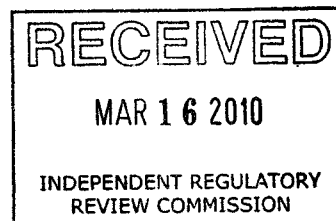


2819

March 15, 2010

Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 171015-8477



Dear Board Members:

The following comments on the proposed regulations in Chapter 92a National Pollutant Discharge Elimination System (NPDES) Permitting, Monitoring, and Compliance (PA Bulletin, Vol. 40, No.7, 2/13/2010) are being submitted on behalf of FirstEnergy Generation Corp. (FirstEnergy).

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. All of the benefits of the reorganization identified in the preamble are appreciated by FirstEnergy. The package clearly states, in multiple sections, that the regulations in 40 CFR Part 122 are incorporated by reference. The differences for PA are also identified. However, in reviewing the proposed rulemaking, FirstEnergy has identified several sections that require clarification and reconsideration relative to compliance with these regulations.

§ 92a.8. Confidentially of Information

(a) The provisions of 40 CFR 122.7 (b) (relating to confidentially of information) are incorporated by reference.

The first word in the title of this section is misspelled. It should be Confidentiality.

(b) The Department may protect any information, other than effluent data, contained in NPDES forms, or other records, reports or plans pertaining to the NPDES permit program as confidential upon a showing by any person that the information is not a public record for the purposes of section 607 of the State 691.607). ... If the Administrator does not concur that some or all of the information being considered for confidential treatment merits the protection and notifies the Department in writing, the Department will make available to the public that information determined by the Administrator in consultation with the EPA Office of General Counsel not entitled to protection in accordance with 40 CFR Part 2 (relating to public 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.

§ 92a.12. Treatment Requirements

(a) Specific treatment requirements and effluent limitations for each discharge must be established based on the more stringent of the following:

(1) Requirements specified in Chapters 16, 77, 87—90, 93, 95, 96 and 102.

(2) The applicable treatment requirements and effluent limitations to which a discharge is subject under this chapter and the Federal Act.

(3) The treatment requirements and effluent limitations of this title.

(b) When interstate or international agencies under an interstate compact or international agreement establish applicable effluent limitations or standards for dischargers of this Commonwealth to surface waters that are more stringent than those required by this title, the more stringent standards and limitations apply.

(c) If the Department has confirmed the presence or critical habitat of endangered or threatened species under Federal or State law or regulation, the Department will limit discharges to these waters to ensure protection of these species and critical habitat.

(d) New or changed water quality standards or treatment requirements may result from revisions to Chapters 16, 77, 87—90, 92a, 93, 95, 96 or 102, or other plans or determinations approved by the Department. Upon notice from the Department, a permittee of an affected facility shall promptly take the steps necessary to plan, obtain a permit or other approval, and construct facilities that are required to comply with the new water quality standards or treatment requirements.

Parts a, b, and d reference treatment requirements that will have been subject to public notice and public comment before becoming enforceable standards. The regulated public will have the opportunity to know well before the receipt of a notice from PADEP that a water quality standard or treatment requirement has changed for a specific parameter and/or a specific water body. However, the statement in part c regarding the endangered species is less controlled. The identification of the presence or critical habitat of endangered or threatened species in waters of the US does not require any public notice. FirstEnergy believes that the imposition of limitations on discharges to these waters should be restricted to times of permit applications or renewals. 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.

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§ 92a.21.(d) Application for a Permit – Additional Information

(d) *Additional information.* The Department may require other information or data needed to assess the discharges from the facility and any impact on receiving waters, and to determine whether to issue an NPDES permit, or what conditions or effluent limitations (including water quality based effluent limitations) to place in the permit. The additional information may include, but is not limited to:

- (1) The results of an effluent assessment (or estimate for new dischargers or new sources), including a list of the mass and concentration of pollutants found (or estimated to be for new discharges or new sources) in the wastewater discharge, under Department protocols.
- (2) Information and data relating to the biological, physical and chemical characteristics of waters and habitat immediately upstream and downstream of the proposed discharge, performed under a Department-approved protocol.
- (3) The results of a water body assessment, under Department protocols, setting forth the impact (or potential impact) of the discharges on surface waters of this Commonwealth.
- (4) The results of whole effluent toxicity testing, an instream cause/effect survey, or other tests or surveys as needed to determine the impact of a discharge on a water body performed under a Department-approved protocol.

In many instances, the examples of additional information that may be requested by the Department to support a permit application will require advance planning and budgeting. FirstEnergy requests confirmation 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.

§92a.38. (b) –Department action on NPDES permit applications

The Department will consider local and county comprehensive plans and zoning ordinances developed pursuant to the Pennsylvania Municipalities Planning Code...when evaluating NPDES permit applications, provided that the plans are not preempted by State law. The Department may use the plans and ordinances as a basis to support actions on applications, including determining appropriate permit conditions and limitations, and whether or not to issue an NPDES permit.

Existing permitted facilities are already compliant with the provisions of local comprehensive plans and zoning ordinances. Only changes to the facilities that would alter compliance with the plan/zoning need to be evaluated by the Department. Denying a renewal to an NPDES permit for an existing facility should not be dependent on the Department's review of local plans and ordinances. FE requests confirmation that this section should apply only to new or expanded facilities.

§ 92a.36. Cooling Water Intake Structures

- (a) The provisions of 40 CFR 125.80 – 125.89 (relating to requirements applicable to cooling water intake structures for new facilities under section 316(b) of the Federal Act) are incorporated by reference.

The federal regulation listed in this section covers new facilities (Phase I). When the EPA finalizes the Phase II regulations for existing facilities, 40 CFR 125.90 – 125.99 will need to be added.

- (b) The location, design, construction and capacity of cooling water intake structures, in connection with a point source, must reflect the BTA for minimizing adverse environmental impacts in accordance with the State Act and section 316(b) of the Federal Act (33 U.S.C.A. § 1326 (b)).
- (c) The Department will determine if a facility with a cooling water intake structure reflects the BTA for minimizing adverse environmental impacts based on a site-specific evaluation.

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) Phase II rule for existing facilities and the PA Chapter 92a regulations coincide, it appears that permit writers may require current 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.

§92a.48. (a) (4) Industrial waste permit

For facilities discharging conventional pollutants in industrial waste, the monthly average discharge limitation for BOD₅ and TSS may not exceed 60 milligrams per liter. If CBOD₅ is specified instead of BOD₅, the limitation may not exceed 50 milligrams per liter. More stringent limits may apply based on the requirements of §92a.12 (relating to treatment requirements).

Federal Effluent Limitation Guidelines (ELG) have been developed for many industry categories, including steam electric generating facilities. Because these limits are based on extensive research and testing of facilities in that industry to determine the best technology-based limits, FirstEnergy believes that where an ELG already specifies a concentration-based limit for TSS/BOD, that federal limit should prevail.

§92a.52. Variances

Any new or amended Federal regulation enacted after November 18, 2000, which creates a variance to existing NPDES permitting requirements is not incorporated by reference.

This creates a potential conflict with the language of §92a.3 Incorporation of Federal regulations by reference.

(a) The Federal NPDES regulations listed in subsection (b), including all appendices, future amendments and supplements thereto, are incorporated by reference to the extent that these provisions are applicable and not contrary to the law of the Commonwealth. In the event of a conflict between Federal and regulatory provisions of the Commonwealth, the provision expressly set out in this chapter shall be applied unless the Federal provision is more stringent.

(b) The following Federal regulatory provisions in 40 CFR Parts 122, 124 and the National Pollutant Discharge Elimination System (relating to EPA administered permit programs: Discharge Elimination System; procedures for decision making; and criteria and standards for the National Pollutant Discharge Elimination system) are incorporated by reference:

(1) 122.2 (relating to definitions) unless the definitions in § 92a.2 (relating to definitions) are different.

(2) 123.25(c) (relating to requirements for permitting).

(3) 124.57(a) (relating to public notice).

(4) 125.1—125.3 (relating to criteria and standards for imposing technology-based treatment requirements under sections 301(b) and 402 of the act).

(5) 125.30—125.32 (relating to criteria and standards for determining fundamentally different factors under sections 301(b)(1)(A), 301(b)(2)(A) and (E) of the act).

(6) 125.70—125.73 (relating to criteria for determining alternative effluent limitations under section 316(a) of the act).

(c) The Federal regulations listed in §§ 92a.4—92a.6, 92a.8, 92a.21, 92a.22, 92a.32—92a.37, 92a.41—92a.45, 92a.55, 92a.61, 92a.71—92a.74 and 92a.92, including all appendices, future amendments and supplements thereto, are incorporated by reference to the extent that these provisions are applicable and not contrary to the law of the Commonwealth. In the event of a conflict between Federal and regulatory provisions of the Commonwealth, the provision expressly set out in this chapter shall be applied unless the Federal provision is more stringent.

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If a variance would be a part of these Federal regulations, § 92a.3.(c) provides the language that would disallow any variance that would be in conflict with the laws or regulations of the Commonwealth. § 92a.52. should be deleted because its intent is included in § 92a.3.(c).

FirstEnergy thanks you for the opportunity to participate in this rulemaking process.

Respectfully submitted,

A handwritten signature in cursive script that reads "Kathryn M. Kunkel".

Kathryn M. Kunkel
Senior Scientist

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).

From: kkunkel@firstenergycorp.com
Sent: Monday, March 15, 2010 4:47 PM
To: EP, RegComments
Subject: National Pollutant Discharge Elimination System (NPDES) Permitting, Monitoring and Compliance
Attachments: FE Comments Chapter 92a 03_15_10.doc.pdf

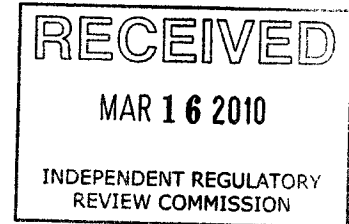
Dear Board Members,

FirstEnergy Generation Corp respectfully submits the attached comments on the proposed rulemaking for 25 PA Code Chapters 92 and 92(a). The one-page summary is the last page of the file.

(See attached file: FE Comments Chapter 92a 03_15_10.doc.pdf)

Thank you,
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