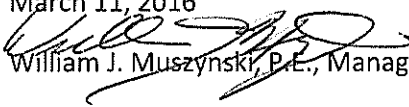


## MEMORANDUM

**Date:** March 11, 2016

**From:**   
William J. Muszynski, P.E., Manager - Water Resources Management Branch  
David Kovach, P.G., Supervisor - Project Review Section  
DAK

**To:** DRBC Commissioners, Steve Tambini, Docket File D-1975-093 CP

**Subject:** DRBC Staff Response to Comments and Recommendation Docket No. D-1975-093 CP-5  
Pennsylvania Utility Company – Wastewater Treatment Plant Lehman Township, Pike  
County, Pennsylvania

**Summary:** In accordance with the Delaware River Basin Compact and regulations, staff of the Delaware River Basin Commission (“DRBC” or “Commission”) prepared a draft docket in response to an application dated December 29, 2014 by Pennsylvania Utility Company, Inc. for renewal of an existing wastewater treatment plant, its discharge, and continued inclusion in the Commission’s Comprehensive Plan.

The Commission published a Notice of Application Receipt (NAR) concerning the application for the renewal of the existing wastewater treatment plant on the DRBC website on April 6, 2015. On the same date via U.S. Mail or email, the DRBC notified all parties on the Interested Parties List (“IPL”) for the project of the receipt of the application. The draft docket was announced for public comment and a public hearing in the Pennsylvania Bulletin on January 30, 2016 for the February 10, 2016 Commission Hearing. The hearing notice and draft docket were posted on the Commission’s website on January 26, 2016 for the February 10, 2016 Commission Hearing. Commission staff also sent copies of the hearing notice to individuals on the IPL.

At the February 10, 2016 public hearing, Commission staff presented a revised draft docket (D-1975-093 CP-5) that renewed the approval of the existing wastewater treatment plant and its discharge. No public comments on the project were presented at the hearing. A single comment letter from **King, Spry, Herman, Freund & Faul, LLC, attorneys for the Charles E. Peters Estate Trust (Peters Trust Letter)** was received via email regarding the project on the day of public hearing, February 10, 2016. Michael Gaul of King, Spry, Herman, Freund, & Faul, LLC was on DRBC’s IPL for the WWTP as representing Peter’s Trust and was sent the NAR and notified of the hearing on the draft docket. The public comment period closed at 5:00 p.m. February 12, 2016.

A summary of the comments provided in the Peters Trust Letter, Commission staff’s responses to those comments and staff’s recommendation are provided below.

**Comment 1.** *There are some differences between the 2010 DRBC Docket and the draft 2016 Docket. Paragraph II, h., from the Decision section of the 2010 Docket is not included in the new draft 2016 Docket. That missing paragraph concerns limitations on changes in water temperature caused by the sewer discharge. PA Utility’s sewer discharge should be regulated from causing unreasonable changes in water temperature, and an appropriate paragraph added to the 2016 Docket.*

**DRBC Response 1.** Condition C.II.h. was included in the previous DRBC docket (D-1975-093 CP-4) inadvertently and as such, was removed from renewal draft Docket No. D-1975-093 CP-5. The temperature requirement, appropriately, did not appear in any former docket issued for the facility (D-1975-093 CP, D-1975-093 CP (revised), D-1975-093 CP-3). The temperature components of the stream quality objectives contained within the DRBC Water Quality Regulations (WQR) only apply to specific interstate zones (Zones 1A, 1B, 1C, 1D, 1E, W1-W2, N1-N2, C1- C8, 2, 3, 4, 5, & 6) and areas immediately above the confluence with such zones.

During suitable weather conditions, treated effluent from this WWTP is pumped to a six-foot deep, lined, aerated holding pond located between the 8th and 17th greens of the Tamiment Golf Course and used for irrigation, as needed. When conditions are unsuitable for spray irrigation, treated WWTP effluent is discharged to an intrastate tributary (an unnamed tributary of Little Bush Kill) approximately 4.15 miles upstream of the interstate Water Quality Zone 1C (Delaware River). The WQR do not contain water uses to be protected, in-stream water quality objectives, or effluent quality requirements for temperature with regard to discharges to intrastate waters except that immediately above the confluence of intrastate waters with an interstate water, the intrastate water shall be maintained in a condition at least equal to the water quality criteria specified for the receiving water. In this case, the intrastate tributary immediately upstream of the interstate Zone 1C water is the Bush Kill not the Little Bush Kill. For these reasons, the temperature condition was not included in draft renewal Docket No. D-1975-093 CP-5 for the facility.

**Comment 2.** *The 2010 Docket orders PA Utility to provide 1992 flow data so DRBC can determine what the "grandfathered load" is for the WWTP. See page 10, subparagraph p. The draft 2016 Docket does not contain a similar order, but also does not state that PA Utility has complied with the prior order. The order should remain in effect, unless it has been complied with, in which case, it should be noted on the 2016 Docket. If PA Utility has provided the required data, the Peters Trust desires to review the data, and any determination by DRBC as to what the "grandfathered load" is for the WWTP if it is expanded. If, on the other hand, the data has not been provided, the Peters Estate is concerned that the passage of time from 1992 is prejudicing the ability of DRBC, and other interested parties, to analyze the relevant data.*

**DRBC Response 2.** Condition II.p. in the Decision section of Docket No. D-1975-093 CP-4 requires:

*"The docket holder shall submit annual average flow data for the year 1992 and 1992 effluent data for the following parameters: Ammonia Nitrogen (NH<sub>3</sub>-N), Total Suspended Solids (TSS), Biological Oxygen Demand (BOD), Total Phosphorous (TP), Nitrate- Nitrite as Nitrogen (NO<sub>3</sub>-NO<sub>2</sub>-N), and Total Kjeldahl Nitrogen (TKN). If 1992 flow data is not available, provide all available historical flow data. If 1992 effluent data is not available, provide available historical effluent data or current effluent data (for these parameters) and describe any modifications to the WWTP treatment technology since 1992, the year of SPW designation."*

As discussed in the Findings section of the docket, the information will be used to determine the "grandfathered load" should the docket holder request a future expansion or propose changes to the facilities that would be considered "Substantial Alterations or Additions" as defined by WQR Article 3.10.3A.2.a.16. The docket holder submitted the information shortly after the docket was approved on December 8, 2010. In addition, as provided in Docket Conditions II.d the docket holder continues to report on these effluent parameters for the current discharge. Since the docket holder has not applied for changes to the facility that would be considered "Substantial Alterations or Additions, the DRBC staff

has not calculated the "grandfathered load" as part of the review of the renewal Docket No. D-1975-093 CP-5. The data will be sent to the commenter as requested.

When the docket holder advises the DRBC that it intends to propose changes to the facility that are "Substantial Alterations or Additions", DRBC will calculate the grandfathered load as well as the SPW effluent limits. These limits will then be included in a draft docket that will be noticed prior to the Commission taking action on that draft docket, and will be available for review when the draft docket is noticed and posted on the DRBC website.

The DRBC practice of including grandfathered loads in dockets prior to changes to the facility that are "Substantial Alterations or Additions", is done at the discretion of DRBC staff. The grandfathered loads are provided to docket holders for informational purposes so that they are aware of what incremental load will be subject to more stringent effluent limits in the event of a substantial alteration or addition, or expansion that may occur at the facility in the future.

**Comment 3.** *There should no expansion of the WWTP above its current allowed discharge of 0.25 mgd, or change in the service area for the WWTP, without appropriate applications being filed with, and approval by DRBC, in accordance with its regulations, and only after notice to the Peters Trust and an opportunity to comment and challenge any such application.*

**DRBC Response 3.** Any increase in capacity or load, or a substantial alteration or addition, or change in service area would require DRBC approval in accordance with Docket No. D-1975-093 CP-5 Conditions C.II.h. and C.II.t. in the Decision section:

Condition C.II.h. States:

*"The docket holder is permitted to treat and discharge wastewaters as set forth in the Area Served Section of this docket, which incorporates by reference Sections B (Type of Discharge) and D (Service Area) of the docket holder's Application to the extent consistent with all other conditions of this DECISION Section."*

Condition C.II.t. states:

*"Prior to the docket holder initiating any substantial alterations or additions to the existing WWTP as defined in Section 3.10.3A2.a.16) of the Commission's WQR, an application must be submitted and approved by the Commission. Such an application shall be submitted prior to final design to ensure that the Commission can provide the docket holder with draft effluent limitations for SPW specific parameters as guidance for design as to not require duplication of work or cause a substantial expenditure of public funds without Commission approval. The docket holder is encouraged to contact the Commission staff during the planning stages to identify the potential effluent limitations required to meet the no measurable change parameters under SPW."*

Michael Gaul of King, Spry, Herman, Freund, & Faul, LLC is on DRBC's IPL for the WWTP as representing Peter's Trust, and will be notified of any future applications to renew the approval or expand the WWTP, draft docket postings, and hearing notices prior to DRBC taking action on any project expansion. Peter's Trust will have the opportunity to provide comment on any application submitted to the DRBC through written comment and/or orally at the Commission Hearing at which the Pennsylvania Utility Company WWTP project is on the agenda or at any Commission hearing during the open public comment period.

**Comment 4.** *The draft 2016 Docket states that the Docket approval is subject to all conditions, requirements, and limitations imposed by PA Utility's NPDES Permit. PA Utility's NPDES Permit is subject to a 2005 Settlement Agreement among the Pennsylvania Department of Environmental Protection, PA Utility (and related parties) and the Peters Trust (and related parties). The current 2011 and draft 2016 NPDES Permit contains the following sentence (see page 18, Part C., I. Other Requirements):*

*"The Permittee has entered into a September 2005 Stipulation and Agreement of Settlement ("the Settlement Agreement") with the Estate of Charles Peters et al, and the Department of Environmental Protection filed at EHB Docket No. 2005-023-K which imposes additional terms and conditions on the parties to that Settlement Agreement."*

*For purposes of clarity, and notice to subsequent docketholders, the existence of the 2005 Settlement Agreement should be expressly noted in PA Utility's DRBC Docket.*

**DRBC Response 4.** PADEP is responsible to enforce the terms and conditions of the NPDES permits that it issues. As the DRBC is not party to the settlement agreement and the components of the settlement agreement do not modify any DRBC related requirement, Commission staff elected not to include details regarding the settlement agreement in the draft docket.

**Staff Recommendation:** Commission staff have reviewed the written comments submitted on the project and prepared the Response to those comments noted above. Commission staff recommend that you approve Docket No. D-1975-093 CP-5 as drafted.