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March 1, 2022

SUBMITTED VIA EMAIL: RegComments@pa.gov

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

**Re: National Pollutant Discharge Elimination System (NPDES)
 Schedules of Compliance/Proposed Rulemaking – January 15, 2022**

Dear Environmental Quality Board:

The Pennsylvania Municipal Authorities Association (“PMAA”) appreciates the opportunity to provide comments, through undersigned counsel, to the Environmental Quality Board’s (“EQB”) January 15, 2022 Pennsylvania Bulletin Notice titled National Pollutant Discharge Elimination System (“NPDES”) Schedules of Compliance (“Proposed Rule”). PMAA is an association that represents the interests of over 700 municipal authorities in Pennsylvania, which collectively provide water, sewer, waste management and other services to over five million Pennsylvania citizens. Founded in 1941, the mission of PMAA is to assist authorities in providing services that protect and enhance the environment, promote economic vitality, and further the general welfare of the Commonwealth and its citizens. PMAA and its members, who are stewards of the environment, strive to provide the highest water quality possible to their customers and rate payers. PMAA is submitting this comment letter because certain of its members may be impacted by the Proposed Rule.

By way of background, the regulation currently set forth at 25 Pa. Code § 92a.51 is titled “Schedule of Compliance” and provides, in part, that a schedule of compliance to remedy a violation of a water quality standard and effluent limitations or standards (together, “Water Quality Standards”) must require compliance as soon as practicable, but in no case longer than five (5) years (unless a court of competent jurisdiction permits a longer time for compliance). In 1994, the United States Environmental Protection Agency (“EPA”) issued its Combined Sewer Overflow Control Policy, which addressed the use of Combined Sewer System Long-Term Control Plans (“LTCP’s”) to achieve Water Quality Standards in Pennsylvania. As PMAA understands, and as the Proposed Rule confirms, federal regulations implemented by EPA do not require that LTCP’s be implemented to achieve Water Quality Standards by a specific date. Rather, the federal timetable to meet

such Water Quality Standards is generally within the shortest feasible period of time. PMAA believes that given the complex technical and financial issues often involved with implementing LTCP's, a five (5) year compliance schedule is simply not practicable in all circumstances. Indeed, the Proposed Rule specifically notes that LTCP implementation schedules exceeding twenty (20) years are common.

In preparing this comment letter, PMAA reviewed, among other documents, 25 Pa. Code § 92a.51; the Proposed Rule to amend this specific section which, to reiterate, was published in the Pennsylvania Bulletin on January 15, 2022; presentations on the Proposed Rule by the Pennsylvania Department of Environmental Protection ("DEP") to the Pennsylvania Water Resources Advisory Committee ("WRAC") on July 28, 2021 and to the EQB on October 19, 2021; and, the minutes of the July 28, 2021 WRAC meeting (approved September 23, 2021).

According to the Proposed Rule and the above-referenced DEP presentations, it is PMAA's understanding that EPA has expressed concerns that the existing language in 25 Pa. Code § 92a.51 is inconsistent with DEP's practice of approving LTCP implementation schedules greater than five (5) years for Combined Sewer Systems. Accordingly, the Proposed Rule would address this issue by allowing DEP to approve NPDES permits with compliance schedules greater than the five (5) year period currently provided for in 25 Pa. Code § 92a.51 (but not longer than the implementation schedule provide in an approved LTCP). Therefore, based upon its review of the Proposed Rule and the aforementioned documents, PMAA supports adoption of the Proposed Rule to amend 25 Pa. Code § 92a.51 as published in the January 15, 2022 Pennsylvania Bulletin.

PMAA would also like to make one recommendation not directly germane to the Proposed Rule. PMAA believes that the concept embodied in the Proposed Rule regarding schedules of compliance greater than five (5) years should also apply, if applicable, to sewer systems other than Combined Sewer Systems. PMAA understands the narrow nature of the Proposed Rule and, to reiterate, supports the Proposed Rule in its current form. PMAA is not suggesting that the Proposed Rule be amended to address non-Combined Sewer Systems; rather, PMAA requests that DEP consider a similar amendment for systems other than Combined Sewer Systems. In fact, PMAA understand from its review of the July 28, 2021 WRAC minutes that DEP has already internally discussed whether a non-Combined Sewer System permittee's particular circumstances could warrant a timeframe for compliance of greater than five (5) years. PMAA is willing to work with DEP on such an amendment.

PMAA would like to thank the EQB once again for the opportunity to submit this comment letter regarding the Proposed Rule.

Very truly yours,

HAMBURG, RUBIN, MULLIN,
MAXWELL & LUPIN

By: 

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SAH:ll