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Stephen Ruzansky
2614 Hirst Terrace
Havertown, PA 19083

Friday, October 23, 1998

Environmental Quality Board
PO Box 8477
Harrisburg, PA 17105

Dear Board Members:

My family (four voting adults) and I urge you to oppose the new proposed water quality standards and toxics strategy. This is an astonishingly backward move for a state that has such a highly visible problem in water quality and toxic dumpsites. We are much aware of the problems we have right here in our own county. It is a strong concern.

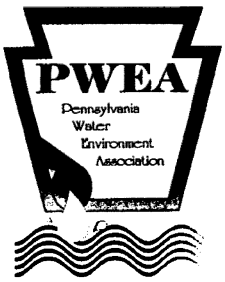
I request a response regarding the direction you do choose to pursue.

Sincerely,

Stephen Ruzansky

ADMINISTRATIVE OFFICE
777 East Park Drive
Harrisburg, PA 17111
Phone: 717/558-7862
Fax: 717/558-7841

Official Publication:
KEYSTONE WATER
QUALITY MANAGER



Member:
WATER
ENVIRONMENT
FEDERATION

Sections:
CPWQA
EPWPCOA
WPWPCA

Pennsylvania Water Environment Association

October 23, 1998

Independent Regulatory Review Commission
333 Market St., 14th Fl.
Harrisburg, PA 17101

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Re: Pending PA DEP Regulation Revisions
25 PA Code Chapters 92, 93, and 96

To Whom It May Concern:

The Pennsylvania Water Environment Association (PWEA) is an association with approximately 4000 members and is comprised of experienced wastewater treatment professionals from the fields of operation, administration, engineering, legal and equipment manufacturing. On behalf of the PWEA, the following are comments concerning the above referenced regulations.

CHAPTER 92. NPDES PERMITTING, MONITORING AND COMPLIANCE

- §92.1 Definitions
  Conventional Pollutant - Definition does not include Ammonia Nitrogen.

- Section numbering method is awkward and confusing. For example, §92.2 is an all new section in the proposed regulations yet it contains two different sections labeled, §92.2(a) and §92.2a.

- §92.4(a)(6)(ii) regarding DEP's right to issue NPDES permits to indirect dischargers of POTWs may conflict with federal pretreatment regulations which give the permitting authority to the POTW. If the POTW has an EPA-approved pretreatment program. DEP does not have primacy over the pretreatment program, therefore, doesn't federal law take precedence?

- §92.21a.(f) requires POTWs with approved pretreatment programs to provide a written technical evaluation of the need to revise local limits as part of the NPDES permit application submittal. This is typically a requirement after the NPDES permit is issued, not before. It is more reasonable for the POTW to wait for DEP to run the model first and issue the permit limits so that the POTW knows what pollutants would be required. It also conflicts with EPA requirements which state the reevaluation is to be submitted to EPA within one year of NPDES permit issuance. Again, DEP does not have primacy over pretreatment programs and should not be dictating specific pretreatment requirements to POTWs.

- §92.21a.(g) requires POTWs to submit a CSO plan as part of the NPDES permit application submittal. Since this is a long and detailed process, it would be best to place the requirement for development and implementation of the plan in the permit, not require it prior to permit issuance.

- Curently DEP requires additional monitoring for toxic pollutants by those NPDES permittees that meet certain criteria including, design flow capacity or whether the POTW has an approved pretreatment program. The particular set of toxic compounds (i.e. priority pollutants and local limits) required to be tested for are stipulated in the permit. Under proposed §92.41(b), DEP does not specify which permittees would be subject to additional monitoring, nor does DEP specify which toxic, conventional, non conventional or other pollutants may be required. This section is too broad and could be interpreted differently from region to region throughout the state. More definitive guidelines should be provided. §92.41(B) also requires the permittee to provide a plan of action on how to prevent or eliminate any pollutants detected during this monitoring that are not currently contained in their NPDES permit. What does DEP consider to be a pollutant of concern under this proposed requirement? Would something as common as Iron be required to be eliminated from the wastewater?

- §92.91 - 92.94 Procedure for Assessing Civil Penalties - There seems to be a considerable amount of confusion in how civil penalties will be addressed. There appears to be an attempt by DEP to be more "informal" in this area, but there needs to be a more formal documented guideline for the notification, hearing and penalty procedures.

- As pointed out by others, there appears to be a general vagueness in the use of the words "shall", "will", "must", and "may" throughout the proposed new rules. These must be clarified more clearly in order for one to know what is a "must" do and what is a "may" do.

CHAPTER 93. WATER QUALITY STANDARDS

- DEP has requested public input on methods of determination for "Color". The current color standard criteria is in Platinum-Cobalt units. This particular test method only detects colors in the yellow or amber color range and does not measure reds or blues that may be produced by dyes and pigments used in the textile industry. A more reliable and accurate test method for Color is the Colorimetric (ADMI) Method (EPA 110.1 or Standard Methods, 18th Ed. 2120 E).

CHAPTER 96. WATER QUALITY STANDARDS IMPLEMENTATION

- §96.4(g)(3) There are concerns on how DEP will enact, monitor and control "effluent trading agreements". It is our opinion that the stakeholders, along with DEP regional offices, should be free to develop effluent trading schemes that address site-specific issues.

Our Association is available to provide the IRRC with additional commentary on proposed rule changes as may be necessary from time to time. If we can be of any assistance providing professional expertise in the evaluation of rules and regulations that have an impact on our associate members, please feel free to contact us.

Very truly yours,

PENNSYLVANIA WATER ENVIRONMENT ASSOCIATION

Carl E. Janson
President

cc: PA Environmental Hearing Board

OCT. 23, 1998

TOM ACCORDINO
67 FIRST ST.
NAZARETH, PA 18064

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TO
DEP,

I A writing to protect our WATER! Please stop Polluting our water. STOP polluting our RIVERS AND streams with toxic Discharges. Please increase the STANDARDS NOT Roll them BACK! Stop The quick permits by lowering the STANDARDS We need our clean WATER - Stop Polluting our future!

Tom Accordino

Sue Kornbau
1215 Crescent Road • York, ... 17402

10-23-98

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Dear Board,

I read with interest the article in the "Daily Record" - Wed. Oct. 21st concerning the lowering of the water standards. I am also concerned that the proposed regulations will weaken the water quality in the state and that more toxic chemicals will be pouring into the State's waterways, some of which are sources of drinking water. I am a registered nurse, and am very concerned about those things which could be cancer-causing agents. There are so many people with cancer these days, and environment (I feel) plays a big part as possible cause.

My husband and I live within a few miles of Modern Landfill, and have been concerned about our family as they grew up on well water here. We were glad to get York city water.

Some of the chemicals listed here are known to be toxic to human and aquatic life. Please reconsider the proposed amendments, and make public the results. I do hope it will be written in clear simple terms. Thank-You for your time.

Sincerely, Mr. & Mrs. Ervin Kornbau

October 23, 1998

Environmental Quality Board
PO Box 8477
Harrisburg, PA 17105

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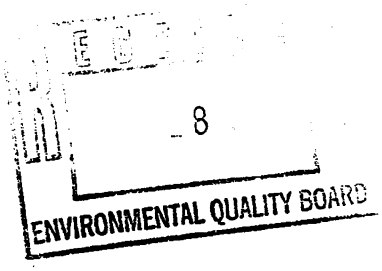
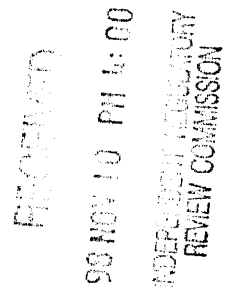


To the Enviromental Quality Board:

We are opposed to the new proposed water quality standards and toxics strategy. We urge you to strengthen the standards that protect our water, not to weaken them. The DEP's proposed toxics strategy is too weak and will allow even more toxic discharges into our waters. We want these new standards stopped! Please respond.



Sincerely,

Sharyn and Joseph Gallagher
205 Shawnee Rd.
Ardmore PA 19003

10-23-98

EQB

I oppose the new proposed water and toxic stragety.

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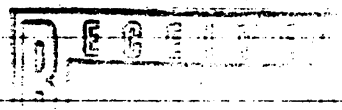
Marlin Smickley



23 October 1998

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

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Dear Mr. Seif:

We are concerned about the proposed changes to the water quality regulations described in the August 29, 1998, Pennsylvania Bulletin. Some of these changes are needed, but others miss the mark.

We support retention of the technology-based limit (0.5 mg/l) for total residual chlorine; the additional public comment period when someone intends to submit an NPDES application, as recommended by the Water Resources Advisory Committee; and, the present protection of all of our waters as "potable water" sources.

However, we urge reconsideration of the provision that allows "general" permits in High Quality streams or impaired waters. Nor should general permits allow the discharge of toxic materials. Individual permits should be required in these cases and documentation for these permits should not be reduced.

It is very disappointing to see no language protecting instream flows and instream habitat. Other states have such protection, and the U.S. Supreme Court has ruled that states are permitted to protect instream flows. Governor Ridge's 21st Century Environment Commission recommended protecting aquatic habitat and instream flow. Since water quality standards are the basis for clean water and healthy streams, lakes and rivers, Pennsylvania needs language protecting instream flow and aquatic habitat in our water quality standards!

We hope that the EQB will extend the study of these regulations and consider changes such as we are suggesting to improve our water quality. No resource is more crucial to the welfare of our people than water. We MUST NOT relax protection of it.

Sincerely,

Marilynn K. Cartwright

Dana Cartwright

Marilynn and Dana Cartwright
263 Hillcrest Road
Wayne, PA 19087-2423

October 23, 1998

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

Dear Members:

I am seriously concerned about the proposed changes in regulations regarding chemicals poured into our water supplies. My husband is a Chemist and we both enjoy the outdoors. We know the simply because research has not been completed on the health effects of a certain chemical, does not mean that the chemical is harmless. Simply, it means that we do not have that knowledge, as yet. I would hope that common sense would prevail over legalese in matters that affect the health of human beings. In the years before regulation, we dumped chemicals into the water that we believed would have no affect on the waterways or in turn, our health. We were wrong and in the Great Lakes area it is still hazardous to eat fish caught in those waters and it will continue to be for hundreds of years. We have made great progress to clean up our waterways in the past 20 years. Please do not let political or financial pressure from local industry overshadow your moral judgement about your responsibility to the people of this state.

I would like more information about the proposed changes and how they compare with other states with stringent guidelines for monitoring chemical dumping. I would also urge you to more widely publicize the proposed changes. The citizens have a right to know even if they live in small towns.

Sincerely,

Katherine Weber

Katherine Weber M.Ed. L.P.C.

318 Black Rock Rd.
Nazareth, PA 18064
10-23-98

ORIGINAL: 1975
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Notes We oppose the new proposed water quality standards.

Russell A. Thomas
Linda A. Thomas

E120-5000

Elk County Chapter Trout Unlimited

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10-24-98

James P. Gikty
1339 Glen Hazel Rd
St. Marys, Pa. 15857

James M. Seif:

I strongly oppose allowing General permits in High Quality streams or impaired waters. Neither should general permits allow the discharge of toxic materials. Individual permits should be required in these cases Documentation for these permits should not be reduced.

I support the present Protection of all waters as potable water sources.

Sincerely

James P. Gikty

James P. Gikty

President of Elk County Trout Unlimited

Richard Benert

75 West Lanark Street
Bethlehem, PA. 18018
(610) 865-2898
e-mail: rbenert@ptd.net

Oct. 24, 1998

ORIGINAL: 1975
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Environmental Quality Board
P.O. Box 8477
Harrisburg, Pa 17105

Dear Sirs:

Since I am of the firm belief that the good of society and of the earth itself should normally take precedence over private property rights, I am amazed that the Pa. Department of Environmental Protection's new Water Quality Standards will actually make it easier for polluters to damage our water supplies. This seems insane in an age when stricter water-quality standards are needed, not weaker ones.

Please exercise your authority in the way it was intended -- to protect the public.

Sincerely,
Richard Benert

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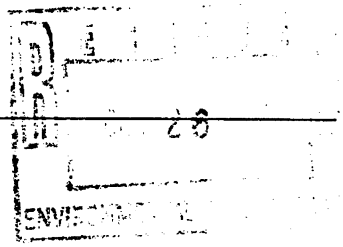
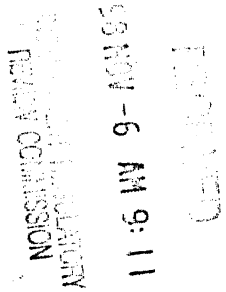


Freeman, Sharon

From: Ahkeech(SMTP:Ahkeech@aol.com)
Sent: Monday, October 26, 1998 12:49 PM
To: REGCOMMENTS
Subject: Public Comments on Proposed Revisions to Water Quality Standards

Please, please protect the instream flow and aquatic habitat in our water quality standards. Water quality standards are the basis for clean water and healthy streams, lakes and rivers. Other states have such protection of instream flow and water habitat and Gov. Ridge's 21st Century Environment commission recommended this protection.

Ann Keech
501 Waterloo Rd.
Devon, PA 19333



Freeman, Sharon

From: Bill Moul(SMTP:wmoul@acm.org)
Reply To: wmoul
Sent: Sunday, October 25, 1998 12:15 PM
To: REGCOMMENTS
Cc: BREZINA EDWARD
Subject: Proposed Water Quality and TMS Regs

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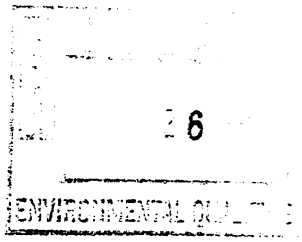
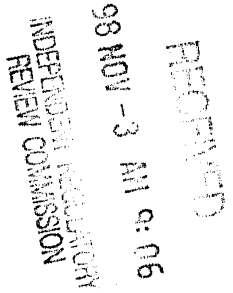


Regarding the proposed Water Quality Standards and Toxic Management Strategy:



I believe that Pennsylvania is on the wrong path in its roll back of water quality and other environmental protections. Pennsylvania's economy will not be helped in the long run by dirtying our streams. As people search for good places to live, the states and areas which have permitted fouling of water and air will suffer relative to states and areas that have maintained or implemented high standards.

That Pennsylvania is is already one of the very largest dumpers of toxics into its streams should be a source of shame. That Pennsylvania proposes to return some streams to an "undrinkable" state is appalling. That Pennsylvania proposes to permit known violators of air and waste permits equal opportunity to violate water permits is stupid.

For Heaven's sake Pennsylvania, wake up! The health, safety, and long term economic health of the state is at risk. Don't weaken the standards that are in place. READ THE GOVERNOR'S OWN 21st CENTURY ENVIRONMENT COMMISSION REPORT.

Sincerely,
William G. Moul, Jr.
PO Box 189
Bradfordwoods, PA 15015

Edward Brezina
Bureau of Water Quality Management
Pennsylvania Dept of
Environmental Protection

October 25, 1998

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Dear Sirs:

I have had a special interest in Special Protection Waters since the 1978 Water Quality Standards Revisions. The purpose of non degradation is not to allow "reasonable" amounts of degradation but to prevent significant degradation. I am strongly opposed to your proposals that would allow more contaminants ie degradation of ante-degradation waters

Second, I am very opposed to the general discharge permits for industrial discharges, and the resulting lack of public input opportunity. The present system has not been unduely burdensome either to DEP or industry.

Sincerely
William Lawrence, III
120 Oakville Drive Apt 1A
Pittsburgh, PA 15220

cc Environmental Quality Board

Freeman, Sharon

From: YFGU56A(SMTP:YFGU56A@prodigy.com)
Sent: Sunday, October 25, 1998 7:00 PM
To: REGCOMMENTS
Subject: Water Quality Standards

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Dear Sirs:

There are three points I would like to make about the proposed General Permit regulations.

1. The US Clean Water Act in the 1970's set pollutant discharge limits based on maintaining or improving stream water quality. In that process the stream is actually used to remove organics through the stream's ability to degrade organic pollutants. Dissolved oxygen levels in the stream help to classify the stream as to fishable and swimable qualities.

We know how to measure these environmental impacts on the stream through the above regulatory process. We also know that toxin's have an environmental impact. They too can be measured on how they impact the environment. I do not believe that the public wants to throw out all that we have learned on how to measure environmental impact on streams. A General Permit that does not require a "good science and engineering" analyses of the pollutants impact on the environment is like closing our eyes and wishing there is now problem.

2. Initially, toxic discharge limits were based mainly on the toxin's effect on organisms in the stream. In recent years more knowledge has been obtained on toxic effects on human health. As instrumentation to measure toxin's has improved, we have found compounds that we did not know were present. Many of these have an impact on human health. The National Primary Drinking Water Regulations now have over 50 toxic chemicals the are regulated. These were not listed some 20 years ago. We need to keep our streams protected as potable water sources. A General Permit that does not recognize the use of streams as potential or actual drinking water supply endangers human health and puts the public at risk.

3. Industrial development is important to the State. Potential or expanding industries do not want to spend a lot of time in obtaining permits. The current process is sometimes lengthy. To reduce the time of obtaining a discharge permit, a highly coordinated effort by the DEP could be put into place. A task force in the DEP for each major permit application could be a corse of action. Quick action while using the existing discharge regulations would save time for industry. In addition, if the cost of a water quality impact study is stumbling block to the industry, a State cost sharing grant with the industry would save the industry money. There are many consultants that could quickly do the study. This would be a proactive approach to industry.

In summary, we do not need to increase pollutant discharges or close

our eyes to there impact in an effort to save time and be responsive to industry. We need to find a better way utilizing what we have.

Sincerely,

Scott J. Tait
McKean, PA

6254 Western Trail
McKean PA 16426

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October 25, 1998

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

To Whom It May Concern,

I am conducting a campaign. "Grow up America."

I am appalled to-say-the-least that the Environmental Quality Board is thinking of suggesting or advocating reductions of water quality standards.

Shame on me. "Grow up America."

I have volunteered for some thirty (30) years as a Director of Conservation, promoting soil conservation, environmental education, and water quality. Now you the Environmental Quality Board are going to reduce the standards. Whoa!

What strange bed-fellows politicians have.

Our nations water quality is at very, very dangerous and critical levels now and someone is advocating lower standards.

"Grow up America." What blatant, gross stupidity.

Shall I advocate to all the senior citizen of E.A.S.I. and the students of my school district, "quit volunteering, you are wasting your valuable time".

"Grow up America." We do not lower standards of quality, we raise them.

Our standards of quality of everything we do should be raised not reduced, (ethics, manufacturing, general business, government, religion, morals, etc.). "Grow up America."

Sincerely yours, for a safe, healthy, drink of water.

Bob

R. G. De Venny, Jr. - Director
Allegheny County Conservation District.
Chairman Water Resources Committee.
Organizer, Brush Creek Watershed Association.

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October 25, 1998

To: Pennsylvania Environmental Quality Board

To Whom It May Concern,

I am writing to express my opposition to the state's proposed new water quality standards.

I believe passage of these standards would be a detriment to water quality in Pennsylvania.

Sincerely,

William J. O'Driscoll

William J. O'Driscoll
107 S. 11th St.
Pittsburgh, PA 15203

(412) 381-3237

- E WB. IN REFERENCE TO 10-25-98

PLEASE STRENGTHEN THE STANDARDS THAT PROTECT OUR WATER — DON'T WEAKEN THEM. WE NEED PROTECTION AGAINST THE TOXIC WASTES THAT MAY BE DISCHARGED INTO OUR WATER. THINK OF US AND THE FISH! A CONCERNED CITIZEN, JOE FAY

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MARLBOROUGH TOWNSHIP

6040 Upper Ridge Road, Green Lane, PA 18054

Eleanor F. Sadorf
Township Manager
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Office 215-234-9300
Fax 215-234-4294

To: Environmental Quality Board
Rachel Carson State Office Bldg.
400 Market St.
Harrisburg, PA 17105-2301

10/25/98

Re: REGULATORY BASICS INITIATIVE, REVISIONS TO WATER QUALITY STANDARDS

The proposed revisions to Chapter 92 and Chapter 93 require an emphatic NO vote. The revisions are designed to weaken rather than strengthen the laws governing water and watershed protection. With the hundreds of thousands of dollars being spent by the Ridge administration to promote the "21st Century Environmental Commission" and its goals, it is ludicrous to have contrary legislation being proposed, much less passed.

As a Vice-Chairman of Marlborough Township's Board of Supervisors, I request the Environmental Quality Board to hold strong, and demonstrate to the public that they, the current administration and the Department of Environmental Protection really intend to protect the environment to the fullest. Developers should be made to comply with the strictest protection possible.

A summary of my objections to these revisions is attached.

Sincerely,

Joy M. Leach,
Vice-Chairperson,
Board of Supervisors,
Chairperson,
Environmental Committee,
Marlborough Township

cc: Rep. Raymond Bunt

SUMMARY

Joy M. Leach, Marlborough Township Board of Supervisors
10/25/98

REGULATORY BASICS INITIATIVE
REVISIONS TO WATER QUALITY STANDARDS
Chapters 92 and 93

Seven years ago, I appeared before the EQB at step one of petitioning them to upgrade the Unami Watershed to High Quality or Exceptional Value. The same day of my appearance, Rep. Robert Godshall was in attendance to obtain a ruling on the lowering of standards on the East Branch Creek to "Warm Water" stream. That lower ruling was granted. In 1997, after six long years of fighting the bureaucracy, builders, developers, etc., the data we submitted was finally accepted as valid, and the Unami Watershed was granted High Quality Status. Now, just one year later, that protection is being threatened. So what did these two actions result in? The Unami and its aquatic biology continues to be a high quality stream. DEP has supported the restrictions of additional effluent discharges, and efforts are underway to further protect stream buffers. On the other hand, the East Branch has been degraded by the lower standards, and now, seven years later, due to massive degradation, the Perkiomen Watershed is soliciting funds and volunteers to restore many areas of the stream. This presents a perfect view of both sides of the story -- what will we do for the 21st Century -- commit to preservation, or settle for restoration?

Chapter 92, NPDES Permitting, Monitoring and Compliance -

92.81 Allowing general permits to include toxics, affords no way to insure maintenance of high quality standards. It will most surely result in a degradation of these protected waters. Additionally, those impaired waters which are not afforded current protection will only become more severely degraded. PRESERVATION AND IMPROVEMENT - NOT BELATED RESTORATION.

Chapter 93, Water Quality Standards -

93.4 Most definitely retention of protection on all of our waters as potential "potable water" sources should be continued. Residents who live along stream corridors often have private wells which are fed from springs in the waterway. This condition exists in the Unami watershed. The warm water fishes designation should be continued as a basement level of protection.

93.5 The current wording of this section "Criteria necessary to protect other designated uses shall be met at the point of wastewater discharge" should be retained.

93.6 DEP should develop instream flow and habitat criteria and incorporate them into this chapter of regulation

Additionally, regulations should be developed on withdrawals of protected watersheds. An example: golf courses, recreational facilities, etc. that withdraw stream water during periods of drought for irrigation purposes. These withdrawals under adverse rainfall conditions threaten the aquatic biology of the streams.

Chapter 96, Water Quality Standards Implementation

96.4 This section on Total Maximum Daily Loads should include a separate section for modeling done on waters that are not impaired, incorporating nonpoint sources into their modeling in particular for impaired waters and indicate how clean-up activities dealing with nonpoint source pollution will be implemented.

96.4 Comment periods should be allowed before effluent trading is authorized. This procedure should be incorporated into the regulations.

As we move into the 21st Century, public awareness of our environmental problems is increasing, but this awareness must be supported by stringent environmental law.

Sharon Freeman

Watershed

From: IEKMLB [IEKMLB@aol.com]
Sent: Sunday, October 25, 1998 9:46 PM
To: regcommments
Cc: BREZINA EDWARD
Subject: Comments re: "Water Quality Standards"

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Untitled Attachment

Dear Board Members and Mr. Brezina:

The current proposed regualtions, regarding , should not be implemented for the following reasons:

1. General permits for the discharge of toxics into thew waters of the Commonwealth will certainly compromise the existing water quality of the many streams, rivers and creeks. As you are most likely aware the EPA was sued two (2) years ago for not forcing the state to do what we Pennsylvanians expect from the DEP: keep our waters clean.

Now, DEP seeks to issue "general permits" which will have no enforcibility. Why not just tell mine operators, chemical factories and other purveyors of poison that they can dump/discharge without a permit? What is the point of the "general permit"? It is not good for fish nor for drinking water.

2. The proposal to allow companies to get quick "general permits" for discharging pollution into "High Quality" streams, some of the better streams and rivers in our state is a travesty. What are you folks thinking about? Do you want to have the best fishable and scenic waters contaminated? Don't sportsmen and the general citizenary deserve some respect from our civil servants and elected officials? DEP is wrong: roll back this initiative back into the cesspool you slimed it from.

RECEIVED PA DEP
DIV OF WQ ASSESS & STDS
98 OCT 28 AM 9:44

3. DEP is dead wrong in seeking to eliminate the requirement that companies who want a general permit will not have to document that the permit will not cause a violation of water quality standards. This roll back is moronic. Why don't Secretary Seif and Governor Ridge allow father rapers and child molestors to walk around playgrounds? They are not harmful either. It is human nature to get away with everything one can. If you disagree then tell me why our rivers and streams are and have been so polluted.

4. Yo, DEP you know what water is for? It's to drink and bathe in. Why are you seeking to eliminate the requirement that all streams and rivers be protected as
"potable water" sources? You should be ashamed of yourselves. This is simply dead wrong!!!!

5. Why is DEP allow ing "mixing zones" ? This means that there will be no measurement of pollution levels until after the contamination has been diluted by mixing with the other water in a stream. This is utterly preposterous. This too is wrong. Stop it and start looking ou for the interests of the ordianry sportsman and cvitizen, not for a bunch of fly by nighters in corporate greed's clothing.

6. Finally, why is DEP seeking to eliminate enforceable standards for 70 toxic chemicals? How else will we know what is going into our water? You folks in Harrisburg must be breathing too much of that rarified air. Come down off your thrones and leave your money at home, for DEP must surely change. Also, do not under any circumstances eliminate regulation of 20

toxic chemicals, and lower standards for 20 or any toxics. We need to fish and drink our water.

Very truly yours,

E. Kornfeld
16 Roumfort Rd.
Philadelphia, PA 19119

Chairman James M. Seif, Environmental Quality Board
P.o.Box 8477
Harrisburg, Pa. 17105-8477

10/25/98
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Dear Mr. Seif:

I am commenting on the proposed changes to water quality regulations as described in the 8/29/98 Pennsylvania Bulletin: Chapter 92.2d(3). I 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.

92.61 I 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 I strongly oppose allowing "general" permits in High Quality streams or impaired waters. Neither should general permits allow the discharge of toxic materials. Individual permits should be required in these cases. Documentation for these permits should not be reduced.

Chapter 93.41 I 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. At the least, regulations are needed to govern their permitting.

93.6 It is very disappointing to see no language protecting instream flows and instream habitat. Other states have such protection, and the U. S. Supreme Court has ruled that states are permitted to protect instream flows. Governor Ridge's 21st Century Environment Commission recommended protecting aquatic habitat and instream flow. Because the water quality standards are the basis for clean water and healthy streams, lakes and rivers, Pennsylvania needs language protecting instream flow and aquatic habitat in our water quality standards!

I hope that the EQB will make these and other changes to improve our water quality, and not relax protection of the same.

Dale M. Steventon, DO
President
Hockendaqua Chapter, Trout Unlimited

Bethlehem Steel Corporation

BETHLEHEM, PA 18016

WILLIAM J. RILEY
GENERAL MANAGER
SAFETY, HEALTH & ENVIRONMENT

October 26, 1998

By Federal Express

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

Re: Volume 28, *Pennsylvania Bulletin*, page 4431 (August 29, 1998)

Gentlemen:

Bethlehem Steel Corporation hereby presents its comments on the subject regulations which are proposed to modify the water quality regulations at Chapters 92, 93, 95, 96 and 97 of 25 PA Code. Bethlehem has interest in this proposal because it has industrial sites with NPDES permits at five separate locations within the Commonwealth.

Many of the proposed changes are beneficial and we support this effort to streamline and simplify the regulations. For example, various changes that we find positive and that should aid in saving time and effort are:

§92.71(a)	The ability to automatically transfer an NPDES permit between two permittees upon 30-day notice to the Department and if the Department has no objections within that time frame.
§92.6(a)	Clarification that it is the operator's duty to obtain the NPDES permit.
§93.4(d)	Ability to request a variance from the osmotic pressure standard.
§92.55	Clarification that a compliance schedule can be obtained.

All of these changes will aid in providing certainty and enhancing the usefulness of the permit program.

However, there are three sections of the regulation that should be modified to improve their clarity and effective application to the regulated community.

No oil sheen— §92.2d(4)

Subsection (i) of this section specifies that both conditions (A) |At no time cause a film or sheen upon or discoloration of the waters of this Commonwealth or adjoining shoreline| and (B) |At no time contain more than 15 milligrams of oil per liter as a daily average value nor 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 ...| apply to oil bearing wastewaters (except petroleum marketing terminals). Some oils of light viscosity can exhibit a sheen under favorable atmospheric conditions even if the concentration is as low as 5 mg/l. Also, certain types of vegetation can cause the same optical effect as an oil sheen even if oil is not present. Bethlehem requests that the Department modify this section similar to the intent of the 1987 amendments to the Clean Water Act known as the Section 311 exclusion. In those amendments, any discharge in compliance with its NPDES permit limits for oil and grease is deemed to be in compliance with the "no sheen" requirements. This could be accomplished by modifying §92.2d(4) as follows:

(4) For oil-bearing wastewaters, the following applies:

(i) Oil-bearing wastewater, except those from petroleum marketing terminals, discharged into surface waters shall comply with |all of the following| either:

Additional information required during the permit application process—§92.21(c)

§92.21(c) states "In addition to the information required under subsection (b), the Department may require an applicant to submit other information or data the Department may need to assess the discharges of the facility and any impact on receiving waters...." The following sections describe studies, such as bioassays, whole effluent toxicity testing, and in-stream surveys, which may require lengthy lead times to hire a consultant, obtain the appropriate stream flow or seasonal conditions, and complete the study.

Bethlehem does not object to providing data which are (1) well defined and (2) necessary to allow the Department to complete its permit review process. However, Bethlehem is concerned that the request for additional data not delay the NPDES permit application process or cause the application to be considered incomplete or untimely. This point is important to dischargers because submittal of a complete application in a timely manner (at least 180 days before the expiration date of the NPDES permit) allows the permit to be administratively extended in the event that DEP is unable to reissue a permit before the expiration date.

We recommend that the regulation be clarified so that a properly completed permit application form with accompanying maps and certifications constitutes a complete application. Any biological data or other information which is not routinely required of all applicants should be considered supplemental information and not part of the routine complete application. These changes could be accomplished by revising the definition of "complete application" at §92.1 as follows:

> Complete application - An application which contains |an| a standard application form properly completed, signed and witnessed, a filing fee, proof of municipal notification, proof of local newspaper publication, |standard reports and forms required by the Department| and maps required to process a permit |and other data

required by the Department]. Additional data, such as bioassays, in-stream modeling, whole effluent toxicity testing, and other studies or reports which may be required by the Department to complete its permit processing shall be considered supplemental information.

Implied prohibition on non-permitted pollutants—§92.41(b)

The requirement at §92.41(b) states that each discharger (with minor exceptions) must monitor and report "all toxic, conventional, nonconventional and other pollutants in its discharge at least once a year." Under the strictest interpretation of this requirement, the permittee could be required to have its discharge(s) tested for the literally thousands of chemicals in commercial use. This requirement places a discharger in jeopardy by its vagueness. The section then further requires that "[i]f 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 pollutants, or otherwise eliminate the pollutants from the discharge within the permit term. If the pollutant cannot be eliminated from the discharge, the permittee shall seek a permit amendment." Again, read literally, this requirement could have the result of having the Department review and revise every NPDES permit for naturally occurring background parameters in water, such as sodium, potassium, or magnesium. Bethlehem understands that this draconian result was not the Department's intention but rather §92.41(b) was intended to give the Department authority to request monitoring results of some parameters at a frequency more often than the once every five years of the NPDES permit reapplication cycle. This section should be revised to indicate that (1) the Department will give a discharger a written list of the specific parameters for which additional monitoring is requested and (2) an appropriate action upon receipt of the monitoring data may be no change in permit terms and no further action required on the part of the permittee.

Bethlehem believes that the modifications of the proposed regulations as discussed above would be in keeping with the intent of the Regulatory Basics Initiative and would result in no harm to the environment. Bethlehem respectfully requests that the Department seriously consider these requests. If you have any questions regarding these comments, please contact Barbara E. Bachman of my staff at 610-694-2897.

Sincerely yours,

William J. Riley

ORIGINAL: 1975

Kim Garner

E-MAILED: Wilmarth
Jewett
Sandusky
Legal

From: wbthomas@gpu.com
Sent: Monday, October 26, 1998 2:20 PM
To: IRRC
Cc: dbiden@paea.org
Subject: Chapter 92, 93 & 96 Comments

Attached are comments on the proposed rulemaking for Chapters 92, 93 & 96 from the Electric Generation Association (formally generating companies in the Pennsylvania Electric Association). These comments were sent today to the EQB by overnight mail. The document is in Word 7.0 format.

Bill Thomas
Chairperson
EGA Water Quality Subcommittee

(See attached file: EGAh20comm.doc)

EGAh20comm.doc

OVERNIGHT MAIL

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

ORIGINAL: 1975
MIZNER
E-MAILED: Wilmarth
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Environmental Quality Board
15th Floor, Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17101-2301

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

Dear Environmental Quality Board:

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

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

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

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

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

Chapter 92:

- The EGA would like to comment on the definition of "Natural Quality", contained in 92.1. The intent is clear that this relates to conditions that have not been influenced by human activity. However, many Pennsylvania streams have had historical Acid Mine Drainage problems going back in some cases over 100 years. There also has been limited corrective action to mitigate a large percentage of those problems. In situations where the prospects of any improvements on an AMD impacted stream are negligible over a permit discharge period, consideration should be given in recognizing that this is a background condition that is analogous to a natural occurring condition.

- The EGA is concerned with the required BAT limit of .5 mg/l for total residual chlorine contained in 92.2(d)(3). This limit is more restrictive than the default BAT limit of 1.2 mg/l, recently established by the Department for small sewage treatment plants with flows below 10,000 gpd. The EGA hopes that the Departments intention is to continue to consider the special case of small sewage treatment plants in their 'facility specific' evaluations that use the 1.2 mg/l limit for Best Professional Judgement.

- The EGA supports 92.13(a) and its restriction on only opening permit issues directly related to the scope of the requested permit modification.

- The EGA would like to comment on 92.21(b)(3), suggesting that the PaDEP limit newspaper publication requirements to major modifications only. Permit renewals for facilities that have not substantively changed their operations/discharges should not be required to publish special notices in the local papers

Chapter 93:

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

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

Chapter 96:

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

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

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

Sincerely,

William B. Thomas
Chairperson
EGA Water Quality Subcommittee

cc: I.R.R.C.

ELECTRIC GENERATION ASSOCIATION
CHAPTER 92, 93 & 96
COMMENT SUMMARY

Chapter 92:

1. The EGA believes that background water quality conditions resulting from long term Acid Mine Drainage (AMD), should be analogous to "Natural Background" conditions when there is no near term prospects of correcting the AMD.

2. The EGA believes the .5 mg/l Total Residual Chlorine limit should not apply to small sewage treatment plants below 10,000 gpd. The current 1.2 mg/l limit or Best Professional Judgement limits should continue to apply.

3. The EGA supports the limitation on what issues can be addressed during a permit modification.

4. The EGA believes that a newspaper notice should only be required for major permit modifications.

Chapter 93:

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

Chapter 96:

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

THE
BERKS
COUNTY
CONSERVANCY

960 Old Mill Road • Wyomissing, PA 19610 • (610) 372-4992 • FAX 372-2917
E-mail: berkscon@ptd.net • Web: www.berksweb.com/conserve

October 26, 1998

Mr. James M. Seif, Chairman
Environmental Quality Board
Rachel Carson Office Building
400 Market St
P.O. Box 8477
Harrisburg, PA 17105-8477

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Re: Water Quality Regulations--Proposed Rulemaking, August 28, 1998, Pennsylvania Bulletin

Dear Mr. Seif and Members of the Environmental Quality Board:

The Berks County Conservancy is an organization which has been involved for many years with a wide variety of stream projects. We wish to comment on the proposed changes in the water quality regulations proposed by the DEP. We offer the following general comments and, if you wish, we would be happy to meet with you to further discuss these comments and our experiences with the streams of Berks County which lead us to make these comments.

With respect to Chapter 92:

** We support keeping the cap for total residual chlorine, since chlorine, although needed for disinfection purposes, can be extremely toxic to aquatic life if discharged in high concentrations.

** We recommend that DEP add that compliance with all water quality standards be required.

** In our opinion, additional public comment should be solicited particularly 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.

** The expansion of the section on general permits significantly weakens protection: The Conservancy recommends against the inclusion of toxics in general permits and the use of general permits in high quality waters.

** We also urge the DEP to retain the documentation provision that the general permit will not violate water quality standards to ensure that water quality standards will not be violated by the use of general permits. DEP proposes to delete this provision and reduce protection of PA waters.

** General permits should not be allowed in impaired waters.

With respect to Chapter 93:
** We support the continuation of the DEP practice which protects all streams as potential "potable water" sources.
** We are opposed to the deletion of warm water fishes as a statewide water use. Without this classification, there will be no basement level of protection for many streams.

With respect to Chapter 96:
** We recommend that the DEP include nonpoint source pollutants in this section which deals with how clean up will occur on waters determined to be impaired. problems.
** At this time, we recommend that the procedures for approval of effluent trading need refinement and strengthening before approvals be granted.

Thank you for this opportunity. We fully appreciate the difficulty of the decisions which you make and the complexity of the problems with which you deal. If you wish to discuss these matters, Joe Hoffman, our director of environmental affairs, would be very pleased to do so.

Sincerely yours

Chip Karasin

Chip Karasin, Vice President, Environmental Affairs

1311 HERBERTON ST.
PGH. PA. 15206
OCTOBER 26, 1996

THE ENVIRONMENTAL QUALITY BOARD
P.O. BOX 8477
HERRISBURG, PA 17105

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TO WHOM IT CONCERNS:

I WRITE TO YOUR BOARD AS A CITIZEN WITHIN THE STATE OF PENNSYLVANIA WITH A SIGNIFICANT CONCERN FOR ALL PENNSYLVANIANS — THE QUALITY OF OUR WATER. I STRONGLY OPPOSE THE PROPOSED WATER QUALITY STANDARDS AND TOXIC MANAGEMENT STRATEGY. I JOIN WITH MANY MANY OTHER CITIZENS WHO BELIEVE WE CAN NOT AFFORD TO WEAKEN OUR STANDARDS FOR DISCHARGING TOXIC CHEMICALS. THE TOXIC MANAGEMENT STRATEGY WOULD ELIMINATE ENFORCEABLE STANDARDS FOR 70 TOXIC CHEMICALS + ELIMINATE REGULATIONS OF 20 TOXIC CHEMICALS AS WELL AS LOWER STANDARDS FOR 20 MORE TOXIC CHEMICALS. IT SOUNDS AS THOUGH IT IS DESIGNED TO LOWER STATE REGULATIONS TO THE BARE MINIMUM REQUIRED BY THE FEDERAL GOVERNMENT. IT ROLLS BACK STANDARDS THAT PROTECT OUR WATER AND OUR HEALTH — IT IS ABSURD!!

DO MAKE YOUR CHOICES ON BEHALF OF THE PENNSYLVANIAN PEOPLE RATHER THAN PROFIT MAKING COMPANIES THAT POLLUTE!!

SINCERELY
Bernadette Fowler

P. H. GLATFELTER COMPANY

CORPORATE HEADQUARTERS / SPRING GROVE, PA 17362 / (717) 225-4711

October 26, 1998

VIA FEDERAL EXPRESS

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

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

To Whom It May Concern:

The P.H. Glatfelter Company ("Glatfelter") is providing its comments on the proposed revisions to 25 Pa. Code Chs. 92, 93, and 95-97, as provided for in the August 29, 1998 Proposed Rulemaking in the Pennsylvania Bulletin, 28 Pa. Bull. 4431. We appreciate this opportunity to provide our comments, and would like to suggest steps to modify the proposed revisions, so as to increase the benefits that will be realized as a result of this Regulatory Basics Initiative as described in the preamble to this proposal.

1. The 50 pcu In-Stream Color Limit on the Codorus Creek Should Be Deleted:

As currently promulgated, Section 93.9 of Title 25 of the Pennsylvania Code sets forth those waters of the Commonwealth that have been assigned specific water quality criteria. Only a handful of the hundreds of waters assigned specific water quality criteria have been assigned such criteria for color. Of these, only the Codorus Creek must maintain an in-stream value of 50 PT-CO units ("pcu"). See 25 Pa. Code § 93.9o (adding Col_1 exception to specific criteria for the main stem of the Codorus Creek, from Oil Creek to the mouth of the Susquehanna River) and § 93.7 (defining the Col_1 criterion as a maximum of 50 pcu with no other colors perceptible to the human eye). All of the other waters with a water quality criterion for color have been assigned a maximum 75 pcu in-stream standard. See, e.g., 25 Pa. Code §§ 93.9e, 93.9*l*, 93.9 n, 93.9z (adding Col_2 criterion to various streams). To date, there has been no published rationale offered for this distinction.

The proposed changes to the existing regulations retain the 50 pcu in-stream limit for the Codorus Creek. 28 Pa. Bull. 4431, 4481. The 75 pcu criterion is represented as continuing to be applied to other waters "as required." 28 Pa. Bull. 4431, 4442. Accordingly, the proposed regulatory changes perpetuate existing inequities in the regulatory scheme, and arbitrarily single out the Codorus Creek for especially stringent regulation. There is no justification given for this deviation from the norm, nor is any such justification discernible from review of the prior rulemakings establishing these differing criteria. Glatfelter respectfully maintains that the in-stream color standard for the Codorus Creek at least be brought in line to be consistent in the final regulatory revisions with the 75 pcu criterion otherwise applicable throughout the Commonwealth.

2. The Regulations Should Retain a Provision for Extensions of Time to Meet Water Quality Based Effluent Limitations Based Upon Technological Infeasibility:

The current 25 Pa. Code § 95.4 provides for an extension of time to meet water quality based effluent limitations, based on the use of best demonstrated technology (and a showing that improvements to meet the published criteria are not technologically feasible). The proposed regulations would eliminate this extension provision. Although Pennsylvania's Regulatory Basics Initiative is supposed to ensure consideration of whether or not the proposed regulatory changes are more stringent than Federal regulations without good reason and/or impose economic costs disproportionate to the environmental benefit, 28 Pa. Bull. 4431, this burden has not been met in the proposed elimination of 25 Pa. Code § 95.4. Indeed, no rationale whatsoever has been provided for this proposal.

It is clear that EPA must maintain its ability to consider economic impacts in setting its own water quality related effluent limitations, which may be modified if "there is no reasonable relationship between the economic and social costs and benefits to be obtained . . . from achieving such limitation." 33 U.S.C. § 1312(b)(2)(A). See also 40 C.F.R. § 122.21(m)(5). The proposed elimination of 25 Pa. Code § 95.4 may very well prevent economic costs associated with Pennsylvania's water quality based effluent limitations from being considered to the same degree as provided for in the federal statute, in violation of Pennsylvania's Regulatory Basics Initiative. Accordingly, 25 Pa. Code § 95.4 should be retained in its current form, or a close analogue.

3. Past Errors in Calculating Temperature Criteria Should be Corrected:

The proposed regulatory changes provide for a re-tabulation of the temperature criteria at 25 Pa. Code § 93.7, but do not reflect any review of the validity of the monthly temperature limits contained therein. Thus, the proposed regulations continue to set limits associated with the $Temp_2$ criterion for warm water fisheries that cannot be attained by most stream segments in the

Commonwealth designated WWF. The present limits are derived from a 1987 triennial review document which employed questionable assumptions. Glatfelter maintains that this Proposed Rulemaking provides an appropriate opportunity to reconsider the validity of the assumptions employed in setting the $Temp_2$ limits.

The triennial review document set out monthly temperature data collected over ten years from thirty warm water streams statewide. See triennial review document, table 1, page 8. These monthly readings provided a statewide average monthly in-stream temperature for warm water streams, from which average in-stream temperature differences between successive months (delta Ts') were calculated. See triennial review document, table 6, page 19. Starting with an 87°F maximum for July and August, maximum temperature limits were calculated for each month using average delta Ts' . Some months were split into two periods to ease the transitions in temperature. Limits were set for a total of eighteen time periods. Then, for eleven of these eighteen time periods, DEP replaced the calculated limits with significantly lower limits based on reported biological requirements of representative species. See triennial review document, table 9, page 24.

The resultant $Temp_2$ temperature limits are overly restrictive for two reasons. First, DEP inappropriately used average monthly delta Ts' to set maximum temperature limits. The upper 95% confidence limit of the delta Ts' should have been used. Second, DEP used reported biological requirements to set the temperature limits lower than observed ambient conditions without providing any evidence that existing ambient conditions pose a problem. In the case of walleye for example, DEP states that "Since the mid-1970's, the growth and survival of walleye have been protected in Pennsylvania by the present criterion's 87°F maximum and 5°F rise above ambient caveat. Although definitive studies are lacking, there have been no reported occurrences of adverse impacts on walleye populations in the Commonwealth due to thermal discharges." See triennial review document, page 21.

Attached Table I shows a comparison between the $Temp_2$ limits and the temperature limits calculated using the upper confidence limits of the delta Ts' taken from table 7 of the triennial review document. The table clearly shows that the $Temp_2$ limits are significantly lower than the limits calculated from observed ambient temperatures. For example, the $Temp_2$ limit for April is 19°F lower than the limit calculated from ambient data; the $Temp_2$ limit for May is 18°F lower; for February and March it is 16°F lower, and for January and December it is 14°F lower. The result of setting the temperature limits at such low levels is that any new or existing thermal discharge to a stream designated $Temp_2$ results automatically in a violation. Although the regulations currently provide for variances, a more sensible course would be set temperature limits that more closely reflect ambient conditions, such as those shown in Table I, especially when historical data indicates that these conditions have been protective of aquatic life.

4. The Requirement that the Permittee Prevent the Generation of Non-Permitted Pollutants or Otherwise Eliminate Non-Permitted Pollutants from the Discharge is Contrary to the Regulatory Scheme of the Clean Water Act:

The proposed requirement at 25 Pa. Code § 92.41(b) that a permittee be required, as part of an annual monitoring report, to identify all non-permitted pollutants and explain how the discharge of these pollutants will be eliminated, must be rewritten to delete the last two sentences of the proposed provision. This requirement is contrary to the regulatory scheme established by the federal Clean Water Act, to the Pennsylvania Regulatory Basics Initiative, and is in any case overbroad.

The proposed requirement at issue would go far beyond a mere tightening of discharge limits. "EPA did not intend to require water quality-based permit limitations on all pollutants contained in a discharge. . . . [W]ater quality-based limits are established where the permitting authority reasonably anticipates the discharge of pollutants by the permittee at levels that have the reasonable potential to cause or contribute to an excursion above any state water quality criterion. . . ." Memorandum from Director, Office of Wastewater Enforcement and Compliance to Water Management Division Directors, Regions I-X, at 2-3 (Aug. 14, 1992), quoted in Atlantic States Legal Found. v. Eastman Kodak Co., 12 F.3d 353 (2d Cir. 1993); cert. denied, 513 U.S. 811 (1994). The suggestion in the proposed regulation that any non-permitted pollutant must be eliminated or subject to an application for an amended permit removes this element of reason on the part of the permitting authority, and further removes the degree of certainty which a five-year permit is intended to provide to a discharger. The NPDES permit is "intended to identify and limit the most harmful pollutants while leaving the control of the vast number of other pollutants to disclosure requirements." Atlantic States Legal Found., 12 F.3d at 357.

Indeed, "EPA does not demand even information regarding each of the many thousand chemical substances potentially present in a manufacturer's wastewater because 'it is impossible to identify and rationally limit every chemical or compound present in a discharge of pollutants . . . . Compliance with such a permit would be impossible . . . .'" Id., citing Memorandum from EPA Deputy Assistant Administrator for Water Enforcement Jeffrey G. Miller to Regional Enforcement Director, Region V, at 2 (Apr. 28, 1976). Such an overbroad requirement is not justified under the Pennsylvania Regulatory Basics Initiative given its stringency several orders of magnitude beyond federal requirements.

5. Miscellaneous Comments and Concerns:

Page 4452, § 92.2(c). This provision does not seem workable given the inherent ambiguity in the term "variance," and therefore should be deleted. This standard is arguably is not compatible with DEP's charge to evaluate whether a provision is more stringent than federal requirements under the Regulatory Basics Initiative.

Page 4453, § 92.2a(c). This section should end with the phrase, "to ensure appropriate protection of these species and critical habitat" to preserve the Department's ability to balance these considerations with others that may be pertinent in establishing treatment requirements.

Page 4453, § 92.2b(b). Provisions such as these throughout the regulations, if retained, should consistently be phrased in terms of what permittees "are encouraged" to do, rather than what permittees "should" do. "Should" is susceptible to interpretation as a requirement or presumption. While pollution prevention activities may be laudable in many contexts, they are not required by federal regulations, and any such requirements would be inconsistent with the philosophy, embodied in the Regulatory Basics Initiative, of environmental regulations establishing performance-based requirements and leaving the permittee free to decide how to meet those requirements.

Page 4456, § 92.13(b)(1). Federal regulations allow a permitting authority to consider compliance with an existing permit as relevant to eligibility for reissuance, but not as determinative of ineligibility if any noncompliance is unresolved (e.g., if allegations of noncompliance are de minimis or are legitimately being contested). Denying reissuance of a permit on these grounds should be discretionary.

Page 4460, § 92.51(6). Given the breadth of this proposed discharge limitation, it is more reasonable -- rather than prohibiting any discharge creating any danger of being "inimical" – to qualify the prohibitions to any discharge "creating a reasonable probability of danger of being inimical to the water uses to be protected. . . ."

Page 4460, § 92.52a. DEP's authority to include any permit condition necessary to assure protection of surface waters should be qualified to include a presumption that the condition would be in the form of a performance-based limitation, if feasible, and would be included only if the permit did not otherwise have terms achieving the desired protection. The same qualifications should apply to the language that is proposed to be added in § 92.57 as well. Such an adjustment is necessary to comport with the express goals of the Regulatory Basics Initiative.

Page 4460, § 92.55. A compliance schedule also should be allowed to exceed three years if authorized by a federal regulation or statute, as is arguably the case with the optional compliance schedule offered pulp and paper mills for certain pollutants under the Voluntary Advanced Technology Program as part of the Cluster Rule.

Page 4462, § 92.72a. The proposal provides no justification for this requirement, and constitutes improper interference with legitimate business actions. At a minimum, notification of cessation of operations should only be required for planned, permanent cessations. There is no indication of how compliance would be feasible for unplanned shutdowns, such as those caused by natural disasters. The provisions should be eliminated, or at a minimum, the advance notice should shortened to 30 days, with an affirmative defense available for the permittee to show that shutdown was not decided upon that far in advance.

Page 4462, § 92.73(6). DEP may not deny a permit merely because EPA or the Army Corps of Engineers raises an objection. This is an unauthorized delegation of DEP's responsibility to administer the Commonwealth's Clean Streams Law. If DEP is not accountable for exercising its own judgment, permit applicants may have no way of challenging and overturning permit denials based on arbitrary and capricious objections by federal agencies which may not qualify as final agency actions. Recent Environmental Hearing Board decisions confirm that the Department may not blindly defer to the determinations of other agencies. See, e.g., Eagle Environmental, L.P. v. DEP, 1997 EHB 733. Rather, it must reserve for itself the ultimate decision of whether or not to issue or suspend a permit. T.R.A.S.H. Ltd. v. DER, 1989 EHB 487 (the Department does not abuse its discretion by referring traffic study to the Department of Transportation, but it must reserve ultimate authority to issue a permit). Thus, if the proposed regulation is to be retained, it must reflect the precept that "the Department must evaluate the determination of another agency and exercise its legislatively mandated discretion to reject that determination if it so chooses." Eagle Environmental, L.P. v. DEP, 1998 EHB ___, (96-215-MG, Sep. 3, 1998).

Page 4464, § 92.93 et seq. The benefit of establishing the intermediate hearing step in § 92.93(b) is unclear at best. There is no assurance of a neutral official conducting the hearing or of other procedural safeguards. In any event, any ruling in such a hearing must be subject to de novo review by the EHB, where the Department would still bear the burden of reproving its enforcement case. Accordingly, the intermediate hearing step should be eliminated.

Page 4466, §93.1. This definition of water quality criteria is unjustifiably more stringent than federal regulations by apparently not allowing water quality criteria to be expressed in narrative form, as authorized by 40 C.F.R. § 131.3(b).

Page 4496, § 96.3(c)-(f). These provisions require that various water quality criteria be met "at least 99% of the time." These are potentially more stringent requirements than those imposed by the current 25 Pa. Code § 93.5(b)(1), which states that water quality criteria shall be "achieved at stream flows equal to or exceeding $Q_{7\text{-}10}$." More explanation is needed for Glatfelter and other permittees to evaluate the purpose of these proposed changes, and the extent to which they may alter the modeling calculations that result in discharge limits in NPDES permits. To the extent that these changes have the potential to result in more stringent discharge limits, Glatfelter objects to their adoption as not sufficiently justified.

Page 4496, § 96.4(e). This provision improperly fails to provide interested parties notice and an opportunity to comment on (1) TMDL, WLA and LA calculation methodologies, and (2) actual TMDL, WLA and LA calculations for particular stream segments. This failure could lead to much confusion and revisiting of these issues as dischargers comment on individual permits after DEP already may have relied on these calculations in issuing earlier permits for other dischargers to the same stream segment.

Page 4496, § 96.4(g). The proposed effluent trading procedures should be codified as regulations, subject to the same public participation, accountability requirements, and other procedural safeguards as other regulatory programs affecting the rights and obligations of persons in Pennsylvania, rather than as the less formal guidance suggested in the proposed rulemaking.

Page 4497, § 96.4(l). The EQB is not authorized in these regulations to assign the burden of proof to a challenger of a TMDL, WLA or LA, particularly when potential challengers have had no opportunity to comment on TMDL, WLA or LA calculations or methodologies. The assignment of burden of proof is properly governed by the rules which otherwise govern the proceeding in which such a challenge would arise.

We appreciate this opportunity to provide our input. If there is any further information that we can provide, please do not hesitate to contact me.

Sincerely,

P. H. GLATFELTER COMPANY

Robert E. Callahan
Environmental Manager

TABLE I
Comparison of $Temp_2$ Limits
and
Limits Calculated from Observed Ambient Temperatures

Month	Upper 95% Confidence Limit of Delta T °F*	Calculated Max. Temp. °F	$Temp_2$ Max. Temp. °F	
JAN	-2.3	54	40	
FEB	2.1	56	40	
MAR	5.8	62	46	
APR	8.9	71	52	Apr 1-15
		71	58	Apr 16-30
MAY	11	82	64	May 1-15
		82	72	May 16-31
JUN	9	87	80	Jun 1-15
		87	84	Jun 16-30
JUL	5.6	87	87	
AUG	1.3	87	87	
SEP	-5.8	81	84	Sep 1-15
		81	78	Sep 16-30
OCT	-10.6	70	72	Oct 1-15
		70	66	Oct 16-31
NOV	-7.3	63	58	Nov 1-15
		63	50	Nov 16-30
DEC	-6.7	56	42	

* from triennial review document, table 7, page 20

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October 26, 1998

Environmental Quality Board
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Legal

Comments on Proposed Rulemaking:

WATER QUALITY AMENDMENTS
25 Pennsylvania Code Chapters 92, 93, 95, 96 AND 97 (No. 7-338)
Regulatory Basics Initiative

The proposed regulation was developed by the department in response to its Regulatory Basics Initiative and the Governor's Executive Order 1996-1. The proposal updates the state's National Pollutant Discharge Elimination System (NPDES) regulations for consistency with the federal program, consolidates regulatory provisions where appropriate, and streamlines and clarifies regulatory requirements.

Our comments focus primarily on the following matters:

- the adoption by reference of a substantial portion of the US Environmental Protection Agency's (EPA) NPDES regulations;
- problems related to the *Chapter 102* erosion and sediment control program;
- The new pollution prevention provisions; and
- The general permit provisions.

Limits on the adoption of federal NPDES rules by reference

Section 92.2 establishes a broad standard adopting by reference any "future amendments" EPA may make to the federal NPDES requirements listed in subsection (b) unless contrary to Pennsylvania law or other federal requirements. Subsection (c) further conditions the standard for incorporating federal NPDES rules by reference by proscribing the adoption of "any new or amended federal regulation ... which creates a variance to existing substantive or procedural NPDES permitting requirements."

We know of no material change that EPA could make in the future to its NPDES permitting rules that would not be either substantive or procedural. We submit that the limits imposed by subsection (c) effectively undermine one of the fundamental reasons for adopting federal rules by reference in the first place, i.e., to expedite the maintenance of primacy over the federal program.

The inflexible standard imposed by proposed subsection (c) will needlessly force the department to undertake a lengthy rulemaking procedure every time the EPA adopts any meaningful or useful rule change. In cases where the new federal rule would be more stringent than the regulatory provisions DEP adopts by reference in the proposed rule, DEP would be forced to undertake a new rulemaking effort simply to maintain primacy. In cases where a new federal rule relaxes a permitting standard, streamlines its permit requirements, or simplifies the standards for compliance, the department's program would automatically become more stringent that the federal program, and the regulated community would be unable to take advantage of the new flexibility unless the department would decide to undertake a lengthy rulemaking effort to adopt the new standards.

In either case, subsection (c) creates unnecessary inefficiencies and is contrary to the express purpose of the RBI and Executive Order 1996-1. We suggest that subsection (c) should be deleted to ensure continuing regulatory continuity with the federal program. The deletion of the subsection from the final rule would not

undermine the department's ability to propose future amendments to its NPDES regulations in cases where it does not agree with a substantive or procedural change to the federal rules that eases the regulatory burden on permittees. Deletion of the subsection would also ensure that future EPA rules that are more stringent that the current permitting standards are automatically adopted by reference.

NPDES storm water permits for oil and gas activities

We applaud the EQB and the department for the proposal to incorporate much of the EPA regulations governing the NPDES program by reference, particularly for including federal rules at *40 Code of Federal Regulations (CFR) Part 122* governing the unique regulatory treatment of storm water runoff associated with oil and gas exploration and production activities.

NPDES permit exemption for uncontaminated storm water runoff. Congress included explicit provisions in the *Clean Water Act* at §1342(l)(2)[1] that categorically prohibit the EPA from requiring a permit for uncontaminated storm water discharges from all facets of oil and gas exploration, production, processing, or treatment operations or transmission facilities.

When EPA promulgated its NPDES regulations governing storm water permitting, it incorporated the *Clean Water Act* permitting limitation almost verbatim. The EPA NPDES rules state:

> The Director may not require a permit for discharges of storm water runoff from ... oil and gas exploration, production, processing or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.[2]

EPA reiterates the NPDES permit requirement for contaminated storm water runoff from oil and gas activities by listing such facilities as a separate category of regulated industrial activity. The provision requires NPDES permits for

> "oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations".[3]

To implement the restricted permit requirement, EPA spelled out the conditions for determining when storm water runoff is contaminated in the section of its rules that stipulates the application requirements for storm water discharges associated with industrial activity. EPA rules state that:

> The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with paragraph (c)(1)(i) of this section, unless the facility:

---

[1] Section 1342(l)(2) of the federal *Clean Water Act* states:

(2) Storm water runoff from oil, gas, and mining operations. The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require a permit, for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations.

[2] 40 CFR §122.26(a)(2)

[3] 40 CFR §122.26(b)(14)(iii)

(A) Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at anytime since November 16, 1987; or

(B) Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or

(C) Contributes to a violation of a water quality standard.[4]

EPA then developed a general permit to implement the foregoing standard. On September 29, 1995, EPA published notice of a final NPDES general permit governing storm water runoff from a number of categories of industrial facilities.[5] EPA's 1995 "multi-sector" general storm water permit states that the only oil and gas operations covered by the permit requirements are those that discharge contaminated storm water.

Incorporation by reference. The department's NPDES RBI rulemaking incorporates all of the foregoing federal regulations by reference at proposed §§92.2(b)(9) and 92.21a(d). While we support the inclusion of the federal regulatory framework establishing a permit requirement for contaminated storm water runoff from oil and gas activities, we believe that the regulation should be clarified.

Suggested modifications. In its present form, a reader of the proposed regulation cannot readily identify the unique regulatory treatment afforded to storm water runoff from oil and gas E&P operations because the permit exclusion for uncontaminated runoff is buried in the elements of the federal rule that are adopted by reference. Unless the reader is willing to spend considerable time reading and analyzing the EPA rules that the proposed regulation merely references, he may be unaware of the NPDES permit exclusion available to uncontaminated storm water runoff from oil and gas activities.

To overcome this difficulty, we suggest an amendment to the proposed rule that would highlight the limited NPDES permit exclusion. We suggest that §92.4 (exclusions from permit requirements) should be modified to incorporate a specific reference to the permit exemption for uncontaminated storm water runoff from oil and gas E&P activities. The revision should read:

§92.4. Exclusions from permit requirements.

(a) The following are excluded from the requirement of obtaining an NPDES permit under this chapter:

* * * * *

(8) STORM WATER RUNOFF FROM OIL AND GAS EXPLORATION, PRODUCTION, PROCESSING OR TREATMENT OPERATIONS OR TRANSMISSION FACILITIES, COMPOSED ENTIRELY OF FLOWS WHICH ARE FROM CONVEYANCES OR SYSTEMS OF CONVEYANCES (INCLUDING BUT NOT LIMITED TO PIPES, CONDUITS, DITCHES, AND CHANNELS) USED FOR COLLECTING AND CONVEYING PRECIPITATION RUNOFF AND WHICH ARE NOT CONTAMINATED BY CONTACT WITH OR THAT HAS NOT COME INTO CONTACT WITH, ANY OVERBURDEN, RAW MATERIAL, INTERMEDIATE PRODUCTS, FINISHED PRODUCT, BYPRODUCT OR WASTE PRODUCTS LOCATED ON THE SITE OF SUCH OPERATIONS

The proposed language is quoted from the federal rules at 40 CFR §122.26(a)(2), which the department proposes to incorporate by reference.

[4] 40 CFR §122.26(c)(1)(iii)

[5] 60 FR 50804

Only contaminated storm water discharges from construction activities conducted as part of oil and gas exploration and development operations should require a permit

A particularly vexing issue that we exhort the department to address in this rulemaking relates to a position that the EPA takes regarding the relationship between its regulations governing storm water discharges from "industrial activities" and those governing storm water discharges from "construction activities." EPA asserts that construction activities that disturb more than five acres of land are a categorically distinct industrial activity that should be regulated separately.

EPA's distinction between construction activities and oil and gas exploration and development operations imposes an additional layer of regulatory control on oil and gas operations that we believe is neither necessary nor legal.

EPA position. In a memorandum internal to the US Environmental Protection Agency dated December 10, 1992[6], an EPA Region VIII staff person asserted that "all construction activities involving oil and gas facilities ... that disturb five or more acres of land are required to apply for a NPDES permit for the storm water discharges from that site, pursuant to 40 CFR Part 122.26(b)(14)(x), regardless of its affiliation with an oil and gas operation." In the memorandum, EPA rationalized that "[t]he exemption afforded to oil and gas operations pursuant to 40 CFR Part 122.26(c)(1)(iii) applies only to the oil and gas operation itself, not associated activities that may fall under different parts of the definition of storm water discharge associated with industrial activity."

DEP position. The department has relied on the December 10 memorandum as if it is a formal EPA policy or regulation that dictates how its storm water management program should be structured under its primacy arrangement with EPA for the NPDES program. DEP has consistently required oil and gas operations that cause five or more acres of earth disturbance to apply for a storm water discharge permit for construction activities.

Litigation. The Pennsylvania Oil and Gas Association and other producer organizations viewed the December 10, 1992 memorandum as an effort by the federal agency to circumvent the scope of the statutory permit exemption otherwise available to oil and gas operations for uncontaminated storm water discharges. In response, the organizations, collectively known as the Appalachian Energy Group (AEG), filed an action in the US Court of Appeals, Fourth Circuit, requesting that the memorandum be declared unlawful and that the court set it aside because (1) it is inconsistent with the *Clean Water Act* and (2) it amounts to a new rule, adopted without proper notice under the *Administrative Procedure Act*. The AEG's only stated interest in filing the action was to determine whether its members must obtain permits for uncontaminated storm water runoff from construction activities undertaken in connection with oil and gas operations.

The Court of Appeals dismissed the AEG appeal, stating that it lacked the subject matter to review an Environmental Protection Agency internal memorandum where "actions by EPA had not yet constituted final agency action." The court characterized the December 10, 1992 memorandum as merely the opinion of one EPA official that was written with no express purpose and for no apparent reason. It also stated that the memorandum only constitutes a position that the federal agency may eventually adopt and that it should not be construed as a final agency action establishing a binding federal policy or requirement.

In a footnote discussing elements of EPA's brief on the case, the court also commented on the EPA's contention that the memorandum is "an interpretive rule that reasonably and correctly interprets the *Clean Water Act*." The court observed that "EPA relies on 26 CFR §122.26(b)(14)(x) to justify its requiring a permit for all construction activities involving five acres or more of land, including those undertaken as part

[6] See Attachment A

of oil and gas operations which would otherwise be exempted," and it observed that there are "problems that EPA may encounter in maintaining this position."[7]

In the wake of the Fourth Circuit Court's ruling, EPA continues to this day to maintain that separate categories of NPDES permits are required for construction activities associated with oil and gas operations that disturb less than five acres of land and for identical activities that disturb more than five acres.

Clean Water Act limitations. EPA's assertion that identical construction activities are different, depending on the amount of acreage disturbed, is a red herring that redirects attention away from the core *Clean Water Act* provision restricting the agency's ability to regulate oil and gas operations. By drawing its arbitrary acreage distinction, EPA subverts the statutory mandate that only allows the agency to regulate contaminated storm water discharges from construction activities associated with oil and gas operations. If EPA intended to implement its construction-related storm water discharge program in a manner that would be true to the intent of Congress, it would acknowledge that the permit exemption for uncontaminated storm water discharges from oil and gas operations applies to *all* construction-related discharges, not just those that involve earth disturbances smaller than five acres.

Recommendation. In light of the court's finding that the December 1992 internal EPA memorandum does not constitute a final agency action, and because EPA has never taken formal action on the matter since the court ruling, the department is not bound to follow the opinion of the writer of the memorandum as if it is an expression of a formal EPA requirement that Pennsylvania must impose on oil and gas operations.

As discussed in the previous section of our comments, the department should include the express *Clean Water Act* provisions granting oil and gas operations an exemption from the NPDES permitting requirements for discharges of uncontaminated storm water pursuant to the directives of the Governor's Executive Order and the Regulatory Basics Initiative. The department should adopt such provisions both in this rulemaking and in its proposed *Chapter 102* amendments. The provisions should acknowledge that oil and gas operations, including any construction activities, only require a permit when they cause a storm water discharge that is contaminated pursuant to the standards established in 40 CFR §122.26(c)(1)(iii). Such provisions, we believe, would be true to the intent of Congress when it enacted the NPDES permit exemption for uncontaminated storm water discharges from oil and gas operations and would satisfy the mandate of Executive Order 1996-1.

NPDES permit requirements for potential storm water discharges

The proposed regulation includes a definition in §92.1 for "storm water discharges associated with construction activity" that imposes a permit requirement on the potential discharge of storm water from construction-related activities. Specifically, the proposed rule stipulates that all construction activities require a permit "whether or not they discharge to waters of the Commonwealth."

Such a requirement is contrary to the scope of the federal NPDES program[8] and ignores the mandate of the RBI and the Governor's Executive Order 1996-1, which require that the department must adopt regulations that are no more stringent than federal counterpart rules unless such a regulation is required by state law or the department can justify the more stringent standard by articulating a compelling Pennsylvania interest that makes such regulation necessary.

No state law expressly requires a permit for potential pollution or for the potential discharge of storm water to surface waters. While provisions of *The Clean Stream Law* grant the department broad discretion to

[7] See Attachment B for the full text of the Court's decision on the matter

[8] EPA rules at §122.1(b) (Scope of the NPDES permit requirement) state: "The NPDES program requires permits for the discharge of 'pollutants' from any 'point source' into 'waters of the United States.'"

require permits to regulate potential pollution,[9] the Governor's Executive Order explicitly obliges the department to evaluate its decisions to impose a regulatory burden that is more stringent than federal requirements on the basis of a compelling Pennsylvania interest that would be served. We know of no interest in the Commonwealth that is so unique to the nation that would compel the department to require a stream discharge permit for activities that do not discharge to a stream.

We suggest that the final regulation should be modified to remove the requirement unless the department identifies a specific provision of state law that mandates the imposition of the permit requirement on potential storm water discharges from construction activities or clearly articulates a compelling reason for imposing such a requirement on Pennsylvanians.

The final rule should define "common plan of development or sale" to clarify the permit requirements for storm water discharges associated with construction activity

The proposed definition of "storm water discharges associated with construction activity" also tracks EPA's regulations by limiting the requirement for a permit to operations that cause a disturbance larger than five acres unless the disturbance is part of "a larger common plan of development or sale."[10]

EPA discussion. The phrase "common plan of development or sale" is fraught with uncertainty because of its generality. EPA noted in its recently revised general permit for construction-related storm water discharges in Region 3 that "the volume and nature of the comments [on the provision] showed that the regulated community and the public needed additional guidance on the issue."[11]

In the many pages of discussion of the phrase in the notice, EPA made it plain that it intends a broad interpretation of the concept. EPA's discussion, however, focused on the types of residential and commercial land development activities that can be readily identified as a "common plan of development or sale" and on activities that commonly result in five contiguous acres of earth disturbance at one time.

EPA also noted that in many cases, a common plan of development or sale consists of many small construction projects that collectively add up to five or more acres of total disturbed land, and again it used the typical residential subdivision as an example, pointing to the layout the streets, house lots, and areas for parks, schools and commercial development that the developer plans to build or sell to others for development.

The more complicated case that needs clarification, EPA observed, is when the common plan consists of several smaller construction projects that cumulatively will disturb five or more acres, but may or may not be under construction at the same time.

Such a scenario is typical in oil and gas well development projects in two instances:

---

[9] Section 402(a) of *The Clean Streams Law* states in part:
(a) Whenever the department finds that any activity, not otherwise requiring a permit under this act, including but not limited to the impounding, handling, storage, transportation, processing or disposing of materials or substances, creates a danger of pollution of the waters of the Commonwealth or that regulation of the activity is necessary to avoid such pollution, the department may, by rule or regulation, require that such activity be conducted only pursuant to a permit issued by the department or may otherwise establish the conditions under which such activity shall be conducted, or the department may issue an order to a person or municipality regulating a particular activity.

[10] 40 CFR §122.26(b)(14)(x) requires NPDES permits for "Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale".

[11] 63 FR 7874

- when a well operator intends to develop a lease where the geology of the oil and gas is well understood.

  In this instance, the well operator may obtain multiple well permits each year for an "in-fill" drilling program that consists of the sequential drilling and completion of a number of wells over the course of five to ten years.

- when the operator seeks to develop a lease where the subsurface geology has not been fully explored and the extent of oil or gas bearing formations is unknown.

  In this instance, the well operator will permit and drill individual or multiple wells over the course of a number of years as he identifies the extent of the hydrocarbon deposits underlying his leasehold acreage.

Typically, earthmoving activities associated with the development, drilling and completion of each well will disturb only a small fraction of the total area in the vicinity of each well. In such cases, the area in the vicinity of each well for each well may be contiguous, but the areas of earth disturbance will not be related, and in some cases may even be located in different watersheds.

To determine whether a permit is needed for storm water discharges associated with construction activity on sites disturbing less than five acres, EPA poses two questions:

1. Is there a "common plan of development or sale" tying individual sites together? (e.g., Are the lots part of a subdivision plat filed with the local land use planning authority?) and
2. Will the total area disturbed by all of the individual sites add up to five or more acres? (e.g., If you added up all of the acreage that will need to be disturbed to completely build out the subdivision as planned, would there be five or more acres disturbed?)[12]

Generally, if the answer to both questions is no, a storm water discharge permit is not needed. EPA goes on to note, however, that

> "The Larger Common Plan concept does have to be applied with some common sense and should not be taken to extremes. ... A common plan of development must at least be theoretically capable of *having five or more acres of land disturbed at one time* in order to trigger the need for a permit." [13] [Emphasis added.]

Recommendation. Because of the problems associated with the interpretation of what would constitute a "common plan of development or sale," we urge the department to modify the final regulation to include a specific definition of the phrase. The new definition should list specific, concrete standards and criteria that the regulated community can rely on to determine whether the department will determine that a proposed project will be subject to the NPDES permit requirements for a storm water discharge associated with construction activity. The definition of the phrase should follow EPA's "common sense" guidance that expects multiple small projects to consist of five or more acres of disturbance at one time.

General permit use on Special Protection waters

Proposed amendments governing general NPDES permits in §§92.81(a)(8) and 92.83(b)(8) allow the use of general NDPES permits on surface waters classified as "High Quality" (HQ) under the department's antidegradation program. The proposal continues to prohibit the use of such permits for discharges to "Exceptional Value" (EV) streams. The proposed changes reflect modifications originally approved as part of another proposed rulemaking endorsed by the EQB in January 1997 and published in the *Pennsylvania Bulletin* the following March.

[12] 63 FR 7874

[13] 63 FR 7874 – 7875

While we appreciate and applaud the department's willingness to extend the opportunity for permittees to operate under a general permit for discharges to HQ waters, the proposed modifications, which retain the prohibition against using general permits on EV waters, is still more stringent than federal NPDES rules. Federal regulations at 40 CFR §§122.28 and 123.25, which the department does not propose to adopt by reference, impose no restrictions on the development, issuance or use of general NPDES permits that relate to the antidegradation classification of a stream. Also, we know of no state law, including *The Clean Streams Law*, which prohibits the use of general permits on streams because of their antidegradation classification.

We suggest that the department should expand the proposed modification of the provisions in §§92.81(a)(8) and 92.83(b)(8) to allow the use of general permits on all state waters, regardless of the antidegradation classification afforded to the stream. If the department chooses to retain the restriction on the use of general permits on EV streams in the final regulation, it should either identify the specific statutory requirements imposing the restriction or articulate a compelling Pennsylvania interest that justifies the restriction.

Voluntary pollution prevention

The proposed regulation at §92.2b (Pollution prevention) is written to "encourage" permittees to maximize pollution prevention efforts to minimize the impact of their permitted activities on the waters of the Commonwealth. Subsection (a) states:

> (a) Permittees are encouraged to maximize the use of pollution prevention approaches including: resource reduction through materials substitution, process changes, wastewater conservation, wastewater reuse, and wastewater recycling.

The structure of subsection (b), however, is confusing with regard to whether the pollution prevention provisions in the section are simply meant to encourage pollution prevention on a voluntary basis or to require permittees to perform specific activities. The confusion arises from the department's use of the verb "should" throughout the subsection. The word "should" is an auxiliary verb that is commonly used to express an obligation or duty. ("You should call you mother.") It is also the past tense of the verb "shall". Use of the passive voice in the section muddles the issue even more.

The subsection tells permittees that they should reduce pollution load to the maximum extent practicable using specific pollution prevention techniques. It also states that they should implement a pollution prevention plan.

We are confused as to whether these offerings are meant to impose a duty on a permittee to carry out the requirements or simply to suggest to the permittee that he may carry out such activities if he wants to.

If the section is meant to convey suggestions for voluntary pollution prevention practices that a permittee may choose to implement, the department should rewrite the section in the active voice without any verb forms that suggest an obligation or duty. The department could "recommend" or "suggest" certain pollution prevention activities, for example.

For the Pennsylvania Oil and Gas Association

Stephen W. Rhoads
President

Attachment A

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

344-9

MEMORANDUM

TO: Vern Berry
Region VIII Storm Water Coordinator (8WM-C)

FROM: Ephraim King, Chief EK
NPDES Program Branch (EN-336)

SUBJECT: Applicability of NPDES Storm Water Regulations to Discharges from Construction Activities Involving Oil and Gas Facilities

The purpose of this memorandum is to respond to your memorandum that asked whether a permit is required for storm water discharges from construction activities involving oil and gas facilities (e.g., access roads, drilling pads, pipelines, etc.). All construction operations, including clearing, grading and excavating activities, that disturb five or more acres of land are required to apply for a NPDES permit for the storm water discharges from that site, pursuant to 40 CFR Part 122.26 (b) (14) (x), regardless of its affiliation with an oil and gas operation. The exemption afforded to oil and gas operations pursuant to 40 CFR Part 122.26 (c) (1) (iii) applies only to the oil and gas operation itself, not associated activities that may fall under different parts of the definition of storm water discharge associated with industrial activity. I hope this memorandum addresses your concerns. Please call me if you have further questions.

Attachment B

regulate insurance." *FMC Corp. v. Holliday*, 498 U.S. 52, 61, 111 S.Ct. 403, 409, 112 L.Ed.2d 356 (1990) (en banc) (emphasis added). Nationwide obviously is not an "employee benefit plan," and the deemer clause has no application to Tri-State's claims against it. *Fravel v. Chesapeake & Potomac Telephone Co. of Virginia*, 780 F.2d 416, 420 (4th Cir.1985), *cert. denied*, 476 U.S. 1170, 106 S.Ct. 2892, 90 L.Ed.2d 980 (1986) ("Since Connecticut General [Life Insurance Company] is not an 'employee benefit plan,' the deemer clause is inapplicable to it."); *see FMC Corp.*, 498 U.S. at 61, 111 S.Ct. at 409 ("An insurance company that insures a plan remains an insurer for purposes of state laws 'purporting to regulate insurance' after application of the deemer clause."). Thus the district court's holding that the deemer clause preempts Tri-State's claims is likewise incorrect. Accordingly, I dissent from the majority's affirmance of that holding as well.

APPALACHIAN ENERGY GROUP; Independent Oil and Gas Association of New York; Independent Oil and Gas Association of Pennsylvania; Independent Oil and Gas Association of West Virginia; Kentucky Oil and Gas Association; Ohio Oil and Gas Association; New York State Oil Producers Association; Pennsylvania Oil and Gas Association; Tennessee Oil and Gas Association; Virginia Oil and Gas Association; West Virginia Oil and Natural Gas Association, Petitioners,

v.

ENVIRONMENTAL PROTECTION AGENCY, Respondent

No. 93-2146.

United States Court of Appeals, Fourth Circuit.

Argued April 29, 1994.

Decided August 30, 1994.

Oil and gas trade associations applied for judicial review of Environmental Protection Agency (EPA) internal memorandum advising that National Pollutant Discharge Elimination System (NPDES) permit was required for storm water discharges from construction activities involving oil and gas facilities. The Court of Appeals, Niemeyer, Circuit Judge, held that it lacked subject matter jurisdiction to review memorandum.

Application dismissed.

1. Health and Environment ⇐25.15(3.1)

Court of Appeals lacked subject matter jurisdiction to review Environmental Protection Agency (EPA) internal memorandum advising that National Pollutant Discharge Elimination System (NPDES) permit was required for storm water discharges from construction activities involving oil and gas facilities, where Court was not presented with any agency action involving issuance or denial of permit, and actions by EPA had not yet constituted final agency action. Federal Water Pollution Control Act Amendments of 1972, §§ 402(b)(2), 509(b)(1)(F), 33 U.S.C.A. §§ 1342(b)(2), 1369(b)(1)(F).

2. Health and Environment ⇐25.15(3.2)

Court of Appeals' jurisdiction to review Environmental Protection Agency (EPA) action under Clean Water Act is limited to categories of agency action identified by statute and even then, Court reviews any such action only if it constitutes final agency action. Federal Water Pollution Control Act Amendments of 1972, § 509(b)(1)(F), 33 U.S.C.A. § 1369(b)(1)(F).

ARGUED: David Michael Flannery, Robinson & McElwee, Charleston, WV, for petitioners. Karen Lee Egbert, Environment and Natural Resources Division, U.S. Dept. of Justice, Washington, DC, for respondent. ON BRIEF: Kathy G. Beckett, Robinson & McElwee, Charleston, WV, for petitioners.

Lois J. Schiffer, Acting Asst. Atty. Gen., Environment and Natural Resources Div., U.S. Dept. of Justice, Washington, DC; Susan Lepow, Associate Gen. Counsel, Stephen J. Sweeney, Office of Gen. Counsel, U.S. E.P.A., Washington, DC, for respondent.

Before ERVIN, Chief Judge, NIEMEYER, Circuit Judge, and RESTANI, Judge, United States Court of International Trade, sitting by designation.

Application dismissed by published opinion. Judge NIEMEYER wrote the opinion, in which Chief Judge ERVIN and Judge RESTANI joined.

OPINION

NIEMEYER, Circuit Judge:

By a memorandum internal to the United States Environmental Protection Agency (EPA) dated December 10, 1982, the NPDES (National Pollutant Discharge Elimination System) Program Branch Chief, responding to an inquiry from an EPA regional storm water coordinator, advised the coordinator that an NPDES permit is required for "storm water discharges from construction activities involving oil and gas facilities (e.g., access roads, drilling pads, pipelines, etc.)."[1] Discovery of this memorandum several months later alarmed companies in the oil and gas industry because the Clean Water Act exempts from any permit requirement uncontaminated "discharges of storm water run-off from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities." 33 U.S.C. § 1342(l)(2). Oil and gas companies feared that the EPA was attempting, under the guise of an internal legal interpretation, to impose an unauthorized regulation on oil and gas operations by requiring a permit for every exploratory activity, because almost every such activity inherently involves some construction.

Appalachian Energy Group, an ad hoc affiliation of nine trade associations in the oil and gas industry, initiated this action in this court, challenging the EPA's memorandum. The group, which consists of oil and gas operators in seven Appalachian region states (Kentucky, New York, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia), represents ownership of approximately 200,000 wells. The group requests that the December 10 memorandum be declared unlawful and that this court set it aside because (1) it is inconsistent with the Clean Water Act,[2]

1. The complete memorandum, which lies at the center of this litigation, provides:

> To: Vern Berry
> Region VIII Storm Water Coordinator (8WM-C)
> From: Ephraim King, Chief
> NPDES Program Branch (EN-336)
> Subject: Applicability of NPDES Storm Water Regulations to Discharges from Construction Activities Involving Oil and Gas Facilities
>
> The purpose of this memorandum is to respond to your memorandum that asked whether a permit is required for storm water discharges from construction activities involving oil and gas facilities (e.g., access roads, drilling pads, pipelines, etc.). All construction operations, including clearing, grading and excavating activities, that disturb five or more acres of land are required to apply for a NPDES permit for the storm water discharges from that site, pursuant to 40 C.F.R. Part 122.26(b)(14)(x), regardless of its affiliation with an oil and gas operation. The exemption afforded to oil and gas operations pursuant to 40 C.F.R. Part 122.26(c)(1)(iii) applies only to the oil and gas operation itself, not associated activities that may fall under different parts of the definition of storm water discharge associated with industrial activity. I hope this memorandum addresses your concerns. Please call me if you have further questions.

2. The Appalachian Energy Group also contends that the December 10 memorandum is inconsistent with prior positions taken by the EPA. The group observes that, in adopting regulations implementing the 1987 amendments to the Clean Water Act, the EPA mandated permits for oil and gas operations only when contaminants are discharged and not for uncontaminated storm water runoff. *See* 40 C.F.R. § 122.26(c)(1)(iii). It also observes that, in adopting Standard Industrial Classification 13 as its definition of oil and gas activities, the EPA commented formally:

> EPA agrees that oil and gas exploration, production, processing, or treatment operations or transmission facilities must only obtain a storm water permit *when a discharge to waters of the U.S. . . . is contaminated.*

55 Fed.Reg. 48,031 (Nov. 16, 1990) (emphasis added). Finally, the group pointed out that, in comments to 40 C.F.R. § 122.26(b)(14)(i-ix), which require storm water permits for certain construction activities, the EPA identifies the requirements as applying only to the construction *industry*, and not to construction activities in other industries, such as the oil or gas industry. *See* 55 Fed.Reg. 48,033 (Nov. 16, 1990).

are [illegible] adopted without proper [illegible] the Administrative Procedure [illegible] that a permit [illegible] required as indicated [illegible] compete [illegible] the [illegible] per year [illegible] force [illegible] of the [illegible] the Appalachian [illegible] per year [illegible] the [illegible] these [illegible] operations [illegible] EPA [illegible]

[illegible] The Appalachian Energy [illegible] section [illegible] of the Clean Water Act [illegible] the EPA Administrator [illegible] or denying any permit" under 33 U.S.C. § 1342, and cites the decision in *Natural Resources Defense Council* [illegible] *EPA*, 966 F.2d 1292 (9th Cir. 1992) (finding appellate court jurisdiction to review EPA "rules that regulate the underlying permit procedures"). Contending that this court is without jurisdiction the EPA [illegible] out that the December 10 memorandum did not issue or deny a permit and notwithstanding the opinion given in the memorandum, to date it has not demanded a permit for uncontaminated storm water runoff from oil and gas construction activities. Accordingly the EPA argues that this court may not at this stage review the substance of the December 10 memorandum or the circumstances of its issuance.[3] While the Appalachian Energy Group recognizes that the December 10 memorandum does not itself involve the issuance or denial of a permit, it nevertheless argues that the memorandum constitutes a rule "underlying a potential permit application" and therefore its review falls within the jurisdiction of this court. *See Natural Resources Defense Council*, 966 F.2d at 1297. For the reasons that follow we agree that this court lacks jurisdiction to review the memorandum.

In deciding whether we have jurisdiction, we must first resolve the nature of the December 10 memorandum, identifying and characterizing the official EPA action, if any, that it involves. The December 10 memorandum is a one-paragraph statement that was sent within the EPA from one official to another in response to an inquiry. The inquiry apparently sought an answer to the question of "whether a permit is required for storm water discharges from construction activities involving oil and gas facilities." The EPA Branch Chief provides a two-sentence response and then concludes, "I hope this memorandum addresses your concerns. Please call me if you have further questions." On its face, the memorandum does not approve the issuance or denial of a permit, it does not facially involve or relate to a pending decision to issue or deny a permit, and, accepting the EPA's representation, it has not been used to issue or deny a permit. Moreover, on its face the memorandum does not purport to issue a new rule. It only provides the writer's interpretation of two regulations apparently in tension (40 C.F.R. 122.26(b)(14)(x) and 40 C.F.R. § 122.26(c)(1)(iii)), concluding that permits are required for storm water discharges from construction activities even when they involve oil and gas operations.

Going beyond the face of the memorandum, we are unable to find anything in the record or briefs that indicates why the opinion was solicited by the EPA coordinator and the purposes for which it was used. Appa-

[3]. The EPA also contends on the merits that the memorandum is an interpretive rule that reasonably and correctly interprets the Clean Water Act, and accordingly it is not subject to the notice requirements of the EPA [illegible] 5 U.S.C. § 553(b). The EPA relies on 40 C.F.R. § 122.26 [illegible] [illegible] is required [illegible] construction activities involving [illegible] of oil and gas operations which would otherwise be exempted. Although we recognize the problems that the EPA may encounter in maintaining this position, we do not resolve the dispute at this time in light of our ruling that subject matter jurisdiction is lacking.

chian Energy Group does note that pursuant to a question posed by its counsel to the EPA's Region III coordinator, the coordinator transmitted to counsel a copy of the December 10 memorandum. But we find nothing in the record to indicate what question was directed to the Region III coordinator. Thus, the "action" of the EPA Administrator which Appalachian Energy Group seeks to have reviewed can only be the *generation* of an internal memorandum expressing an opinion and the *transmission* of that memorandum to the public.

[2] Section 509(b) of the Clean Water Act confers jurisdiction on the courts of appeals to review, upon application filed by an interested person, only specified actions of the EPA Administrator. Section 509(b)(1)(F), the particular provision on which Appalachian Energy Group relies, gives the courts of appeals the power to review the EPA Administrator's *action* "in issuing or denying any permit under section 1342 of this title." 33 U.S.C. § 1369(b)(1)(F). Thus, the text of the Clean Water Act permits us to review only those categories of agency action identified. *See Westvaco Corp. v. EPA*, 899 F.2d 1383, 1387 (4th Cir.1990). And even then, we review any such action only if it constitutes a *final* agency action. *See Champion International Corp. v. EPA*, 850 F.2d 182, 187–90 (4th Cir.1988) (holding that an EPA objection to the state's issuance of a permit is not reviewable; only the issuance of the permit would be reviewable); *American Paper Institute, Inc. v. EPA*, 882 F.2d 287, 289 (7th Cir.1989) (holding that EPA's regional "policy statement" on dioxin tolerances is not reviewable; only the denial or modification of a permit would be reviewable).

While the memorandum in this case may signal the position that the EPA might eventually take, the EPA has not taken any action *at this point* triggering our power to review its position. Certainly, in its December 10 memorandum, the EPA did not issue or deny any permits to petitioner or threaten such action. Thus, up to this point in time, its action does not fall within the limited class of actions for which review is authorized by 33 U.S.C. § 1369(b)(1)(F). Moreover, to the extent that the EPA's action in this case is a only predictor of future action, it is not yet a "final action" subject to judicial review.

Appalachian Energy Group's reliance on *Natural Resources Defense Council v. EPA*, 966 F.2d 1292 (9th Cir.1992), does not advance its argument. The court there recognized that it might have jurisdiction under 33 U.S.C. § 1369(b)(1)(F), since activities relating to the issuance or denial of permits were involved. But the scope of agency activity there was also alleged to be broader than simply issuing and denying permits. The petitioners in *Natural Resources Defense Council* sought to declare unlawful the EPA's failure to issue certain storm water permitting regulations and the EPA's extension of certain statutory deadlines; they sought to enjoin the EPA from granting future extensions; and they sought to compel the EPA to include deadlines for permit approval or denial and for permit compliance consistent with the statute. Since the parties there did not specify the particular section on which they relied for subject matter jurisdiction, the court went on to make the general statement about its jurisdiction, for which it provided no authority, that it "also had the power to review rules that regulate the underlying permit procedures." 966 F.2d at 1297. We can only speculate about the source of the court's authorization, recognizing that subsections (A), (C), and (E) of § 1369(b)(1) provide for review of the EPA administrator's action in promulgating certain standards under specified sections of the Clean Water Act, and subsection (D) provides for review of determinations "as to a state permit program submitted under section 1342(b)."

In contrast, Appalachian Energy Group's only stated interest here is knowing whether its members must obtain permits for uncontaminated storm water runoff from construction activities undertaken in connection with oil and gas operations. Since we are not presented with any agency action involving the issuance or denial of a permit and the actions by the EPA thus far do not constitute final agency action, we lack subject matter jurisdiction to review the December 10 mem-

...ole inferences from undisputed facts in light most favorable to party opposing motion. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.

5. Civil Rights ⇐108.1

Rights created by regulation alone. 2 rights can be so created, probably only on basis for § 1983 action. 42 U.S.C.A. § 1983.

6. Administrative Law and Procedure ⇐651

Administrative Procedure Act does not provide standard of review for consideration of state agency's actions. 5 U.S.C.A. § 701 b(1).

7. Administrative Law and Procedure ⇐413

Even though state agency may not benefit from standard of review established by Administrative Procedure Act, it is appropriate for Court of Appeals to show some deference to state agency interpreting regulations where authority of federally funded program. 5 U.S.C.A. § 701(b)(1).

8. Administrative Law and Procedure ⇐413

Once it is determined that agency rule is not inconsistent with statute or regulation, deference is accorded, and court may not substitute its own interpretation for agency's if agency's interpretation is reasonable.

7. United States ⇐82(3.4)

Violation by recipient of federal housing assistance benefits of local housing authority's two week visitation rule, imposed to delineate between proper visitation and improper residency, justified local agency's action in terminating her benefits; agency's rule was not unreasonable interpretation of Department of Housing and Urban Development's regulation prohibiting residency by nonfamily members. United States Housing Act of 1937, § 8, as amended 42 U.S.C.A. § 1437f.

8. United States ⇐82(3.4)

Recipient of Section 8 housing assistance benefits had sufficient notice that violation of local agency's two-week visitation rule could result in termination of her Section 8 assistance to satisfy due process clause, where

Oct. 26, 1998

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Sandusky
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Environmental Quality Board
PO Box 8477
Harrisburg, PA 17105

To Whom It May Concern:

An item entitled "Water Standards cause worry" in the York Daily Record this past week is very much of interest to me. My top priorities in terms of quality of life are AIR and WATER issues!

Since I moved to York from Marin County, California I am certainly aware of these factors. Whether I stay in York or move depends on these issues. Since buying a homre in the Newton Square area of York, I have been horrified to find that the air on many days smells very bad; I understand this is due to the Gladfelter Paper Plant, and I am told the problem is with the filters which the company does not replace on a timely basis. They wait for the fines imposed by the governing authority, and then pay the fines and forget about the ongoing problem as it affects the community.

I had been under the impression that water quality in York was excellent, although I still filter as best I can. HOWEVER the article mentioned above amounts to a Red Alert. I am shocked to read that news of the public hearing when it first occurred was purposely not given out to the York area papers. Then when the article did appear (on October 21) insufficient notice was allowed for the public to respond. What kind of way is this to do business? Certainly it is not in the interests of the people in the community. Where is the democratic spirit and process in this area of Pennsylvania?

Don't you realize that the governing bodies need to exercise utmost caution in controlling the corporations that willfully dump and will continue to do so minus strict regulation? The people have only the governing bodies to rely upon.

Extend the deadline for responding to this issue and show at least the willingness to listen to the people. For otherwise, you are woefully in neglect of your duties and deserve to be replaced with cause.

Sincerely,

Nancy J. Larsen

326 W. Newton Ave.
York, PA 17404

87 Valley View Road
Lewisburg, PA 17837
October 26, 1998

Environmental Quality Board
Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17105-2301

Re: Comments to Proposed Rulemaking, Pennsylvania Bulletin, Aug. 29, 1998, Part III, containing the EQB's Water Quality

Dear Members of the Environmental Quality Board:

Before commenting on specific sections of Chapters 92, 93, and 96, I would like to place the general issue of environmental quality standards in a broader context. I'll begin with this question:

What are we doing to our children?

They are most vulnerable in the womb. Here they are exposed to persistent synthetic chemicals which may impair their immune, nervous, and/or endocrine systems. Further concerns are raised by a paper in the New England Journal of Medicine (9/96) which ". . . documented lasting intellectual impairment in children exposed to PCB's in the womb."[1]

As they breastfeed, newborns are ingesting the persistent synthetic chemicals that accumulate in breast milk. Six months of breastfeeding gives an American baby the maximum recommended lifetime dose of dioxin, one of these chemicals.[2]

Children today are inheriting an environment with over 75,000 synthetic chemicals. More than 80% of these chemicals have not been adequately tested for their impact on human health and the environment. The vast majority are discharged into the environment without any state or federal limits. The question of the synergistic health effects of these chemicals has not been answered; it has only recently been asked. Neither do we know the multigenerational effects of these chemicals, nor the effects of even very low doses of the hormone-disrupting chemicals.

Further, hundreds of new chemicals are added each year. "In the United States, 90% of new industrial and commercial chemicals are approved for production or commercial use without any mandatory health-testing data."[3]

Since we all have to breathe, eat, and drink, these chemicals are part of us. "Everyone on the planet is carrying at least 250 measurable chemicals in his or her body that were not part of human chemistry before the 1920's."[4]

Since we have already put our children at high risk, we cannot afford to take actions which make their risks even greater. Specifically, we cannot weaken water quality standards as proposed in certain sections of Chapters 92, 93, and 96.

Chapter 92. NPDES Permitting, Monitoring and Compliance

92.2d(3) I support keeping the cap of 0.5 mg/l for total residual chlorine.

92.51(6) Strengthen this section by requiring compliance with all water quality standards.

92.61 Solicit additional public comment when an application is filed. Water quality has far-reaching consequences. Public input is needed before the calculations have been done and a draft permit published.

92.81 Do not allow toxics in general permits since there is no easy way to track who uses these permits.
Do not allow the use of general permits in high quality waters. It is too difficult to follow the use of these permits.
Retain the documentation provision to insure that the use of general permits will not violate water quality standards.
Prohibit the use of general permits in impaired waters.

Chapter 93. Water Quality Standards

93.4 I strongly support retaining the provision which protects all of our waters as potential potable water sources.

93.4 Retain warm water fishes as a statewide water use to protect any stream that happens to be omitted from the stream list.

93.5(e) Retain this current wording of this section: "Criteria necessary to protect other designated uses shall be met at the point of wastewater discharge."

93.6 DEP should develop instream flow and habitat criteria and incorporate them here.

Chapter 96. Water Quality Standards Implementation

96.4 Include a separate section for modeling done on waters that are not impaired; incorporate nonpoint sources into the modeling especially for impaired waters; include how clean up activities dealing with nonpoint source pollution will be implemented.

96.4(g) DEP should not have the authority to approve effluent trading unless a procedure for this has survived public comment.

Thank you.

Sincerely,

Marjorie T. Duck

Marjorie T. Duck

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1 Our Stolen Future, Colburn, Dumanoski, and Myers, p. 251.
2 Ibid., p. 107.
3 Amicus Journal, Spring 1998, "Risky Business," John Murphy, p. 25.
4 Ibid., p. 23.

one page summary

87 Valley View Road
Lewisburg, PA 17837
October 26, 1998

Environmental Quality Board
Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17105-2301

Re: Comments to Proposed Rulemaking, Pennsylvania Bulletin, Aug. 29, 1998, Part III, containing the EQB's Water Quality

Dear Members of the Environmental Quality Board:

Before commenting on Chapters 92, 93, and 96, I would like to place the general issue of environmental quality standards in a broader context. I'll begin with this question: What are we doing to our children?

They are most vulnerable in the womb. Here they are exposed to persistent synthetic chemicals which may impair their immune, nervous, and/or endocrine systems. A paper in the New England Journal of Medicine (9/96) ". . . documented lasting intellectual impairment in children exposed to PCB's in the womb."[1]

As they breastfeed, newborns are ingesting the persistent synthetic chemicals that accumulate in breast milk. Six months of breastfeeding gives an American baby the maximum recommended lifetime dose of dioxin, one of these chemicals.[2]

Children today are inheriting an environment with over 75,000 synthetic chemicals. More than 80% of these chemicals have not been adequately tested for their impact on human health and the environment. The vast majority are discharged into the environment without any state or federal limits. The question of the synergistic health effects of these chemicals has not been answered; it has only recently been asked. Neither do we know the multigenerational effects of these chemicals, nor the effects of even very low doses of the hormone-disrupting chemicals. Further, hundreds of new chemicals are added each year without mandatory health-testing data.

Since we all have to breathe, eat, and drink, these chemicals are part of us. "Everyone on the planet is carrying at least 250 measurable chemicals in his or her body that were not part of human chemistry before the 1920's."[3]

Since we have already put our children at high risk, we cannot afford to take actions which make their risks even greater. Specifically, we cannot weaken water quality standards as proposed in certain sections of Chapters 92, 93, and 96.

Do not allow increased discharges of toxic chemicals to waterways; do not reduce regulation of toxic chemicals; do not allow toxics in general permits; do not allow the use of general permits in high quality waters. DEP should not have authority to approve effluent trading unless a procedure for this has survived public comment.

Thank you.

Sincerely,

Marjorie T. Duck

Marjorie T. Duck

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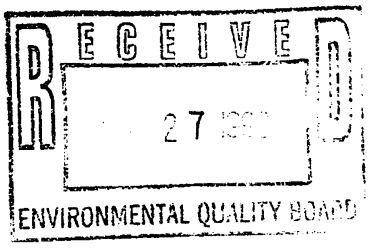
1 Our Stolen Future, Colburn, Dumanoski, and Myers, p. 251.
2 Ibid., p. 107.
3 Amicus Journal, Spring 1998, "Risky Business," John Murphy, p. 23.

Freeman, Sharon

From: Dick Exley(SMTP:jrexley@enter.net)
Reply To: Dick Exley
Sent: Monday, October 26, 1998 10:58 PM
To: REGCOMMENTS
Subject: Comments on Water Quality Regulations



October 26, 1998

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

Dear Mr. Seif:

I am commenting on the proposed changes to the water quality regulations as described in the August 29, 1998, Pennsylvania Bulletin.

Chapter 92.2d(3). I 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.

92.61 I 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 I strongly oppose allowing "general" permits in High Quality streams or impaired waters. Neither should general permits allow the discharge of toxic materials. Individual permits should be required in these cases. Documentation for these permits should not be reduced.

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

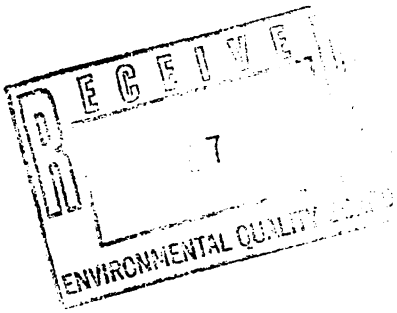
93.5(e) The proposal moved most of this section to the new Chapter 96, but did not include a sentence that presently limits mixing zones. Pennsylvania's regulations need to retain this sentence and prohibit mixing zones. At the least, regulations are needed to govern their permitting.

93.6 It is very disappointing to see no language protecting instream flows and instream habitat. Other states have such protection, and the U.S. Supreme Court has ruled that states are permitted to protect instream flows. Governor Ridge's 21st Century Environment Commission recommended protecting aquatic habitat and instream flow. Because the water quality standards are the basis for clean water and healthy streams, lakes and rivers, Pennsylvania needs language protecting instream flow and aquatic habitat in our water quality standards!

I hope that the EQB will make these and other changes to improve our water quality, and not relax protection of it.

Yours truly,

J. Richard Exley
2512 Meadow Lane Drive
Easton, PA 18040-7518



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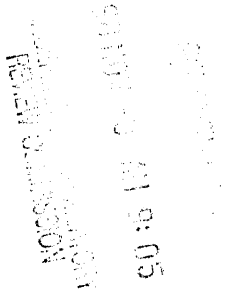
GPU Generation, Inc.
1001 Broad Street
Johnstown, PA 15907
Tel 814-533-8111

Writer's Direct Dial Number
814-533-8583

October 26, 1998

OVERNIGHT MAIL



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

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

Dear Environmental Quality Board:

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

Chapter 92:

- In regards to the definition of "Natural Quality", the intent is clear that this relates to conditions that have not been influenced by human activity. However, many Pennsylvania streams have had Acid Mine Drainage problems for over 100 years, and there has been limited corrective action to mitigate a large percentage of those problems. In situations where the prospects of any improvements on an AMD impacted stream are negligible over the permit discharge period, consideration should be given in recognizing that this is a background condition that is analogous to a natural occurring condition.

- In regards to 92.2(d)(3), the citation requires a BAT of .5 mg/l for total residual chlorine. This limit is more restrictive then the BAT limit of 1.2 mg/l recently established by the Department for small sewage treatment plants under 10,000 gpd. It is assumed that the Departments intention is to consider small sewage treatment plants as 'facility specific'.

- We support 92.13(a), and its restriction on only opening permit issues directly related to a permit modification.

- In regards to 92.21(b)(3), the citation requires newspaper notice for permit applications. This should be limited to major permit modifications only.

- We support 92.41(g) and its requirement to monitor "Stormwater Associated with Industrial Activity" on a case-by-case basis.

Chapter 93:

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

Chapter 96:

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

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

We appreciate the opportunity to provide comments on these amendments.

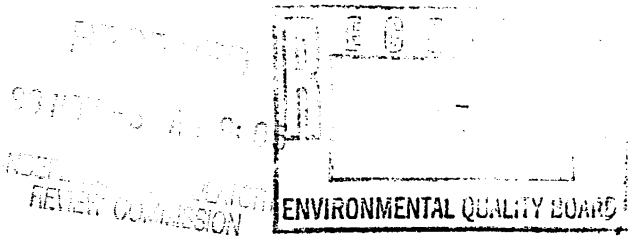
Sincerely,

William B. Thomas
Engineer Sr. II

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

w:\wbt\h20regcomm.wpd

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



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

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Sandusky
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Dear Mr. Seif:

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

Chapter 92: NPDES Permitting, Monitoring, and Compliance.

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

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

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

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

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

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

Chapter 93: Water Quality Standards.

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

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

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

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

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

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

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

Chapter 96: Water Quality Standards Implementation.

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

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

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

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

Sincerely,

The Cannan Family
Edward
Grace
Jane
David
Paul
John
Marc

cc: Greg Vitali, State Representative
Delaware County Commissioners

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

Chapter 92: NPDES Permitting, Monitoring, and Compliance.

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

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

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

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

10/24/98

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

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

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Dear Mr. Seif:

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

Chapter 92: NPDES Permitting, Monitoring, and Compliance.

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

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

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

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

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

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

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

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

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

Sincerely,

David Cannan, Vice-President

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

Chapter 92: NPDES Permitting, Monitoring, and Compliance.

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

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

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

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

David Cannan
10/24/98

ORIGINAL: 1975
MIZNER
E-MAILED: Wilmarth
Hewett
Sandusky
Legal

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

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

William B. Thomas

Engineer Sr. II

(See attached file: h20regcomm.doc)

h20regcomm.doc

ORIGINAL: 1975
MIZNER
E-MAILED: Wilmarth
Jewett
Sandusky
Legal

Writer's Direct Dial Number
814-533-8583

October 26, 1998

OVERNIGHT MAIL

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

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

Dear Environmental Quality Board:

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

Chapter 92:

- In regards to the definition of "Natural Quality", the intent is clear that this relates to conditions that have not been influenced by human activity. However, many Pennsylvania streams have had Acid Mine Drainage problems for over 100 years, and there has been limited corrective action to mitigate a large percentage of those problems. In situations where the prospects of any improvements on an AMD impacted stream are negligible over the permit discharge period, consideration should be given in recognizing that this is a background condition that is analogous to a natural occurring condition.

- In regards to 92.2(d)(3), the citation requires a BAT of .5 mg/l for total residual chlorine. This limit is more restrictive then the BAT limit of 1.2 mg/l recently established by the Department for small sewage treatment plants under 10,000 gpd. It is assumed that the Departments intention is to consider small sewage treatment plants as 'facility specific'.

- We support 92.13(a), and its restriction on only opening permit issues directly related to a permit modification.

- In regards to 92.21(b)(3), the citation requires newspaper notice for permit applications. This should be limited to major permit modifications only.

- We support 92.41(g) and its requirement to monitor "Stormwater Associated with Industrial Activity" on a case-by-case basis.

Chapter 93:

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

Chapter 96:

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

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

We appreciate the opportunity to provide comments on these amendments.

Sincerely,

William B. Thomas
Engineer Sr. II

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

w:\wbt\h20regcomm.wpd

OVERNIGHT MAIL

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

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

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

Dear Environmental Quality Board:

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

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

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

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

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

Chapter 92:

- The EGA would like to comment on the definition of "Natural Quality", contained in 92.1. The intent is clear that this relates to conditions that have not been influenced by human activity. However, many Pennsylvania streams have had historical Acid Mine Drainage problems going back in some cases over 100 years. There also has been limited corrective action to mitigate a large percentage of those problems. In situations where the prospects of any improvements on an AMD impacted stream are negligible over a permit discharge period, consideration should be given in recognizing that this is a background condition that is analogous to a natural occurring condition.

- The EGA is concerned with the required BAT limit of .5 mg/l for total residual chlorine contained in 92.2(d)(3). This limit is more restrictive than the default BAT limit of 1.2 mg/l, recently established by the Department for small sewage treatment plants with flows below 10,000 gpd. The EGA hopes that the Departments intention is to continue to consider the special case of small sewage treatment plants in their 'facility specific' evaluations that use the 1.2 mg/l limit for Best Professional Judgement.

- The EGA supports 92.13(a) and its restriction on only opening permit issues directly related to the scope of the requested permit modification.

- The EGA would like to comment on 92.21(b)(3), suggesting that the PaDEP limit newspaper publication requirements to major modifications only. Permit renewals for facilities that have not substantively changed their operations/discharges should not be required to publish special notices in the local papers

Chapter 93:

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

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

Chapter 96:

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

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

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

Sincerely,

William B. Thomas
Chairperson
EGA Water Quality Subcommittee

cc: I.R.R.C.

ELECTRIC GENERATION ASSOCIATION
CHAPTER 92, 93 & 96
COMMENT SUMMARY

Chapter 92:

1. The EGA believes that background water quality conditions resulting from long term Acid Mine Drainage (AMD), should be analogous to "Natural Background" conditions when there is no near term prospects of correcting the AMD.

2. The EGA believes the .5 mg/l Total Residual Chlorine limit should not apply to small sewage treatment plants below 10,000 gpd. The current 1.2 mg/l limit or Best Professional Judgement limits should continue to apply.

3. The EGA supports the limitation on what issues can be addressed during a permit modification.

4. The EGA believes that a newspaper notice should only be required for major permit modifications.

Chapter 93:

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

Chapter 96:

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

Environmental Quality Board:

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

Sincerely,
Mary Lou Bidzyska
177 McAlester Dr.
Pittsburgh, Penna. 15235
412-372-4322

Please let me know what your going to do about our clean water!

Thank You

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

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

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To Whom It May Concern,

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

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

I appreciate your time.

Julie Koontz

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

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

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

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

Concerned Citizen

Lisa Caputo

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

Freeman, Sharon

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

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

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

DATE: October 27, 1998

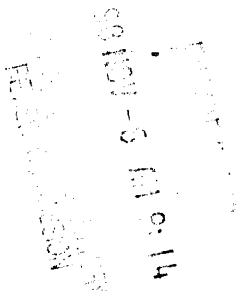
RE: Proposed Amendments to Chapters 92, 93, 95 and 97 and new Chapter 96 (Regulatory Basics Initiative for Water Quality)

Dear Board Members:

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

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

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



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

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

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

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

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

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

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

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

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

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

Very truly yours,

Mary Etezady
President

Edith D. Stevens
Water Specialist

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Sandusky
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Edward Brezina
PA DEP
PO Box 8555
Harrisburg, Pa 17105

Dear Edward,

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

Thank you.

Sincerely,

John D. McGrann

To the environmental quality board

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

James C Burrett

DEAR SIR,

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

MR. JOHN MCBRIDE
401 FRANKLIN AVE.
GLENSIDE, PA.
19038

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INDEPENDENT REGULATORY REVIEW COMMISSION

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Environmental Quality Board
PO Box 8477
Harrisburg, PA 17105

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

Thank you for your attention in this matter.

Sincerely,

Eileen Connolly

jc

Dear the environment Quality Board.

My name is Donniel Ramsevr. My Address is 125 poplar Ridge Dr. 45235. I Am writing Because of the weakening of the laws that regulate the dispense of toxics substances in our water. Don't you know what you are doing to people and there family: I think you are making a big mistake Please strengthen this laws so our water will not be polluted no more then what they are. Please I don't want to be sick.

Sincerely yours,
Donniel Ramser
thank you

P.S
Please
Respond
w/B

CITY OF PHILADELPHIA

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

October 27, 1998

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

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

Dear Sir and/or Madam:

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

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

Sincerely,

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

DAK:bs

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

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

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

The section has two provisions that are extremely objectionable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5) 92.2c(b)(4) <u>Minimum sewage treatment requirements</u>

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

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

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

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

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

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

6) 92.8(a) <u>Changes in treatment requirements</u>

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

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

7) Section 92.92 Method of seeking civil penalty

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

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

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

8) §92.4(g)(3) TMDLs

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

9) §96.4(L) TMDLs

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

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

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

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

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

10) §96.4(f)(2) TMDLs

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

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

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

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

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

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

12) §92.57 Effluent Limitations

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

13) §92.1 Definitions

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

Freeman, Sharon

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

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

To Whom It May Concern:

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

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

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

MAJOR REGULATORY CHAPTERS, CHANGES, AND GENERAL CONCERNS

Chapter 92, NPDES Permitting, Monitoring, and Compliance

* 92.25(3): For total residual chlorine, the technology cap of 0.5mg/l is proposed to be retained. I support keeping the cap, since chlorine, although needed for disinfection purposes, can be extremely toxic to aquatic life if discharged in high concentrations.
* 92.51(6): This "narrative criterion" language which is in every discharge permit is good, but needs strengthened. DEP should add that compliance with all water quality standards is required.
* 92.61: Additional public comment should be solicited, in particular when an application is filed. It is important to know about specific public water quality concerns before all the calculations have been done and a draft permit published.
* 92.81: This section on general permits is greatly expanded and therefore weakens protection. Specific proposals include:

*for the first time allowing general permits to include limits for toxic chemicals. Since there is no easy way to track who uses these permits, DEP

should not allow toxics in general permits.

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

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

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

Chapter 93 Water Quality Standards

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

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

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

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

Chapter 96 Water Quality Standards Implementation

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

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

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

Sincerely,

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

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Mr. Aaron Haber
61 Tookany Creek Pkwy.
Cheltenham, PA 19012-1715

SIR.

I OPPOSE THE NEW PROPOSED WATER QUALITY STANDARDS & TOXIC STRATEGY

THE PROPOSED TOXIC STRATEGY IS TOO WEAK. I WANT THESE NEW STANDARDS STOPPED

Aaron Haber

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

Gentlemen:

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

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

Sincerely
Barbara McFall

106 Clay Dr
Pgh PA 15235

SPECIALTY STEEL INDUSTRY OF PENNSYLVANIA
Address correspondence to: Allegheny Ludlum Corporation, 1000 Six PPG Place, Pittsburgh, PA 15222
Phone: (412) 394-2836 Facsimile: (412) 394-3010

October 27, 1998

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Latrobe Steel Company

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Affiliated with:

Specialty Steel Industry of North America

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

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Gentlemen:

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

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

Sincerely,

Richard B. Hoyt, Chairman
SSIPA Technical Committee

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

SSIPA Comments
Proposed Water Quality Amendments
Published August 29, 1998

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§ 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 buy the number of daily discharges measured during that month.

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

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

B) BAT

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

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

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

C) Complete Application

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

D) Contact Cooling Water

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

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

F) Facility or Activity

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

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

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

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

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

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

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

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

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

§ 92.21c(3)(4)(5). Applications

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

Sections (3), (4), and (5) indicate that the Department may request the Permitee 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 <u>estimated</u> toxicity from a <u>proposed</u> 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 permitee 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 steam.

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.