



The New York Water Environment Association, Inc.
The Water Quality Management Professionals

525 Plum Street • Suite 102
Syracuse, New York 13204
(315) 422-7811 • Fax: 422-3851
www.nywea.org • e-mail: pcr@nywea.org

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Senator Thomas O'Mara
NY State Senate, Legislative Office Building, Room 848
Albany, NY 12247

RE: **Coliform Bill No. S5132 – An Act to amend the ECL, in relation to the water quality standard for coliform – NYWEA's Comments**

Dear Senator O'Mara,

The New York Water Environment Association (NYWEA) is a statewide nonprofit organization of 2,500 water professionals dedicated to the preservation, protection and enhancement of New York's water resources. NYWEA has reviewed proposed Bill S6986 and offers the following comments for your consideration.

NYWEA commends you for proposing the Bill reaffirming the Department of Environmental Conservation's (DEC) regulatory authority to adopt water quality standards by introducing them in regulations rather than in the Environmental Conservation Law (ECL) to ensure protection of the public use and benefit of State's waters. We agree that this is the correct approach allowing development of scientifically defensible and protective water quality standards and effluent limits which is one of the key principles of both the Clean Water Act and the Environmental Conservation Law. The regulatory/rulemaking process provides opportunity for public comments and incorporates regulatory impact analysis which includes among others factors, economic impact of the proposed new rule.

We also agree that the proposed Bill would provide greater flexibility for NYS DEC to update water quality standards for pathogens or pathogen indicators as appropriate.

NYWEA, however, has three comments regarding the newly proposed language in Subparagraph 1 of paragraph c of subdivision 5 of section 17-0301 of the ECL:

1. The proposed language may be misinterpreted as requiring those municipalities that currently conduct seasonal or no disinfection based on their receiving water classification to perform year-round disinfection. Such a requirement would result in

significant unfunded capital and O&M costs for all of such municipalities and their respective treatment facilities.

Year-round disinfection of treatment plant effluent is usually required to protect shellfish areas and waters that serve as source of drinking water.¹ Seasonal disinfection of treatment plant effluent (e.g., from May 1 to October 1) is usually required to protect the sanitary quality of bathing waters and/or support swimmable goal while minimizing adverse impact on aquatic life associated with disinfection during the balance of the year. Disinfection is usually not recommended (and at times not allowed without subsequent removal of some disinfection by-products) for discharges to those fresh and saline waters for which best usage is fishing, unless there is a demonstrated public health need. The new language of the Bill may be misinterpreted as requiring a year-round disinfection for all designated water uses – except for commercial shellfishing in tidal salt waters.

Having discussed the matter with the Department, NYWEA recognizes that the Bill requires “adequate” disinfection, along with secondary treatment, specifically to ensure protection of the population that could be exposed to the surface waters and, therefore, seasonal or no disinfection in those areas where it is determined by the Department to be sufficiently protective is expected to remain unchanged. To avoid any misinterpretation, NYWEA recommends that a clarifying language be added to the Bill: **“The Department will continue to make a determination on disinfection requirements for individual wastewater treatment plants in accordance with the Department’s Technical Guidance documents.”**

2. The proposed language may require municipalities to meet the current water quality standards for coliform in the effluent (end-of-pipe) without appropriate scientifically-based consideration for site specific factors.

NYWEA recognizes that the current language of the ECL technically contains the same numerical requirements for coliform as both water quality standards and effluent limitations; however the consideration for site-specific factors such as a mixing zone² should still remain an integral part of the regulatory and permitting process. The proposed language requiring that “...*the water quality standards for coliform that apply to the receiving water are also met in the effluent*” can be interpreted as removing consideration of site-specific factors when DEC is deriving effluent limitations for coliform.

NYWEA, therefore, recommends that the phrase “in the effluent” be either removed or amended as follows (in bold):

“...that the water quality standards for coliform that apply to the receiving water are also met in the effluent **taking into account site-specific conditions.**”

¹ Year-round disinfection is currently also required in significant part of the Interstate Environmental Commission’s jurisdiction and portion of the Delaware River Basin Commission’s jurisdiction.

² A mixing zone is the portion of the receiving water body where an effluent discharge undergoes initial dilution and where the concentration of the discharged material is progressively diluted by the receiving water. Water quality criteria must be met at the edge of a mixing zone.

3. As pointed out in Comment #1, the Bill as currently written would result in significant unfunded capital and O&M costs to all wastewater treatment plants that currently conduct seasonal or no disinfection based on their receiving waters classification, in addition it may lead to unnecessary indirect negative environmental effects.

In addition to unfunded capital and O&M costs associated with year-round effluent disinfection requirements for the aforementioned municipalities, there would be significant increase in energy use costs to address such requirements. Needless to say, such increase in energy use would result in increase of the carbon footprint for wastewater treatment facilities, which would be contrary to the efforts of such municipalities to slow down the impact of climate change.

Therefore, if the comments and changes proposed by NYWEA are not addressed, the “**Local Impact**” section of the memo supporting the Bill should be amended to inform the members of the Legislature of the significant unfunded cost impact and the potentially significant indirect environmental impacts due to significant increases in energy usage for a number of NYS municipalities resulting from the proposed Bill.

Because we are currently pursuing the discussion with the NYS DEC to discuss changes in the language of the proposed Bill to address our comments, we are asking you, as the Bill sponsor and the Chair of the Senate Environmental Conservation Committee, to put an informal “hold” on this Bill while NYWEA is working with the Department on clarifying the language of the Bill that would be mutually acceptable to NYS DEC and NYWEA. We will contact your office as soon as we reach consensus with the Department.

In the meantime, if you would like to discuss our comments on the proposed Bill further please contact our Executive Director Patricia Cerro-Reehil at 315-422-7811.

Respectfully,



Michael Garland, P.E.
President

/ Joe Martens, Commissioner, NYSDEC
James Tierney, Assistant Commissioner, NYSDEC
Joseph DiMura, NYS DEC
Julie Tighe, NYS DEC
NYWEA Board & Utility Executives Committee
NYWEA Government Affairs Committee