

**WATER QUALITY ADVISORY COMMITTEE
MARCH 24 & 25, 2003**

ATTENDEES:

<p>NY Al Fuchs (via telephone)</p>	<p>DE DNREC John Schneider</p>
<p>EPA Wayne Jackson, Region II Denise Hakowski, EPA Region III</p>	<p>Dupont Not Present</p>
<p>PA DEP Ed Brezina, Env. Prog. Mgr. Pam Bishop, Asst. Counsel</p>	<p>Delaware Riverkeeper Network Maya van Rossum, Tracy Carluccio, Director Special Projects</p>
<p>NJ DEP Debra Hammond, Water Quality Standards & Assmt.</p>	<p>Academy of Natural Sciences Not present</p>
<p>DRBC Bob Tudor, Deputy Executive Director Pam Bush, Assistant General Counsel Ken Najjar, Branch Head Planning & Implementation Patricia McSparran, Water Resources Engineer Todd Kratzer, Water Resource Engineer Bob Limbeck, Watershed Scientist Jonathan Zangwill, Water Resources Planner Pamela V'Combe, Watershed Planner</p>	<p>Other attendees: Patrick Lynch, National Park Service Don Hamilton, National Park Service</p>

This is a two-day meeting which took place March 24th & 25th, 2003. The sole purpose of the meeting was to discuss the Special Protection Waters Regulations, as such, there was no review of previous meeting minutes. The meeting was called to order at 9:30 a.m.

Patricia McSparran stated that if resolution could be reached on the antidegradation section between today and tomorrow, the next meeting could look at the entire water quality regulations as they have been updated to include this section and the other sections. It had been previously suggested to separate them into two sections: water quality standards (includes usage criteria and antidegradation) and the other manual that includes effluent limits (technology-based limits).

The committee decided to focus on the major issues first and then go through the document page by page, rather than starting at the beginning.

MAJOR ISSUES:**1) No measurable change objective for the Special Protection Waters:**

- Policy states that there be no measurable change in existing water quality due to point source and also due to non-point source pollution. Some of the states' comments were that they don't feel this should be done in regulations.
- The words "To the extent feasible" do not belong in the goals, it belongs in the implementation phase. These words shall be removed from section 4.40.4 (A)(1)(b). The states are also comfortable with having these words removed from the State Responsibility section on the statement of policy.
- The committee decided the words "to the extent feasible" do not belong anywhere in the policy or statement of goals.

2) The role of DRBC vs. the States:

- A) DRBC reviews projects on the tributaries to the Special Protection Waters and requires a NPS pollution control plan for projects meeting the review threshold in this drainage area of the special protection waters. The states want the DRBC to be out of review on projects on the tributaries. If the DRBC did at some point get out of these reviews, would the states be able to implement the policies in the SPW regulations, the NPS controls and the analysis.
- States concern is that DRBC has had this in their regulations 1991 and hasn't implemented it and now the DRBC wants to delegate it to be the states' responsibility. DRBC has been implementing this policy on a project by project basis.
 - DRBC can only do what the states can do. DRBC has no authority but what the states agree to give. What is it that the DRBC is now doing that the states aren't?
 - 1) Withdraw projects – DRBC reviews any withdraw over 100,000 gallons per day
 - 2) If located in special protection waters, required applicants to do an NPS pollution control plan for the service area
 - What DRBC is doing now that the states would have to do in the future would be to review the non-point source plan required by the DRBC regulations for consistency of meeting the goal at the point of shared waters.
- B) It was decided that the DRBC will continue with the reviews in the drainage area of Special Protection Waters until the states put into place a process to pick it up.

C) Responsibility for Monitoring at Boundary Control Points – States or DRBC?

- DRBC has been doing it so far
- Some concern as to who will do it in the future to ensure no measurable change
- To establish a baseline for a boundary control point you need 3 years of data
- DRBC is currently developing criteria for boundary control points
- Once this regulation is agreed to, it would drive the monitoring framework which would seek to have different agencies complement each other toward the same strategy
- The Monitoring Advisory Committee can coordinate this

3) Feasibility of Trading Policy:

The trading would occur at the tributaries coming into the Special Protection Waters, as long as the boundary control points are met. If the boundary control point is met, then trading is allowed as long as it meets other state requirements within the tributary and as long as there is no localized impairment at any particular site. The overarching policy of no measurable change still controls everything.

- 1:1 for point source
- Greater than 2:1 for non-point source. Add an exception to this that it could be modified if the applicant can show that it's in the best interest of the watershed – no harm, plus “net” benefit.
- It should also be written that, if for some reason, the states didn't want to approve the trade, that it shouldn't happen. The way this is written, DRBC would have the absolute authority to approve the trade. Currently the applicant also needs the state's approval for a permit, and that will stay in place.
- Can be further clarified when actual criteria for a NPS pollution control plan is developed

Break for lunch until 12:00 to 12:45

4) Designated vs. Existing Uses:

In DRBC regulations, we protect designated uses and the issue has been raised of existing uses.

- Agreed that it should be written to read protection of existing and designated uses
- Existing uses needs to be defined
- There would have to be a system in place to do this in the mainstem since this would apply just to shared waters. DRBC's designated uses are more protective than the existing uses. By protecting the designated uses, we are also protecting existing uses.
- A state had a case where the existing use is higher than the designated use where they based a fish reclassification on warm, coldwater and trout stocking. There was a stream that was designated at the warm water level, but studies showed that

there was not only maintenance, but also reproduction of trout in the stream, thus the existing use. If there was an application to discharge into that stream, it would be protected at the more stringent existing use, which is the cold water.

5) *Watershed Prioritization and Planning Components:*

Agreed to be set aside until staff can demonstrate where this issue will be addressed. There is a Key Result Area #3 in the Basin Plan being developed which addresses this. The WQAC will review KRA #3 to see if it covers all points or if they need to consider adding a modified regulation.

6) *Feasibility of a Watershed Planning Fund:*

The WQAC agreed that there should be no fund. Municipalities are doing planning and making sure that the communities are growing in the direction they intend and an agency should not come in and set in place a regulatory process that allows the permitting to impede that planning. A planning fund is parallel to buying a permit.

7) *Language on Interim Protection (should it be more specific or removed?)*

Page 6, #3:

Unless there is supported data at the time of application or nomination to make a scientific decision of whether an area qualifies for special protection waters, should there be a form of interim protection that's automatically applied?

- WQAC are not opposed to interim protection as long as it is based on firm technical and scientific information
- The clause needs to be more specific and include the data that is needed
- The water would be protected for existing use and water quality after the commission determines the correct designation
- There has to be a clause that states if you have the information, you don't have to wait the 5 year period for all of the scientific data to be collected before the stream is protected

8) *Should we define which water quality parameters must be better than criteria for a water body to qualify for SPW designation?*

On page 3, under Statements of Policy, it talks about shared water quality is determined to be better than the established surface water quality criteria. It doesn't give which parameters have to be above the criteria in order for that condition to be met. Should it be defined? If some are below, but the majority are above, does that qualify?

- There are circumstance depending upon geology and other issues such as, what may be an indicator of high quality for one waterway may not be for another

The WQAC decided to leave the process in place as it is now, which is, the DRBC collects the water quality data and if it is above criteria for the important parameters it goes before the Commissioners who then decide whether it qualifies or not.

9) Clarification of Language Concerning SEJ in Significant Resource Waters:

There are several citations where it talks about no measurable change for both Significant Resource Waters and Outstanding Basin Waters, but for Significant Resource Waters, a measurable change is allowed as long as there is an SEJ.

- As they are written now, it almost looks like SEJ for both waters
- Needs to be distinguished that SEJ applies only to significant resource waters, not outstanding basin waters

THE REGULATIONS: PAGE BY PAGE

Page 1

3.40.4 Should be titled “Antidegradation for Shared Waters”

3.40.4 (A)(1)(a)

- Take out “The more protective of”
- Everyone agreed to defer to the DRBC on shared waters
- Language should state: DRBC antidegradation policies and rules will apply to the following waters: outstanding basin waters, significant resource waters

3.40.4 (A)(1)(b)

- Take out “to the extent feasible”

Page 3

3.40.4 (A)(2)(a) Statements of policy

- Add SEJ in significant resource waters
- Need to flag the trading policy for offsets or trading
- Delete phrase, “or to improve significantly another body of water via offsets or trade-off remedial activity”
- “development in the public interest in the area in which the waters are located”-
 - the area benefited should be within the drainage area
 - there would have to be a bigger benefit for greater degree of degradation
 - how would the “area” be defined?- define in guidance manual

3.40.4 (A)(2)(b) Protection of Designated Uses

- Should say “Protect *and* attain”, and we need the exiting use language

3.40.4 (A)(2)(c) Pollutant Trading

- This section needs to be re-written
- Should say: “Pollutant trading can be used for the following:
- Not for OBW, yes for SRW, yes for tributaries

Page 5

3.40.4 (B)(1) Special Protection Waters

- Add quality element

3.40.4 (B)(2)(A) Designation of special protection waters

- Also needs a quality element added
- values requiring special protection - should be deleted
- Make consistent with definition

3.40.4 (B)(2)(B)

- It states that the commission will consider nomination petitions and on page 6, #3 it talks about doing it on your own initiative - that should be in here too
- In other words, the Commission can react to petitions or on its own initiative can determine if the waters are suitable
- Riverkeeper will come back with language that they think suits this section
- Define what happens with a petition brought before the Commissioners. Refer to Chapter 23 of PA's Environmental Quality Board procedures.

Page 6

3.40.4 (B)(3) Interim Protection for Waters Under Evaluation

- Must have strong evidence to pass a resolution for interim protection
- Must be based on supportive data
- Patricia will run language by committee for appropriateness

Page 7

3.40.4 (B)(4)(a)(1) Outstanding Basin Waters

- Revise section reference from 3.40.4B.4.b.6 to 3.40.4B.4.c.6
- The common language was put under the general section to reduce redundancy
- Non-discharge analysis needs to be incorporated somewhere in this section, it's on page 10 under #5, needs to be moved closer to the front

3.40.4 (B)(4)(a)(2) Significant Resource Waters

- Revise section reference from 3.40.4B.4.b.6 to 3.40.4B.4.c.6

3.40.4 (B)(4)(a)(3) Discharges upstream of SPWs

- Only comment is to add SEJ for SRW

Page 8

3.40.4 (B)(4)(a)(4) State responsibilities

- Remove "to the extent feasible"
- Add reference to the Compact

- Where it says no measurable change where water quality occurs, insert “in Special Protection Waters”

Page 9

3.40.4 (B)(4)(b) Consistency with state wastewater management plans

- What about a parallel component for industrials?
- Are all of the other states covered in this?
- It should be more general language, rather than referencing specific state plans

DAY TWO 3/25/03

Todd Kratzer is missing today- review his proposed updates of the Existing Water Quality table in his absence.

The following are the important points discussed for the table:

- The tables must be updated to include missing annual or seasonal values for DO, add DO percent saturation, TDS, turbidity, and monthly temperature.
- When you check whether you’re meeting the existing water quality levels which governs?
 - Annual, seasonal and percent saturation? You have to meet each one.
- Many tables are in the process of being developed for the targets and boundary control points.
- We are trying to convert these two tables into point specific tables so that real allocation, monitoring and tributary effects will be represented.
- For the Lower Delaware we started collecting data in 2000; for the Middle and Upper we collected data from 1992 thru 1994; and tributaries were started last year in 2002.
- We will be adding to table 12 until we have the site specific tables done
- When we do the point specific tables, each boundary control point will have a table like table 12 with the same parameters and the same criteria with the same targets.
- We would use modeling or allocation to determine what load a project would have and then we would probably measure and monitor at the boundary control points.
- The use of Percent Saturation is not clear...
If there are three measures of existing quality for data, from a state’s standpoint, which do we use, all three or just two of them?
This question needs to be answered to Todd Kratzer (send comments to Todd)

- Ask Todd to include the range on table 1 and table 2- show trends, range, and parameters.

WQAC will get comments to Todd after a package is put together, in a reasonable amount of time.

- Picking up from yesterday: page by page review of regulations

Page 9

3.40.4 (B)(4)(c)(1) Wastewater treatment

- This applies to “the drainage area of Special Protection Waters” – specify when it applies in the drainage area
- Drainage area - needs to be less broad
- What is meant by interrupted for an extended period? How long are we talking about?
- Clarification - it depends on the kind of system, if it’s just going back up to the pipes there’s not going to a problem, it’s really dependent upon the system how long that could be.
- Make it more specific in the guidance manual.
- We are taking out the words, “unless it can be shown.....with no threats to water quality..... “, put a period after facilities.

3.40.4 (B)(4)(c)(2) Alarm systems

- the statement after the 1st paragraph “in implementing this policy the commission will require the highest.....”, was moved to section (probably under policy) It was mistakenly put under alarm systems. This statement should probably go under the policy section.
- Jumping back to 1st paragraph in C where it talks about this section applying to discharges to the drainage area - that wasn’t resolved
 - Is it all the plants in the drainage area or is it just the plants discharging into the Special Protection Waters?
 - Our current regulations say it’s just the discharge to SPWs but there was some discussion to change it to include all of the drainage area
 - No commitment until an analysis is done on all the treatment plants to see what the impact would be. This could be a major cost problem. There is a problem with going up the entire tributary- it’s too broad.
 - It was suggested to place a colon after compact because under each requirement we specify where it applies.

Page 10

3.40.4 (B)(4)(c)(3) Visual Requirement

- in 3 and 4 cross out “new” and add “all” wastewater facilities

3.40.4 (B)(4)(c)(5)

- discussion that they would like to see some criteria or guidance that explains how the determination of technical, financial and or feasibility is reached.

- It should appear in guidance
- Should be specific enough to stand up if it's challenged
- Clarify that applicant has to do an alternatives analysis - show it's environmentally not sound or financially infeasible before we even think about a direct discharge.
- Move closer to beginning of point source section
- **Patricia will re-write this**

3.40.4 (B)(4)(c)(6) Minimum Treatment Requirements

- Make sure this is the best technology available - the table should be revised
- If you upgrade you have to meet the minimum performance standards
- They are going to have to be more stringent than the effluent guidelines
- These requirements don't apply to industrial discharges
- Only applies to direct dischargers to SPW's
- Suggested to move the numeric requirements to the guidance manual
- See PA's language

Page 11

3.40.4 (B)(4)(c)(7) Delegation to State Agencies

- Change delegate to defer
- "under this section" refers to subsection c

3.40.4 (B)(4)(d) Exemption

- suggested deletion of (d)- place in guidance manual to show no measurable change might want to add an exemption to allow plant to not upgrade if they show no measurable change
- Commission should be reviewing agency, not the executive director
- some didn't want it deleted
- **Not agreed on**

Page 12

3.40.4 (B)(5)(a) Statements of Policy

- Discussed most of this yesterday, general concerns were that it's not specific, there are no deadlines, etc.
- Yesterday's discussion was to make it firmer
- There should be a general statement of policy under the non-point source section
- Repeat overall statement/goal

3.40.4 (B)(5)(a)(1) Area-wide Plans

- Make clear the relationship between area-wide plan and non-point source control plan
- Take out the examples of state plans
- The non-point source control plan should cover the broader aspects, not just stormwater
- This paragraph is actually referring to NPS section of area-wide plan, not project specific

Page 13

3.40.4 (B)(5)(a)(2)

- Move #2 to requirements section

3.40.4 (B)(5)(a)(3)

- Remove fund as decided yesterday during our discussion
- Trading could be an alternative to the fund

3.40.4 (B)(5)(a)(4)

- Remove first sentence: “Through the application of state non-point..... reviews;”
- Start paragraph with “The states shall ensure that no measurable change.....”
- Delete “ to the extent feasible”
- Add “through existing state programs” after discharges.

Page 14

3.40.4 (B)(5)(b)

- Move #2 to #1, #3 to #2 and #1 to #3 so it’s in logical sequence starting with the goal
- Insert the phrase “to the greatest extent possible” after minimizes
- Under goal, it should cover broader issue of NPS

Page 15

3.40.4 (B)(5)(c)

- change “regulated by” to “subject to”

3.40.4 (B)(5)(d) Exemptions

- take out “may be exempt, at the discretion of the executive director”
- add “are exempt from th requirement of” instead
- change the section referred to from 3.40.4B.5.c to 3.40.4B.5.b

3.40.4 (B)(5)(d)(1)

- this is not really an exemption, it’s a decision by the staff
- only exempt from creating an NPS pollution control plan

Page 16

3.40.4 (B)(5)(d)(2)

- RK wants this removed
- PA wants this investigated
- NY wants this left in
- Find data on water quality and hydraulic retention times
- Find out if NY reservoirs have watershed plans

3.40.4 (B)(5)(d)(3)

- after “areas”, add “within the basin”
- add a new number under 3 (it would be #4) to say “if they don’t do this any longer, require a review”

3.40.4 (B)(5)(d)(4)

- We are keeping this exemption
- Change #4 to #5 because we added a #4 above

3.40.4 (B)(5)(d)(5) Pollutant Trading

- Change #5 to #6 because of addition above
- Check NJ stormwater rule for maintenance requirement in plan
- Decided to make it greater than: 1:1 for point source, 2:1 for non-point
- Add exception to the 2:1, “net” benefit if no harm