



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

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May 20, 2014

Senator Mark Grisanti
NY State Senate, Legislative Office Building, Room 609
Albany, NY 12247

RE: Coliform Bill No. S6986 – An Act to amend the ECL, in relation to the water quality standard for coliform – NYWEA’s Comments

Dear Senator Grisanti,

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 (ECL). 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 two 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 disinfection in order to protect their uses to perform year-round disinfection.

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. The new language of the Bill may be misinterpreted as requiring a year-round disinfection for all 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 disinfection in those areas where it is determined by the Department to be sufficiently protective will remain unchanged. NYWEA appreciates this explanation, but recommends that a clarifying language be added to the memo supporting the Bill stating that **“The Department will continue to make a determination on whether year-round or seasonal disinfection should be used by individual wastewater treatment plants in accordance with the Department’s existing Technical Guidance documents.”**

2. The proposed language may require municipalities to meet new water quality standard – based on new EPA 2012 recreational criteria – as the effluent (end-of-pipe) limit without appropriate scientifically based consideration for a mixing zone.

NYWEA recognizes that the current language of the ECL contains the same numerical requirements for coliform as both water quality standard and effluent limitation. Since coliform has been extensively studied and monitored by the Department and environmental professionals, this approach is well substantiated. However, should the Department decide to adopt enterococcus (one of the two criteria recommended by EPA) as its new water quality standard, there is currently not sufficient information to justify including the same numerical requirement for enterococcus as an effluent limitation without appropriate scientific analysis and water quality monitoring and modeling. Consistent with the intent of the Bill, new effluent limitations should be introduced through the appropriate regulatory process based on appropriate scientific analyses. Since enterococcus has been studied as water quality standard but not sufficiently studied as the effluent parameter, mandating a specific numerical requirement for enterococcus in the effluent without appropriate

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.

analyses which should include consideration for a mixing zone,² is premature and may potentially become an unfunded mandate for the municipalities.

Therefore, NYWEA proposes the following amendment to the proposed language of Subparagraph 1 of the Bill (in bold):

“Surface waters used for bathing, fishing, boating, and any other usages except shellfishing for market purposes in tidal salt waters receiving treated sewage discharges which pass through residential communities where there is a potential exposure of population to the surface waters shall be protected by the requirement that all effluent from sewage treatment plants that are required to provide a minimum of effective secondary treatment shall be adequately disinfected prior to discharge into the surface waters such that the water quality standards for pathogens or indicators for pathogens that apply to the receiving water are **achieved through application of specific effluent limitations consistent with permitting procedures developed by the Department**”.

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,



Steven Fangmann, P.E.
President

cc: Commissioner Joe Martens, NYS DEC
Assistant Commissioner James Tierney, NYS DEC
Joseph DiMura, NYS DEC
NYWEA Board
NYWEA Government Affairs Committee
NYWEA Utility Executives Committee

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.