

Water Issues – January 2009

Prepared by [Thomas Au](#), and [Barbara Benson](#).

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### **Clean Water Restoration Act**

Although the environmental community made progress toward restoring the historic scope of the Clean Water Act's protections, we obviously fell short of passing the Clean Water Restoration Act (H.R. 2421/S. 1870) in 2008. The Clean Water Restoration Act is a legislative response to two Supreme Court decisions which created confusion about Clean Water Act protections for streams that flow seasonally or only in response to rainfall and wetlands that, on the surface, lack a direct connection to other waters. In the House, 176 co-sponsors from both parties supported the bill. In the Senate, we had 21 co-sponsors. Both chambers held hearings on the bill.

The prospects of passage look good for 2009. With the end of the Congressional session, the bills' sponsors will have to re-introduce the bill. Unlike the Bush administration, which opposed the Clean Water Restoration Act, President-elect Obama supported the principles of the legislation during the campaign. The national environmental groups have made clear to the Obama transition team that this bill is the number one priority. For more information, contact Dalal Aboulhosn at [Dalal.Aboulhosn@sierraclub.org](mailto:Dalal.Aboulhosn@sierraclub.org) (202-675-6270) or Ed Hopkins at [Ed.Hopkins@sierraclub.org](mailto:Ed.Hopkins@sierraclub.org) (202-675-7908).

### **Buffers 100 Campaign and Revisions to Erosion Control and Wetland and Stream Encroachment Regulations**

In May 2008, the Pennsylvania Campaign for Clean Water held a press conference at the announcing the "Buffers 100" initiative. The initiative would impose requirements on developers to protect rivers and streams on their constructed properties with a forested strip of land at least 100 feet wide. The initiative has attracted the attention of the builders association, which has been running opinion pieces across the state opposing the measure. Environmental organizations have sent letters to the editors of these newspapers correcting the misrepresentations.

DEP is continuing work on revising two sets of regulations relating to erosion and sedimentation control (Chapter 102) and encroachments on wetlands and streams (Chapter 105). However, Acting Secretary Hanger recently announced a voluntary, rather than mandatory, requirement of 100 foot buffers as a component in the revised regulations to expedite approvals of post construction stormwater permits. The Campaign for Clean Water and its members have opposed this weak form of regulation. For more information, contact Thomas Au ([thomxau@gmail.com](mailto:thomxau@gmail.com)) or Barbara Benson

([barbarabenson@bensonsails.com](mailto:barbarabenson@bensonsails.com)) or go to the Pennsylvania Campaign for Clean Water website (<http://www.pacleanwatercampaign.org/buffer.htm>).

### **DEP Triennial Water Quality Review**

At the Sept. 16, 2008 Environmental Quality Board meeting, the Board approved publication of final regulations to revise the water quality standards. Section 303(c)(1) of the Clean Water Act requires states to review and revise water quality standards. The water quality standards consist of the designated uses of the surface waters of this Commonwealth, along with the specific numerical and narrative criteria necessary to achieve and maintain those uses and an anti-degradation policy.

Water quality standards are in-stream water quality goals that are implemented by imposing specific regulatory requirements, such as treatment requirements and effluent limitations, on individual sources of pollution. DEP considers molybdenum (Mo) to be a toxic substance. DEP believes it is necessary to establish a consistent statewide instream criterion for Mo of 210 ug/L to address the discharge of Mo from several major facilities across the state. These include at least four facilities that have active NPDES permits, and a number of facilities (including Superfund sites) where Mo is currently being discharged. The industries discharging Mo argue that DEP should establish a standard at the intake point of a public water supply. DEP has responded that such a strategy would require the drinking water suppliers to be responsible for removing Mo from the drinking water.

On Nov. 20, 2008, the Independent Regulatory Review Commission has denied approval of the regulations based on the molybdenum issue. IRRC believes that since EPA has not set a health standard for Mo, it should not be regulated. The Environmental Quality Board may resubmit the regulation. For more information, contact Thomas Au ([thomxau@gmail.com](mailto:thomxau@gmail.com))

### **Marcellus Gas Exploration**

Natural gas exploration is rapidly growing in Pennsylvania. Once limited to a relatively small portion of western and northwestern Pennsylvania, it has spread throughout much of the state as new exploration and production technologies improve the finding and developing of gas producing formations. Major environmental concerns associated with these operations include erosion from land disturbed by access roads and drilling areas, disposal of rock cuttings resulting from drilling, the withdrawal of freshwater from streams to fracture the shale, and the improper disposal of brines and wastewater associated with the drilling process. DEP has issued nearly 300 permits for drilling in the Marcellus Shale.

DEP is attempting to address drilling through best management practices, which includes guidelines on how to comply with requirements for erosion control and wastewater discharges. DEP has allowed municipal sewage treatment plants to accept some drilling wastewater, although no treatment actually occurs at these plants.

Recently, high levels of total dissolved solids (TDS) in the Monongahela River have affected industrial and drinking water intakes along the river. DEP has concluded that wastewater discharges from gas well drilling has caused this problem.

The Pennsylvania Campaign for Clean Water is forming a workgroup to coordinate the efforts of environmental groups in tracking this and other problems that this drilling may cause. For more information, contact Thomas Au ([thomxau@gmail.com](mailto:thomxau@gmail.com)) or Bob Wendelgass ([bwendelgass@cleanwater.org](mailto:bwendelgass@cleanwater.org))