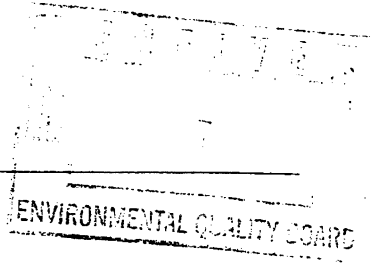


Freeman, Sharon



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 92,93,95,06 and 97
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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 regularity 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

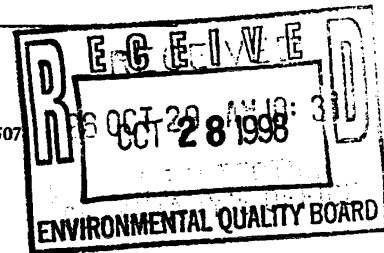
Terry Morrow
Jack Williams
Co-chairs PA Trout Environmental Committee

RR # 2, Box 168
Clarion, Pa 16214

KIRKPATRICK & LOCKHART LLP

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R. TIMOTHY WESTON
(717) 231-4504
westonrt@kl.com

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

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DEPARTMENT OF ENVIRONMENTAL PROTECTION
HARRISBURG, PA
OCT 29 1998 11 09 13

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

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Freeman, Sharon

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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
MICHIGAN COMMISSION

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

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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.

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,

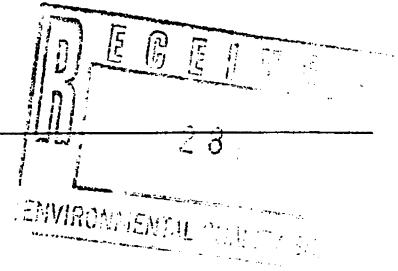
Chari Towne
Director, Schuylkill Riverkeeper
P.O. Box 459
St. Peters, Pennsylvania 19470

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

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 #3, Box 354~~

~~Acme, PA 15610~~

P.O. Box 408

Melcroft, PA 15462

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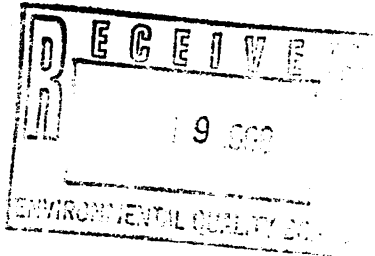
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INDEPENDENT REGULATORY
REVIEW COMMISSION

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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 in John Brenner

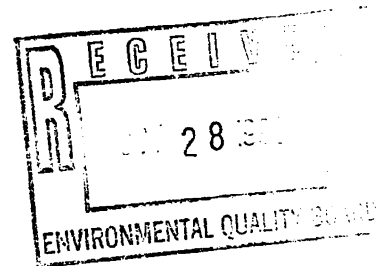


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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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

Customer Service Hotline: 1-800-438-2474

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, they 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.

Customer Service Hotline: 1-800-438-2474

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	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 NM/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 NMAVPA 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-Dichloro-benzene					3000 ⁷	400
1,4-Dichloro-benzene					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 $\mu\text{g/l}$, where it is actually 2.5 $\mu\text{g/l}$.

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.

1 E R 5 1

Freeman, Sharon

From: Tornabene, Kathy W(SMTP:kathy.w.tornabene@lukens.com)
Sent: Tuesday, October 27, 1998 6:38 PM
To: REGCOMMENTS
Cc: dcalderazzo; jnimg; 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*

10/27/98 6:38 PM
REGCOMMENTS

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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30 NOV -2 AM 9:11

October 28, 1998

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

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WELFARE, REGULATORY
REVIEW COMMISSION

COPY

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. *Regarding public partic, I would encourage the EGB to allow additional public comments regarding NPDES permits*

§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 too much discretion. The public needs to know specifically what effluent trading criteria will entail 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, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

§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 $1 \text{ in } 10^{-4}$ 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 set the most protective level and ensure it being met.

96/4/96
I would like to read my comment to the EGB.

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
STATE WATER
REVENUE 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

NOVEMBER 11 1998
DEPARTMENT OF ENVIRONMENTAL PROTECTION
HARRISBURG, PA
610-489-6729

Freeman, Sharon

From: FCA3(SMTP:FCA3@aol.com)
Sent: Wednesday, October 28, 1998 9:50 AM
To: regcomments
Cc: rmusto; ghope; rmadigan; cgeorge
Subject: Reduction of water standards in Pennsylvania

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We are writing to voice our strong objections to lowering the water pollution standards in Pennsylvania. We must not take a step backwards. Don't be soft on polluters. Don't allow more toxic chemicals to be dumped into our waters.
Frank and Margaret Arrison, 554 Mud Rd., Newton, PA.

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REVIEW COMMISSION

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98 NOV 10 PM 3:57

INDEPENDENT REGULATORY
REVIEW COMMISSION

ORIGINAL: 1975

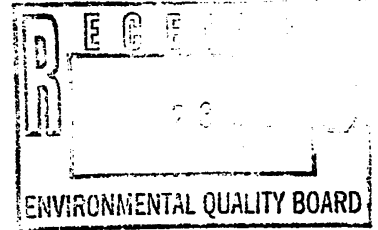
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October 28, 1998

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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Freeman, Sharon

From: DDCOOK56(SMTP:DDCOOK56@aol.com)
Sent: Wednesday, October 28, 1998 9:36 AM
To: regcomments
Subject: Lower water quality

As a concerned citizen of PA, I protest your proposal to lower water quality of our waterways. We should keep working to make our streams healthier, not bend to industrial pressures. Why should anyone look at our streams as a dumping grounds for their waste?

I certainly do believe we should use lower life forms in the streams as an indicator of levels of pollution.

Government has the responsibility to protect our environment, not to allow industry to

ruin our air and water quality.

People are already reluctant to swim in our streams and lakes. Why would you

ever think of allowing the streams to get worse?

Toxins should not be discharged into our streams. They should be treated and

disposed of in some other way.

Please be responsible scientists and government officials and not allow this

increase in toxic discharges. Do you want your kids swimming down stream of these sites?

Concerned,

Dorothea and David Cook
112 North Chester Road
West Chester, PA 19380

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SANDUSKY
LEGAL

Freeman, Sharon

From: J. Turner(SMTP:jturner@voicenet.com)
Sent: Wednesday, October 28, 1998 6:24 PM
To: REGCOMMENTS
Cc: gateway; mspanier; llandes; hsnyder; rmyers; jwilmer; rmadigan; musto; cgeorge
Subject: Comments

Mr. James M. Seif, Chairman
Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477
28 October 98

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Dear Mr. Seif:

The following are the comments of the Raymond Proffitt Foundation on the proposed changes to the water quality regulations as described in the August 29, 1998, Pennsylvania Bulletin.

We are disappointed that DEP would not support an extension of the comment period. These are complex regulations that deserve a thorough analysis. Apparently, DEP believes they have received sufficient input from the "regulated community" on the "Regulatory Basics Initiative," and input from citizens (who have to do things on their own time and do not have paid lobbyists working for them) simply gets in the way. DEP should pull these regulations, hold public information meetings across the state, and then publish draft regulations. These changes were written by polluters, for polluters.

Despite DEP's insistence on rushing through these changes, we have managed to analyze the regulations to a certain extent and offer these comments.

Chapter 92

92.2d(3). We support retention of the technology-based limit (0.5 mg/l) for total residual chlorine.

92.51(6) The language in the proposed regulation needs to be simplified to say that compliance with all water quality standards is required. The proposed language has loopholes.

92.61 We strongly support an additional public comment period when someone intends to submit an NPDES application, as recommended by the Water Resources Advisory Committee.

92.81 We strongly oppose allowing "general" permits in High Quality streams or impaired waters. General permits should not allow the discharge of toxic

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materials. Individual permits should be required in these cases. Documentation for these permits should not be reduced.

Chapter 93

DEP is representing this as a Triennial Review of Water Quality Standards, although it has few of the elements required by Federal regulations for inclusion in Triennial Reviews. Pennsylvania has a history of inadequate Triennial Reviews, so we are not surprised to see these changes, represented as "streamlining" under the "Regulatory Basics Initiative," suddenly transformed by DEP into a "Triennial Review" only for the reason that one is overdue. We will be watching EPA's action carefully on this so-called "Triennial Review."

We also note that a Triennial Review is supposed to consider changes that make the standards more protective, not just "streamlined" or weaker. DEP's refusal to extend the comment period makes it nearly impossible for citizens' groups to suggest revisions or additions to the standards that will help them fulfill their function, which is to protect public health and welfare and aquatic life. DEP's changes seem to have been made only to protect dischargers' financial health.

93.4 We support the present protection of all of our waters as "potable water" sources.

93.5(e) The proposal moved most of this section to the new Chapter 96, but did not include a sentence that presently limits mixing zones. Pennsylvania's regulations need to retain this sentence and prohibit mixing zones.

93.6 It is very disappointing to see no language protecting instream flows and aquatic habitat. Other states have such protection, and the U.S. Supreme Court has ruled that states are permitted to protect instream flows. The U.S. Fish and Wildlife Service presented testimony on the need for such language and presented the EQB with draft language that we support.

Chapter 96

This chapter is weak in many areas, including protection of existing uses, TMDLs, and nutrient controls. This new chapter should be withdrawn and explained to the citizens of the Commonwealth through a series of public information meetings.

Sincerely yours,

Joseph W. Turner, Sec/Tres.
Raymond Proffitt Foundation
P.O. Box - 723

Langhorne, Pa. 19047-0723
(215) 945-1329
jturner@voicenet.com
<http://www.rayproffitt.org>

hard copy to follow

Comments on Changes in Regulations on Water Quality

Chapter 92 – NPDES Permitting.

92.25 (3) Keep the chlorine cap to help protect aquatic life.

92.51(6) DEP must insist on all permittee's guarantee that they will comply with all water quality standards.

92.81 DEP should not allow toxics to be regulated by general permits.

Do not use general permits in high quality waters at all.

Require documentation that the permitted activity will not violate water quality standards.

Do not allow use of general permits in impaired waters.

Chapter 93 Water Quality Standards

93.4 Retain the protection that all waters in the Commonwealth are considered potential potable water sources.

Retain warm water fishes as the base level of protection for aquatic life in Pennsylvania streams.

93.5 (e) Replace the "mixing zone" section in Chapter 93.5 or expound it in Chapter 96. At any rate, if planning to do something else to the same effect, DEP must seek comment.

93.6 DEP should develop instream flow and habitat criteria, incorporating them into this chapter of regulation.

Chapter 96 Water Quality Standards Implementation

96.4 TMDLs as discussed and regulated in this chapter ignores non-point source problems. You really can't ignore them, you know. They exist. There is also no discussion of modeling in rain-induced pollution episodes. Get real. Also, the regs should be clear in that they apply to all waters, not just impaired waters, though those are most important. Also, let's see how DEP would address remediation of such non-point source, rain-induced or not, pollution.

Submitted by:

Helen Norton
119 Conway Street
Carlisle, PA 17013

DEP
11-15-14
11 15 14

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Freeman, Sharon

From: Meiser, David(SMTP:david_meiser@merck.com)
Sent: Wednesday, October 28, 1998 12:23 PM
To: REGCOMMENTS
Subject: Comments on Revisions to Chapter 96 Water Quality Standards Implementation

David Meiser
5526 Wismer Rd
Pipersville PA 18947
215 297-8771
dhmeiser@dyanet.com
October 28, 1998

Edward Brezina
DEP
PO Box 8555
Harrisburg PA 17105-8555

Attached are my comments on 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.

David Meiser

RECEIVED
98 NOV -6 AM 9:13
PAUL H. JOHNSON
WATER COMMISSION

Freeman, Sharon

From: Meiser, David(SMTP:david_meiser@merck.com)
Sent: Wednesday, October 28, 1998 12:23 PM
To: REGCOMMENTS
Subject: Comments on Revisions to Chapter 92, NPDES Permitting, Monitoring , and Compliance

David Meiser
5526 Wismer Rd
Pipersville PA 18947
215 297-8771
dhmeiser@dyanet.com
October 28, 1998

Edward Brezina
DEP
PO Box 8555
Harrisburg PA 17105-8555

DEP PERMITTING DIVISION
98 NOV -6 AM 9:13
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Attached are my comments on 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 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.

PUBLIC COMMENTS:

Written comments should be sent to: Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail to Rachel Carson State Office

Building, 400 Market Street, Harrisburg, PA 17105-2301) before October 28, 1998. If a one page summary of the comments are submitted as well, the EQB members will receive it with the regulatory package for the meeting on the final form regulations.

Electronic comments may also be sent to: RegComments@A1.dep.state.pa.us. The subject heading of the proposal and return name and address must be included in each transmission.

Revisions to Water Quality Standards (Cont.)

Chapter 16 Water Quality Toxics Management Strategy - Statement of Policy

This is separate from the rest of the proposed changes - since Chapter 16 is only a statement of policy, comments should be directed to DEP rather than the Environmental Quality Board. However, since this chapter contains all the chemical specific criteria, these changes are very important.

DEP is proposing a major roll back regarding criteria for toxics. The proposal includes deleting aquatic life criteria for about 70 chemicals, with the reasoning that they were originally developed using an old method and there aren't enough data available to use the newer method. DEP proposes to make these old values "guidance," with the discretion to require whole effluent toxicity testing(WETT).

There are several problems with this approach. First, DEP cannot include an enforceable effluent limit in a permit based on guidance values. Second, DEP has discretion to require the discharger to look at total toxicity, which means a discharger can discharge possibly toxic amounts of one of these chemicals into the stream with absolutely no way to regulate the amount.

Right now, discharge limits are calculated to protect aquatic life and human health, and the more stringent is used. With the proposed changes, there will be no way to regulate 20 of the chemicals since there are no corresponding human health criteria. For about another 20 substances the protection will be weakened since the human health numbers are greater, and in some cases much greater, than the aquatic life values DEP proposes to delete. DEP should keep the current aquatic life values as criteria until more data become available to use newer methods to update the criteria.

This proposal also deletes the requirement for DEP to develop criteria for chemicals proposed to be discharged if none currently exist. DEP should retain this requirement to develop criteria for discharges of chemicals if data show a chemical is toxic.

David Meiser

Freeman, Sharon

RECEIVED

From: Meiser, David(SMTP:david_meiser@merck.com)
Sent: Wednesday, October 28, 1998 12:23 PM
To: REGCOMMENTS
Subject: Comments on Revisions to Chapter 93 Water Quality Standards

98 NOV -6 AM 9:13

INDEPENDENT REGULATORY
REVIEW COMMISSION

David Meiser
5526 Wismer Rd
Pipersville PA 18947
215 297-8771
dhmeiser@dynamet.com
October 28, 1998

Edward Brezina
DEP
PO Box 8555
Harrisburg PA 17105-8555

Attached are my comments on 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.

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I N T E R O F F I C E M E M O R A N D U M

Date: 28-Oct-1998 02:20pm EST
From: Susan Meeker & Jim Cummings
alaric@netaxs.com@PMDF@DER003
Dept:
Tel No:

TO: regcoments (regcoments@a1.dep.state.pa.us@PMDF@D
TO: brezina.edward (brezina.edward@a1.dep.state.pa.us@PM

Subject: Comments on Proposed deregualtion of clean water

I was shocked reading today's Inquirer that, in a state where I do not let my child drink the tap water, PA is considering deregulating water standards. I appeal to this in charge of such things that the public comment period on these regulations be lengthened. My main concerns are that relaxed regulations for general permits to discharge deadly chemicals in my family's water and the removal of aquatic life criteria, including removing numeric standards for cobalt! and relaxing standards for phenol, toluene, xylene and formaldehyde - chemicals which I do not permit in my house and do not want in Pennsylvania's house

I would prefer to spend the money I use for filtered and bottled water f taxes to support better schools, environmental protection and public services in PA.

Sincerely
Jim Cummings
505 S. 48th St.
Philadelphia, PA 19143-2020

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REVIEW COMMISSION
OCT 10 PM 3:58



Green Valleys Association

Kathryn Sloan, President * Morrison Huston, Daniel P. Mannix, V, Esq., and Richard Tesar, Vice Presidents
Mary Ellen Eldridge, Secretary * Donald W. Hans, Jr., Treasurer * John F. Hoekstra, Executive Director

Oct. 28, 1998

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Chairman James M. Seif, EQB
PO Box 8477
Harrisburg, PA 17105-8477

RE: Proposed Revision to Water Quality Standards

Dear Mr. Seif,

On behalf of the Board of Directors of the Green Valleys Association and our 1000 members, I wish to express our opposition to some of the changes to the water quality regulations as described in the PA Bulletin, August 29, 1998 edition. We are most concern about the proposed modifications to the wastewater discharge regulations as follows:

Chapter 92.51 - The language needs to be simplified to say that compliance with all water quality standards are required.

92.81 - We are strongly opposed to "general permits" in H.Q. or impaired streams. General permits should not allow the discharge of **toxic chemicals**. The ability of the state to monitor toxic discharges is negated. Toxic chemicals must be be individually monitored and eventually eliminated from all discharges to any stream.

93.5(e) - Proposal does not include a sentence that presently limits "mixing zones". PA regulations need to prohibit these zones.

93.6 - There is no language protecting instream flow and instream habitat, in spite of the U.S. Supreme Court ruling which says that states are permitted to protect instream flows. This omission also ignores the recommendations by the 21st Century Environmental Commission. Our water quality depends on instream flow and aquatic habitat protection.

Pennsylvania is currently second only to Louisiana for toxic chemical discharges into its streams rivers and lakes. This fact is based on just the reported toxic releases and does not reflect any illegal discharges or accidental releases. These proposed changes to water quality and permitting regulations are a step backwards from our current level of protection and are not acceptable.

DEP must revise these proposals so the quality of the waters in Pennsylvania will be of the highest quality possible for current and future generations.

Sincerely,

John Hoekstra, Executive Director

cc: Chester Co. Commissioners, Sen. J. Gerlach, Rep. C. Schroeder, Rep. C. Rubley,

1368 Prizer Road
Pottstown, PA 19465

Freeman, Sharon

From: Roger House(SMTP:rogerh@philadelphia.libertynet.org)
Sent: Wednesday, October 28, 1998 2:41 PM
To: REGCOMMENTS
Subject: Opposed to Proposed Changes to Clean Water standards

RECEIVED
98 NOV 10 PM 1:00
INDEPENDENT REGULATORY
REVIEW COMMISSION

We are citizens of Pennsylvania, and are very upset to read about the proposed lowering of the standards for industrial emissions into the state's waters.

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We don't like the general permits that DEP would issue to companies, as opposed to individual permits for specific chemicals. How in the world would the citizens find out what is being released in our waters? Specifically, the government should be able to readily deny general permits to companies with a history of non-compliance.

The complete removal of aquatic-life criteria standards is not acceptable. The proposed lessening of stringency standards for phenol, toluene, xylene, and formaldehyde are unacceptable. These are carcinogens, and as a household who has already been struck by cancer, we find the government's willingness to bend to industry on this matter unacceptable and offensive.

Whose interests, exactly, is the government looking out for? It doesn't feel like us! We were ready to vote for Governor Ridge for re-election, but this proposal has us steaming.

Please don't corrupt our hard-won rights to a safe environment.
Sincerely,

Joy Bergey and Roger House
1632 Chattin Road
Laverock, PA 19038-7120

Freeman, Sharon

From: Judy Austin(SMTP:JAustin@mail.nbme.org)
Sent: Wednesday, October 28, 1998 8:24 AM
To: REGCOMMENTS
Subject: lowering standards on water

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To the DEP: I am emailing you to register by concern and disapproval regarding the proposed relaxation of pollution regulations. That this organization would remove limits for the discharge of toxic chemicals into to our water and ease the standards on others is unacceptable. You have no way of knowing what the long term effect this will have on human life. It will be hazardous to fish and wildlife. If this is the attitude of our governor, then he has just lost a vote from a registered Republican. Please, for the sake of human and wildlife, reconsider this change. Had I known that this was the last day for comments, I would have put these comments in a letter. I only saw the information in today's Philadelphia Inquirer. Thank you for your attention.

Judy Austin
102 Nursery Drive
Norristown, PA 19401

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98 NOV -6 AM 9:14
DEPARTMENT OF ENVIRONMENTAL PROTECTION
REVIEW COMMISSION

Freeman, Sharon

From: John Snodgrass(SMTP:snodgras@Op.Net)
Sent: Wednesday, October 28, 1998 11:57 AM
To: REGCOMMENTS
Subject: Toxic Chemical dumping

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ATT101849.htm

Hi, I read in the Inquirer News Paper today 28 of Oct. that you are going to roll back regulations on toxic pollution, SHAME SHAME SHAME. This is a bad idea. If anything you should be MAKE IT HARDER for businesses and sewer facilities to DUMP TOXIC CHEMICALS AND WASTE PRODUCTS in our natural waterways. I am a voting citizen and a vocal citizen, please reconsider for our children's and grandchildren wellbeing.

Tamera Snodgrass, 541 BeecherAve. Cheltenham, Pa. 19012, 215-379-0336

RECEIVED
98 NOV -6 AM 9:13
INDUSTRIAL POLLUTION CONTROL
REVIEW COMMISSION



SIERRA CLUB

98 OCT 28 PM 12:00

SECRETARY'S OFFICE

Pennsylvania Chapter

P.O. Box 606

Harrisburg, PA 17108

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OCT 28 1998
FEDERAL GOVERNMENT

October 28, 1998

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

Dear Mr. Seif:

The Pennsylvania Chapter of the Sierra Club is pleased to have the opportunity to comment on the proposed amendments to water quality regulations in Chapters 92, 93, 95 and 97 and the addition of Chapter 96 regarding water quality standards implementation, as noticed in the Pennsylvania Bulletin, v. 28, no. 35. The Pennsylvania Chapter has played a long-standing role in promoting the interests of our membership in the protection and restoration of the health of the Commonwealth's aquatic environment. We strongly believe that effective and properly implemented water quality regulations are fundamental to the protection of Pennsylvania's lakes, rivers and streams and the diversity of life dependent on them.

We note that the proposed amendments represent the result of a regulatory review of Pennsylvania's water quality regulations as part of the Regulatory Basics Initiative announced by the Ridge Administration in 1995. According to the announcement, the proposed rulemaking is intended to "streamline" and "clarify" the water quality regulations and to modify them where they are "more stringent than Federal regulations without good reason". The notice in the Pennsylvania Bulletin also indicates that the amendments to Chapters 93 and 96 "constitute the major portion" of the Triennial Review of State water quality standards, as required under Sec. 303 of the federal Clean Water Act.

Our comments regarding the proposed amendments are guided by three fundamental considerations. First, we believe that a precautionary approach should be applied to the establishment of regulations regarding the exposure of human and other life to toxic and other pollutants. Secondly, we believe that the purpose of the Triennial Review is to identify those



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changes to water quality regulations that are necessary to ensure that the restoration and protection of the Commonwealth's waters are achieved and maintained. In other words, the Triennial Review is intended to expand the toolbox where necessary; it is not for the purpose of regulatory streamlining. Hence, it cannot be assumed that the proposed rulemaking fulfills the Clean Water Act requirement for review.

Our comments are also guided by the fact that many of Pennsylvania's waters are severely impacted by water pollution and degradation, while other waters are threatened. Despite the Commonwealth's long-standing legal tradition of safeguarding its water quality through the state Constitution and the Clean Streams Law, long pre-dating the federal Clean Water Act, our experience has not lived up to the potential embodied in those statutes. Acid mine drainage is a gross illustration of water pollution still ravaging our rivers and streams; past toxic pollution means a legacy of toxic sediments in some of our rivers; and loss of half our wetlands. Our progress with curbing toxic and conventional pollution discharges has been counteracted by our failure to address nonpoint pollution sources, especially agriculture. In addition, the aquatic habitat degradation and hydromodification impacting many of our waters as a result of inappropriate land uses are very likely contributors to the recent finding by the Fish and Boat Commission that Pennsylvania's fish populations appear to be more stressed than previously recognized. The Commission's proposal to add thirteen species to the Pennsylvania listings of endangered, threatened and candidate species should cause the Department of Environmental Protection to rethink these proposed changes.

In general, we find that the proposed regulatory package, especially when considered in conjunction with the proposed statement of policy on toxics management, proposed Chapter 16, fails to meet our expectations and represents a major setback in the effort to make Pennsylvania's waters healthy. Our comments on specific aspects of the revisions are detailed below.

Chapter 92:

92.2d We support the EQB's proposal to retain the "best available technology" effluent limitation for total residual chlorine (either 0.5 mg/L or a facility-specific number). These effluent limits on chlorine are critical to the protection of aquatic life.

92.51 We support the addition of language making the general water quality criteria of Chapter 93.6 a standard condition in each permit. As proposed, however, the language inappropriately merges the two criteria such that the specifically controlled substances [oil, grease, scum, etc.] are not subject to limits unless they pose a threat to the protected uses and only if no effluent limitation is provided in the permit. We believe that the incorporation should apply the two standards 93.6a and 93.6b independently and in all circumstances.

92.61 We support the recommendation of the Water Resources Advisory Committee, as described in the background discussion of the current proposal, to revise the public notice

process in order to afford the public a more participatory role in the review and approval of NPDES permit applications. Requiring that applicants publish notice of their intent to submit an application for a new discharge will ensure that comments from the public can be taken into account at a point of greater impact in the application process.

92.81 We fundamentally oppose the provisions in this section that would allow pollution dischargers to high quality waters and toxic pollution dischargers to be eligible for general permits. This provision, while it may be portrayed as a mere streamlining measure, would constitute a dangerous and unacceptable relaxation of protective regulations. If Pennsylvania has made progress in reducing the flow of toxic and conventional pollutants into our rivers and streams, it is in no small way due to the monitoring, oversight and public participation associated with the individual permitting process. DEP is proposing to eliminate that scrutiny for eligible discharges of toxic chemicals and discharges to high value waters, with the requirement that general permits contain effluent limits as the only real safeguard. The precautionary principle regarding exposure to toxins and the evidence that present water quality may not be sufficient to protect our fish populations argue strongly that pollution discharges to high quality waters and discharges of toxins to any waters should be subject to the full scrutiny and accountability of the individual permitting process.

Chapter 93:

93.4 We recommend retaining "potable water supply" as a Statewide water use, in order to provide the protection to all of the Commonwealth's waters as existing or potential sources of drinking water.

93.6 The proposed revisions to water quality standards represented in this section are not sufficient to meet the intended purposes of the Triennial Review, which are to improve the effectiveness of the water quality regulations in protecting human, fish and wildlife uses of the waters. As noted above, we believe that the findings of the Fish and Boat Commission are a signal to the EQB that more effective protection of aquatic habitat and hydrological integrity may be necessary. In addition, in many of Pennsylvania's surface waters where biological assessments indicate unhealthy conditions, habitat degradation and flow modification are implicated. Pennsylvania needs to adopt explicit criteria for addressing these sources of impairment. We support the adoption of the additional standards recommended by the U.S. Fish and Wildlife in their comments on the current revisions to Chapter 93, namely the addition of prohibitions against the alteration of waters and human-induced hydrological alterations inimical to the protection of humans, aquatic life and wildlife, and their uses of the waters.

Chapter 96

96.4 This section on implementation of TMDLs fails to address the control of nonpoint sources where they represent a cause, or the cause, of impairment, except by proposing, in extremely simplistic terms, an effluent trading mechanism. The proposal would give virtual carte blanche to allow trading of effluent limits among pollution dischargers and other pollution sources. The

public is being asked to grant new authority to DEP essentially on faith. DEP would have the ability to make the rules in terms of the scope of the trading program, the types of pollutants involved, the evaluation of potential cumulative impacts on waterbodies, and a host of other important considerations. DEP offers that they would invite public comment on a published description of the procedure. On the contrary, we believe that such a program would need to be proposed in regulation.

Among the issues that a satisfactory program would need to explicitly address, in addition to those mentioned above, are: the treatment of unused pollution allowances; the accountability of nonpoint sources for the pollution reductions assigned to them; the monitoring necessary to ensure pollution reductions actually occur; the issue of recourse if reductions do NOT occur; and the treatment of non-compliance. None of these issues should be left to DEP's discretion alone. In general, the Sierra Club is opposed to effluent trading unless it would achieve better results than those achievable on a permit-by-permit basis. The Sierra Club is unaware of an effluent trading program that provides a sufficient degree of accountability to address our concerns.

In summary, the Pennsylvania Chapter of the Sierra Club does not find the proposed revisions to the water quality regulations adequate. We believe that, especially if the effort is to kill two birds with one stone by having the Regulatory Basics Initiative meet the requirements for a Triennial Review, the EQB will need to address our above-mentioned concerns. The Triennial Review should answer the question: what changes are necessary to enable Pennsylvania's regulations to foster the protection and restoration of the water quality in our lakes, rivers and streams that is needed to make them safe and clean enough to support the diversity of life dependent on them? This regulatory package fails to do so.

Sincerely yours,



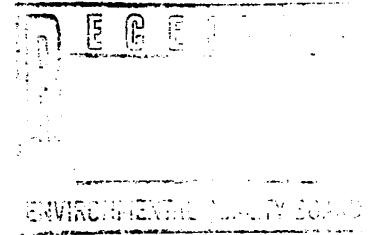
Michael Stibich
Chair, Sierra Club Pennsylvania Chapter

no return address

Freeman, Sharon

From: Mushpup(SMTP:Mushpup@aol.com)
Sent: Wednesday, October 28, 1998 4:22 PM
To: REGCOMMENTS
Cc: BREZINA EDWARD
Subject: water standards

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Dear sirs:

What do you call bureaucratic burden?
Is it a "burden" to preserve our water quality?
Is it a burden to notify the community in a reasonable way so public discourse
can take place?
Why are we a society that kills our grandchildren to feed our children?
Water is the life blood of our planet and we depend on it for our very
survival.
WE as a community demand to be more amply informed!!!!
This has been on the table for 60 days, and now we hear about it on the last
day? Where was the notification? Are you hiding????

Received
90 NOV 10 PM 3:58
INDEPENDENT
REVIEW COMMISSION

We request an extended public comment period!

Samie & Mitchell Dozor

Sexton

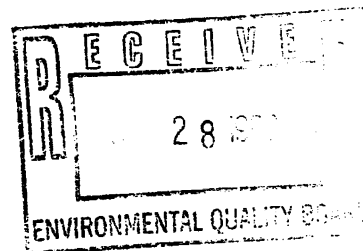
Lauderbach, Cindy

From: Bob Stanfield[SMTP:stanassc@epix.net]
Reply To: Bob Stanfield
Sent: Wednesday, October 28, 1998 12:54 PM
To: SEIF JAMES
Cc: rmadigan; musto; cgeorge; Joe Conti; Linda Wieand; Bruce Wallace; Martie Kyde; Gary Pearson; jturner
Subject: EQB & Water Quality Standards

Re:Rule Making NPDES,Water Quality Standards, et al

Mr. James M. Seif,Chairman
Environmental Quality Board
Department of Environmental Protection
Rachel Carson State Office Building
Harrisburg, PA 17105

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Dear Mr. Seif,

Both as a member of the Tinicum Township Environmental Advisory Committee and as a petitioner for EV status for the Smithtown Creek, I have an interest in reviewing the Proposed Rule Making for NPDES, Water Quality Standards,etal It has been unfortunate that

- a) this process had not been brought to my attention earlier and
- b) some of the documents on the Web Site were in a proprietary, not universally accepted format that made downloading and conversion very difficult.

Not withstanding that Chapter 93 is still inaccessible to me, I am concerned that broad General NPDES permits are not tightly defined and constrained. It has been our experience that there can and has been lapses in the permitting process. In such cases, the public needs specific criteria to effect legal remedies in court. It is of particular concern that effluent limitations may be established in the general permit without reference to pre-established standards. Further, these revisions will allow the discharge of toxic or hazardous substances into High Quality Waters while the barrier has been raised to the designation of Exception Value Waters, is extremely disturbing. I object to the wording of the proposed Section 92.81 and believe that it needs significant revision.

It is unfortunate that I did not have the time to research other state regulations, but I am concerned that there is not at least cross reference to groundwater quality. For example, in the comments on Section 92.5a Concentrated animal feeding operations the concern is with surface water discharge. There exists serious groundwater contamination in agricultural areas, particularly by nitrates. (See the problems created in North Carolina and Oklahoma.) The use of holding ponds can and has lead to serious groundwater pollution. The connection of surface and groundwater should be addressed.

In Section 92.11 the wording should be made clear that more stringent standard of performance for lesser of 10 years... or during the period of depreciation. I presume this was the intent of the EQB.

Very truly yours,
Robert B. Stanfield,ScD

29 Ledge Lane

Pipersville, PA 18947
Voice 610-294-9884
FAX 610-294-8119

NOVEMBER 13 1998 3:57 PM
MIZNER
ENVIRONMENTAL QUALITY BOARD

Freeman, Sharon

From: Peter & Karen Diamond (SMTP:diamond@vsi.net)
Sent: Wednesday, October 28, 1998 8:06 PM
To: Senator Greenleaf; Governor Ridge; SEIF JAMES; ALLEN CHRISTOPHER; FREEMAN SHARON; FEOLA JOSEPH; RUPERT CLARKE
Subject: Water Quality Standards

We are writing to express our outrage at the proposed changing of the standards for toxic water pollution discharges in Pennsylvania. (Water Quality Amendments Chs. 92, 93, 95, 96 & 97)

This is completely outrageous and unacceptable!!! There is no way anyone can be helped by an increase in toxic pollutants in our water. At a time when Pennsylvania citizens are being harassed by the DEP with stricter and stricter automobile emissions, the DEP is ready to allow additional toxic chemicals in our streams and lakes???

The changes to the "general permit" distribution system are also unacceptable. Any person or company who has already proven to be negligent and untrustworthy with permits and discharges should be watched like a hawk, not given further latitude to do as they please.

We demand you take whatever steps are necessary to prevent these dangerous and misguided changes from contaminating our natural resources.

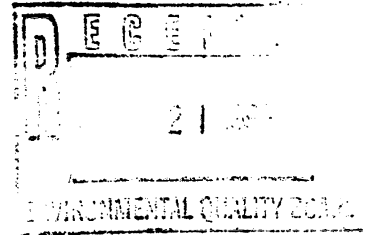
Thank you for your support on this important issue.

Peter and Karen Diamond
1800 Patricia Ave
Willow Grove PA 19090

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NOV 10 11 31 AM '98
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Environmental Quality Board.
PO Box 8375, Harrisburg Pa 17105



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Dear Board Member:

I am deeply concerned about the DEP plans to lower the current state standards for discharging toxic waste into state waterways. I request you intervene against the DEP and encourage tighter regulation of toxic discharges.

Would appreciate Your
attention and Reply.

Paul Schuchert
3 South Ave W
Wyncote Pa 19095

98 OCT 13 PM 1:29
INDEPENDENT REGULATORY
REVIEW COMMISSION

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Freeman, Sharon

From: Karl Novak(SMTP:novakpen@crosslink.net)
Sent: Wednesday, October 28, 1998 4:21 PM
To: REGCOMMENTS
Subject: Water Quality Standards

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>Subject: Water Quality Standards

>

>The proposed water quality standards are most distasteful. This half-hatched thrust towards federal standards, which are saturated with downward compromises, is not in the best interests of anyone, least of all those of us who drink, swim, fish and wash in Pennsylvania waters.

>

>Why should we allow companies to obtain general permits to discharge toxic chemicals into our waterways?

>

>Why should companies be allowed to obtain a quick general permit so that they can discharge pollution into high quality streams?

>

>Why should anyone consider eliminating the requirement that companies wanting a general permit must document that the permit will not cause a violation of water quality standards?

>

>Why are you advocating the elimination of the requirement that all streams and rivers be protected as "potable water" sources?

>

>Why are you proposing "mixing zones," which is an obvious step towards more pollution by way of dilution?

>

>Why are you proposing regulations that will restrict DEP's ability to deny general permits to companies with a history of violations of "any" prior permits, limiting the review to just water discharge permits? Why should one even consider permits for proven bad actors?

>

>Further, the toxic management strategy is absolutely repugnant. What positive result in the public interest can be achieved by: (1) eliminating enforceable standards for toxic chemicals and (2) eliminating the regulation of 20 toxic chemicals and lowering the standards for 20 more?

>

>Do NOT rubber stamp these regulations, which will increase the toxics in our water. Don't forget that not only other citizens of Pennsylvania but also you and your family will be put at greater risk for an unhealthy future if these compromises are passed.

>

>Take the high road and say NO to all these changes.

>

>Sincerely,

>

>Patricia B. Novak

>RD 2, Box 132

>Clearville, PA 15535

>814-652-5232

PROCESSED
98 NOV -6 AM 9:14
REGULATORY COMMISSION



PENNSYLVANIA BUILDERS ASSOCIATION

600 N. Twelfth St. • Lemoyne, Pennsylvania 17043
717-730-4380 • 800-692-7339 • 717-730-4396 (Fax) • Internet-www.pahomes.c...

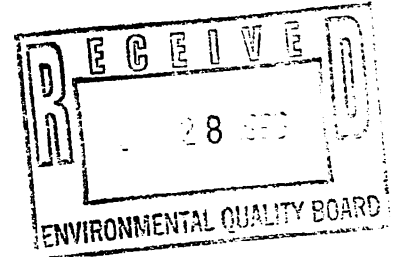
President Charles L. Kasko BIA of Northeastern PA	Vice President Dennis L. Brislin BIA of Northeastern PA	Associate Vice President James P. Pigott, Jr. HBA of Metro Harrisburg	Treasurer Michael J. Schultz Washington County BA	Secretary Toni J. Rogan BIA of Northeastern PA	Executive Vice President David F. Sheppard, Jr. CAE
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OFFICE OF THE SECRETARY
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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

October 28, 1998

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Dear Secretary Seif:

The Pennsylvania Builder's Association (PBA) appreciates the opportunity to submit comments on the Department of Environmental Protection's (DEP) proposed changes to their water quality regulations, 25 PA Code Chapters 92, 93 and 95-97. This proposal was published in the *Pennsylvania Bulletin* (28 Pa.B. 4431-4497) on August 29, 1998.

The Pennsylvania Builders Association (PBA) represents over 12,000 builder, remodeler, and associate member firms and 350,000 employees throughout Pennsylvania involved in the housing industry. PBA believes reasonable water quality regulations and protection are essential. These proposed regulations and their implementation will impact the way our members conduct business.

PBA supports the Governor's Executive Order 1996-1 requiring the review and revision of state regulations. This evaluation is based on several factors. One factor in particular, "regulations of the Commonwealth may not exceed federal standards unless justified" must be used to critically evaluate existing and proposed changes to these regulations. Pennsylvania's existing or proposed changes to their water quality regulations should not exceed federal standards unless the Department can prove there is "a compelling and articulable Pennsylvania interest."

The following are PBA's comments on this proposal.

Definitions

Section 92.1

The proposed definition of stormwater discharges associated with construction activity includes a permit requirement for the "potential discharge" of stormwater from construction activities. Specifically, the definition indicates that a construction activity not discharging stormwater to a stream is still subject to NPDES permitting requirements, unless less than 5 acres of land are disturbed.

u wu

This definition goes beyond the scope of the federal standard. It is also contrary to the Governor's executive order as described above. The Department has not provided any justification for this proposed excessive discharge permitting requirement.

PBA recommends the phrase "potential discharge" and the sentence "All such activities require a permit under this chapter whether or not they discharge to waters of the Commonwealth" contained in the proposed definition be eliminated from the final regulation. Justification must be provided if this requirement is retained in the final regulation.

Section 96.1

The proposed definition of nonpoint source best management practice should be revised. The word "preventing" should be changed to minimizing. This revision provides the regulated community with a more realistic regulatory compliance standard.

General Permits §§92.81(a)(8) and 92.83(b)(8)

The department is proposing to allow for the use of general permits in high quality streams. PBA commends the Department for this action. We support DEP's realization that discharges associated with general permits have minimal impacts and are appropriate for use on high quality streams. We believe, however, these provisions are still unnecessarily restrictive. Because of the limited impacts associated with general permits, we strongly urge DEP to allow their use on exceptional value streams as well. The prohibition of general permit use in exceptional value streams should be eliminated from the final regulation.

Public Notice

Finally, PBA does not believe additional public notice is necessary prior to an applicant's submittal of an NPDES permit application. There is adequate public notification already built into the permitting process. Placing an additional regulatory burden on an applicant requiring public notice prior to a permit application submittal is unnecessary and unsubstantiated.

Thank you for the opportunity to provide comments on this proposal. If you have any questions or need additional information, please contact me at the above address.

Sincerely,

Megan A. Milford
Regulatory Specialist

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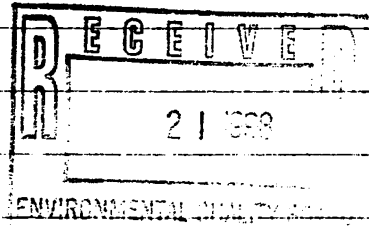
Dear Sirs,

I am urging you to strengthen
the standards that protect our
water, not weaken it.

I think DEP's proposed
toxic strategy is to weak & will
allow even more toxic discharges
in our water.

Please stop these new
standards & protect our water.

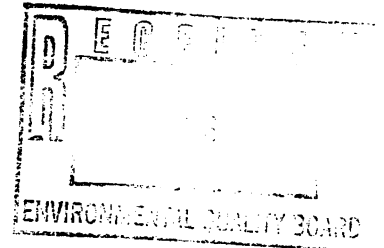
Sincerely
Mary Lou Watson



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Freeman, Sharon

From: Mark C. Kennedy(SMTP:mck440@redrose.net)
Sent: Wednesday, October 28, 1998 12:58 PM
To: REGCOMMENTS; BREZINA EDWARD
Cc: Sandy Smith
Subject: Raise standards to preserve purity of our water supply



To representataive of Pennsylvania's Department of Environmental Protection. These:

This is a letter of extreme concern. Let me introduce myself. I am Mark C. Kennedy, publisher, author, and Emeritus Professor of Social Science, with a focus on environmental concerns. I am horrified at what is happening regarding the pollution of our water supply and soil in Pennsylvania. What is worse is that you folks, our alleged public servants, are endorsing it, and solely, in my opinion, to allow corporations to dump toxic wastes into our, OUR, precious water sources. If you continue to endorse the State Department of Environmental Protection, then you will weaken the standards that protect the public. CEOs and Corporate Boards are not the public, no matter how powerful is their lobby.

I have learned that Pennsylvania is already second in the nation for toxic discharges to our water, dumping almost 23 million pounds of toxins into our rivers and streams in 1996. We need to strengthen our standards, not weaken them!! What is more we need the Department of Environmental Protection to help us to strengthen our standards and see to it that they are followed.

We, those who agree with me, will do our utmost to hold you, our alleged public servants, to do what true public servants, ought to do anyway. That is to hold you accountable to the public and do your proper job!!!

I am aware of your new Toxics Management Strategy, and that it is really a dis-service to the public, is it will allow more pollution to be dumped into Pennsylvania's wonderful waterways, rather than less. But this is what we know of the so-called Water Quality Standards. The Water Quality Standards would:

- allow companies to get quick "general permits" to discharge toxic chemicals into our waterways, a practice which is now prohibited.
- allow companies to get quick "general permits" for discharging pollution into High Quality streams, some of the better streams and rivers in our state.
- eliminate the requirement that companies who want a general permit have to document that the permit will not cause a violation of water quality standards.
- eliminate the requirement that all streams and rivers be protected as "potable water" sources (sources of drinking water).
- allow "mixing zones" -- not measuring pollution levels until after the pollution has been diluted by mixing with the other water in a stream.
- restrict DEP's ability to deny general permits to companies with a history

of violations of "any" prior permits, limiting the review to just water

discharge permits. This could allow companies who violate air or waste permits to get a general permit for new water discharges.

The Toxics Management Strategy would:

- eliminate enforceable standards for 70 toxic chemicals.
- eliminate regulation of 20 toxic chemicals, and lower standards for 20

more toxic chemicals.

Come on now. Start serving the public by lots of pressure to kite up our standards, not bring them down. Serve the public, not corporate polluters! Let your conscience be your guide.

Sincerely, Mark C. Kennedy

1114 W. Ross St.

Lancaster PA 17603

Independent Oil and Gas Association of Pennsylvania
234 State Street
Harrisburg, PA 17101

October 28, 1998

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

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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

Freeman, Sharon

From: Laurel J. Standley(SMTP:ljestandley@stroudcenter.org)
Sent: Wednesday, October 28, 1998 5:05 PM
To: regcmnts
Subject: Water Quality Standards



regcmnts28oct98

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October 28, 1998

Glenn Maurer, Director
Bureau of Water Quality Protection
11th Floor, Rachel Carson State Office Building
P.O. Box 8465
Harrisburg, PA 17105-8465

Dear Mr. Maurer:

Below are my comments as an individual scientist (environmental chemist) regarding the proposed changes by the Environmental Quality Board to water quality standards implementation (as published in the Pennsylvania Bulletin, vol. 28, August 29, 1998, edition).

While I support clarification of standards and documentation of the scientific basis for regulations where possible, I am concerned that some of the proposed changes represent a lessening of protection for water quality in our streams and rivers. With respect to promulgating only those regulations that can be definitively supported by current data, science has not yet advanced to the level essential to allow an accurate assessment of the effect of multiple stressors either for the protection of humans or aquatic organisms. Currently, almost half of river and stream miles nationwide are unsafe for human use due to the presence of a multitude of pollutants from present-day and historical sources. Therefore, relaxing standards and thus allowing further degradation of these water bodies is not defensible.

I welcome the Total Maximum Daily Load (TMDL) approach ONLY if it will be used as a mechanism to identify watersheds that need improvement and as a tool for reaching protective targets. However, basing standards on individual toxics or stressors or on the effect of effluents on laboratory assay organisms does not necessarily protect human health or aquatic organisms due to the unpredictable impact of multiple stressors and varied response of different organisms. In other words, while the presence of a single pollutant or effluent may not be toxic in and of itself, addition of that material to the milieu that includes other contaminants, acid mine drainage, and/or the stress of excessive sedimentation contributed by land uses such as agriculture and development, will be to the detriment of human health and survival of aquatic organisms. In-stream measures of water quality (such as macroinvertebrate diversity and abundance) and human health criteria must be the basis for determining impact of watershed activities.

* Specifically, a few of the proposed changes that concern me include:

1. There should be no limitation to the authority of DEP to address discharges of toxic or other pollutants that fall outside identified circumstances but which still pose a problem.
2. Criteria for allowable levels of toxics should not be increased until it is demonstrated scientifically that their addition to systems containing other pollutants will not decrease water quality and survival of native biota.
3. All waterways should be targeted for protection at water quality criteria for potable waters, not just those that are upstream of known or planned water supply intakes (it is far more expensive to reclaim resources than to protect them from degradation in the first place).
4. Criteria should be for protection at chronic criteria levels, not just acute (e.g. aluminum).
5. What will replace the "withdrawn" fluoride criteria?
6. Compliance for existing discharges, when a specified deadline has passed, should occur no longer than 1 year (not 3 years) after notification of a problem.
7. With respect to application requirements for new and existing sewage dischargers, the exception for locations where water quality data indicate no improving trend should be eliminated since that will just make recovery for those systems that much more difficult. The ultimate goal should be recovery of all waterways.

I recommend that the State focus efforts on promoting the use of innovative technologies that aim for "zero discharge" and sustainable industrial practices, such as those targeted by forward thinking companies like DuPont, rather than easing regulations that protect water quality in streams and rivers. The State can set up tax incentives to promote such practices, keep in place the regulations that protect our valuable stream and river resources from further degradation, and target degraded systems for recovery through more stringent TMDLs.

With regards,

Laurel J. Standley, Ph.D.
Assistant Curator
Stroud Water Research Center
970 Spencer Rd.
Avondale, PA 19311-9516
(610) 268-2153 (ext. 229)

Note - hard copy follows email

Freeman, Sharon

From: Freeman, Sharon
Sent: Wednesday, October 28, 1998 9:24 AM
To: 'Julie Becker'
Subject: RE: Water Quality Standards

98 OCT 28 PM 3:57
REGISTRY COMMISSION

Thank you for your comments. Would you please forward your mailing address so we can include you on the official list of commentators? Thanks!

From: Julie Becker(SMTP:jbecker@astro.ocis.temple.edu)
Reply To: Julie Becker
Sent: Wednesday, October 28, 1998 7:44 AM
To: REGCOMMENTS
Subject: Water Quality Standards

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To Whom It May Concern--
Pennsylvania can not afford to weaken its water quality standards. We are the second largest discharger of toxic chemicals into streams and rivers. It is no wonder that this state is in the top ten states for incidence of asthma and cancer. The issue is not only the protection of our state's natural resources but the protection of our citizenry's health.

I strongly urge you to reject the allowance of more toxic discharges.

Julie Becker, MA, MPH
Women's Health and Environmental Network (WHEN)

2534 Swain Street
Philadelphia PA 19130



CLEAN WATER ACTION

Original: 1975

Mizner: Copies: Wilmarth, Jewett, Sandusky, Legal

TESTIMONY ON PA. WATER QUALITY STANDARDS, CHAPTERS 92, 93, and 95-97

Good afternoon. My name is Robert Wendelgass, and I am Pennsylvania State Director for Clean Water Action. Clean Water Action is a statewide environmental organization with over 80,000 members in Pennsylvania. I am here today on their behalf to express our opposition to the changes that DEP has proposed in its Water Quality Standards and Toxics Management Strategy.

Before I begin the substance of my testimony, I want to urge the DEP to extend the comment period for these Water Quality Standards and for the changes to the Toxic Management Strategy. We are very concerned about this "stealth" rulemaking process and the short comment period allowed the public.

I call it a "stealth" rulemaking because most people, including most environmental groups and state legislators, are not aware of the changes that DEP is proposing. There has been virtually no publicity about this proposal, except for the notice in the Pennsylvania Bulletin the week before Labor Day. For changes of this magnitude, DEP should have featured the rulemaking in its weekly Update and done a mailing to environmental and conservation groups around the state. But it hasn't done so.

In addition, for changes of this complexity, DEP should give the public more than 60 days to digest them and make comments. These proposed changes took up 64 pages of small print in the Pennsylvania Bulletin. They are dense, complicated and confusing. Reading them is a time-consuming and difficult task. In light of that, DEP needs to give the public plenty of time to read, review and discuss them. Sixty days is simply not enough. We call on DEP to extend the comment period for these regulations by at least another 60 days to allow for real input by the public.

Clean Water Action opposes these changes because they will weaken the standards for discharge of pollutants into our state's waterways. They will allow more pollution, especially toxic chemicals, to be discharged into our state's rivers, streams and lakes. And that is something we cannot afford.

According to 1996 data from the EPA, Pennsylvania is already second in the nation for toxic discharges to our state's surface waters. That year, 22.8 million pounds of toxic chemicals were discharged into rivers, lakes and streams in our state! We should be strengthening our regulations, not weakening them. We should be reducing toxic pollution of our water, not allowing more!

Let me comment briefly on some of the specific changes proposed in the rulemaking.

First, we are very concerned about a number of changes that would expand the use of general permits for discharges into our rivers, lakes and streams. General Permits do not afford as much protection to waterways or to the public. They require less documentation by the polluter and provide less information to the public.

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1128 Walnut Street, Suite 300, Philadelphia, PA 19107 ■ (215) 629-4022 ■ FAX (215) 629-3973
607 Penn Avenue, Suite 212, Pittsburgh, PA 15222 ■ (412) 765-3053 ■ FAX (412) 765-1737
4455 Connecticut Avenue NW, Suite A300, Washington, DC 20008-2328 ■ (202) 895-0420 ■ FAX (202) 895-0438



But now, DEP wants to let companies use a general permit for discharges of toxic chemicals. And the proposals would allow polluters to use a general permit for discharges into High Quality waters, some of the better streams and rivers in our state.

We oppose both these changes. General permits will not protect the public from toxic chemicals and protect our High Quality waters; rather, they will put our health and our waters at even greater risk. Any permits for discharge of toxic chemicals or for discharges to High Quality waters should go through the individual NPDES permit review process, with full scrutiny by regulators and the public.

In addition, we oppose the changes in Section 92.83 that would eliminate the requirement that companies who want a general permit have to document that the permit will not cause a violation of water quality standards. The new language would let companies “certify” rather than “document”. We believe this is a lower standard and do not support its use.

We also oppose the change that would restrict DEP’s ability to deny general permits to companies with a history of violations of prior permits. The new regulations would limit DEP’s review to just NPDES permits. This could allow companies who violate air or waste permits to get a general permit for new water discharges. We believe that a company with a history of noncompliance with any DEP permits, whether for air, waste or water issues, should not be trusted with a general permit.

Finally, there is no language in the regulations governing the use of general permits in impaired waters. Because these waters already have a serious pollution problem and do not meet designated uses, discharges into such waterways should be closely regulated, and general permits should not be allowed in such waters.

We are also concerned with a number of other changes proposed in the regulations:

- In Section 92.61, we support additional opportunities for public involvement and comment in the NPDES review process. We believe that the suggestions made by the WRAC requiring applicants to publish a notice of their intent to apply for a NPDES permit have merit and urge that they be included.
- In Section 93.4, we support retention of the requirement that all streams and rivers be protected as “potable water” sources. We also support retention of Warm Water Fishes as a statewide water use. Both these standards provide important minimum levels of protection for our waterways, and should be retained.
- We oppose the changes to Section 93.5 that delete the current language prohibiting mixing zones and requiring that criteria be met at the point of wastewater discharge. If DEP wants to institute a formal mixing zone policy, this should be explained in detail and be subject to public review and comment. Simply deleting the existing language without explaining how the mixing zone policy would work does not allow sufficient public review.
- We oppose the language in Section 96.4 that gives DEP authority to approve effluent trading. As a matter of principle, we do not support such trading. In addition, this proposed rulemaking includes no details on how such trading would work, and what criteria and procedures would be

used. Absent such details, there is no way the public can comment on such a major change. This language should be stricken from the rulemaking, and re-submitted for public comment if and when a comprehensive policy and procedures have been developed.

For the past several months, Clean Water Action has been working with DEP's Bureau of Water Supply Management on a new source water assessment project designed to protect the sources of our drinking water from pollution. Millions of people in our state get their drinking water from the Susquehanna, Delaware, Schuylkill, Allegheny or Ohio Rivers, which are all likely to receive more toxic discharges if these changes are approved. So, on the one hand, the Bureau of Water Supply Management is launching a new project to protect public health by protecting our rivers and streams. Then, at the same time, the Bureau of Watershed Conservation proposes new rules that would allow more toxic discharges into these same rivers and streams. This is totally counterproductive.

We urge DEP to withdraw these proposed changes immediately and leave the existing regulations in place. Pennsylvania is already number two in the nation for toxic discharges to our water. This is one area where we don't want to be Number One! DEP needs to go back to the drawing board and develop new regulations that will reduce toxic discharges and protect our waters from pollution.

Thank you very much.

10/20/98

From the office of Anne Goeke

LANCASTER GREENS

PO BOS 7413
LANCASTER PA 17604
USA

RECEIVED

Phone (717) 394-9110
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ENVIROMENTAL QUALITY BOARD HEARINGS
OCTOBER 20TH 1998

On behalf of the Lancaster Greens, a grassroots organization devoted to political and social transformation, we would like to comment about the new proposed regulations. We believe strongly that these amendments would only weaken our water protection. Considering that water resources all over the world are being threatened, approving these amendments would be devastating for not only Pennsylvania but would contribute to this worldwide serious issue. It is your duty to help protect our Commonwealth, this includes that everyone has the right to clean water.

Over the years, we have seen Pennsylvania deteriorating as we lose more and more of our natural resources. We believe that it is up to those who are involved in making decisions affecting our society to direct towards making PA a more sustainable community. This means using our resources to meet current needs but it also ensures that there is adequate resources available for future generations. To remind you, sustainable community is a community that seeks to improve public health and better the quality of life for its members by limiting waste, preventing pollution, maximizing conservation and efficiency.

As an environmentalist organization, we believe we need to move towards getting ahead of the negative consequences, by reminding people what happens when we wait until damage is done and rely on the end of the pipe regulations and multi-million dollar cleanups. So I am here today for the Lancaster Greens to do such.

Again, I urge you to throw away these existing amendments and start over again with the idea that we all have a responsibility to the future generations and to protect what is our commonwealth – our water.

Thank you

ENVIRONMENTAL QUALITY BOARD HEARINGS
October 20, 1998

We, the people listed below, have asked Anne Goeke to speak for us on this very important matter regarding the proposed rulemaking by the Environmental Quality Board (EQB). We believe strongly that these proposals will greatly weaken the already too weak regulations for Water Quality, Residual Waste and Municipal Waste. Further more, we believe that the present environmental regulations should be made much tighter, not "streamlined" to encourage trash as Pennsylvania's number one business under the guise of recycling. The EQB, DEP and PA government has a duty to preserve a safe and healthy quality of life for every person in PA.

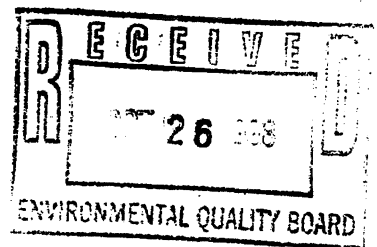
NAMES:

KIP ADAMS	TIM ALTERI
RONDI ANDERSON	HOLLY ANGLIQUE
MARLENE ARNOLD	STEVE BAKER
RICK BATES	DAVID BECHTEL
TERRY BROWN	GRETA BROWNE
SARA CAMPBELL	ALEX CLARK
CHERYL DESMOND	AMY DONOHUE
DAVID FREIBERG	REBECCA FRENCH
BILL GALIANO	JOHN GOEKE
ANNE GOEKE	ANN GREENSPAN
SAM HARNISH	SAMI FORREST
MOLLY HENDERSON	PHILIP HOLZINGER
AUBREY HOTTELL	JOHN IRWIN
SHIRLYN KAMARA	SHARON KENT
CLAUDIA KIRK	JUNE LANG
JANNA WEIL	ROBERT MARQUET
THOMAS LINZEY	JANICE LION
BARRY LONGENECKER	ELAINE LONGENECKER
LINDA MARTIN	JAY MCGINNIS
LUZ MECK	JACK MONGAR
KATHLEEN MOYER	BOZICA MYERS
JULIE NETTKE	JOYCE NETTKE
MARK NEVIN	BETSY REESE
DIANE ROBITELLE	JOHN ROHRKEMPER
JORRIS ROSSE	AARON WEAVER
RICH SCHREIBER	PATTY SPEAR
MICHELLE SPITKO	DAVID STIRBA
RUTH VANHORN	MARILYN WEAVER
ELIZABETH WEAVER	

ORIGINAL: 1975
No copies per FEW

I am writing to state that I am opposed to the new proposed water quality standards and toxic strategy. I live in Nazareth and we are fighting for clean air. Please don't be lenient in your standards with air or our waters.

John A. Rasy.



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