Summary of Primary Comments on Proposed 25 Pa. Code Chs. 92 and 92a – NPDES Regulations
City of Allentown, Robert Kerchusky, Manager of Operations

Secondary Treatment Should Not Include Fecal Coliform Instantaneous Maximum Limits

With EPA declaring that daily pathogen requirements are "subject to random variation" and that the "geometric mean is the more relevant value for ensuring that appropriate actions are taken to protect and improve water quality because it is a more reliable measure" (69 Fed Reg. 67224 (2004)), NPDES states are amending their regulations to eliminate daily pathogen requirements. Oddly, the proposal would now establish summer and winter instantaneous maximum limits. The preamble does not discuss the basis for these values or any explanation of the deletion from the current standard allowing exceedance in less than 10% of the samples tested. Nor does the proposal identify why such qualification was not added to the new winter limit. Due to the "random variation," a properly-operated and maintained POTW would not be able to meet the proposed limits 100% of the time. The proposal should not be finalized.

Tertiary Treatment Standards for POTWs Should Not Be Imposed: The proposal to impose TTS should not be promulgated. Municipalities are already facing financial difficulties – there is no basis for imposing advanced "treatment for treatment's sake" with no environmental benefit. Moreover, there is no indication how the TTS for the different pollutant parameters were developed. These values appear to be arbitrary. While we do not believe TTS should be imposed at all, we note the inappropriate overly-broad nature of the proposal in that it would apply: (a) to dischargers not identified as causing the impairment; (b) to situations where the pollutants regulated by TTS have nothing to do with the impairment (*e.g.*, temperature) and would require total nitrogen removal even where the impairment is not caused by nutrients; and (c) to *de minimis* changes to a facility (based upon the definition of "expanding facility or activity"), even for those changes that would not even require DEP approval under proposed § 92a.26.

Such Radical Permit Costs Should Not be Imposed: The proposal would increase the cost of our five-year NPDES permit 3000%, from $500 to $15,000. Such an increase is not reasonable. While the Clean Streams Law provides the Department the authority to impose reasonable permit application fees, it does not provide the authority for such significant increase or annual fees. Even if annual fees were somehow legal, it does not appear that such funds could appropriately go to DEP as opposed to the State treasury.

SSO Prohibition: The proposal would eliminate the authority of DEP to authorize SSO's in NPDES permits even where such authorization is consistent with federal law. The deletion of the exception would purport to preclude any defense for sewer overflows even if due to Hurricane Ivan or another catastrophic storm typically considered "acts of God" and not controllable. In essence, this new provision requires the design of a collection system to withstand any and all storms regardless of intensity. It presumes that DEP has adopted such a design requirement for collection systems when it has not. Surely, municipalities cannot reasonably be expected to design their sewer systems (and treatment plants) to handle all flows associated with such catastrophic events. The existing regulation should be maintained

Schedules of Compliance: Whereas existing § 92.55 would limit permit compliance schedules to three years only if a deadline specified in the CWA has passed, the proposal would limit **all compliance schedules to three years.** If a new requirement is put in a permit (*e.g.*, tertiary treatment for POTWs, new water quality standard, long-term control plans for CSO communities), compliance cannot reasonably be expected to occur in three years in all situations. This concern is particularly exacerbated by the decrease in DEP personnel as compliance would involve DEP action in approving plans (*e.g.*, Act 537 Plans) and issuing permits in addition to the various actions required by the permittee to design, finance, plan, construct and begin operation of a plant upgrade. As such, the regulations would artificially place permittees in noncompliance. Particularly troubling about the proposal is that nowhere in the preamble or elsewhere does the proposal identify this change. The general public has not been provided due process notice of the change or the reasons for the change. The change should not be made.

Summary of Comments of FirstEnergy Generation Corp.

Proposed Rulemaking Chapter 92a National Pollutant Discharge Elimination System (NPDES) Permitting, Monitoring, and Compliance

FirstEnergy supports the Department's efforts to reorganize the existing NPDES regulations to be consistent with the companion Federal regulations in 40 CFR Part 122. However, in reviewing the proposed rulemaking, FirstEnergy has identified several sections that require clarification and reconsideration relative to compliance with these regulations.

1. Confidentiality of Information

As written, it appears that if the Administrator decides that given information is not eligible for protection, it will be made available to the public immediately. FirstEnergy asks that a permittee be given the right to appeal, if the Administrator does not concur that information provided by the permittee is confidential.

2. Treatment Requirements

The identification of the presence or critical habitat of endangered or threatened species in waters of the US does not require any public notice. Imposition of discharge limits to protect endangered species with inadequate warning may require costly equipment and process modifications without the benefit of a cost benefit analysis. FirstEnergy suggests that PADEP include the words, "Prior to the issuance of a new permit or permit renewal," at the beginning of this section. The permit process would then allow the permittee to develop a reasonable, mutually agreeable compliance schedule to conform with the limited discharges.

3. Application for a Permit – Additional Information

The examples of additional information that may be requested by the Department to support a permit application in many instances will require advance planning and budgeting. FirstEnergy requests that the same procedure of negotiating a reasonable compliance schedule for changes in water quality standards, effluent limitations, or other standards and treatment requirements be applicable to the category of additional information.

4. Cooling Water Intakes

In attempting to keep the PA regulations current with the federal regulations, PADEP has addressed the USEPA 316(b) Rule both in this section and in the addition of terms, such as entrainment and impingement to the definitions in this chapter. Unless the effective dates of the Federal 316 (b) rule for existing facilities and the PA Chapter 92a regulations coincide, it appears that permit writers may require permittees to select and install treatment for reducing impingement mortality and/or entrainment prior to the issuance of the revised federal language for the 316(b) rule for existing facilities. FirstEnergy requests clarification on this point.

5. TSS and BOD Limits

FirstEnergy believes that where a federal ELG already specifies a concentration-based limit for TSS/BOD, that federal limit should prevail.

6. Variances

FirstEnergy proposes that this section be deleted because its intent is included in §92a.3. (c).

HALL & ASSOCIATES

Summary of Primary Comments on Proposed 25 Pa. Code Chs. 92 and 92a
Pennsylvania Periphyton Coalition, Gary Cohen (Hall & Associates)

Tertiary Treatment Standards for POTWs Should Not Be Imposed: The proposal to impose TTS should not be promulgated. Municipalities are already facing financial difficulties – there is no basis for imposing advanced "treatment for treatment's sake" with no environmental benefit. Moreover, there is no indication how the TTS for the different pollutant parameters were developed. These values appear to be arbitrary. While we do not believe TTS should be imposed at all, we note the inappropriate overly-broad nature of the proposal in that it would apply: (a) to dischargers not identified as causing the impairment; (b) to situations where the pollutants regulated by TTS have nothing to do with the impairment (*e.g.*, temperature) and would require total nitrogen removal even where the impairment is not caused by nutrients; and (c) to *de minimis* changes to a facility (based upon the definition of "expanding facility or activity"), even for those changes that would not even require DEP approval under proposed § 92a.26.

Notice of Proposed Rulemaking is Insufficient: The preamble informs the pubic that the proposal merely reorganizes the regulations to be consistent with federal regulations and the only new costs are those associated with permit fees. In fact, the regulations would impose **costly** new requirements **beyond that required by federal law** (*e.g.*, deletion of secondary treatment standard adjustments and imposition of tertiary treatment standards ("TTS")). Moreover, the preamble fails to provide one iota of information even identifying the change or the underlying rationale for a number of changes that would have significant impact (*e.g.*, limiting all compliance schedules to three years, deletion of fecal coliform exceedances being allowed in 10% of the samples) or that are otherwise proposed. Failure to provide such information does not meet applicable due process requirements which require, at a minimum, a brief explanation of the proposed regulation or change. In addition, the proposal must also have a reasonable estimate of economic impacts – something it fails to do.

Schedules of Compliance Should Not be Limited to Three Years: Whereas existing § 92.55 would limit permit compliance schedules to three years only if a deadline specified in the CWA has passed, the proposal would limit all compliance schedules to three years. If a new requirement is put in a permit (*e.g.*, tertiary treatment for POTWs, new water quality standard, long-term control plans for CSO communities), compliance cannot reasonably be expected to occur in three years in all situations. This concern is particularly exacerbated by the decrease in DEP personnel as compliance would involve DEP action in approving plans (*e.g.*, Act 537 Plans) and issuing permits in addition to the various actions required by the permittee to design, finance, plan, construct and begin operation of a plant upgrade. As such, the regulations would artificially place permittees in noncompliance. Particularly troubling about the proposal is that nowhere in the preamble or elsewhere does the proposal identify this change. The general public has not been provided due process notice of the change or the reasons for the change. The change should not be made.

EPA Approval of State Regulations Is Required: It has been thirty-two years since Pennsylvania's NPDES program was approved by EPA pursuant to 40 C.F.R. Part 123. Since that time there have been numerous changes to EPA and Pennsylvania's NPDES rules. The preamble to the proposal readily acknowledges that "[s]ome of these provisions are needed to ensure continued federal approval of Pennsylvania's program." Part 123 requires that significant changes must go through the State program modification process. It is imperative that the State follow such federally-mandated procedures before modifying its regulations. The proposed changes are significant and Part 123 procedures must be followed.

ONE PAGE SUMMARY OF COMMENTS
Randall G. Hurst

There are too many technical and legal errors in the proposed regulations to even list on one page. However, there are several important matters that I hope the Board will seriously consider, which apply to many of my individual comments:

1. The Board should understand that t**his is the most radical rule change the Department has proposed in over a decade.** The proposed regulations constitute sweeping and universal changes to long-standing Federal discharge requirements. They radically re-write the standards under which municipal and industrial treatment facilities operate. The Secondary Treatment regulations (40 CFR Part 133) have been gutted and a "one size fits all" approach has been substituted for the thoughtful, technically accurate, and flexible EPA rules. The Federal Effluent Limits Guidelines are to be generally ignored and arbitrary BOD and TSS limits instituted in their place. New terms with no Federal counterpart are invented and ambiguity is rampant, inviting confusion and litigation to figure out what these new rules mean. Compliance costs will be enormous, noncompliance rates will increase, and, in spite of all of this, there will be NO change in environmental protection (the existing rules are working just fine). These changes are related not to environmental protection, but to simplifying DEP's regulatory program by imposing arbitrary new standards across the board, eliminating the well-researched EPA standards that have served us well for over 40 years. Statements in the Preamble that the rules are merely a recodification of existing rules and propose no substantive changes are false.

2. Most important, in light of the magnitude of the changes, is the almost complete lack of documentation, in the Preamble or any other place, regarding the basis for making these new rules The ONLY "justification" for these substantive changes is the unsupported statement that the federal standards have mysteriously become "outdated." Not a single study, scholarly paper, magazine article, or letter to the editor is cited in support of this astounding statement. If municipalities are to spend millions, and hundreds of industries are to be shut down, the Department should at least tell us why.

3. Arbitrary new zero discharge standards will be imposed on every municipal and industrial wastewater facility in the state. No timetable is provided to meet these radical new standards, **which cannot be met using installed technology**. DEP's comment on all of this? "an unqualified prohibition on most of these listed conditions is appropriate." Since environmental protection is not the issue, what is this statement based on?

4. Even worse, the prohibitions and other changes (e.g., the strange and arbitrary "tertiary treatment standards") will cumulative cost hundreds of millions of dollars to address. Meeting a zero discharge standard for turbidity, oil and grease, or color, will require installation of state-of-the art equipment costing hundreds of thousands of dollars to construct and more each year to operate at every treatment plant in the state. DEP's comment? "the proposed rulemaking does not include any new broad-based treatment requirements . . . . The compliance costs of the proposed rulemaking for most facilities is [*sic*] limited to the revised application and annual fees." Nothing could be further from the truth! *The attempt at concealment of the enormous cost of the most radical and far-reaching treatment requirements in forty years is inexcusable and an affront to the Board and the regulated community, not to mention a violation of the law..*

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Department of Environmental Protection Proposed Amendment of the National Pollutant Discharge Elimination System (NPDES) Permitting, Monitoring and Compliance Regulations [25 PA. CODE CHS. 92 and 92a]

Issued: 40 Pa.B. 847 Saturday, February 13, 2010

Comment Deadline: March 15, 2010

1. **Summary: Although the stated intents for the Chapter 92 revisions are commendable; the changes will:**
   a. **Create more confusion or the opposite effect of clarity in many cases,**
   b. **Add significant and in some cases dramatic changes and associated costs to the public for new and unjustified wastewater treatment requirements.**

2. **Stated Intent:**
   a. *"The primary goal of the proposed rulemaking is to reorganize the existing NPDES regulations outlined in Chapter 92 so that the organization of the regulations is consistent with the organization of the companion Federal regulations ..."*
   b. *Every effort has been made to revert to the baseline Federal requirements except where additional or more stringent requirements in Chapter 92 were clear, well understood, and have an appropriate basis in The Clean Streams Law or other appropriate basis.*
   c. *"... the proposed rulemaking does not include any new broad-based treatment requirements that would apply to most facilities."*
   d. *"...so that the total additional cost to the regulated community will be approximately $4.25 million per year*

3. **Consequences:**
   a. **Federal "variance" provisions have been dropped**
   b. **Requires tertiary treatment at significant costs *even on non- HQ or EV streams or impaired waters -see 92a (a)(1) after the "or"***
   c. **New broad based revised and/or additional standards will apply to many POTW as they increase hydraulic capacity to address wet weather issues or increase their capacity in the future, which is inevitable costing hundreds of millions**
   d. **Lack of scientific or economic justifications for many of the significant changes that will affect costs and compliance.**

SUMMARY OF MAJOR COMMENTS SUBMITTED BY THE BOROUGH OF LANSDALE TO PROPOSED AMENDMENTS TO NPDES RULES (CHAPTER 92a)
March 15, 2010

Submitted by Counsel for Lansdale
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Note that additional issues are raised in Lansdale's full set of comments.

General Comments:

Inadequate opportunity to comment and inadequate preamble descriptions of changes/impacts provided given the significant changes. Many sections now more stringent than federal law.

Definitions:

"Expanding Facility or Activity" is vague. It should be defined as that which will require a permit amendment or physical construction of expanded facilities.
"Immediate" should be defined as no longer than 8 hours.
"POTW" should include only sewers owned by the POTW and not the municipality itself.
"Significant Biological Treatment" is vague and should be eliminated.

Other Comments:

§92a.3 incorporation of federal regulations language is vague and confusing.
§92a.26 contains many vague new terms (e.g., "may result in ..", "have the potential to").
§92a.28 and §92a.62 contain significantly higher fees that are arbitrary, without precedent or authority and will cause hardship. Lansdale will pay as much as the City of Philadelphia.
§92a.41 contains an absolute ban on floating materials, oil, grease, etc. that will result in immediate and consistent violations by virtually all WWTPs.
§92a.47 contains significant changes to secondary treatment and new tertiary treatment tied to vague triggers, conflicts with other provisions of law/policies (e.g. blending/maximizing flow through plants during high flow), is more stringent than federal requirements, and will result in significant costs, particularly if applicability to CSOs is not clarified.
§92a.51 –schedules of compliance should be allowed beyond 3 years, based on complexity/costs.
§92a.54 – denial of general permits should be immediately appealable.
§92a.61 provides unfettered discretion to impose monitoring based on vague triggers and imposes new monitoring for influent that may be extremely costly to implement.
§92a75 – the provision eliminating the administrative extension of most permits based on factors beyond the permittees' control must be eliminated. It is also inconsistent with §92a7.

One Page Summary of Primary Comments on Proposed 25 Pa. Code Chs. 92 and 92a – NPDES Regulations
Milton Regional Sewer Authority (MRSA), George Myers, Superintendent

Notice of Proposed Rulemaking is Insufficient: The preamble informs the pubic that the proposal merely reorganizes the regulations to be consistent with federal regulations and the only new costs are those associated with permit fees. In fact, the regulations would impose **costly** new requirements **beyond that required by federal law** (*e.g.*, deletion of secondary treatment standard adjustments and imposition of tertiary treatment standards ("TTS")). Moreover, the preamble fails to provide one iota of information even identifying the change or the underlying rationale for a number of changes that would have significant impact (*e.g.*, limiting all compliance schedules to three years, deletion of fecal coliform exceedances being allowed in 10% of the samples) or that are otherwise proposed (*e.g.*, precluding variances based upon any EPA regulation enacted after November 18, 2000). Failure to provide such information does not meet applicable due process requirements which require, at a minimum, a brief explanation of the proposed regulation or change. In addition, the proposal must also have a reasonable estimate of economic impacts – something it fails to do.

Secondary Treatment Adjustments Should Not Be Eliminated and Industrial Discharges Should Not Have Their Technology-Based Limits Artificially Restricted: The proposal would eliminate adjustments to secondary treatment standards ("STS") provided for by federal regulations at 40 CFR Part 133 to address atypical situations. This includes adjustment to POTW BOD and TSS effluent limitations to proportionately apply industrial technology-based standards when more than 10% of the POTW's design flow or loading is from a particular industrial category. The EHB (In *Municipal Authority of Union Township v. DEP* (2002)) declared illegal the very thing the EQB proposes -- "by failing to make an adjustment to account for the mixed nature of the wastestream, the Department's action effectively imposes a treatment standard for sewage on industrial wastewater" and "has taken the technology that must be dedicated to the treatment of one type of wastestream and imposed it on a different wastestream that has its own technological requirements." The assertion in the preamble that these adjustments are "outdated" and that "any competent sewage treatment operation can readily achieve STS" is unsubstantiated. If ConAgra, a major industrial user comprising more than 10% of MRSA's flow, were to increase its production and discharge a larger percentage of MRSA's flow (*e.g.*, 90%) MRSA could not reasonably be expected to meet traditional STS. Elsewhere in the proposal it is recognized that the industry, if treating the same wastewater, could, at a minimum, have monthly average limits of 60 mg/l yet MRSA would now be required to treat the same wastestream to 30 mg/l. The existing regulations with the federal adjustments must be maintained.

The proposal to limit the BOD and TSS technology-based limits for industrial facilities is similarly inappropriate. EPA undertakes extensive analyses in establishing effluent guidelines. The proposal provides no underlying analysis but merely asserts that EPA guidelines are "outdated," even those that have recently been promulgated. If water quality is a concern, then water quality-based effluent limitations should be imposed. Technology-based standards should not be artificially limited. Such approach would impede the ability of industry to increase production and provide much-needed jobs to our communities.

Tertiary Treatment Standards for POTWs Should Not Be Imposed: The proposal to impose TTS for discharges that affect surface waters that are not achieving water quality standards should not be promulgated. Municipalities are already facing financial difficulties – there is no basis for imposing advanced "treatment for treatment's sake" with no environmental benefit. Moreover, there is no indication how the TTS for the different pollutant parameters were developed. These values appear to be arbitrary. While we do not believe TTS should be imposed at all, we also note the inappropriate overly-broad nature of the proposal in that it: (a) would apply to dischargers not identified as causing the impairment; (b) would apply to situations where the pollutants regulated by TTS have nothing to do with the impairment (*e.g.*, temperature) and would require total nitrogen removal even where the impairment is not caused by nutrients; and (c) would apply to *de minimis* changes to a facility (based upon the definition of "expanding facility or activity"), even for those changes that would not even require DEP approval under proposed §92a.26. Furthermore, as the Chesapeake Bay is listed as impaired, it appears that the TTS might apply to all POTWs in the Chesapeake Bay Program. This would significantly impact the trading program and essentially eliminate the trading cost-savings DEP has been espousing to State legislators and the regulated community.

Summary of Comments
of Citizens for Pennsylvania's Future (PennFuture)
Proposed Rulemaking, 25 Pa. Code Chapters 92 and 92a
National Pollutant Discharge Elimination System Permitting, Monitoring and Compliance

- The proposed regulations would appropriately require the regulated entities to pay for the Commonwealth's share of the costs of administering the NPDES program and would equitably apportion the permit application and annual fees, but the Board should clarify that discharges of treated mine drainage are "discharges of industrial waste" for the purposes of applying the fee schedules.

- The proposed regulations would appropriately prohibit the use of both the "no exposure" conditional permit exclusion and general permits for discharges to High Quality Waters or Exceptional Value Waters.

- The definition of "surface waters" must match the breadth of the surface waters included in the statutory definition of "Waters of the Commonwealth," and the definitions of several other terms in proposed Section 92a.2 should be clarified.

- Sections 92a.3(a) and (c) of the proposed regulations should be revised to eliminate the ambiguity they create over which regulatory provisions govern.

- Proposed Section 92a.8 governing confidentiality of information is inconsistent with both the federal NPDES regulations and Section 607 of The Clean Streams Law.

- Proposed Section 92a.21(a) improperly purports to delegate to PADEP the power to un-incorporate federal regulations that this Board has incorporated by reference.

- The Board may not create permits-by-rule for single residence sewage treatment plants and the application of pesticides because the federal NPDES program does not authorize the use of permits-by-rule.

- Proposed Section 92a.26(a) should be revised to provide that any new or increased discharge or change in wastestream that requires advance approval must be approved through the issuance or revision of an NPDES permit.

- Proposed Section 92a.41(b) must be rewritten so that it satisfies all of the reporting requirements of 40 C.F.R. § 122.41(l)(6).

- Proposed Section 92a.48(a)(3) should be revised to make clear that it applies where the relevant effluent limitation guidelines lack limitations for a specific parameter(s) of concern.

- Section 92a.51 of the proposed regulations governing schedules of compliance must either incorporate the relevant portions of 40 C.F.R. § 122.47 by reference or be revised so that it is consistent with § 122.47.

March 12, 2010

PENNSYLVANIA MUNICIPAL AUTHORITIES ASSOCIATION

SUMMARY OF COMMENTS ON PROPOSED RULEMAKING
25 PA CODE CHAPTER 92a

1. Downplaying of Potential Major Impacts of the Proposed Rulemaking

In various sections of the preamble, the Department has portrayed these changes as having minimal impact on the regulated community. To the contrary, certain provisions of the proposed regulation (particularly section 92a.47 Sewage Permit) could pose major technical and economic challenges, and could create major compliance and enforcement problems, for many public and privately-owned sewage treatment systems across the state. For example:

- The Department has arbitrarily decided to drop key "variance" provisions to EPA's Secondary Treatment regulation, 40 CFR Part 133 that allow for modification of effluent requirements based on: a) systems with combined sewers; b) systems with certain industrial waste loadings; c) systems using waste stabilization ponds; d) systems with less concentrated influent wastewater; and e) treatment equivalent to secondary treatment.
- The Department has also arbitrarily created a set of "tertiary treatment" effluent requirements for some situations that would be, in some respects, even more stringent than what is being required of significant sewage dischargers in the Chesapeake Bay watershed. Imposing these requirements could also hamper the Department's efforts to implement a Bay nutrient reduction trading program.
- It is unclear as to why a "tertiary treatment" standard is even needed, given the fact that the Department has comprehensive requirements for developing effluent limitations stricter than "secondary treatment" in order to prevent impairment of receiving streams.

The preamble discussion of these changes is generally superficial and there is no indication in the preamble that the Department has actually conducted a detailed legal, technical and economical analysis of these potential consequences in order to support these proposed changes.

2. The Proposed Fee Schedules Appear to be Contrary to State Law and Fundamentally Flawed

Pennsylvania's Clean Streams Law simply states that:

> *SECTION 6. APPLICATION AND PERMIT FEES*
> *The department is hereby authorized to charge and collect from persons and municipalities in accordance with its rules and regulations reasonable filing fees for applications filed and for permits issued.*

This is the only provision in the law authorizing the Department to impose fees for sewage, industrial wastewater and (possibly) stormwater permitting. "Reasonable" is not defined, but the law has always intended that they be used to help offset, not cover the entire cost, of permit application review and permit issuance. The Law does not appear to authorize imposition of annual fees to help offset the cost of monitoring, compliance evaluation, administration and training and enforcement activities associated with the NPDES program.

In addition, the Department has not presented evidence that the majority of permittees will receive any benefits in return for paying these annual fees.

3. Several of the Proposed Provisions (Including Some Definitions) are Unclear or Otherwise Potentially Problematic for the Department and/or Regulated Entities

These are addressed in our detailed comments.

4. We suggest that the Department go through an Advanced Notice of Final Rulemaking process before finalizing this regulation update.

Williamsport Sanitary Authority

Summary of Comments on 25 PA Code, Chapter 92a proposed regulations which appeared in the PA Bulletin on February 13, 2010

The Williamsport Sanitary Authority wholeheartedly supports the comments on this matter submitted by the Pennsylvania Municipal Authorities Association. The proposed Chapter 92a changes are difficult to compare with the current regulations and bring with them a high level of confusion, especially with regard to the applicability of federal regulations (particularly 40 CFR 122 and 40 CFR 133) concerning secondary treatment definitions, standards and adjustments in NPDES permit effluent limitations formerly incorporated by reference. The proposed changes are so potentially different than those currently in force that an additional extension of time is required for the regulated community to fully review and discuss with the Department its interpretations and justifications for the changes. It is recommended that the Department publish any changes to these proposed regulations as advance notice of final rulemaking in order to allow for sufficient public and stakeholder input prior to adoption.

Contrary to the preamble in the proposed regulations stating that the changes will have "No fiscal impact," the WSA believes the proposed changes if adopted as published could have a significant adverse economic impact on our community, including serious ramifications to important industrial customers which we serve. The WSA and its tributary municipalities are now in the latter stages of design, construction and implementation of treatment facility and sewer system improvements costing over $150 million to simultaneously meet Chesapeake Bay nutrient removal initiatives and wet weather combined sewer overflow regulatory standards and are experiencing the subsequent staggering user rate increases. There are numerous changes in the proposed regulations which could have the affect of significantly changing the NPDES permit conditions and current Department policies on which our facility improvements have been designed. Some of these changes could conservatively cost the WSA over $20 million to construct additional treatment facility improvements, experience significant operating cost increases, and cause major industrial customers to implement additional redundant costly pretreatment.

The elimination of incorporating federal Clean Water Act 40 CFR 133 regulations by reference into the new minimum secondary treatment standards at § 92a.47 will have significant adverse impacts on user rates and costs to indirect industrial dischargers to municipal plants if provisions such as the high strength industrial effluent limitation adjustments provided by federal regulations are not allowed. Elimination of high strength industrial adjustments by regulation or policy will over the long term, result in more, not fewer permits for the Department to write, administer, monitor and enforce (provided the industries don't move to another state which does allow the adjustments).

The proposed § 92a.47(b) requirement for tertiary treatment is arbitrary, not requiring its application to be supported by scientific or economic analysis, and could result in significantly more costly treatment for dischargers on streams where the "impairment" will not be improved by the increased costly treatment. This section also has the potential to be in conflict with the proposed Chapter 96 regulations and to wreak havoc on the planning and development of municipal plant facility improvements based on the Chesapeake Bay Compliance Strategy such as those owned by the WSA.

There are changes in the proposed § 92a.47(a)(4) fecal coliform treatment standard, eliminating the allowance for no more than 10% of the samples over1000/100 mL in a summer month. This change is not supported by scientific, statistical or operational justification and will have the practical effect of having many dischargers over-chlorinate their effluent and generate and discharge additional toxic disinfection byproducts.