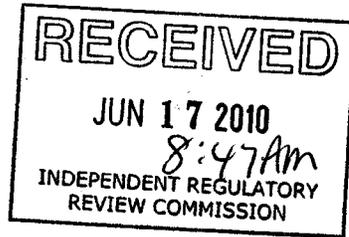


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CARPENTER
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June 14, 2010

Environmental Quality Board
Rachel Carson State Office Building
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Harrisburg, PA 17105-8477

Subject: Carpenter Technology Corporation's Comments on the Pennsylvania Department of Environmental Protection's Proposed Rulemaking, *Ambient Water Quality Criterion; Chloride (Ch) 25 PA. Code Chapter 93, Pennsylvania Bulletin, May 1, 2010 – Revision 2.*

Dear Sir/Madam,

Carpenter Technology Corporation (Carpenter) strenuously objects to the Pennsylvania Department of Environmental Protection's (the Department) proposed rulemaking for the establishment of the Ambient Water Quality Criterion for chlorides.

Carpenter objects to the proposed rule as it believes that the Department exceeded its powers provided in the Pennsylvania Clean Streams Act (the Act) by not considering the mandated elements in developing the rulemaking. Carpenter also objects to the regulation as it appears to not have been developed and promulgated in accordance with the principles established in Commonwealth of Pennsylvania Governor's Executive Order 1996-1 and the associated regulations found at 4 Pa. Code § 1.371 concerning the promulgation of regulations.

Carpenter will be substantially harmed by the implementation of this proposed rule to the extent that its continued ability to operate and employ thousands of fellow Pennsylvanians will be threatened even though its existing NPDES permitted discharge is not causing water quality problems or interfering with any designated use of the water body it discharges into. Carpenter believes that the existing osmotic pressure standard is protective of aquatic life and should be retained.

Section 5(a) which relates to the establishment of rules and regulations of the Act is as follows:

SECTION 5. POWERS AND DUTIES.

(a) The department, in adopting rules and regulations, in establishing policy and priorities, in issuing orders or permits, and in taking any other action pursuant to this act, shall, in the exercise of sound judgment and discretion, and for the purpose of implementing the declaration of policy set forth in section 4 of this act, consider, where applicable, the following:

- (1) Water quality management and pollution control in the watershed as a whole;*
- (2) The present and possible future uses of particular waters;*
- (3) The feasibility of combined or joint treatment facilities;*
- (4) The state of scientific and technological knowledge;*
- (5) The immediate and long-range economic impact upon the Commonwealth and its citizens.*

The Act plainly states that the Department ***shall*** consider the five enumerated elements when establishing rules and regulations. The Department failed to adequately consider or consider at all the following elements.

- (2) The present and possible future uses of particular waters;*
- (4) The state of scientific and technological knowledge;*
- (5) The immediate and long-range economic impact upon the Commonwealth and its citizens.*

The present and possible future uses of particular waters

Treatment costs for dischargers of high-chloride wastewaters to meet the proposed standard will make it economically infeasible (see discussion on economic impact below) to continue their manufacturing operations.

The proposed rulemaking does not consider the limitation of the use of the state's waters for current dischargers of high-chloride discharges and does not contemplate the inability of future high-chloride dischargers to utilize a particular water for industrial discharge.

The Department failed to consider the impact the rulemaking will have on the use of the state's waters for present and future dischargers of high-chloride wastewaters. Given this, Carpenter objects to the rulemaking.

The state of scientific and technological knowledge

The Department has failed to consider the current state of scientific and technical knowledge in the rulemaking. The Department is proposing to adopt standards based upon a 1988 EPA document, *Ambient Water Quality Criteria for Chloride – 1988*. This document is approaching twenty-five years in age.

As evidenced by rulemakings related to chloride water quality criteria in other states, as described in the Pennsylvania Chamber of Business and Industry's comments on this proposed rulemaking (incorporated by reference), the information in the EPA document is out-dated and is in need of revision. These states include Iowa (2009)^{1,2}, Wisconsin (2008)³ and Missouri (2010)⁴. The fact that these government entities have or are in the process of adopting alternatives to the EPA's 1988 criterion clearly demonstrates that the scientific and technical knowledge has evolved since the creation of the 1988 document and that there is substantial additional knowledge to consider.

The Department failed to consider current scientific and technical knowledge in the rulemaking as it has relied on twenty-five year old data and has ignored updated information that has been recently used by other state environmental agencies to establish chloride ambient water quality standards. The Department's "rationale" document only cites the 1988 EPA document as basis of the proposed regulation. Based on the regulatory record, it appears that no research was conducted to investigate current scientific or technological knowledge.

The department also failed to consider the current scientific or technical knowledge in abandoning the osmotic pressure standard for protection of aquatic life while establishing a separate criterion for chlorides.

The Department has failed to identify any existing aquatic problem with current chloride concentrations in the state's waterways. This demonstrates that the current approach to protecting aquatic life through the osmotic pressure criterion is scientifically and technically valid and appropriate. The Department failed to consider this information in developing the proposed chloride standard.

The reasons cited for abandoning the osmotic pressure criterion are unrelated to aquatic life impact, which is the purpose of the criterion, but rather related to internal administrative processes for watershed management.

Given that the Department has failed to consider the current state of scientific and technological knowledge related to chlorides' impact on aquatic life in considering the proposed chloride criterion, Carpenter objects to this rulemaking.

Carpenter also objects to the rulemaking as it believes the Department acted arbitrarily and capriciously as the Department has failed to demonstrate that the establishment of the proposed chloride criterion will impact designated use of a water body or address any existing issues with chloride concentrations in the state's waters.

Carpenter believes that the current osmotic pressure standard is adequate for protection of the state's waters and should be retained.

The immediate and long-range economic impact upon the Commonwealth and its citizens

The Department failed to consider the immediate and long-range economic impact upon the Commonwealth and its citizens in developing the rule. This rule will significantly impact current business costs and preclude the construction of new high-chloride dischargers in the state.

The Department has provided estimated treatment costs for high-chloride wastewater of twenty-five cents per gallon. Carpenter nominally discharges a million gallons per day of high-chloride wastewater. Based upon the Department's estimate, Carpenter would spend over **\$80,000,000.00** per year to treat its effluent. This does not include the capital cost of installing the equipment which Carpenter estimates is over thirty-million dollars.

This will force Carpenter to move operations into other states or overseas, decreasing the state's employment and tax-base and jeopardizing the local economy in which Carpenter is a major employer.

Pennsylvania will lose a large segment of its steel industry as hydrochloric acid is extensively used to clean steel. Chlorides are formed when these acids are neutralized during treatment. The industry group employs over ten-thousand Pennsylvanians. The steel industry is not alone in this respect. Many other industries will be unnecessarily impacted by the proposed rule, decreasing the state's competitiveness, employment, and tax base.

The immediate and long range economic impacts upon the Commonwealth and its citizens were not considered in developing the rule as is required by the Act. No mention of the rule's impact on employment, economic development, or economic losses was considered in the rulemaking. Given this, Carpenter objects to the rulemaking as the Department exceeded its powers established in the Act.

Carpenter also objects to the proposed rulemaking as it is inconsistent with Executive Order 1996-1 – Regulatory Review and Promulgation and the associated regulations found at 4 Pa. Code § 1.371, Subchapter FF. Regulatory Review and Promulgation, which states;

1. General Requirements. In the drafting and promulgating of new regulations and the application and review of existing regulations, all agencies shall adhere to the following principles:

- (1) Regulations shall address a compelling public interest.*
- (2) Costs of regulations shall not outweigh their benefits.*
- (3) Regulations shall be written in clear, concise and, when possible, nontechnical language.*
- (4) Regulations shall address definable public health, safety, or environmental risks.*

(5) Where federal regulations exist, Pennsylvania's regulations shall not exceed federal standards unless justified by a compelling and articulable Pennsylvania interest or required by state law.

(6) Compliance shall be the goal of all regulations.

(7) Where viable nonregulatory alternatives exist, they shall be preferred over regulations.

(8) Regulations shall be drafted and promulgated with early and meaningful input from the regulated community.

(9) Regulations shall not hamper Pennsylvania's ability to compete effectively with other states.

(10) All agency heads shall be held directly accountable for regulations promulgated by their respective agencies.

Carpenter believes that the proposed rulemaking is inconsistent with 4 Pa. Code § 1.371 (1) and the order as the Department has not demonstrated that the proposed regulation has a compelling public interest. Neither does the proposed rulemaking identify any existing chloride-related issue that the proposed rulemaking will address, nor does the Department identify any tangible benefit that will occur as a result of the rulemaking.

Carpenter believes that the proposed rulemaking is inconsistent with 4 Pa. Code § 1.371 (2) and the order as the Department has established that the cost of the regulations will be in the billions of dollars while the Department has not identified a tangible benefit of the rulemaking.

Carpenter believes that the proposed rulemaking is inconsistent with 4 Pa. Code § 1.371 (4) and the order as the proposed regulation does not address a definable public health, safety, or environmental risk.

Carpenter believes that the proposed rulemaking is inconsistent with 4 Pa. Code § 1.371 (8) and the order as Carpenter is not aware of and the Department did not identify that it sought any meaningful input from the regulated community early in the regulatory development process.

Carpenter believes that the proposed rulemaking is inconsistent with 4 Pa. Code § 1.371 (9) and the order as the proposed regulation will hamper Pennsylvania's ability to compete effectively with other states as documented above.

Summary

In summary, Carpenter believes that the Department exceeded its powers established by the Act by not considering the elements required by the Act when developing the proposed rulemaking.

Carpenter also believes that the Department acted arbitrarily and capriciously in establishing the

new chloride standard as it has not demonstrated the existing standard is inappropriate for the protection of aquatic life or that the new standard will improve the conditions for aquatic life in the Commonwealth.

Carpenter objects to the regulation as it was not developed and promulgated in accordance with the principles established in Executive Order 1996-1 or the regulations concerning the promulgation of regulations contained in 4 Pa. Code § 1.371.

Carpenter believes that the existing osmotic pressure standard is protective of aquatic life and should be retained. Carpenter believes that the Department has adequate existing regulations in place to address any localized chloride discharge issues.

Thank you for the opportunity to comment on this proposed regulation.

Sincerely,



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1. GLEC and INHS. 2008. Acute Toxicity of Chloride to Select Freshwater Invertebrates. Final Draft Report to USEPA. 9-26-08.
2. Iowa Department of Natural Resources. Water Quality Standards Review: Chloride, Sulfate, and Total Dissolved Solids Consultation Package. February 9, 2009, updated March 2, 2009.
3. Wisconsin State Laboratory of Hygiene, 2007. Summary results available at www.iowadnr.gov/water/standards/files/cissue.pdf
4. Missouri Agribusiness Association, Petition Requesting Revision to Chloride and Sulfate Water Quality Standards. February 5, 2010 to Missouri Clean Water Commission.