



LEAGUE OF WOMEN VOTERS®
OF NEW JERSEY

Gary J. Brower, Esq.
ATTN: DEP Docket Number 08-15-09
Department of Environmental Protection
Office of Legal Affairs
Mail Code 401-04L P. O. Box 402
401 East State Street, 7th Floor
Trenton, New Jersey 08625-0402

December 28, 2015

Re: DEP Docket Number 08-15-09

Dear Mr. Brower,

The League of Women Voters of New Jersey is guided by a principle of active and informed participation by citizens in government. We are a non-partisan, non-profit public interest organization with a longstanding position in support of protecting our natural resources and our drinking water.

We oppose the new Capacity Analysis Plan (CAP) regulations, one of the objectives of which is to prohibit overloads that violate permit discharge limits for sewage treatment plants. Moving the CAP trigger from 80% of permitted flow based on a 3 month consecutive average to 100% of permitted flow over 12 consecutive months is a major change. It appears certain this change increases the likelihood of degrading our water quality.

Specifically, redefining flow in the new CAP rules as the average for 12, not 3, consecutive months will smooth out peak months. A 3 month average coupled with an 80% trigger captures peak flow exceedances that then trigger a Capacity Analysis Report (CAR) faster than using the proposed 12 month average coupled with a 100% of permitted flow trigger. This change will have particularly egregious impact for systems subject to seasonal peak flows. The existing regulations at N.J.A.C.7:14A – 1.2 require that “the seasonal peak flow period” shall be used in determining “actual flow.” Actual flow is the three month average which, along with expected flows from approved but as yet unoperational connections, comprises “committed flow.” Shifting to a 12 month average and 100% of permitted flow trigger (which smooths and masks the seasonal peaks) effectively insulates systems subject to seasonal flows from scrutiny and reporting even though they are operating at flows well above the permitted value for a good part of the year.

More generally, a consequence is that 129 of 189 facilities studied by the DEP trigger the CAP rule

requirements under the present rules - but only 34 out of 189 facilities will trigger the CAP requirements in the proposed rules. Furthermore, the proposed regulations allow 180 days from the last month of the proposed 12 month period for submitting a report followed by the additional time it will take to review, approve, and implement a plan. During this period, the facility will by definition, using a 100% trigger, be discharging at levels above its permit limits.

The DEP explains, even when a treatment plant is operating at 100% of its permitted flow, the plant “can” operate without violating effluent limits, because plants are “often” designed to handle flows of up to two and a half times their average permitted flow. The DEP's optimism is predicated on their unpublished study of treatment plants that found only a “weak correlation” between the percentage of flow and violations in water quality. This flow study should have been published and sufficient time afforded for analysis and review. Rather, the only explanation the DEP is giving the public to justify such a consequential change in policy is a summary in the preamble of the proposed new CAP rules.

In sum, these proposed rule changes are enabled by the conclusions and assumptions of a yet to be published DEP flow study. Only after the DEP releases this study for peer review and public discourse, can changes in the CAP regulations be properly evaluated.

Sincerely,

A handwritten signature in black ink that reads "Nancy K. Hedinger". The signature is written in a cursive, flowing style.

Nancy Hedinger
President
League of Women Voters of New Jersey
204 West State Street
Trenton, New Jersey 08608