

Citizens Advisory Council

to the Department of Environmental Protection

P.O. Box 8459 • Rachel Carson State Office Building

Harrisburg, PA 17105-8459 • 717-787-4527 • Fax 717-772-2291

Please Note: Our New Fax Number is 717-787-2878

September 28, 2001

The Honorable David E. Hess
Secretary
Department of Environmental Protection
16th Floor Rachel Carson State Office Building
Harrisburg, PA 17105

Dear Secretary Hess:

For many years, the Council has assisted the Department of Environmental Protection with the development and modification of the anti-degradation program. Most recently, we have provided comments through our members' participation on the Environmental Quality Board, the expanded Water Resources Advisory Committee, and through our testimony at the August 1, 2001 hearing on the draft Water Quality Anti-Degradation Implementation Guidance (Guidance).

In August, the Council postponed developing its own comments and recommendations on the Guidance until we reviewed the information received during the formal public participation process. We appreciate the opportunity to review the public comments that the Department received. We used these comments to inform our own deliberations, and to make recommendations on how the department should respond to the divergent viewpoints.

Based on our review of comments and our own discussions, the Council wishes to emphasize the following major points:

1. Council supported the regulation as published. The newly implemented process is an improvement over both the old program and the proposed regulations. The draft Guidance generally reflects the regulations as promulgated by the EQB. It, too, is an improvement over the last version in that it more clearly describes certain aspects of the process.
2. Non-point source pollution (NPS) is the primary cause of water quality impairment throughout the Commonwealth. Yet this type of pollution is handled inconsistently and inadequately throughout the Guidance. DEP has a legal obligation to assure that controls are implemented, and must take affirmative measures to this end.

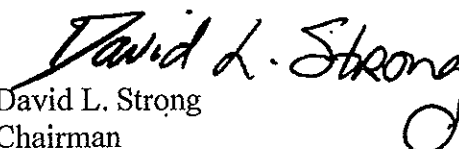
3. The water quality criteria in the antidegradation program must be used to protect all categories of surface waters, not just certain categories. Nondegradation of our surface waters is and should remain the overall goal. We need to protect and enhance the biological integrity of all stream systems; therefore, DEP should never allow the degradation of existing uses, including threatened and endangered species and their habitats.
4. DEP should gather and/or verify the accuracy of stream data when making existing use designations.
5. It is unclear to Council which species are of "Unique Ecological Significance," and whether these species are on a state or national list. This should be clarified.
6. The Guidance mentions a public notification pilot, which generated a significant amount of comment, both pro and con. It is not clear how the pilot is defined and should be clarified as to the number of streams involved, its duration, etc. Council supports broader notification of all affected parties (not just property owners) of actions affecting either stream quality or property rights. Council supports the pilot if its intent is to promote more effective and broader notification of affected parties and particularly the use of new and innovative mechanisms to more effectively notify people. We caution against requiring individual notification, because if individual notice is required, then not getting through to a single property owner could invalidate either a permit or a redesignation. Instead, the Department should test new means such as the use of its E-Notice function, as well as radio, cable, newspaper advertisements and municipal and county mechanisms to alert those interested in a pending action.
7. We support protecting existing uses during the stream redesignation process. Based on the comments, more information is needed on how this existing use protection applies to CWF and WWF streams in degradation situations. Additionally, once a stream's existing use has been determined or changed, notice should then be given in a clear manner, and this should be done prior to any discharge approvals.
8. There appear to be valid concerns in both directions about the department's application of scoring criteria. The Guidance should not be more stringent than the regulations; neither should it allow for the dilution of the pool of reference streams.
9. Council agrees with the need to provide a description of public participation opportunities. We suggest that the Department make Chapter 12 into a checklist of what must be done at each stage, combined with fact sheets that explain the opportunities in each phase. These fact sheets should then accompany the notifications regarding either a redesignation or a permit action.
10. The regulatory impact of water withdrawals is important, because we must maintain a streams' ecological integrity (based on sound science) during

withdrawal situations. Neither the Guidance nor the regulations control the withdrawal itself, but they consider the impact of the withdrawal. This recognizes that activities other than discharges affect water quality and stream use, and must be included in implementing the antidegradation program.

11. The difficulties associated with Social and Economic Justification still exist. The Department must acquire the necessary technical skills to demonstrate that the 'benefits of the proposal clearly outweigh the environmental impacts of lower water quality.' For example, the evaluation of the local, intrastate and interstate ramifications of a new power plant could be extraordinarily difficult without sufficient expertise.
12. Providing a choice of three cost effectiveness methodologies may lead to conflicting results. DEP may be putting itself in a no-win position as an applicant and others choose different methodologies to support their cases.
13. We advocate consistency with the Great Lakes Initiative position of maintaining ecological integrity based on good science.
14. The Guidance omits grandfathering of existing discharges in redesignated watersheds. Does the Department have an existing policy on this issue, or was this an oversight?
15. Although the Department has created the Guidance to clarify the details of the antidegradation program, the Council suspects that many citizens will still find the program difficult to understand. For example, some of our members who are familiar with many of these issues still found the Guidance difficult to assimilate. To make the program more accessible, the Department should develop fact sheets and flowcharts that complement various sections of the manual.
16. Finally, we note that some of the comments received by the Department are attempts to reopen the debate that occurred during the regulatory process. We advise the Department to move beyond that debate, make the necessary editing and technical changes, and begin implementation.

Again, we appreciate the Department's willingness to share all of the public comments with us. The Council also commends the Department for the extensive public participation process associated with the development of the Guidance.

Sincerely,


David L. Strong
Chairman