di-n-butyl phthalate
Hexachlorobutadiene
Hexachloroethane
Nitrobenzene
N-Nitrosodimethylamine
Pyrene
1,2,4-Trichlorobenzene
alpha-BHC
gamma-BHC
4,4'-DDT
4,4'-DDE
Endrin

Table 3

From our attendance at the public meeting, it is EPA's understanding that the units assigned to the detection limits (mg/L) in the table were, in fact, an error, and that this will be corrected in the final rulemaking. Also, the detection level for chrysene using method 625 is listed as 5.3 µg/l, where it is actually 2.5 µg/l .

ENCLOSURE 3

FY 1998 - 1999

WATER QUALITY STANDARDS PROGRAM PRIORITIES

- States, Tribes, and Regional Offices should resolve all currently outstanding EPA disapproval actions, targeting those posing the greatest legal vulnerability or risk to human health or to the environment. When a State or Tribal disapproval can not be resolved within the triennium, the State or Tribal and Regional Office should develop and agree upon an action plan to collect the data, conduct the analyses, etc. needed to resolve the disapproval action.
- States and Tribes should adopt or identify acceptable procedures to implement their antidegradation and mixing zone policies, and their narrative water quality and sediment quality criteria for toxic pollutants.
- States and Tribes should review, and, if necessary, revise their water quality standards to include the protection of threatened or endangered species, identified under the Federal Endangered Species Act (ESA), as part of use designations, criteria, antidegradation policy and implementation procedures, mixing zones policies and implementation procedures adopted to support or implement State or Tribal water quality standards.
- States and Tribes should initiate and continue to expand development of scientifically defensible biologically-based use classification and assessment systems.
- States and Tribes should identify how they will routinely use water quality standards in managing their water improvement programs on a watershed basis. Greater recognition of water quality standards as the goals for the watershed may require and, if appropriate, revision of State and Tribal water quality standards. Such revisions may include more precisely defined, biologically-based, aquatic life uses, as well as more precisely defined recreational uses. More precisely defined uses enhance public understanding of the basis for the uses adopted into State and Tribal water quality standards serving as the goals for the watershed and provide a stronger scientific basis on which to select the most cost-effective management controls.



Freeman, Sharon

From: Tornabene, Kathy W(SMTP:kathy.w.tornabene@lukens.com)
Sent: Tuesday, October 27, 1998 6:38 PM
To: REGCOMMENTS
Cc: dcalderazzo; jnimag; smcgowan; szwedd; swartz.ron
Subject: SSIPA Comments to Water Quality Regulations

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On behalf of the Specialty Steel Industry of Pennsylvania (SSIPA), attached are our comments on the proposed amendments to Chapters 92, 93, 95 and 97, and the addition of Chapter 96 to the Water Quality Regulations. We are available, at your convenience, to discuss our comments.

Richard B. Hoyt, Chairman
SSIPA Technical Committee

NOTE: A hard copy will follow in the mail.

*Specialty Steel Industry of Pennsylvania
1000 Six PPG Place
Pittsburgh PA 15222*

SSIPA Comments
Proposed Water Quality Amendments
Published August 29, 1998

§ 92.1. Definitions

A) Average Monthly Discharge Limitations

The PADEP defines the Average Monthly Discharge Limitation in Section 92.1 as the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges (A minimum of 4 daily discharge sample results is recommended for toxics; 10 is preferred) measured during a calendar month divided by the number of daily discharges measured during that month.

This is the only discharge limitation definition in which PADEP incorporates guidance on sampling frequently. SSIPA members are concerned that the Agency has arbitrarily recommended that a minimum of 4 (10 preferred) daily discharge samples be collected during each calendar month. Experience has shown that there are a number of instances when less than 4 samples collected during the Month is more than sufficient to accurately monitor discharges to the waters of the State.

Sampling frequency is routinely specified in discharge permits. Including generic sampling guidelines in a discharge limitation definition introduces an unnecessary rigidity to permit decision-making and could impose unnecessary costs on the permit holder. When determining the number of samples to be collected during monthly monitoring a number of factors should be considered by the permit writer. These factors include the potential for the parameter to be present (based upon previous sampling data and permit application), location (difficulty in collection) of samples, Toxicity (chemical and physical properties) of the chemical parameter in question, characteristics of the discharge (consistent vs. intermittent flows and concentrations), normal concentration of parameter in the wastestream, etc.. In short, the determination of how many samples to collect in a month should be based upon all of the factors involved at the permitted site and not on a generic recommendation by the PADEP. Such a recommendation is more appropriate in guidance documents for permit writers rather than in a regulation applicable to all permit holders. As such SSIPA strongly urges that the Agency delete the following statement from the proposed regulation: "(A minimum of 4 daily discharge sample results is recommended for toxics; 10 is preferred)".

B) BAT

The PADEP has expanded the definition of Best Available Technology (BAT) to include “the engineering aspects of the application of various types of control techniques and process changes (including in-plant controls)”. Expansion of the definition of BAT is confusing and unnecessary.

SSIPA members are specifically concerned with the PADEP’s broadening of the definition of BAT to include any reference of process changes. The definition as proposed by the PADEP would potentially require facilities to constantly modify their existing treatment technology to meet changes in the process which have no effect upon the quality or quantity of the discharge. Even worse, this confusing language could be misconstrued as allowing PADEP to mandate process changes within facilities. SSIPA believes it is beyond the scope of PADEP’s authority to determine how products are to be manufactured within a facility. PADEP should delete the extraneous and confusing language used in the definition.

The goal of the Regulatory Basics Initiative (RBI) was to reduce and simplify the PA regulations, not to increase and broaden them. In accordance with the RBI principles the definition of BAT should be simplified to read as follows: “The maximum degree of effluent reduction attainable through the application of the best treatment technology economically achievable within an industrial category or subcategory, or other category of discharger”

C) Complete Application

The definition as proposed reads, in part, “...standard reports and forms required by the Department to process a permit and any other data required by the Department.” This definition is far too broad and open-ended. The Department does not have unlimited authority to collect data from businesses in the state. This definition should be revised to state, “...standard reports and forms required by the Department to process a permit, and any other data required by the regulations.”

D) Contact Cooling Water

The definition as proposed reads “cooling water that comes into contact with any raw material, intermediate product, finished product, byproduct or waste product, or which otherwise has the potential to become contaminated.”

It seems patently illogical that water that may become contaminated be considered contaminated. Such waters should be considered contact cooling water only if and when they become contaminated. Therefore, the definition should be changed to read “cooling water that comes into contact with any raw material, intermediate product, finished product, byproduct or waste product.”

F) Facility or Activity

Again, this definition is overly broad by stating in part “...or are associated with an NPDES discharge.” This could be interpreted to include inactive property,

such as a ten acre field owned by an industrial entity, that could bring such property into the N.P.D.E.S. Program. This is certainly not what was intended and the language quoted above should be deleted.

§ 92.2d(3)(ii). Technology-based standards

This sentence requires facilities utilizing chlorine to dechlorinate their effluents or discontinue the use of chlorine. First, a facility could utilize chlorine in a water system and still have no detectable residual chlorine in the discharge due to the effective use of the chemical. This type of facility should not be required to install a dechlorination system.

Secondly, some minimal discharge level of chlorine must be essentially harmless. The Department should set a maximum acceptable total residual chlorine limit and allow dischargers to meet the limit in whatever manner makes sense for them.

§ 92.2d(4)(b). Technology-based standards

(i)(B)

This section reads, in part “at no time contain more than 15 milligrams of oil per liter as a daily average value, no more than 30 milligrams of oil per liter at any time, or whatever lesser amount the Department may specify for a given discharge or type of discharge as being necessary for the proper protection of the public interest...”. The latter phrase is extraordinarily open-ended and arbitrary. The Department should follow appropriate rule-making procedures in setting any lower discharge limitations and in those proceedings should demonstrate how and why such lower values are necessary to protect the public interest and analyze the feasibility of attaining such specified reduced values.

(ii)

This section states that pollution prevention approaches are “encouraged”. Businesses are encouraged by cost reduction goals and good business practices to reduce material usage by recycling and reuse of materials. However laudatory the goals of pollution prevention are, it should not be included as a regulation. Too often the focus of such programs switches to compiling documentation for agency review rather than on allowing cost effective innovation in addressing pollution prevention opportunities. Again, the purpose of the Regulatory Basics Initiative was to simplify regulations, not expand them into new areas.

§ 92.8.a(b). Changes in treatment requirements

This section requires a permittee to submit a report to the D.E.P., within 90 days of a request from the Department, that states whether the permittee’s existing treatment facility can attain newly established water quality permit limits. In many cases, it will be literally impossible to perform treatability studies in this period of time, yet alone

determine what new treatment equipment will be required to meet the new standard and a schedule to install and troubleshoot such equipment. This timeframe should be increased to a minimum of 180 days, with a proviso that the Department may grant an extension for more complicated systems.

§ 92.21c(3)(4)(5). Applications

Section 92.21 of the proposed regulation sets forth the requirements for applying for and receiving NPDES permits for new discharges. Section 92.21(c) states in clear detail that in addition to the information required in section (b) the Department may require the applicant to submit “any other information or data the Department may need to assess the discharges of the facility and any impact on receiving waters []”. The information which the Department may request is further described in subsections (c) (1) – (6). SSIPA believes that further description of information which the Permit Writer may request is confusing, unnecessary, and contrary to the goals of the RBI initiative. Section 92.21(c) clearly states that the Department may request additional information as needed. SSIPA is especially concerned with the information listed under subsections (3) – (5).

Sections (3), (4), and (5) indicate that the Department may request the Permittee to provide the results of a Waterbody Assessment, Whole Effluent Toxicity Testing, and Additional Quantitative data and Bioassays to determine the effect of the discharges upon aquatic life. SSIPA must point out that submittal of this information for new discharges is not only infeasible but inaccurate, and unwarranted.

SSIPA members have found the results of bioassay testing for existing discharges to be highly variable and extremely unreliable. Based upon the experience with existing discharges it would be essentially impossible for facilities to somehow determine in advance (prior to discharge) the toxicity of the resultant effluent from a specific industrial process. In addition SSIPA members fail to see any benefit in using speculative results of estimated toxicity from a proposed discharge as part of an overall assessment of the effect the discharge will have upon the discharge stream (upstream and downstream of the discharge point). As collection of toxicity data and correlation of this data into a meaningful assessment of the discharge stream is not feasible for new discharges, SSIPA requests that the PADEP remove Sections 92.21 (c)(3),(4), and (5) from the proposed RBI regulations.

§ 92.41. Monitoring

Section 92.41(a) states that the “Department may impose reasonable monitoring requirements on any discharge. Contrary to Section 92.41(a) and the principals of the RBI initiative, section 92.41(b) indicates that “If the monitoring results indicate the existence of pollutants which are not limited in the Permit, the Permittee shall separately identify the pollutants, and their concentration, on the Monitoring Report, with an explanation of how the Permittee will prevent the generation of the pollutant, or otherwise eliminate the pollutant from the discharge within the permit term. If the pollutant cannot be eliminated from the discharge, the permittee shall seek a permit amendment.”

In most NPDES permits, the Permit Writer does not include all of the parameters which are determined through analytical testing to be present at levels above the detection limit. The current NPDES permit process is designed to allow the Permit Writer to utilize all of the data (chemical analyses, historical compliance, site location, discharge stream quality, etc.) when determining the parameters to include in the NPDES permit. Section 92.41(b) of this regulation would greatly expand the scope of regulation under the NPDES program and make it needlessly complex by requiring attention to every substance which was determined to be present in the discharge, regardless of the concentration or whether the parameter is a concern for the discharge stream.

This proposed regulation is in direct conflict with the RBI goals the Agency has espoused. It would also unnecessarily increase the burden upon the Permittee by requiring facilities to either remove, or request a permit modification for any pollutant which is deemed to exist in the discharge stream. This requirement does not take into account the concentration of the parameter, nor does it consider the effect or lack of effect the pollutant may have upon the discharge stream.

This section should be modified to read, in part, "if the monitoring results indicate the existence of pollutants which are not limited in the permit, the Department may do any of the following:

- A) Determine that the parameter at that concentration is not of concern and call for no further action
- B) Establish a limit for the parameter as necessary to protect the quality of the surface water
- C) Require a toxic reduction evaluation for parameters of concern, where the permittee is not likely to meet the appropriate limit.

§ 92.52a. Site specific permit conditions

This section begins "the Department may establish and include in any NPDES permit, any permit condition, as needed on a case-by-case basis, to assure protection of surface waters." This statement is incredibly broad with little or no responsibility for the Department to base such conditions on sound science. While we recognize that the Department needs flexibility to write appropriate permits on a case-by-case basis, the proposed regulation appears to give the Department unlimited authority in imposing requirements on permittees. Such a sweeping and standardless assertion of authority is unlawfully vague and could be abused with no effective recourse for the permittee. We suggest the provision should read "the Department may establish and include in an NPDES permit, reasonable permit conditions, demonstrated to be necessary on a case-by-case basis, to protect surface waters."

§ 92.57. Effluent limitations

The new language found at 92.57 is overly broad and should be modified to read "...and may include instantaneous maximum limits, best management practices, or other limitations necessary to protect water quality."

§ 92.72a. Cessation of discharge

This section requires 180 days notice to the Department of cessation of a discharge. Facilities that are going to shut down rarely, if ever, know 180 days in advance that they are going to shut down. This requirement should be reduced to the state mandated employee notice requirement (90 days).

§ 92.73 (7). Prohibition of certain discharges

This section could be interpreted to imply that no new discharges can be permitted for a stream that is not currently attaining a water quality standard. It should be made clear that this refers only to new discharges that would add significant load of the parameter or parameters for which the stream is not currently meeting the water quality standard.

§ 92.93. Procedure for civil penalty assessments

- a.) The civil penalty assessment should be delivered to the address set forth in the permit or to the permittee's registered agent. "Delivery at an address where the discharger is located" is unnecessarily vague. Permittees should not be subject to enforcement action if the PADEP delivers mail to an address the permittee would not expect to receive it, especially, if it is an address where "mail is not collected."
- b.) This section should be revised to clarify the PADEP's authority to hold informal hearings even if they are not requested. The last sentence should be rewritten as: "If no timely request for an informal hearing is submitted, the failure to submit a timely request shall operate as a waiver of the opportunity for an informal hearing, and the proposed assessment will become a final assessment of the department upon the expiration of the 30 day time period. The Department may, at its own discretion, determine to hold an informal hearing on such proposed assessment pursuant to the procedures set forth in (c) even if no timely written request has been received."
- c.) Informal hearings should be held within 6 weeks of the request, unless the requester agrees to a longer period of time.

§ 92.94. Disbursement of funds pending resolution of appeal

The preclusion of permit issuance and renewals should be imposed on the specific facility with an unpaid final assessment. As written, it would impose a disproportionately severe hardship on any company with more than one facility in Pennsylvania.

§ 93.7 (b). Specific water quality criteria

This section states that "the Department may develop a criterion for any substance not listed in Table 3 that is determined to be inimical or injurious to existing or designated

water uses using the best available scientific information, as determined by the Department.” Such criterion should be subject to notice and comment and it should be so stated.

§ 96.4 (h) and (j). TMDLs

In Section 96.4(h) of the Draft regulation, the Department indicates that “Steady State Modeling at the design flow conditions listed in Table 1 shall be used to develop TMDLs, WLAS, and LAS where it is determined that continuous point sources(s) are the primary cause of a violation of the water quality protection levels specified in Section 96.3, []”. In addition Section 96.4(j) states “Where mathematical modeling techniques are used to determine TMDLs, WLAS, and LAS the techniques should be generally accepted in the scientific community.” In both of these sections the Department refers to the use of Models in determining TMDLs, WLAS, and LAS. However; the PADEP fails to indicate what models are proposed for use and what process will be in place to determine what is considered to be an acceptable model by the Scientific Community. SSIPA requests that the Draft regulation be modified to include clarification of these issues. Furthermore, it should be stated that any models adopted should be available to the permittee.

§ 96.5 (a). Nutrient discharges

This section requires the employment of land disposal of wastewater under specified circumstances without consideration of appropriate alternatives. This could result in a lack of flexibility for certain discharges that could be counterproductive. This language should be altered to indicate that land discharge must be considered along with other appropriate alternatives under the circumstances outlined. Land disposal should not be mandated.



Independent Oil & Gas Association of Pennsylvania

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Re: Comments on Proposed Rulemaking for Water Quality Amendments
(25 PA Code, Chapters 92, 93, 95, 96, and 97)

Dear Board Members:

The Independent Oil and Gas Association of Pennsylvania (IOGA) supports the Department of Environmental Protection's efforts to streamline and update regulatory requirements for NPDES permitting, water quality standards development and water quality standards implementation. IOGA is a non-profit trade association that represents the natural gas and oil producing industry in Pennsylvania. Its member companies drill wells, produce and market natural gas, and service the industry to provide a valuable, clean-burning source of energy.

Many of the proposed revisions to Pennsylvania's water quality program represent improvements in clarity and organization. Streamlining the administrative aspect of environmental regulatory compliance is an important step towards fostering truly responsible management of our natural resources.

We support the Department's effort to limit extended NPDES permit reporting and public notification requirements. Repetitive permitting tasks and unwarranted delays do nothing to protect the environment; on the contrary, they waste time, energy and money. Pennsylvania's economy relies on the ability of its business and industry to function efficiently, responsibly and competitively. Consolidation and elimination of overlapping reporting requirements in the permitting process make good economic and ecological sense.

However, this regulatory package (specifically, Chapter 92, National Pollutant Discharge Elimination System Permitting, Monitoring and Compliance) contains a glaring omission, which, if left uncorrected, could have serious detrimental effects on our industry in the very near future. Activities associated with natural gas and oil producing operations are currently subject to NPDES stormwater permit requirements, although the identical activities are exempt from permitting for the silviculture industry. Sections 92.4(a)(1) and 92.4(a)(2) provide exclusions from NPDES permit requirements for pollutants from non-point source agricultural activities and silvicultural activities. Natural gas and oil producing activities that are identical to those defined as non-point silvicultural activities in Section 92.1 -- i.e., construction of temporary access roads and

other earth moving activities from which there is (the potential for) runoff -- should be added to the exclusions from NPDES permit requirements. Currently, the regulations represent unjustified favoritism and special treatment for the logging industry. If the current exclusions are environmentally valid, they should be extended to include identical activities of the natural gas and oil producing industry.

Although current NPDES stormwater permitting for construction activities applies to earth disturbances larger than five acres, EPA has proposed expanding the NPDES permitting program to include operations that disturb one acre or more. If adopted, this rule would cause serious problems for Pennsylvania's natural gas producing industry. Without the specific exclusions that are now afforded to the silviculture industry, EPA's proposed stormwater permit rules could apply to virtually every new well site. The resulting delays in operations would severely cripple Pennsylvania's production of natural gas.

In proposing the rule change, EPA cited a growing concern over pollution from urban stormwater runoff; its rationale was not based on evidence of excessive pollution from rural stormwater runoff related to oil and gas construction activities. Without some corrective action by the state to prevent this unfortunate oversight, Pennsylvania could be hurt economically and hampered in its efforts to meet new federal air quality mandates. From a more holistic perspective, it seems counter-productive to stymie an industry that plays such an important role in providing Pennsylvania with a valuable, clean-burning energy source.

In addition to highlighting these concerns, IOGA wishes to submit the following comments on other aspects of the proposed rulemaking contained in Chapters 92, 93, 95, 96 and 97 of the Pennsylvania Code.

92.41 Monitoring:

IOGA agrees with the statement by the Water Resources Advisory Committee (WRAC) that DEP should not require additional monitoring beyond that required by the NPDES permit unless the additional monitoring has been made a condition of that permit. The purpose of Section C (Required and Optional Chemical Analysts) of the NPDES permit application is to initially identify any problem pollutants. At that point, DEP should regulate the pollutants by establishing limits and monitoring requirements or by adding a special permit condition for additional monitoring. Since any change in the permitted facility, such as production increases or process modifications, requires dischargers to notify DEP, as stated in 92.7, no additional pollutant analyses should be required of dischargers who make no changes to their operations. In the event that new regulations would take effect, 92.8(a) already requires permitted facilities to take steps to comply with the new water quality standards or treatment requirements.

92.61 Public Notice of Permit Applications and Public Hearings

We agree with the Department's decision not to add an additional public

notification and comment period before an NPDES permit is submitted for review. Publication of the intent to apply for an NPDES permit under Section 307 of the Pennsylvania Clean Streams Law and notification of Municipal and County officials under Act 14 already give the public adequate time to comment. Since the Department requires a notarized copy of the newspaper notice and statement of publication dates be sent with the permit application, the public is guaranteed a 30-day notification period to express any interest or concerns with the permit application.

92.8(c) Changes in Treatment Requirements:

If the proposed regulation is adopted and NPDES dischargers are required to meet more stringent effluent limitations when a potable water supply is identified, then the discharger must be notified as early as possible in order to make timely changes to achieve compliance. We suggest that the NPDES permittee be notified immediately whenever an application for a Water Allocation Permit is submitted to the Department or when the State Water Plans are updated and new potable water supplies are identified.

93.4 Statewide Water Uses:

We agree with members of the WRAC and the RBI report that the Potable Water Supply (PWS) criteria should be applied only at the point of potable water withdrawal and that the statewide PWS use should be removed. Proposed paragraph 92.5(c) states that whenever a new potable water supply is identified, the discharger "shall meet more stringent effluent limitations needed to protect the point of withdrawal." Therefore, the rationale that maintaining the statewide PWS use is necessary to prevent degradation of water quality should the body of water be used for drinking water in the future is not applicable.

Chapter 96. Definitions:

A general explanation of the term "effluent trading" as it applies to implementation of Pennsylvania's water quality standards should be included in the definitions.

96.4(k) Total Maximum Daily Loads:

This proposed requirement may impose undue economic hardship on smaller dischargers if there are a number of pollution sources (point and non-point) contributing to a receiving stream segment which must be analyzed to develop TMDLs. Also, the phrase "to determine their (MDL) effectiveness" is highly subjective language, open to broad interpretation that could result in additional costs. If one of the goals of this regulatory reevaluation is to ensure "that pollution control costs are equitably distributed," then the Department, not the individual dischargers, should assume the costs of determining TMDLs. Development and documentation of the TMDLs should be the responsibility of the Department. As outlined in 96.4(1), anyone challenging a TMDL

determination should be required to assume the burden of proof. The state should only require a discharger to determine the TMDL of a receiving stream if the discharger disagrees with the TMDL assigned by the State.

Thank you for the opportunity to comment on the proposed changes to these regulations.

Sincerely,
IOGA of Pennsylvania

Louis D. D'Amico
Executive Director

Cc: Independent Regulatory Review Commission
Chair, PA Senate Environmental Resources and Energy Committee
Chair, PA House Environmental Protection Committee

Comments of Jane Garbacz
Proposed Water Quality Regulations and Guidance
Executive Summary

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My name is Jane Garbacz. I have been active as a grassroots environmentalist in the Conshohocken area since 1985. I respectfully ask that the Environmental Quality Board consider the following concerns about the proposed regulations.

INDEPENDENT REGULATORY
REVIEW COMMISSION

First, I would request that an additional round of hearings be scheduled regarding the proposed regulations. It took the Department many years to come up with these regulations. While the various advisory committees may have had access to this proposal for some time, sixty days is not enough time for citizens to give it careful attention, especially when extensive municipal and residual waste regulations are being proposed at the same time. I must admit that it has been extremely difficult to review any of these regulations comprehensively.

Partic, I would encourage the EAB to allow additional public comments regarding public NPDES permit
§92.81 The General Permit program is becoming less protective. The Department's plan that a general permit may now include effluent limits for toxic and hazardous substances will weaken protection of the waters of the Commonwealth. At the same time, §92.59 is being deleted which would have required documentation demonstrating that the general permit will not violate applicable water quality standards. While a NOI is proposed, a general permit may be issued without one, and many holders of individual NPDES permits will be allowed to switch over to a general permit. While there may be some language in the Federal regulations that could be construed to allow such a scenario, I do not believe that such a system would work in Pennsylvania due to the numerous problems tracking such permits both by DEP as well as the public. I oppose the concept of general permits in general, but am particularly opposed to allowing general NPDES permittees to discharge effluents which include toxic and hazardous substances into High Quality Waters as well as to waters which are already impaired.

§93.4 The potable water supply and warm water fishes should be retained as a Statewide water uses. I do not understand why the language "Except when otherwise specified in law or regulations..." is prefacing §93.4a. If this is in any way a waiver, I am opposed to such language. The highest protection possible must be given to all waters of the Commonwealth not only in the short term but in the long term. Effluent trading is also problematic. DEP is being given what effluent trading criteria will entail in a specific watershed in order to know if it has any value.
§93.9a-93.9z I oppose usage of the language "cost-effective and reasonable best management practices" and "widespread economic and social impact" unless the Department creates a statewide policy establishing economic and social criteria for such waivers. This policy should be published in the PA Bulletin and released for public comment. When it comes to water pollution, I am concerned that short-term economic and/or social benefits due to a waiver of the regulations may result in long-term havoc since water pollution is so difficult to remediate once it has occurred. While remediation may seem "unreasonable" today it may be vital when one looks to the future.

Additional
time period
NPDES

Some of the Chapter 16 regulations also have references in the Chapters 96-98. I would like to see my comments to the EAB on these criteria could
§16.321 I oppose deletion of Subsection (c) taste and odor values, and (d) teratology data, and other sources which might not have been used in criteria development but might be vital to the health of the waters of the Commonwealth. Many citizens would have a problem with the Department's assertion that human health criteria are established for protection from long-term effects, and that taste and odor values involve acute or immediate effects. The preoccupation with specific data sources could also result in the Department's missing out on important new information.

§16 Appendix A - I oppose the deletion and/or weakening of numerous chemicals from regulation due to the Department's assertion that their development was under outdated procedures. I am also opposed to the Department's plan to make many of the chemical criteria less stringent, as well as to relegate previously enforceable effluent limits to the lesser "Guidance." It also appears that it is the Department's obvious intention to more frequently impose Whole Effluent Toxicity Testing, a method which will allow a discharger to pass a test while emitting possibly toxic amounts of one or more chemicals into the waters of the Commonwealth. On the one hand the Department is concerned about lack of data, but on the other hand the lack of data doesn't seem to matter.

I am also opposed to allowing the National Toxics Rule to govern Pennsylvania. As an example, there are fish advisories for the Delaware River and Bay due to pesticide contamination, especially chlordane. Yet, the Criteria Maximum Concentration levels for chlordane (as well as for many other pesticides) will double under the proposed criteria.

I would also note that an inconsistency exists between these regulations which call for a 1×10^{-6} cancer risk level and a $1 \text{ in } 10^{-7}$ level in the proposed residual waste regulations as well as the Act 2 regulations. Levels for enterprise zones and special industrial areas may eventually be stringent. I would urge the Board to not be under the most protective level and ensure it being met

Freeman, Sharon

From: Herb Mays - DARA(SMTP:herbmays@cdbcpcpa.com)
Sent: Wednesday, October 28, 1998 8:44 AM
To: RegComments

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On behalf of the Downingtown Area Regional Authority, I would like to provide the following comments on the proposed revisions to chapters 92, 93, 95, and 97 of the state's water quality regulations:

1) Regarding the protection of potable water supplies, I believe that criteria should be applicable to all waters of the state. However, the state permitting people must understand that such a criteria does not imply the water should be safe for drinking without prior treatment. I have previously encountered instances where the potable water supply criteria has been misapplied by the state. Also, the state is proposing numerous changes to Ch 93, including the apparent deletion of many of the parameters currently listed under Table 3 of that chapter. The state also has deleted Table 5 of that section which defines the acronyms used under the "critical use" column of Table 3. I can find no reference to the remaining acronyms in Table 3 nor could I find reference to the potable water supply criteria anywhere therein.

2) The Chapter 16 - Water Quality Toxics Management Strategy should be made available for comment and adopted as regulations. The state's intended strategy to be no more stringent than the federal regulations is currently violated within Ch 16 and the discrepancies must be addressed. Reference should also be made in Chapter 93 to the Chapter 16 toxics strategy.

3) New subparagraph 92.41 explains new policy for requiring additional monitoring by NPDES permittee. Essentially it requires annual conventional, non-conventional, and/or priority pollutant sampling by the permittee at least once a year and follow-up measures where pollutants are detected in the discharge that are currently not limited by the permit. What does it mean by detected? Does their mere presence justify follow-up actions, or should an actual exceedance of a water quality standard or limit be the basis for further actions? It would seem to me that the latter would be more prudent. Similarly, the basis for the additional permit conditions required by new paragraph 92.52a must be stated. The state should not have carte-blanch power to include new and costly requirements without due cause. That cause is not defined in the current regulations.

Otherwise, the regulations appear to be clearer and technically superior to the current regs.

Very truly yours,

Herbert J. Mays, P.E.
Downingtown Area Regional Authority
P.O. Box 8
Exton, PA 19341
herbmays@cdbcpcpa.com

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98 NOV -6 AM 9:14
STATEMENT
REVIEW COMMISSION

Freeman, Sharon

From: Kershner Gwendolyn (SMTP:kershner_gwendolyn@bah.com)
Sent: Wednesday, October 28, 1998 2:16 PM
To: REGCOMMENTS
Subject: Proposed Water Quality Amendments

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To whom it may concern:

While I express confidence in the federal government's abilities to ensure protection of human health and the environment, I find myself gravely disturbed at the proposal to "roll-back" state regulations to federal guidelines. In granting states authority to implement portions of federal environmental programs, they recommended, AT A MINIMUM, that state standards must be meet federal regulations. Why must Pennsylvania be a minimalist state and once again cater to big business interests? I think it makes sense to review the existing state regulations and analyze whether they are economically prohibitive. However, I don't think DEP has presented enough data to allow the public sector to assess whether the benefits gained by the less stringent regulations will result in far greater costs to human health and the environment, in particular, the ecological integrity of our streams and rivers. I request a public hearing so that DEP can provide in more detail, the basis for the proposed regulations.

Sincerely,
Gwen Kershner-Supplee
14 Fox Road
Collegeville PA, 19426
610-489-6729

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DEPARTMENT OF ENVIRONMENTAL PROTECTION
WATER QUALITY DIVISION
OCT 29 1998 9:13 AM

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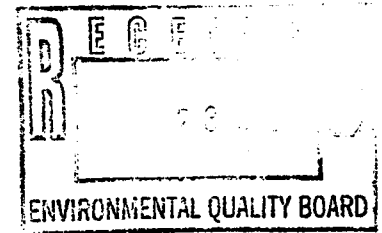
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INDEPENDENT REGULATORY
REVIEW COMMISSION

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October 28, 1998

Re: proposed changes to Pennsylvania's water quality standards

Good day,

The Delaware Riverkeeper Network (PO Box 326, Washington Crossing, PA 18977, (215) 369-1188) is writing in opposition of PADEP relaxing water quality standards of the Commonwealth. Consider the following bullets:

- PADEP has made great strides forward in developing watershed planning, environmental education in the classrooms and promoting volunteer water quality monitoring. How responsible is it for DEP to encourage school children and senior citizens to dip their hands in the water to collect dissolved oxygen readings or lift rocks to observe macroinvertebrates when that same agency is authorizing greater amounts of toxins and carcinogens to be dumped into those same waterways? PADEP and responsible industries should be looking for ways to eliminate the discharges into our waterways not how to justify discharging greater quantities.
- PADEP states that some criteria are 20 years old and not scientifically defensible. Let's address those one at a time in a responsible manner, not make sweeping changes that might seriously threaten our waterways. Our streams and rivers provide drinking water, recreation and habitat for humans and wildlife alike. Remember that we are all part of the same food chain, if we poison the fish and other aquatic species we poison ourselves
- Riverkeeper further opposes the changes of permitting that will result with these regulatory changes. The citizens of the Commonwealth can not afford to rely on business to make the most responsible decisions when it comes to a clean environment and public safety. Their focus on the bottom-line is contrary to environmental protection. The state must monitor industrial and municipal discharges.

Again, we oppose these changes and feel strongly that the citizens of Pennsylvania would say the same. We urge you to grant an additional 60 days public comment and allow the environmental community to bring this issue to the public. If this extension is not granted, we urge the legislative committees and the Independent Regulatory Review Commission to provide this opportunity to the citizens of the Commonwealth.

Sincerely,

Fred Stine
Citizen Action Coordinator

C: Chesapeake Bay Foundation

*Delaware Riverkeeper Network
P.O. Box 326
Washington Crossing, PA 18977*

Freeman, Sharon

From: DotF1(SMTP:DotF1@aol.com)
Sent: Wednesday, October 28, 1998 5:24 PM
To: REGCOMMENTS
Subject: Water Regulations

I oppose weaking of Pennsylvania's clean water regulations.

(The Rev.) Dorothy M. Field
P.O. Box 379
Swarthmore. PA 19081

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