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DEPARTMENT OF ENVIRONMENTAL PROTECTION  
CONNECTICUT

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IN THE MATTER OF THE ARBITRATION BETWEEN

- - - - -

PUBLIC HEARING  
February 3, 2010  
1:30 P.M.

Department of Environmental Protection  
79 Elm Street  
Hartford, CT

H e l d      B e f o r e :  
DENISE RUZICKA, Hearing Officer

Reporter: JENNY C. EBNER, RPR, LSR 00030.  
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A P P E A R A N C E S :

SPEAKERS :

- BARBARA LOSEY
- RICHARD WEISBERG
- JAMES BELDEN
- SETH MOLOFSKY
- JOHN WERTEM
- JOSEPH KILOWIEC
- ROGER REYNOLDS
- GREG SHARP
- MARGARET MINER

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... The following is the transcript of the Public Hearing on the Proposed Amendments to the Connecticut Water Quality Standards, which was held before DENISE RUZICKA, Hearing Officer, at The Department of Environmental Protection, Connecticut, on February 3, 2010, at 1:30 P.M. o'clock p.m., at which time the public appeared as hereinbefore set forth...

1 P-R-O-C-E-E-D-I-N-G-S

2  
3 HEARING OFFICER RUZICKA: Good  
4 afternoon. Good afternoon everyone, if  
5 we could get started.

6 Welcome. Good afternoon. My name  
7 is Denise Ruzicka. I am the Director of  
8 the Inland Water Resources Division of  
9 the Bureau of Water Protection and Land  
10 Reuse at the Department of Environmental  
11 Protection, and I will be the hearing  
12 officer for today's hearing.

13 For the record, today is Wednesday,  
14 February 3, 2010. The time is 1:31.

15 This hearing is being conducted in  
16 the Phoenix Auditorium at the Department  
17 of Environmental Protection, 79  
18 Elm Street, Hartford.

19 The hearing record is now open for  
20 the Department of Environmental  
21 Protection to oppose amendments to the  
22 Water Quality Standards.

23 This is a hearing as provided for in  
24 Section 22a-426 of the Connecticut  
25 General Statutes, and will be conducted

1 in accordance with the DEP Rules of  
2 Practice.

3 The purpose of today's hearing is to  
4 receive both oral and written comments  
5 on the proposed amendments to the Water  
6 Quality Standards.

7 The proposed amendments relate to a  
8 number of revisions to the surface water  
9 quality standards, surface water quality  
10 criteria, and surface and groundwater  
11 quality classifications.

12 I would also like to note that the  
13 period for written comments announced in  
14 the public notice has been extended to  
15 Wednesday, March 17, 2010. This  
16 extension will be posted on the DEP  
17 website in the next few days.

18 If you are planning to speak today,  
19 we do have extra sign-up sheets. They  
20 are all downstairs right now. We only  
21 have a few speakers signed up, so there  
22 will be ample opportunity for people to  
23 sign up. Once they come up from  
24 downstairs, we will have sign-up sheets  
25 out in the hallway so that people can

1 sign up, if you haven't already signed  
2 up to speak.

3 If you have written comments, you  
4 can submit them today. After today,  
5 written comments should be directed to  
6 the attention of Tracy Iott at DEP.

7 There are sheets on the table out in  
8 the vestibule with the address where to  
9 send comments to. It looks like this  
10 (indicating). Pick up one on the way  
11 out, and please take one with you if you  
12 are submitting written comments after  
13 today.

14 Please note that e-mail comments  
15 cannot be accepted for the record. The  
16 record must contain original signatures  
17 and mailing addresses.

18 Now, a few logistics before we  
19 begin. The restrooms are out this door  
20 and to the left of the elevator lobby,  
21 on either side of the second set of  
22 elevators.

23 I don't anticipate this going long  
24 enough for us to necessitate a break,  
25 but if we should, I will be taking a

1 short break at approximately 3:00  
2 o'clock. Okay.

3 The hearing will continue today  
4 until all those present who wish to  
5 speak have been heard.

6 Speakers will be called to the  
7 microphone in order of your name as it  
8 appears on the sign-up sheet, with the  
9 exception of state or municipal elected  
10 officials who have signed up on the  
11 speaker list and have noted themselves  
12 as elected officials. They will be  
13 given the opportunity to be heard first.

14 If you wish to speak and haven't  
15 signed up, please let me know.

16 When I call the speaker, I will also  
17 announce the name of the subsequent  
18 speaker so you know you are on deck.

19 And in order to make sure that  
20 everyone has a chance to make their  
21 comments for the record, speakers are  
22 limited to three minutes.

23 And we have this really neat  
24 technical gadget here on the table. The  
25 light is green when you begin speaking.

1           After you have spoken for two minutes,  
2           the green light will then blink for 30  
3           seconds and then it will go to a yellow  
4           light for the last 30 seconds. And  
5           finally, after three minutes, it will  
6           turn red. At that point you should  
7           conclude your remarks.

8                     I encourage you to keep the  
9           statements brief and to the point and  
10          exclude irrelevant comments and repeated  
11          comments.

12                    Therefore, if you agree with the  
13          prior speaker, please note your  
14          concurrence, rather than repeating the  
15          prior speaker's comments.

16                    To my left is Ms. Napier. She is  
17          going to be organizing the exhibits for  
18          me here today.

19                    If you have a written statement,  
20          please give it to her, and she will  
21          enter it into the record.

22                    And it's not necessary for you to  
23          read any written statements; however, if  
24          you would like to do so within the time  
25          limit, you may do so.

1           If you only wish to send in written  
2           comments today, you may also do that by  
3           submitting them to Liz.

4           Please note that this hearing is  
5           being recorded and a written transcript  
6           will be produced.

7           When you come up to the microphone,  
8           I will ask you to please state and then  
9           spell your name so that it will be  
10          recorded on the record.

11          When the record is closed, all  
12          comments, both written and oral, will be  
13          carefully considered. A statement of  
14          the reasons will be prepared responding  
15          to the comments received and identifying  
16          any revisions that the Department has  
17          made to our Water Quality Standards as  
18          proposed.

19          I will be drafting a Statement of  
20          Reasons and also a final decision for  
21          the Commissioner's consideration,  
22          revision and finalization.

23          And after the Commissioner's review,  
24          the proposed Water Quality Standards  
25          will be sent to EPA Region One for final

1 review and approval in accordance with  
2 the requirements with the Federal Clean  
3 Water Act.

4 So that we can send a copy of the  
5 Statement of Reasons to anyone and  
6 everyone who has made oral or written  
7 comments, please make sure you include  
8 your address on the sign-up sheet so we  
9 may get that to you.

10 In addition, individuals who have  
11 not commented but who wish to receive a  
12 copy may sign up by using the mailing  
13 list that is out in the vestibule on the  
14 table.

15 Please also note that these  
16 documents will also be posted to the DEP  
17 website at [www.ct.gov/dep](http://www.ct.gov/dep).

18 At this time I would like to enter a  
19 number of exhibits into the record.

20 Exhibit 1 is an authorization to  
21 hold a public hearing.

22 Exhibit 2, Notice of Intent to Amend  
23 Connecticut Water Quality Standards and  
24 to Hold Public Hearing.

25 Exhibit 3, copy of Notice to Amend

1 Connecticut Water Quality Standards and  
2 Hold Public Hearing published in the Law  
3 Journal on December 22, 2009.

4 Exhibit 4, Affidavit of Publication  
5 of Notice in the Norwich Bulletin on  
6 January 12, 2010.

7 Exhibit 5, Affidavit of Publication  
8 of Notice in the Connecticut Post on  
9 January 13, 2010.

10 Exhibit 6, attendance sheet for  
11 Public Informational Meeting held  
12 January 26, 2010, held in the Russell  
13 Room.

14 Exhibit 7, copy of presentation  
15 shown on January 26th in the Russell  
16 Room.

17 Exhibit 8, copies of letters sent to  
18 members of the Environment Committee  
19 informing them of the public review  
20 process and public hearing.

21 Exhibit 9, certified mail receipts  
22 for letters sent to the chief elected  
23 officials throughout the state,  
24 informing them of DEP's intent to amend  
25 the Water Quality Standards and hold a

1 public hearing.

2 Exhibit 10, copy of Proposed  
3 Revisions of Connecticut Water Quality  
4 Standards dated December 22, 2009.

5 Exhibit 11, copy of current Water  
6 Quality Standards.

7 Exhibit 12, Water Quality Standards  
8 Revision 2009 to resolve oxygen criteria  
9 for marine water, dated January 12,  
10 2010.

11 Exhibit 13, Water quality criteria,  
12 Harrison Table, showing criteria for  
13 Harrison between water quality criteria  
14 2002, Water Quality Standards, and those  
15 published on December 22nd, 2009.

16 Exhibit 14, proposed changes to  
17 Connecticut Water Quality Standards as  
18 proposed on December 22, 2009, red line  
19 version.

20 Exhibit 15, errata sheet for  
21 proposed revisions to the Connecticut  
22 Water Quality Standards and Ambient  
23 Water Quality Criteria dated February 2,  
24 2010.

25 Exhibit 16, technical supporting

1 information for the proposed revision to  
2 the Connecticut Water Quality Standards,  
3 biological condition gradient.

4 Exhibit 17, technical supporting  
5 information for the proposed revisions  
6 to Connecticut Water Quality Standards,  
7 Water Temperature.

8 Exhibit 18, nutrient reduction  
9 strategy for the inland fresh waters  
10 phosphorus.

11 Exhibit 19, Connecticut methodology  
12 for fresh water nutrient management  
13 technical support document.

14 Exhibit 20, technical supporting  
15 information for proposed revisions to  
16 the Connecticut Water Quality Standards  
17 and ambient water quality criteria.

18 Exhibit 21, comments received from  
19 Connecticut Business and Industry  
20 Association, dated January 29, 2010.

21 Exhibit 22, comments received from  
22 Connecticut Water Pollution Abatement  
23 Association, dated February 1st, 2010.

24 With that I would like to call the  
25 first speaker up. It's Barbara Losey.

1                   And the next speaker is Richard  
2                   Weisberg.

3                   MS. LOSEY: I am Barbara Losey,  
4                   L-o-s-e-y. Thank you for the  
5                   opportunity to comment on the  
6                   Connecticut Water Quality Standards.

7                   I am the deputy director of the  
8                   Alkylphenols and Ethoxylates Research  
9                   Council. We call it "APERC" for short,  
10                  A-P-E-R-C.

11                  APERC's mission is to promote the  
12                  safe use of alkylphenol-based products,  
13                  such as nonylphenol and nonylphenol  
14                  ethoxylates, within the framework of  
15                  responsible chemical management.

16                  And as such, we support Connecticut  
17                  DEP's proposal to adopt the US EPA water  
18                  quality criteria for nonylphenol, as the  
19                  numeric water criteria for this compound  
20                  in the Water Quality Standards for  
21                  Connecticut.

22                  US EPA conducted a review of the  
23                  hundreds of available ecotoxicity  
24                  studies for NP when they developed the  
25                  Water Quality Criteria.

1           The Agency used data from a wide  
2 range of taxa and species to develop the  
3 criteria, and as EPA states, these  
4 criteria represent an estimate of the  
5 highest concentration to which an  
6 aquatic community can be exposed  
7 indefinitely without unacceptable  
8 effects.

9           US EPA also studied the long-term  
10 effects of nonylphenol in deriving the  
11 Water Quality Criteria.

12           These types of studies look at  
13 effects from the level of the fish or  
14 organisms, such as their ability to  
15 reproduce or developmental effects in  
16 the offspring.

17           These types of effects reflect the  
18 culmination of changes that can occur at  
19 the molecular, biochemical or tissue  
20 level in the organisms.

21           So the NP Water Quality Criteria  
22 address all mechanisms of toxicity,  
23 including any that might be due to its  
24 weak estrogenic activity.

25           EPA finalized the Water Quality

1 Criteria in 2006. And since that time  
2 additional research has been conducted.

3 So APERC sponsored a project to  
4 summarize and assess the recent data to  
5 see if the criteria are still valid.  
6 That assessment, which will be  
7 summarized in our written comments,  
8 found that the most recent data still  
9 support EPA's criteria for nonylphenol.

10 Nonylphenol are treatable in waste  
11 water treatment plants, and they are  
12 neither persistent nor biocumulative;  
13 they can be effectively managed using  
14 Water Quality Standards, and, as  
15 necessary, NPDES permits to monitor and  
16 control effluent concentrations.

17 So, incorporating the federal Water  
18 Quality Criteria into Connecticut Water  
19 Quality Standards is not likely to be a  
20 technical or economic burden on either  
21 the DEP or the local business community  
22 in Connecticut.

23 Adopting the federal Water Quality  
24 Criteria will provide a clear definition  
25 of the aquatic concentrations of NP that

1 are protective of the aquatic  
2 environment; thereby assuring that  
3 surface and ground waters in Connecticut  
4 are protected from degradation, as  
5 required under the Clean Water Act.

6 We have referenced the US Water  
7 Quality Criteria document for  
8 nonylphenol and its related Federal  
9 Register notice in this statement and  
10 request that the hearing officer take  
11 administrative notice of these documents  
12 and incorporate them by reference into  
13 the record.

14 Thank you.

15 HEARING OFFICER RUZICKA: Richard  
16 Weisberg, to be followed by James  
17 Belden.

18 MR. WEISBERG: My name is Richard  
19 Weisberg. I am a member of a wide  
20 variety of organizations and citizens  
21 advisory panels, but I am not here in a  
22 representative capacity.

23 I am here representing myself, and  
24 the first thing I would like to say is  
25 that I was very pleased when I read the

1 proposed revisions to note that there  
2 were significant changes made to  
3 temperature criteria and  
4 antidegradation, which I feel are  
5 responsive in one way to meet the  
6 comments that I made in July of 2009.

7 There is, however, one element of  
8 the proposed revisions which makes me  
9 very unhappy. That is the changes, the  
10 revisions that deal with what you now  
11 refer to as Tier 3, which primarily  
12 concerns what are enormous outstanding  
13 national resource waters and ONRWS, and  
14 I find that this provision is eternally  
15 consistent in EPA relations, which  
16 Connecticut, as an authorized state, has  
17 complied with.

18 I just -- the first problem is that  
19 nowhere in the proposed revisions or the  
20 antidegradation regulations are ONRWS  
21 defined. Unlike EPA, which has a  
22 definition of ONRWS and interprets that  
23 definition to mean that there can be no  
24 new or increased discharge of ONRWS  
25 other than short-term, temporary

1 discharges.

2 DEP's proposed revision to the  
3 ONRWs, as I said there is no definition  
4 of ONRWs, and moreover, Section 6 of  
5 Appendix E says that ONRWs are governed  
6 by Standard 2 and Standard 3 of the  
7 Water Quality Standards.

8 Now, Section 6, the A-Deg provisions  
9 provides that -- in fact, absolutely  
10 prohibits degradation of ONRWs.

11 Standard 3, however, provides --  
12 Standard 3, which governs Section 6,  
13 provides that waters to which it is  
14 applicable may be degraded under certain  
15 circumstances.

16 So you have Section 6, which says no  
17 degradation to ONRWs; Section 3, which  
18 governs that particular Standard which  
19 governs Section 6, says you can degrade  
20 waters to which it is applicable.

21 That is just a hopelessly  
22 inconsistency in the regulations.

23 I want to make clear that I am not  
24 being critical of Standard 3. In fact,  
25 I think the revisions to Standard 3 have



1           there is no, there is just no standard  
2           by which you can do that.

3           It's an unauthorized -- it  
4           constitutes an unauthorized  
5           administrative act.

6           Thank you.

7           HEARING OFFICER RUZICKA: Thank you  
8           very much. The next speaker is James  
9           Belden, followed by Seth Molofsky.

10          MR. BELDEN: Hello. My name is  
11          James Belden, B-e-l-d-e-n. I represent  
12          the Pomperaug River Watershed Coalition,  
13          P-o-m-p-e-r-a-u-g. I am the executive  
14          director.

15          I thank you very much for holding  
16          this today. This is a very important  
17          issue.

18          The Pomperaug Watershed Coalition is  
19          a nonprofit group dedicated to the  
20          continued protection of our water  
21          resources. Our organization is diverse,  
22          but we all understand the great  
23          importance of high quality water and the  
24          integrity of the systems that deliver  
25          it.

1           For 10 years the PRWC has conducted  
2           significant science-based research and  
3           developed actionable initiatives to  
4           further better stewardship; however, all  
5           we do is critically depend upon the  
6           regulatory and policy decisions made at  
7           the state level.

8           We consider the Connecticut DEP to  
9           be an vital partner and one that is  
10          tasked with creating a baseline for  
11          protection of our resources statewide.

12          We commend these continued efforts  
13          to improve your regulatory enforcement  
14          tools in addressing the water quality  
15          concerns.

16          As you know, we are in an age where  
17          single polluters are difficult to  
18          identify and address, but the watersheds  
19          and watercourses are bearing the brunt  
20          of our society's collective burdens.

21          The significant task is not only to  
22          protect what we have, but to repair what  
23          has been damaged, thus the importance of  
24          better criteria and limits as well as  
25          the antidegradation policies.

1           This is a continual process as  
2 science improves, and we have a better  
3 understanding of the issues.

4           Of note is the lack of mention of  
5 any endocrine structures and  
6 neurotoxins. Of course, as science  
7 improves we hope that these regulations  
8 will do more in addressing those issues.

9           We believe it's a looming threat.

10          Following are specific comments,  
11 though, regarding the changes pertaining  
12 to thermal impacts.

13          As Mr. Weisberg stated, it is  
14 excellent to see that there is improving  
15 language; however, we are satisfied  
16 except for a few issues here. One in  
17 particular, the new numeric temperature  
18 criteria in Appendix F of the proposed  
19 regulations.

20          They do appear more protective  
21 except the four degree Fahrenheit  
22 allowable temperature increase criteria  
23 which is set forth in Appendix F.

24          This language seems to be a holdover  
25 from DEP's current standards, and our

1           understanding is that the four degree  
2           criterion has been applied cumulatively  
3           rather from a baseline temperature.

4           Nothing in the draft indicates that  
5           this will not continue to be the case.

6           We are very concerned that if this  
7           four degree allowable temperature  
8           increase criterion continues to be  
9           applied cumulatively, this will permit  
10          long-term incremental increases in water  
11          temperature far beyond four degrees  
12          Fahrenheit, which is in conflict with  
13          other criteria in Sections F2 and F4.

14          We believe this can be avoided if it  
15          is made clear in both revisions that  
16          that application of the four degree  
17          Fahrenheit criterion is limited by other  
18          numeric criteria in Sections F2 and F4,  
19          such as the average weekly maximum  
20          temperature of 65 degrees Fahrenheit,  
21          and the maximum daily temperature of 75  
22          degrees Fahrenheit.

23          In short, we propose the revised  
24          temperature provisions fail to provide  
25          any assurance that the four degree

1 Fahrenheit criterion will not be applied  
2 cumulatively, as in the past.

3 This problem can be readily  
4 corrected by a change in language, such  
5 as, in any case the ambient instream  
6 temperature should not be raised by more  
7 than four degree Fahrenheit, and in no  
8 case may the ambient instream  
9 temperature be raised in excess of the  
10 numeric criteria cited above.

11 HEARING OFFICER RUZICKA: Time is  
12 up.

13 MR. BELDEN: Thermal degradation is  
14 a primary threat to water quality. The  
15 dual impacts of water withdrawals and  
16 warm water -- so I will leave it at  
17 that.

18 Either way, the total impact on  
19 society, both for nutrients and  
20 temperature impacts create great  
21 contamination threats, not only to  
22 humans, to wildlife as well.

23 Thank you very much.

24 HEARING OFFICER RUZICKA: Seth  
25 Molofsky, followed by John Wertem.

1                   MR. MOLOFSKY: My name is Seth  
2                   Molofsky, M-o-l-o-f-s-k-y. I am the  
3                   Executive Director of the Environmental  
4                   Professionals' Organization of  
5                   Connecticut.

6                   EPOC, Environmental Professional's  
7                   Organization of Connecticut, was formed  
8                   in 1996 to represent the interests of  
9                   Connecticut's licensed environmental  
10                  professionals, or LEPs, by providing  
11                  information, training and updates  
12                  regarding the LEP program in Connecticut  
13                  following regulations and such from the  
14                  Connecticut DEP.

15                  Our organization has approximately  
16                  500 members. We represent numerous  
17                  technical disciplines, all working in  
18                  the area of investigation and cleanup of  
19                  environmentally impacted sites in  
20                  Connecticut.

21                  The members of EPOC have a keen  
22                  interest in these proposed amendments  
23                  to the Connecticut Water Quality  
24                  Standards, and we are currently  
25                  preparing written comments.

1           During the public informational  
2           session held at DEP on January 26th it  
3           was stated by Tracy Iott of the  
4           Department that the Department was  
5           finalizing a document, the technical  
6           support document, on the proposed  
7           amendments, and that that document would  
8           be available soon.

9           Looking at the DEP website I noticed  
10          that this morning, that that document is  
11          available now for review.

12          This document is extremely important  
13          and necessary for us to make an  
14          objective, scientific evaluation of the  
15          standards being proposed in the  
16          amendments.

17          Just at a very brief glance, it was  
18          181 pages, and it covers documentation  
19          of hundreds of standards.

20          I understand this morning there was  
21          an announcement that the period for  
22          written comments has been extended to  
23          March 17. Today we are asking for a  
24          60-day extension to the comment period  
25          from the date that that document, the

1 technical support document was  
2 published, so that would be 60 days from  
3 today, so we can gather appropriate  
4 comments from our 500 plus members and  
5 make a good evaluation of the details in  
6 that document.

7 Thank you very much.

8 HEARING OFFICER RUZICKA: Thank you.  
9 John Wertem followed by Joseph Kulowiec.  
10 Excuse me if I am not pronouncing it  
11 properly.

12 MR. WERTEM: John Wertem from  
13 Shipman & Goodwin. I just have a  
14 general procedural concern. I would ask  
15 the hearing officer to consider, and I  
16 think it will be incorporated as well in  
17 the CVIA's comments, but the fact that  
18 only the comment period has been  
19 extended without the opportunity to  
20 present information to the hearing  
21 officer directly in the context of a  
22 hearing I think is an important  
23 consideration.

24 And so I would urge the hearing  
25 officer to honor the request of CVIA and

1 others to have the opportunity in a  
2 hearing setting to comment on the  
3 substantial amount of technical  
4 documentation that supports DEP's  
5 proposals at a later date, because we,  
6 many of us have never had a chance or  
7 haven't had a chance yet to look at  
8 those documents.

9 It's a procedural issue that I would  
10 urge the hearing officer to consider.  
11 Thank you.

12 HEARING OFFICER RUZICKA: Thank you.  
13 Joseph Kulowiec, followed by Roger  
14 Reynolds.

15 MR. KULOWIEC: Good afternoon. My  
16 name is Jay Kulowiec. I am a  
17 professional engineer. I have been  
18 practicing in the state of Connecticut  
19 for about 40 years. I have represented  
20 a great number of industrial clients  
21 over that period of time.

22 I am not here testifying for any  
23 particular client, but in general terms,  
24 of the science behind these regulations  
25 or these proposed standards.

1           I will limit my comments. I am  
2 going to sort of truncate what I  
3 actually wrote, because I can get to the  
4 point.

5           There was a document provided to the  
6 public on the 28th of January. It was  
7 the Technical Support Information for  
8 Proposed Revisions to the Connecticut  
9 Water Quality Standards.

10           My reading, that was posted on the  
11 28th of January by the Department. My  
12 comments are very brief on that  
13 document.

14           On pages 7, 8 and 9 of that document  
15 the DEP provides text describing the  
16 allowable temperature increase in marine  
17 waters, oftentimes classified as SA or  
18 SB waters. And I will quote from the  
19 document itself. "Current temperature  
20 criteria for increased -- incremental  
21 increases is proposed to be retained.

22           "During the months of July, August  
23 and September the temperature increase  
24 of marine waters is 1.5 degrees  
25 Fahrenheit, and all other times the

1           allowable increase in the marine waters  
2           is 40 degrees Fahrenheit.

3                     Now, that is what the technical  
4           support document says.

5                     The actual revised Water Quality  
6           Standard document that had been referred  
7           to previously, as part of the record,  
8           states that for SA and SB waters -- this  
9           is on pages 27 and 29 of that  
10          document -- that the allowable increase  
11          is only two degrees Fahrenheit.

12                    My only comments in that regard is  
13          that the Department has not provided a  
14          explanation for this discrepancy between  
15          two of their documents or supporting  
16          technical information justifying this  
17          decrease.

18                    Where they earlier stated in the  
19          technical supporting information there  
20          was not to be a change for marine  
21          waters.

22                    I heard earlier testimony from the  
23          gentleman from EPOC that the technical  
24          support document relative to the  
25          numerical criteria was posted this

1 morning on the DEP website.

2 It's the first notice that it was a  
3 document that the Department had was on  
4 December 22nd of this year.

5 Now that that document is available,  
6 there certainly has to be adequate time  
7 provided to look at the science of --  
8 the scientific basis of these various  
9 standards that the DEP is proposing to  
10 revise.

11 As part of my testimony I supplied a  
12 spreadsheet that shows four numerical  
13 criteria which is contained in Appendix  
14 D, Table One of the Water Quality  
15 Standards, a comparison of what is  
16 currently adopted, those standards that  
17 were adopted in 2002.

18 The ones that are being proposed in  
19 2009 when they were first made numerical  
20 numbers, is my understanding, were first  
21 made public in December of 2009. And  
22 also what EPA at the national level is  
23 proposing for Water Quality Criteria for  
24 various constituents.

25 Needless to, say the sheer number of

1 changes that the DEP is making between  
2 new criteria and revisions to existing  
3 criteria, there are 553 changes to  
4 Appendix D Table one. That is a very  
5 significant number of revisions,  
6 particularly when you compare it to the  
7 kind of numerical revisions that were  
8 incorporated into the 2002 standards  
9 from previous versions of Water Quality  
10 Standards.

11 I support two things in that regard.  
12 I think that, in my professional  
13 opinion, the 42-day extension for  
14 written comments is totally inadequate  
15 when you consider the sheer magnitude of  
16 the number of changes that have been  
17 made in order for a very important  
18 objective and complete review by the  
19 regular community or any of the other  
20 interested parties relative to those  
21 standards.

22 Mr. Molofsky from --

23 HEARING OFFICER RUZICKA: Wrap it  
24 up.

25 MR. KULOWIEC: I am sorry. The EPOC

1 representative indicated that they would  
2 request a 60-day extension. I, frankly,  
3 am more in line with what the CVIA  
4 request is, which is for numerical  
5 criteria at least a minimum of 120 days  
6 for additional comments, and frankly,  
7 another opportunity for actual public  
8 hearing testimony in that regard.

9 That's the -- that concludes my  
10 testimony. Thank you.

11 HEARING OFFICER RUZICKA: Thank you  
12 very much.

13 Roger Reynolds to be followed by  
14 Greg Sharp.

15 MR. REYNOLDS: Thank you. My name  
16 is Roger Reynolds. I am a senior  
17 attorney from Connecticut Fund for the  
18 Environment. We are a state-wide  
19 environmental organization representing  
20 more than 5,000 members.

21 I have reviewed the written comments  
22 of Richard Weisberg and heard his oral  
23 testimony, and we agree with those  
24 comments and would like to adopt them.

25 We also agree with the comments that

1           were expressed by Mr. Belden orally  
2           earlier today, and we would like to  
3           adopt those.

4           We will be submitting more extensive  
5           written comments before the end of the  
6           comment period.

7           We support DEP's issuing numeric  
8           scientific-based toxic Water Quality  
9           Standards. We ask that they do the same  
10          for phosphorus.

11          Phosphorus is an incredibly harmful  
12          pollutant. It's a nutrient that up  
13          until now has been largely unregulated  
14          in Connecticut. The harms are well  
15          known and obvious.

16          Most fundamentally, the revised  
17          phosphorus standards in this are not  
18          scientifically based, and they fail to  
19          comply, in our view, with federal law  
20          and state law and fail to adequately  
21          protect water quality.

22          The key to Water Quality Standards,  
23          as defined under the Federal Clean Water  
24          Act is to protect water quality. It's  
25          not a statistical analysis to reduce

1 phosphorus to the extent practical.

2 It's a scientific analysis designed  
3 to establish a water quality baseline  
4 and protect that water quality baseline  
5 using whatever means necessary.

6 We don't believe that has been done.  
7 In our written comments that have been  
8 submitted in the past, which I don't  
9 believe any changes have been made since  
10 then, so we will probably be basically  
11 resubmitting those, we point out that  
12 both EPA in Maine have systems where  
13 they do, in fact, consider the quality  
14 of the water body in addition to their  
15 statistical analysis.

16 So they do do a statistical  
17 analysis. EPA believes the statistical  
18 analysis is appropriate in their  
19 approach, but then they tie that  
20 statistical analysis to water quality  
21 and require a certain amount of water  
22 quality.

23 That's what we believe is missing in  
24 the Connecticut interpretation of their  
25 Water Quality Standards.

1           Similarly, if viewed on a  
2           case-by-case basis, the appropriate  
3           effluent limitations for specific  
4           plants, rather than Water Quality  
5           Standards, we believe the phosphorus  
6           strategy still falls short.

7           While it does incorporate some  
8           positive antidegradation measures to  
9           protect some of the less impaired  
10          streams, it really fails to identify  
11          impaired streams and set water quality  
12          scientific-based limits that will no  
13          longer cause or contribute to  
14          impairments as we believe is required by  
15          law.

16          Another problem with the phosphorus  
17          strategy is that it assumes there will  
18          be 60 percent reductions from other  
19          sources. There is no reasonably certain  
20          enforceable mechanism, however, to get  
21          to those reductions, so we believe that  
22          assumption cannot be validated.

23          In the broader sense, in dealing  
24          with phosphorus, and our written  
25          comments will go beyond phosphorus, it

1 is imperative that DEP begin to make  
2 BMPs, or urban and agricultural uses,  
3 enforceable that will be reflected in  
4 actual improved water quality.

5 Until the DEP does so, the brunt of  
6 limiting nutrients into the streams will  
7 necessarily fall solely on the sewage  
8 treatment plants, which is not a  
9 realistic, equitable or desirable  
10 approach.

11 Until they do so, we believe that  
12 the Phosphorus Standards and the Water  
13 Quality Standards have to comply with  
14 federal law and have to be based on  
15 justifiable science.

16 Thank you very much.

17 HEARING OFFICER RUZICKA: Thank you.  
18 Next speaker is Greg Sharp to be  
19 followed by Margaret Miner.

20 MR. SHARP: Good afternoon. My name  
21 is Greg Sharp. I am a partner in Murtha  
22 Cullina in Hartford. Our firm  
23 represents a number of clients, both  
24 municipal and industrial dischargers.

25 I am not here to speak on behalf of

1           any one of those but just to reflect my  
2           concerns about the standards and the  
3           process, thus far, to adopt them.

4           In many respects everybody has  
5           their, probably, favorite program in  
6           DEP, but the Water Quality Standards  
7           program is arguably the most important  
8           of all of them.

9           It provides the underlying basis for  
10          regulation of NPDS discharge permits on  
11          both the industrial side and the  
12          municipal side. It plays a role in the  
13          water quality certification process for  
14          Army Corps of Permitting -- excuse me --  
15          Army Corps of Permitting and FERP  
16          licensing. It will have impacts to the  
17          1500 or so storm, industrial storm water  
18          dischargers, and it will work its way  
19          indirectly into the running fields and  
20          Transfer Act cleanups.

21          The document, Appendix D, will  
22          clearly have a significant impact on the  
23          ability of people going through the  
24          Transfer Act program to get their sites  
25          signed off.

1           So, we have a huge undertaking here  
2           that appears, based on the presentations  
3           I have seen, to have been developed in  
4           the side wall, in the sense that the  
5           planning and standards program has come  
6           up with these standards, the Department  
7           representatives have thus far not been  
8           able to explain what the impacts of  
9           these standards will be if they were to  
10          adopted on the regulated community.

11           I think that is a critical failing.

12           With respect to the 30 days, I  
13          appreciate the Department's willingness  
14          to extend that. I think it's totally  
15          inadequate. I think if the Department  
16          wants to adopt such far-reaching  
17          standards this time around, they need an  
18          extensive outreach program to all the  
19          people who are going to be affected.

20           I can tell you, from the municipal  
21          POPWs I have talked to, they have no  
22          idea about this temperature stuff. They  
23          have been in the loop with the  
24          Department on phosphorus, but the  
25          temperature is going to come as a

1 complete surprise.

2 I think the industrial folks will  
3 have the same reaction.

4 As I understand how we got to where  
5 we got, Mr. Weisberg had brought a suit  
6 against EPA, not against Connecticut,  
7 for the state's failing to do a  
8 triangular review of their Water Quality  
9 Standards.

10 My further understanding, having  
11 talked to him and officials in the  
12 department, is that there is no judicial  
13 deadline for adopting these standards.  
14 So the Department has as much time as it  
15 needs to get it right, and it should do  
16 that.

17 Just a point, as other speakers have  
18 indicated, the notice that was published  
19 on December 22nd contained a paper about  
20 this. The subsequent documents, which  
21 is about an inch -- the subsequent  
22 documents have been about three inches,  
23 some of which have -- came in yesterday.

24 That is -- I think it's totally  
25 unfair and impossible for the regulated

1 community to review these and comment  
2 intelligently, even given an additional  
3 30 days.

4 And I would, therefore, request that  
5 the hearing be rescheduled 60 days from  
6 yesterday to allow further  
7 consideration.

8 Thank you.

9 HEARING OFFICER RUZICKA: Thank you.  
10 Margaret Miner.

11 MS. MINER: Thank you. I am  
12 Margaret Miner with Rivers Alliance of  
13 Connecticut. We are state-wide  
14 nonprofit that works on water resources.

15 I thank you for revising the Water  
16 Quality Standards. We have been waiting  
17 a long time for that.

18 Some -- a number of the amendments  
19 are more protective and we appreciate  
20 that. We are having trouble state-wide  
21 with water quality issues and  
22 contamination.

23 I second the comments of Richard  
24 Weisberg and Roger Reynolds at CFE on  
25 the phosphorus, the lack of clarity on

1 enforceability on the phosphorus  
2 standards.

3 I have, as I have expressed before,  
4 really a concern about condensing --  
5 mixing in with the definition of natural  
6 flow and natural conditions a factor  
7 that is best management practices, fine,  
8 but that are, I believe, financially and  
9 institutionally feasible.

10 I don't feel that is a criteria that  
11 should be applied to making a  
12 determination of what natural flow is.  
13 And I did make that point in previous,  
14 in previous submission of comments.

15 Mr. Weisberg makes the point, at  
16 length but very well, that the  
17 antidegradation principle in the  
18 regulations has been weakened in a  
19 number of places I consider are in the  
20 Water Quality Standards.

21 I believe this is the backbone of  
22 those Water Quality Standards. I have  
23 been getting a lot of questions about  
24 the language that would allow the  
25 discharge of treated domestic sewage to

1           waters classified AA, and I comment on  
2           that. Those are high quality, possibly  
3           future drinking water sources, and I  
4           think it is a, really a change in state  
5           policy to move in that direction.

6                     I ask that the -- I know that the  
7           standards still do not include any means  
8           to monitor or respond to endocrine  
9           disrupters in water, which is becoming  
10          an increasing problem both for human  
11          health and ecological health.

12                    Typical result, male fish that are  
13          our sources of caviar when they are  
14          exposed to a sufficient number of these  
15          substances.

16                    So, if there is any way to begin,  
17          for the state to begin to work toward  
18          those, I would -- we would be very  
19          grateful.

20                    Of course, since 2002 I have been  
21          asking for the inclusion of the  
22          narrative goal Flow Sufficient to  
23          Support Designated Uses.

24                    This language was originally  
25          suggested by EPA. I think it's still

1           needed. And if you read the sections  
2           that relate to flow, it's extremely  
3           convoluted, trying to deal with the  
4           problem of how you maintain water  
5           quality in a body of water that simply  
6           doesn't have very much water in it.

7           So I have some written comments that  
8           pretty much reflect these, and I will  
9           turn those in.

10          Thank you very much.

11          HEARING OFFICER RUZICKA: Thank you  
12          very much.

13          That is it by the list of speakers  
14          that signed up thus far. Does anybody  
15          else wish to be heard at this time?

16          Give me one moment, please.

17          (Pause.)

18          HEARING OFFICER RUZICKA: At this  
19          point this concludes the public hearing  
20          portion. The public comments period has  
21          been extended, I will repeat, until  
22          March 17, 2010.

23          Comments be must be provided by 4:00  
24          p.m. If you would like to receive a  
25          copy of the record of this proceeding,

1           please leave your name and address on  
2           the signup sheet in the back.

3                     With that, this concludes the  
4           proceeding today. Thank you.

5  
6                     (Whereupon, the hearing was  
7           concluded at 2:18 o'clock p.m.)

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CERTIFICATE

I, JENNY C. EBNER, R.P.R., L.S.R., do  
hereby certify that the foregoing testimony taken  
on February 3, 2010, is true and accurate to the  
best of my knowledge and belief.

\_\_\_\_\_  
Jenny C. Ebner, R.P.R., L.S.R.,  
Certified Court Reporter.  
CT. License 00030

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