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**WILLIAMSPORT MUNICIPAL WATER AUTHORITY
and
WILLIAMSPORT SANITARY AUTHORITY
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INDEPENDENT REGULATORY
CHECK COMMISSION

March 15, 2010

Environmental Quality Board
P. O. Box 8477
Harrisburg, PA 17105-8477
[Sent via Electronic mail to RegComments@state.pa.us]

Dear Board Members:

The following comments are being submitted by the Williamsport Sanitary Authority (WSA) on the 25 PA Code, Chapter 96 proposed regulations which appeared in the PA Bulletin on February 13, 2010.

The WSA has been an active participant in Lycoming County's Chesapeake Bay Tributary Strategy program and supports the comments recently submitted by the Lycoming County Commissioners on these Chapter 96 proposed regulations. The WSA owns and operates two municipal wastewater treatment plants serving 60,000 persons in eight municipalities in the greater Williamsport regional community, treating wastewater from 50% of the population of Lycoming County and 75% of the county's wastewater flow. The WSA and its tributary municipalities have considered and made provision for nutrient credit trading as part of the planning, design, construction and implementation of treatment facility and sewer system improvements now underway which are estimated to cost over \$150 million to simultaneously meet Chesapeake Bay nutrient removal initiatives and wet weather combined sewer overflow regulatory standards.

There are numerous provisions in the proposed regulations that could have the effect of significantly changing the NPDES permit conditions and current Department policies on which WSA facility improvements have been planned and designed, particularly with regard to the future use of offsets which have been written into our current NPDES permits by the Department. Some of these changes could conservatively cost the WSA over \$20 million in additional treatment facility improvements, significant operating cost increases, and/or trading credit purchases over those currently anticipated and further increase the staggering user rate increases now being experienced.

The WSA has reviewed the proposed regulations from its perspective as a point source discharger and has also reviewed the comments on these regulations submitted by the Pennsylvania Municipalities Association (PMAA). The WSA supports the PMAA's position and comments, and wishes to present the following points to further identify and explain issues of concern presented by the proposed regulations.

§96.8 (a) Definitions:

Baseline - Part (ii) needs to be eliminated or amended to allow nutrient reductions achieved by an NPDES point source discharger over and above those needed to meet Chesapeake Bay compliance cap loads, including those needed to meet potential future local stream TMDL-based reductions, to be able to be sold or traded for the purpose of the Chesapeake Bay program compliance.

Offsets - There are currently two types of offsets which have been incorporated into the WSA's two NPDES permits. Such offsets are not necessarily certified, verified and registered by the Department, and the WSA's NPDES permit states that they "...cannot be directly bought, sold or transferred..." The first type is the "permanent" offset provided by the Department to adjust the WSA NPDES permit total nitrogen compliance cap load as a result of connecting properties formerly on septic tanks to the WSA treatment system (mostly in contract municipalities). The second type is the ability of the WSA to offset TN and TP load reductions at one of its two treatment plants against the NPDES cap load at the other plant. The WSA's NPDES permits allow the cap loads between the two plants to be combined for the purpose of Chesapeake Bay compliance so that its capital and operating expenditures can be allocated to the most efficient use. The WSA's Act 537 plans, design of over \$110 million of facility improvements, and contracts with tributary municipalities have been based on the use of these permitted offsets. Accordingly, these types of offsets need to be memorialized by regulation, and not lumped into the regulations as presented in §96.8 with credits. The word "offsets" should be deleted from the collective terminology "credits and offsets" throughout the proposed regulations, and a separate section be drafted to deal with offsets to codify the basis of the NPDES permit writer guidance currently used by the Department.

§ 96.8 (e) through (g)

Point Source Discharger-generated credits - Publicly-owned municipal treatment works (POTW) point sources can generate credits in at least two different ways: (1) through end of water year "true up" surplus by overachieving cap load reductions in any given water year due to better than expected performance, and (2) through planned overachieving in a number of future years either by the happenstance of having a permit cap load which is far lower than that needed for near term compliance, or based on investing in additional facilities or operating methods to create excess cap load reductions.

The regulatory procedures for a POTW NPDES discharger to trade or sell surplus load reductions as end-of-year truing-up credits described under (1) above, should not be subject to the application, certification and verification provisions of the regulation applicable to generators of nonpoint credits. The NPDES permittee's signature on its discharge monitoring report (DMR) should be sufficient certification and verification. Additionally, these credits should be not be subject to reduction using the "reserve ratio" because there is a certainty that the credits were actually generated by virtue of certification on the DMR by the permittee. Additionally, such POTW point source-generated credits should be allowed to be traded or sold to another POTW within a sub-watershed having the same delivery ratio on a pound for

pound basis with no reduction in tradable load. In fact, there is a valid argument that because individual POTW effluent limitations cap loads were determined by regulation to be based on a uniform "technology standard" throughout the Chesapeake Bay watershed, it would follow that POTWs farther from the Bay should not be at a disadvantage and have their credits reduced by the delivery ratio when selling to a POTW closer to the Bay who benefitted from the uniform effluent limitation standard.

For POTW NPDES dischargers which are planning on selling credits in future years by design, then some aspects of the approval procedures may be applicable in order to trade or sell future forward strips of multiple years of credits. However, when these credits are generated, they are verified by signature on a DMR.

Program uncertainty created by the regulations - Throughout the § 96.8 sections, there is too much ambiguity in the context and conditions under which DEP is given the ability to readjust BMP reduction efficiencies, thresholds, and delivery ratios. It must be stated clearly in the regulations that once a credit is certified and sold in compliance with the regulations (such as through PENNVEST), the number of pounds of credits is guaranteed for the current or future years for which it was certified and purchased and cannot be reduced based on "further review" of whether it was really produced. For credit generators who are investing in farm equipment or other practices to generate credits, the prospect of the Department taking away credits once approved and certified, but not yet sold, will also be unsettling. If this uncertainty is not removed, the entire program may be perceived as having too much risk for participation.

§ 96.8 (h)

TMDL Issues – As stated in the comments to the definition of "Baseline" above, if local stream TMDLs are developed for TN or TP and result in lower POTW NPDES permit limits than those required for the Chesapeake Bay cap loads, the POTW should be allowed to trade or sell those excess loading reductions as credits for the purpose of the Bay compliance program. There is also an issue for nonpoint sources if they are on a nutrient or sediment impaired stream. The regulations should not require a farmer in an impaired TMDL-affected watershed to meet higher BMP efficiencies or have higher thresholds than normally set in order to have credits certified for sale.

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The WSA supports the comments on this matter submitted by the Pennsylvania Municipal Authorities Association and the Lycoming County Commissioners, and recommends that because of the short time period afforded to review these proposed rules, the Department should publish any revisions to the proposed regulations in the form of advance notice of final rulemaking for additional public comment prior to final adoption.

Thank you for your consideration of these comments and recommendations.

Very truly yours,

A handwritten signature in black ink, appearing to read "David A. DiNicola". The signature is written in a cursive style with a large initial "D".

David A. DiNicola
Executive Director

- c. Peter T. Slack, PMAA
Megan Lehman, Lycoming County

Williamsport Sanitary Authority

Summary of Comments on 25 PA Code, Chapter 96 proposed regulations which appeared in the PA Bulletin on February 13, 2010

The WSA supports the comments on this matter submitted by the Pennsylvania Municipal Authorities Association and the Lycoming County Commissioners, and recommends that because of the short time period afforded to review these proposed rules, the Department should publish any revisions to the proposed regulations in the form of advance notice of final rulemaking for additional public comment prior to final adoption.

There are numerous sections in the proposed regulations that could have the effect of significantly changing current Department NPDES permit policies on which WSA facility improvements have been planned and designed, particularly with regard to the future use of offsets provisions which have been written into our current NPDES permits by the Department. Some of these changes could conservatively cost the WSA over \$20 million in additional treatment facility improvements, significant operating cost increases, and/or trading credit purchases over those currently anticipated and further increase the staggering user rate increases now being experienced. The WSA's planning for over \$110 million of facility improvements and contracts with tributary municipalities have been based on the use of these permitted offsets.

Accordingly, these types of offsets need to be memorialized by regulation, and not lumped into the regulations as presented in §96.8 with credits. The word "offsets" should be deleted from the collective terminology "credits and offsets" throughout the proposed regulations, and a separate section be drafted to deal with offsets to codify the basis of the NPDES permit writer guidance currently used by the Department.

In § 96.8 (e) through (g), the regulatory procedures for a POTW NPDES discharger to trade or sell surplus load reductions as end-of-year true-up credits described under (1) above, should not be subject to the application, certification and verification provisions of the regulation applicable to generators of nonpoint credits. The NPDES permittee's signature on its DMRs should be sufficient certification and verification. Additionally, these credits should not be subject to reduction using the "reserve ratio" because there is a certainty that the credits were actually generated by virtue of certification on the DMR by the permittee. Additionally, such POTW point source-generated credits should be allowed to be traded or sold to another POTW within a sub-watershed having the same delivery ratio on a pound for pound basis with no reduction in tradable load. It must be stated clearly in the regulation that once a credit is certified and sold such as at a PENNVEST auction), the number of pounds of credits is guaranteed for the current or future years for which it was certified and purchased and cannot be reduced based on "further review" of whether it was really produced.

As stated in the comments to the definition of "Baseline" above, if local stream TMDLs are developed for TN or TP and result in lower POTW NPDES permit limits than those required for the Chesapeake Bay cap loads, the POTW should be allowed to trade or sell those excess loading reductions as credits for the purpose of the Bay compliance program.