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COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

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IN RE: PROPOSED RULEMAKING FOR TRIENNIAL REVIEW OF WATER QUALITY STANDARDS

PUBLIC HEARING

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BEFORE: LAURA FUSARE EDINGER, Regulatory Coordinator, Pennsylvania DEP, Chair
THOMAS A. BARRON, Pennsylvania DEP

HEARING: Tuesday, January 30, 2018
2:03 p.m.

LOCATION: Department of Environmental Protection
Southeast Regional Office
Delaware and Schuylkill Conference Rooms
2 East Main Street
Norristown, PA 19401

Reporter: Stephanie Lukacs

I N D E X

E X H I B I T S

Number	Description	Page Offered	Page Admitted
NONE OFFERED			

P R O C E E D I N G S

MS. EDINGER: Good afternoon. I'd like to welcome you to the Environmental Quality Board public hearing on the proposed rulemaking for the Triennial Review of water quality standards.

If at any point you have trouble hearing me, just kind of raise your hand so I'll speak up. My name is Laura Edinger, I'm the Regulatory Coordinator for the Department of Environmental Protection, and I am representing the Environmental Quality Board at today's hearing. After this, I'll call it - I'll just refer to it as the EQB. I officially call this hearing to order at 2:04 p.m.

In the event of an emergency, exits are located - the most prominent one is the one - the door's open right behind us, but there are a couple of others as well. At this time, I'll ask that all cell phones are silenced.

The purpose of this hearing is to accept formal testimony on the proposed rulemaking. This proposed rulemaking was adopted by the EQB at its meeting on April 18th, 2017. This rulemaking is required for Pennsylvania to comply with the Federal Clean Water Act which mandates that states

periodically, but at least once every three years, review and revise, as necessary, their water quality standards.

Pennsylvania's water quality standards include the designated uses of the surface waters of this Commonwealth, along with the specific numerical and narrative criteria necessary to achieve and maintain those uses and, also, an anti-degradation policy.

Essentially, water quality standards are in-stream water quality goals that are implemented by imposing the specific regulatory requirements such as treatment work requirements and effluent limitations on individual sources of pollution.

This rule proposes to update the aquatic life criterion for ammonia. The rule will also propose updating bacteria criteria by replacing the current fecal coliform-based criteria for water contact sports, WC, during the swimming season, which is from May 1st through the September 30th, with the United States Environmental Protection Agency's EPA 2012 Recreational Water Quality Criteria in Pennsylvania's surface waters. The proposal will further update water quality criteria for toxic substances using the latest scientific information and policies developed by the

EPA under the Clean Water Act.

The rule additionally proposes to clarify that for any pollutant not listed in Table 6, criteria in Table 5 may be used to protect existing and designated uses in the Great Lakes System, or that criteria will be developed by the Department of Environmental Protection, DEP, as needed, in accordance with this chapter and the methods described in Chapter 16.

Further, the rulemaking notes that DEP has developed a new online resource to maintain a publicly available list of site-specific criteria that have been developed and are being used by DEP in permitting and other pollution control measures. This list will be routinely updated as new criteria are developed or other applications and implementation of existing site-specific criteria are added.

Corrections are proposed to the water quality standards chapters for typographical and translation errors and missed references associated with prior rulemaking and/or publication activities. But proposed corrections do not change the current stream use designations.

Also of note, DEP routinely reevaluates, as part of its Triennial Review of water quality

standards, the two water bodies where the fishable or swimmable uses specific in the Federal Clean Water Act required uses are not being met. These include the Harbor Basin and entrance channel to Outer Erie Harbor/Presque Isle Bay and several zones within a portion of the Delaware Estuary. Because the same conditions and hazards for swimming exist today as during original use obtainability assessments, no change to the designated use is anticipated for these waters.

In addition, limited uses for Zones 3, 4, and upper Zone 5 of the Delaware Estuary basin are incorporated into Drainage Lists E and G because they do not meet Section 101(a)2 fishable uses. The current designated uses within these zones only include warm-water fishes, maintenance only, and migratory fishes, passage only, and do not include propagation unless referred to he Delaware River Basin Commission's, DRBC, standards which were developed to protect fish maintenance and passage only.

Recent data and observation, however, suggest recovery is occurring in propagation for some species and portions of these zones. DRBC initiated and evaluation of available data for resident and anadromous fishes collected since 2000 in an attempt to

quantify spawning and early life stages and the extent of successful reproduction for estuarine species. DEP continues to work in cooperation with the DRBC, the EPA, and other DRBC signatory states with regard to the recovery taking place in the lower river and estuary.

Entities affected by the proposed rulemaking may include facilities with point source discharges or treated wastewater to waters of the Commonwealth because all of discharges are assigned effluent limits consistent with achieving water quality standards, including all applicable water quality criteria and designated uses. These effluent limits are implemented through DEP's permit and approval actions.

Overall, the Commonwealth, its citizens, and natural resources will benefit from these recommended changes because they provide the appropriate level of protection to preserve the integrity of existing and designated uses of surface waters in this Commonwealth. Protecting water quality protects public health, wildlife, and aquatic life.

Having said all of that, to give everyone an equal opportunity to comment on this proposal, I would like to establish the following ground rules. I will first call upon the witnesses who

have preregistered to testify at this hearing. After hearing from these witnesses, I will provide any other interested parties with the opportunity to testify as time allows.

Testimony is limited to five minutes for each witness, and I want to note that written and spoken testimony both carry the same weight. If you should run out of time for your spoken testimony, we will read the rest of your comments in your written testimony.

Organizations are requested to designate one witness to present testimony on its behalf. Each witness is asked to submit three written copies of his or her testimony to aid in transcribing the hearing. Please hand two copies to me and one copy to our stenographer prior to presenting your testimony. If you don't have the copies, it's okay, we will work it out.

Please state your name, address and affiliation for the record prior to presenting your testimony. The EQB would appreciate your help by spelling names and terms that may not be generally familiar so that the transcript can be as accurate as possible.

Because the purpose of a hearing is to

receive comments on a proposal, EQB or DEP staff cannot address questions about the proposed rulemaking during the duration of the hearing but may address questions after the conclusion of the hearing.

In addition to or in place of verbal testimony presented at today's hearing, interested persons may also submit written comments on this proposal. Again, written and verbal comments hold the same weight when considered in the finalization of this proposed rulemaking. All comments provided become a part of the official public record.

All comments must be received by the EQB before February 16th, 2018. Comments should be addressed to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA, 17105. Comments may also be submitted online through eComment which is accessible through DEP's website. You can click on the eComment link at the bottom of our homepage which is www.dep.pa.gov. Comments may also be submitted by email at regcomments@pa.gov, that's regcomments@pa.gov. A subject heading of the proposed rulemaking and a returned name and address must be included in each email.

All comments received at this hearing, as well as written comments received by February 16th,

will be considered by the EQB and will be included in a Comment and Response document which will be prepared by the Department and reviewed by the EQB prior to the Board taking it's final action on this regulation.

Anyone interested in receiving a copy of the transcripts of today's hearing may contact EQB for further information.

I'd like to now call our first commentator which is Kelly Germann. If you could come up to the microphone, please.

MS. GERMANN: For the record, my name is Kelly Germann (corrects pronunciation).

MS. EDINGER: Germann, my apologies.

MS. GERMANN: As I said, my name is Kelly Germann, I'm from Tinicum Conservancy, but I am here on behalf of the 75-member organizations of the Pennsylvania Land Trust Association, and I'm here to give comments drawn from a full comment letter submitted by Andrew Loza, the Executive Director of the Pennsylvania Land Trust Association.

The Triennial Review seeks comments regarding clarifications for how conservation easements should be considered in the evaluation for stream redesignation. The Pennsylvania Land Trust Association, herein referred to as PALTA, welcomes this

opportunity to comment in advance of possible rulemaking on this matter. Additionally, PALTA welcomes the opportunity to engage in further clarifying discussions on these matters prior to further rulemaking.

First, PALTA opposes any effort to eliminate the consideration of conservation easements during the evaluation for a stream redesignations. Our role is to have PADEP broaden that consideration here, not eliminate it or severely restrict it. PALTA asserts that the definition of conservation easements should reflect the definition used in the Pennsylvania's Conversation and Preservation Easements Act.

It's important that conservation easements play a greater, positive role in redesignation evaluations. Conservations easements - if held by any holder respecting the practices set forth in the document, Land Trust Standards and Practices, as published by the Land Trust Alliance - can reliably deliver consistent water quality protections.

PALTA suggests a definition of a qualified conservation easement be introduced that incorporates the definition of conversation easement

contained in Pennsylvania's Conservation and Preservation Easements Act, and then adds standards specific to Chapter 93 - standards that will ensure consistent water quality protections in perpetuity.

The Department suggested additional sentence defining outstanding national, state, regional, or local resource water accordingly would be modified to change the term conservation easements to qualified conservation easements.

The Model Grant of Conservation Easements published by the Pennsylvania Land Trust Association, and used by most Pennsylvania land trusts, holds at first objective to maintain and improve the quality of water resources, both surface and ground water, within, around, and downstream of the property.

Additional covenants that back this purpose, including, among others, a prohibition on gas and oil extraction that presents any risk to water resources, limitations on impervious coverage, a prohibition on agriculture near waterways, and a prohibition on forestry unless conducted in accordance with a plan that protects water quality.

The Department's tentative proposal provides the conservation easements must not be amendable. PALTA believes that amendments are

important to strengthening conservation protections over time and to improving administrative practices as better understandings are developed, and thus need to be permitted. Land trust operate within a robust infrastructure that ensures that amendments of easement documents advance rather than diminish conservation protections.

Finally, the Department's preliminary proposal takes the approach that requiring government to have an ownership interest in the conservation easement, either as a holder or a beneficiary of the easement. Presumably, this approach assumes that the government has greater capacity or willingness to uphold an easement's purpose than a private charitable land trust. PALTA believes, based on decades of exemplary land trust conduct - in building common land trust standards and diligently monitoring and enforcing easements - that such an assumption is unfounded.

Further, there are practical ways to ensure that a specific land trust has sufficient capacity to uphold an easement's water quality objective that do not have to rely on government involvement.

Again, we look forward to holding more detailed discussions on this issue prior to the next

water quality standards review and rulemaking period.

Thank you for your consideration.

MS. EDINGER: Thank you, Kelly. Next on our list we have Faith Zerbe.

MS. ZERBE: My name Faith Zerbe, F-A-I-T-H, Z-E-R-B-E. I am a scientist with the Delaware Riverkeeper Network. Delaware Riverkeeper Network is the grassroots environmental advocacy organization that has 20,000 members, and we operate throughout the four basin states. DRN collects, uses and disseminates stream data to help better protect and restore the streams of the Delaware River Basin which serves as drinking water for 17 million people which is about five percent of the U.S. population.

We thank the EPA today, first, for extending the public comment beyond the holiday period which was the original 12/31 date, extending that to 2/16, and also for holding a hearing here in the Delaware River Basin where people have concerns.

Water quality standards are a critical component to ensuring the spirit of the Clean Water Act is implemented. In addition, water quality standards, as subject today, is critical to ensure that the PA Constitution Article 1, Section 27, is fulfilled. The Pennsylvania Supreme Court, Act 13, Natural Gas

Challenge issued an important decision in 2013 where the Court ruled Act 13 violates the Pennsylvania Constitution on the grounds that it violates the Environmental Rights Amendment.

In doing so, the Court held that the right to pure water, clean air, and a healthy environment are fundamental rights that must be given high priority, consideration and protection of every level of Pennsylvania government. Since that ruling by Justice Castille, multiple examples of case law have been reinforcing this protection and the responsibility of the DEP to work and operate within this strong environmental rights construct.

DRN believes strengthening water quality standards is a critical component to fulfilling this obligation under Act 1, Section 27, for our generation and future generations to come. Despite this strong environmental rights amendment, according to the most recent assessment by EPA and the Department, there are 20,000 miles of polluted waterways in the Commonwealth currently not meeting their current uses.

Some of the most common pollutant sources are abandoned mine drainage from coal mining, ag runoff and urban storm water runoff. DRN believes we need more strict numeric standards codified to

better clean up these pollution inputs. We believe the science is clear to warrant these standards and the Constitution requires it.

So some points specifically. First, my colleague, Kelly, has talked about conservation easements. DRN believes it is critical that private conservation easements be a fundamental component to determine outstanding resource waters under Chapter 93. With a wealth of private conservation trusts in the state that work to preserve land and that leverage government and private funds to conserve land, by DEP proposing to undermine its past practice of considering private easements as part of an outstanding water qualifiers flies in the face of what is required under anti-deg guidance. A narrow look at only government easements being proposed for future Triennial Reviews in not in practice what has been done in the past for past upgrade petitions nor is it protective. Furthermore, land trusts are often the very entities that support or petition for stream upgrades.

Similar to 2011 Upper Delaware Regional Petition which many land trusts had supported and similar to several petitions that is just went in recently in the past year lead by conservancies as well as Tinicum Conservancy's Tohickon upgrade that has not

been realized in the last 20 years despite all their efforts.

We also believe that because the metrics on water chemistry are very high bars for our streams to get special protection watersheds, it's absolutely critical that these outstanding and other qualifiers are considered, not narrowly, but, in fact, broadly by DEP so we don't undermine the spirit of the Clean Water Act or the Constitution.

Next up is the 11 new toxics to the list which we are encouraged and we are very supportive of that. We do wish, however, that DEP would be proposing PFA standards to protect drinking water even though these toxins have been found in many drinking water supplies in the Delaware River Basin.

In fact, Delaware Riverkeeper Network has helped them cover some of those areas where people had contaminated drinking water. We know that New Jersey is currently advancing as science panels recommendation to adopt a standard of 14 parts per trillion. That's the most protective standard in the nation and we believe that Pennsylvania should go with, to not undermine what's happening on the other side of the river.

Regarding fish propagation and DO

standards for the estuary, currently, fish propagation is not a designated use in sections of the Delaware River Estuary, and the State is required to review reasons behind rejection of those uses since, clearly, its own studies, and those of DRBC, in Zones 3, 4 and 5 show that fish are, in fact, propagating. These fish include the endangered Atlantic Sturgeon, for example, and many other fish species that have been reproducing.

In 2013, the Delaware Riverkeeper Network submitted a petition, in fact, to DRBC for dissolved oxygen criteria to be elevated - that was back in 2013 - to meet the existing use of the main stem Delaware River because DO levels far exceed the current standards. The science documented in the past two decades shows these improvements to fish as well as dissolved oxygen. And we have letters to back that up.

It's also important to note the historic aspect. That in 1967 the DO goals and exceptions were very low, they were set very low for the Delaware River and the Estuary. They were set at 3.5 milligrams a liter daily averages. We need much higher standards. Five milligrams a liter and, ideally, to the 6 to 6.5 milligram level that research asserts is optimal for Atlantic Sturgeon and other fish procreation.

Finally, the chloride standard is

something we wanted to point out as well. We have concerns that DEP has, again, not established chloride standards for aquatic life uses. A criterion for chloride to begin protecting Pennsylvania streams from brine wastewater, from gas drilling, and road salt applications would be a critical step by the State that is overdue and needed. And the science conducted by the State and academic institutions supports establishment of this chloride criterion at this critical time in history. This need should be increasingly clear to the Department.

For example, between 2004 and November, 2016, DEP lists 9,443 public complaints about environmental problems in shale gas drilling areas. The DRBC has also proposed a permanent ban on gas grilling in the Delaware River Basin because of the harms and threats.

We have a de facto moratorium on drilling, wastewater import and freshwater export since 2010 in this basin. The rest of the Commonwealth streams and communities deserve this same protection and, at minimum, a protective aquatic life use chloride standard that is science-based would allow more tools for impacted communities to better document these very real harms they are facing from gas drilling.

Regarding nutrient standards, DEP continues not to set nitrogen and phosphorous standards. We believe this is failure. Since 2000, EPA has been technical guidance for states to develop regional nutrient criteria, yet we have not developed these. And it is encouraging that the DEP is proposing an ammonia standard.

DRN also has great concerns about the removal of water contact/swimming from the Delaware River from river mile 108.4 to 81.8. I won't get into details, but we have various documentation where people are using the river for water contact and swimming within the John Heinz Refuge down into Harbor State Park and many other places. In fact, there is a water trail that highlights this title section, so again, that use is actual use and should be reflected in the standards this time around.

Finally, we wanted to just point out some proposed possible downgrades that are listed. We're taking a look at the list closer before the 16th, but Goose Creek and the Chester Creek comes to mind where it appears that DEP is looking to downgrade from TSF to warm water fishery. More analysis is needed on that; EPA also agrees with that point. We also see that Beaver Creek and the East Brandywine Creek might

also be suffering from a downgrade, so, again, use attainable analysis is our understanding what needs to be happening if you're taking that use away. It's a long process and we need more information.

In closing, thank you for your time, thank you for all that you do, thank you for representing the science and using the science the best you can in a climate that's friendly to environment and facts. We appreciate all you do and thanks, again.

MS. EDINGER: Thank you, Faith. Next, we have Ellen Kohler.

MS. KOHLER: Ellen Kohler here on behalf of River Network which is a national organization which works to protect the waters of our country and help engage community members and local organizations to take a stand for their waters. I have already submitted some written comments; I'm going to highlight today, but if you would like me to, again, submit those comments. We'll figure that out later.

In this context, River Network is partnering with organizations throughout the Delaware River Basin on water quality issues. I also work directly with conservation and watershed organizations in the Brandywine-Christina Watershed and the Schuylkill Highlands Watershed, and I wanted to note

for you that today we have several people in organizations here that are new to this process and that are learning about opportunities to engage with Pennsylvania DEP about water quality issues. So I want you to know you have interested partners in the Delaware River Basin.

Others have focused on some of the points that I have made in my comments. Particularly, I also am concerned by the definition of conservation easements. We look forward to continued discussion with DEP about how to have a standard in place that works and provides true protection and includes the important work that private conservation groups do.

With respect to the chloride standard, I want to note that recently the Brandywine-Christina Watershed, the USGS Exton office shared information about trends for chloride levels that are increasing and particularly noted that the slope line is getting steeper and steeper in terms of that increasing trend for chlorides. This is a - so this is a standard where we need to be taking action particularly to be protective of aquatic life. So I encourage DEP to act expeditiously to adopt a process to be looking at the impacts for chloride in aquatic life and adapting a standard, ideally, before the next Triennial Review.

Likewise, with respect to PFAs, PFOAs, PFOs, as we know now, there's a high incidence - high detection level of these substances within the Delaware River Basin. We have lots of detection levels of - beyond the 70ng per liter that EPA recommends as a lifetime limit. We should be looking at those and particularly adopting site-specific standards as soon as possible in an expeditious basis without waiting for the next Triennial Review, if possible.

Those are the highlights I wanted to address today. Thank you very much for your time.

MS. EDINGER: Thank you.

Okay. And our next and last pre-registry commentator is Lindsay Blanton.

MS. BLANTON: Hello. My name is Lindsay Blanton, and I'm the water programs coordinator at the Wissahickon Valley Watershed Association. I've been monitoring the Wissahickon Creek and have managed a team of citizens science volunteers to monitor the creek for three and a half years.

The Wissahickon Watershed is home to almost a quarter of a million people. The Wissahickon Valley Watershed Association has spent the last 60 years serving and educating those people to care for our watershed community. We know these citizens to be

people that value their environment, people who value time spent in nature, and people who value and cherish wildlife.

I'm here today on behalf of the Wissahickon Valley Watershed Association but also on behalf of all those people to urge the Board to adopt aquatic life criteria for chloride or specific conductivity. This is absolutely vital for suburban waterways like the Wissahickon Watershed to remain viable habitats for all the wildlife we know and love.

Pennsylvania lies in the center of what is known as the Salt Belt, a cluster of northeastern states in which large quantities of salt are applied to roadways to control snow and ice. Today, as we speak, as the snowfalls, our salted roads will convey polluted runoff to the Wissahickon Creek.

Chloride concentrations are, of course, higher in areas with more impervious surface and watersheds in Southeastern Pennsylvania are seeing elevated chloride levels in our streams like never before.

Once chloride are in a water body there are no biological processes to remove them. They are not typically removed at wastewater treatment plants due to restrictively high costs and, thus, we're seeing

chloride in the stream throughout the year including during the summer low flow spikes when evaporation exceeds precipitation.

As many studies have concluded already, we know now that elevated levels of chloride are toxic to aquatic life and freshwater environments. For example, macroinvertebrates maintain an internal ionic concentration that's higher than the surrounding water through osmoregulation. Osmoregulation can be disrupted by large increases in certain ions including chloride. This disruption in ion exchange can cause stress or even death to these sensitive macroinvertebrates. The Wissahickon has had steadily poor macroinvertebrate IBI scores scoring at 26 percent and below for all sites that we monitor since we began surveying seven years ago in 2011.

Though we know this can be attributed to many stresses, rising chloride levels in our creek throughout the year surely have a profound impact on their populations. Frogs and salamanders that spawn in vernal pools in the Wissahickon may also be severely affected. Vernal pools tent to have high chloride concentrations in early spring when eggs are laid and in the summer when larvae and tadpoles undergo metamorphosis, two especially delicate times in their

life cycle.

The Wissahickon Valley Watershed Association has collected data for 14 years since 2004. We currently sample at 13 different sites spanning the entire watershed. Between 2013 and 2017, all of the sites that we test tested above the EPA recommended aquatic life criteria of 230 milligrams per liter during winter sampling. Since 2011, significant trends of increasing chloride concentrations were found at several of our sites, not just for the winter months but throughout the entire year.

The bottom line is that chloride is increasing in our waterways. The bottom line is that we know this is bad for our waterways. We understand there may be mixed messages from EPA and other states on accepted procedures - on what the accepted procedures for chloride should be but this is Pennsylvania and our citizens care about our environment and our citizens want to protect our waterways.

We urge you to make a commitment to get the ball rolling, to not delay setting chloride standards any further. The time is now to start improving our procedures and think about what's going on the ground and what's ending up in our waterways.

There may be other regulatory tools to solve the problem of chloride in our waters, but let us begin here. Leadership needs to be taken by the State of Pennsylvania. We need to act, starting with a chloride standard.

The use of road salts in Pennsylvania is not going to stop in the near future and long-term effects of chloride in aquatic communities remain to be seen, but we do know this, freshwater shouldn't be salty. Thank you very much.

MS. EDINGER: Thank you.

At this time, all of our pre-registered folks have spoken. Is there anybody, additionally, who would like to offer commentary today on our proposed rule?

All right. Well, thank you all very much for being here. With no other commentators present, on behalf of the EQB, I hereby adjourn this public hearing at 2:34 p.m. Thank you, once again. We appreciate your presence here today.

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HEARING CONCLUDED AT 2:34 P.M.

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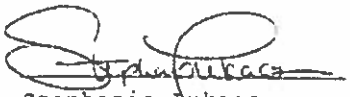
CERTIFICATE

I HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS, HEARING HELD BEFORE CHAIR LAURA EDINGER WAS REPORTED BY ME ON 01/30/2018 AND I STEPHANIE LUKACS READ THIS TRANSCRIPT AND THAT I ATTEST THAT THIS TRANSCRIPT IS A TRUE AND ACCURATE RECORD OF THE PROCEEDING.



Stephanie Lukacs,

Court Reporter