



August 3, 2010

Janis Hoagland  
Office of Legal Affairs  
NJ Department of Environmental Protection  
PO Box 402  
Trenton, NJ 08625

Dear Ms. Hoagland:

The undersigned strongly oppose the petition submitted by Edward A. Kondracki, Esq., on behalf of the Association of Environmental Authorities. The petitioner asks the Department to permit wastewater treatment facilities to discharge effluent that exceeds the human health criteria for nitrate and total dissolved solids provided these standards were met at the point of intake for potable water use. The Department should reject the petition because the proposed change violates New Jersey's State Surface Water Quality Standards ("SWQS) that were adopted pursuant to the federal Clean Water Act and the NJ Water Pollution Control Act. N.J.S.A. 58:10A-1 et seq. and were approved by the U.S. Environmental Protection Agency. The proposed amendment would also violate New Jersey's antidegradation standards.

In effect, petitioner has requested DEP amend the regulation to permit a mixing zone extending from the wastewater facility discharge pipe to a water purveyor's intake point. This, petitioner argues, is justified because as long as the drinking water has to be filtered and disinfected, they should be given leave to pollute - thus ignoring the many other beneficial uses of the waters of the State and the many other protective purposes of the water pollution laws and its EPA-approved implementing regulations. The petition, filed by an organization of publicly-owned facilities, seeks permission to put more pollution in New Jersey's waters. This cannot be sustained.

The petitioner's proposal directly contravenes many of the goals of the Clean Water Act and the NJ Water Pollution Control Act including protection of biota and aquatic life. The SWQS Statement of Policy clearly delineates the multiple protection goals inherent in the statutory framework. N.J.A.C. 7:9B-1.5(h) provides:

1. These Surface Water Quality Standards apply to all surface waters of the State.
2. Water is vital to life and comprises an invaluable natural resource which is not to be abused by any segment of the State's population or economy. It is the policy of the State to restore, maintain and enhance the chemical, physical and biological integrity of its waters, to protect the public health, to safeguard the aquatic biota, protect scenic and ecological values, and to enhance the domestic, municipal, recreational, industrial, agricultural and other reasonable uses of the State's waters.

These goals cannot be achieved if petitioner's constituents are permitted to discharge untreated effluent in excess of the limits for nitrates and TDS. Petitioner seeks to use (and abuse) the waters of the State to treat (through dilution) the wastes that they are obligated to treat at their sewage treatment plants. The waters of the State are not to be used as treatment plants for any segment of the State's population or economy which is precisely what petitioner seeks to permit.

Petitioner's argument that existing rules provide that water may only be used as a public potable supply after treatment provides no support for its effort to divest wastewater dischargers of their responsibility to treat effluent. That water purveyors must filter and disinfect water prior to its use as potable water is irrelevant to dischargers' obligations to "protect the public health, to safeguard the aquatic biota, protect scenic and ecological values, and to enhance the domestic, municipal, recreational, industrial, agricultural and other reasonable uses of the State's waters." N.J.A.C. 7:9B-1.5(h). Wastewater facilities must continue to treat effluent for TDS and nitrates prior to discharge.

Petitioner makes the self-serving and unsubstantiated claim that nitrate is a common constituent found in nearly all municipal effluents and is generated as a byproduct of treatment to remove ammonia from wastewater. Petitioner also asserts without substantiation that nitrate is naturally assimilated in streams and degrades in the environment, so that it is expected to be at much lower levels downstream of the discharge. Petitioner ignores the fact that nitrate is a nutrient that, with high enough levels, can create unhealthy blooms of algae that can drastically lower oxygen levels necessary for aquatic life. Nitrate from nonpoint source pollution is already a serious problem in most of New Jersey's surface waters. Not requiring nitrate treatment at the point of discharge will exacerbate these concerns. For example, if water purveyors need to treat for decaying vegetation (algae), they most frequently use chlorine to eliminate it. The byproduct of chlorine, however, is trihalomethanes - chloroform, bromodichloromethane and more. The trihalomethanes are environmental pollutants, and many are considered carcinogenic.

Thus, for the reasons described above, not only is there no scientific or legal basis for DEP to grant the petition, the law and science require its rejection.

cc: Robert Martin, Commissioner, NJ DEP  
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