



417 Walnut Street  
Harrisburg, PA 17101-1902  
717 255-3252 / 800 225-7224  
Fax 717 255-3298  
www.pachamber.org

January 10, 2012

The Honorable Michael Krancer  
Secretary, Pennsylvania Department of Environmental Protection  
Chairperson, Environmental Quality Board  
Rachel Carson State Office Building -16<sup>th</sup> floor  
400 Market Street  
Harrisburg, PA 17101

Subject: 25 PA Code Chapter 93 Triennial Water Quality Standards Review Process

Dear Secretary Krancer:

On behalf of its membership comprising thousands of businesses of all sizes and across all industry sectors, the Pennsylvania Chamber of Business and Industry ("Chamber") wishes to express its concern regarding the Department's current 25 PA Code Chapter 93 triennial water quality standards review process.

Through its membership, the Chamber has been very actively following the current Chapter 93 water quality standards triennial review process. Instream water quality criteria have a profound impact on a wide range of Pennsylvania enterprises, and it is essential that those criteria be developed in a process which assures a thorough, clearheaded review of the need for additional or changed criteria, the scientific basis of proposed criteria, and the impact of those proposed criteria. The Chamber supports measures which are reasonably protective of the Commonwealth's environment that are based on sound science and a clear and careful assessment of environmental objectives, risks, alternatives, costs, and economic and other impacts.

Our concern is that the triennial review process to date, as pursued before the Water Resources Advisory Committee (WRAC), has fallen far short of what should be expected in terms of an open, thoughtful, and transparent process.

The Chamber has several issues that we would like to elevate to your attention, and respectfully appreciate your consideration:

1. Rationale Documents – In the past, as part of its initial presentations and evaluations, the Department has provided the technical rationale documents for proposed water quality standards to WRAC members. That approach was entirely appropriate. WRAC was created as an advisory body composed of representatives from a cross-section of stakeholders, with a strong emphasis on membership with technical backgrounds familiar with water quality science and management issues. The technical rationale documents represent the compilation of scientific studies reviewed and relied upon by DEP staff and the rationale for calculating or deriving the proposed instream criteria. Understanding what

data DEP is considering, and how it is evaluating that data, is essential for WRAC members to fulfill their role in providing sound technical feedback to the Department on the proposed water quality standards. However, since early 2011, the Department has not been providing to WRAC technical rationale documents on new or revised water quality standards, and in fact stated at the December 16, 2011 WRAC meeting that the rationale documents will not be provided until *after* WRAC votes on the proposed standards at their January 11, 2012 meeting. The oral summaries of studies that were provided at the December 16<sup>th</sup> meeting was, at best, cursory. WRAC members properly expressed concern at the December 16 meeting that the Committee is being asked to vote for (and presumably support) certain water quality standards without an opportunity to evaluate the science behind those standards. The Chamber shares this concern. Sound science needs to be a fundamental part of any environmental regulation or standard. To be asked to support a standard or regulation without the ability to first review the alleged basis of the proposed standard, and provide feedback on the quality of the science and rationale behind that standard, conflicts with the commitment to open, transparent, science-based rulemaking.

2. Consideration of Impacts, Implementability and Economic Costs – During the course of WRAC deliberations on December 16 and in prior meetings, WRAC members repeatedly asked questions regarding the impact, implementability and economic cost of various proposed standards. The Department's water quality staff turned aside such questions, arguing that economics and implementability should not be considered in setting water quality standards. In essence, the Department's expressed position was that whether a proposed standard would shut down facilities, or engender billions of dollars in implementation expense, could not be considered in the process of setting water quality standards designed to reasonably protect instream uses. We respectfully disagree.

Section 5 of the Clean Streams Law explicitly commands DEP to consider economic impacts in both adopting regulations and standard, and in implementing those regulations. Section 5(a) provides:

The department, *in adopting rules and regulations*, ... 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 ac, consider, where applicable, the following:

\* \* \*

- (5) The immediate and long-range economic impact upon the Commonwealth and its citizens.

The Department cannot duck questions concerning the technical feasibility of meeting water quality standards, or the costs of such proposed standards. The statute imposes a direct duty to consider such factors in taking any action, including adopting rules and regulations.

3. Molybdenum Water Quality Standards – The Department is proposing water quality standards for molybdenum. Specifically, an Aquatic Life chronic criteria (CCC) of 1,900 µg/l, an Aquatic Life acute criteria (CMC) of 6,000 µg/l, and a Human Health Criteria of 210 µg/l. The Chamber has concerns with these proposed criteria.

The Human Health criterion of 210 µg/l was originally proposed by the Department during the 2008 water quality standards triennial review. At that time, the Chamber, as well as individual member industries, had provided comments on the flawed scientific rationale and reasoning for the proposed molybdenum standard. Members of WRAC expressed significant concern with the proposed molybdenum standard. And ultimately the Independent Regulatory Review Commission (IRRC) voted on November 20, 2008 that the proposed Chapter 93 water quality standard regulation was not in the public interest and that the proposed molybdenum human health standard should be removed from the regulation. The Department is proposing the same standard using the same rationale as was proposed in 2008. Consistent with the comments provided by PA industry and the decision provided by IRRC in 2008, the Chamber requests that the proposed molybdenum human health standard be removed from the proposed Chapter 93 regulation.

The proposed Aquatic Life standards are new. The proposed standards are purportedly based on a study performed in 2008 by Tetra Tech for the state of Nevada (Tetra Tech 2008). Since that report, a more recent aquatic life impact study of molybdenum (D.H. Heijerick, et al 2008) was published. The aquatic life criteria in the more recent Heijerick 2008 study were less restrictive than reflected in the Tetra Tech 2008 study. The principal author of Tetra Tech 2008, Mr. Henry Latimer, reviewed Heijerick 2008 and concluded that the data provided in that report filled and completed data gaps that existed at the time of Tetra Tech 2008, and that the criteria of Heijerick 2008 would be the more appropriate criteria. Based on this information, the Chamber concludes that the Department's proposed aquatic life standards for molybdenum are premature, and therefore should be withdrawn from the proposed regulation to allow further study. This additional time for a sound scientific evaluation is very appropriate in that according to the Department, the need for this standard is based on one Regional office requesting a molybdenum standard, and not due to water quality degradation or impairments.

4. Laboratory Test Methods – The Department is proposing a number of new water quality standards that do not have approved analytical methods under 40 CFR Part 136, Guidelines Establishing Test Procedures for the Analysis of Pollutants. Those parameters include: acrylamide, benzene metadisulfonic, benzene monosulfonic, p-Phenol sulfonic acids, 2-butoxyethanol, cyclohexylamine, 1,4-dioxane, nonylphenol, strontium, and trimethylbenzene. In an email from the Department to WRAC members (D. Adams, 1/4/2012, 10:27 AM), an attachment was provided listing analytical methods for these parameters. The Chamber is concerned because the above listed parameters and the analytical methods in the mentioned email communication are not approved for any analytical testing in 40 CFR Part 136. Only one of the parameters, nonylphenol, is subject to a pending amendment to 40 CFR Part 136 (75 Fed. Reg. 58024 (Sept. 23. 2010); but this proposed regulation has not been finalized. NPDES permits under 25 PA Code §92a.41 (which incorporates 40 CFR §122.41 by reference) and Industrial Pretreatment Permits under 40 CFR Part 403 require the use of analytical methods approved under 40 CFR Part 136. This creates a scenario whereby dischargers will be issued monitoring requirements for the listed parameters without the available 40 CFR Part 136-approved analytical methods. Parameters should be included in the Chapter 93 water quality criteria only if they have approved test methods that dischargers can utilize, consistent with 40 C.F.R. Part 136 requirements.

The Honorable Michael Krancer

January 10, 2012

Page 4

The Chamber appreciates the Department's consideration of these issues and concerns. We would welcome the opportunity to sit down with you and your staff to consider these concerns, with the objective of assuring that the triennial review process be strengthened with a full and careful consideration of the applicable scientific, technical and economic issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'Samuel Denisco', with a long horizontal line extending to the right.

Samuel Denisco

Vice President, Government Affairs

cc: Andrew Ritter, Governor's Office  
Rebekah Myers, Governor's Office  
Alisa Harris, Special Deputy Secretary for External Affairs  
Daniel Lapato, Deputy Director, Office of External Affairs  
Tom Santanna, Director of Legislative Affairs