

TROUTMAN SANDERS LLP

MEMORANDUM

TO: GIEC Water Resources Workgroup

FROM: Harvey Rosenzweig
Amanda Baxter

RE: GIEC Proposal for Sampling of Discharges of Substances Other than Fecal Coliform

DATE: November 28, 2005

Following the November 21 negotiating session, GIEC committed to providing a revised proposal for sampling of discharges of substances other than fecal coliform. During the negotiating session, Riverkeepers' counsel made a major concession, i.e., samples of discharges to impaired waters under Part III.C which exceed benchmarks or water quality standards will not constitute evidence of permit violations. This revised proposal incorporates that concession and also addresses some concerns raised by Riverkeepers regarding sampling.

The revisions to our initial proposal include:

- Language in the Permit that states that an exceedance is not a violation of the Permit and does not indicate a violation of the instream water quality standards. As noted above, Riverkeepers' counsel agreed in the November 21 session that the purpose of the Part III.C sampling was not to create a mechanism to violate the Permit or the law, but instead, to provide an effective mechanism for determining whether BMPs are currently working or whether additional BMPs are warranted. Our revised language to this effect is very beneficial to GIEC.
- In return for the above language, we propose eliminating the concept of instream sampling and returning to the original Permit's end-of-pipe sampling requirement. Since exceedances will not be permit violations, end-of-pipe sampling is much less of a concern.
- Initially, we provided three methods for analyzing the sampling data. We propose revising the language regarding the method to analyze the sampling data. Further, we understand from previous discussions that relying on the average of the samples is not an effective method of analyzing the data. Thought should be given to potentially removing this method from our proposal.
- Finally, in previous communications, Riverkeeper sought language that required EPD's concurrence with a facility's plans to implement additional BMPs. We have attempted to address these revisions even though the proposal has changed. The proposal now provides that (a) EPD must concur with an existing facility's decision to implement

additional BMPs at the initial monitoring stage and (b) EPD must concur with a facility's plan to implement additional BMPs during the Supplemental Monitoring Period.

We believe this current proposal is very beneficial to GIEC. Compared to the current Permit, our proposal significantly reduces the amount of sampling, provides alternative methods for analyzing the sampling data, and provides language in the Permit that this data cannot be used to prove a violation of the law or permit. We believe Riverkeeper should agree to this proposal because it (a) provides a defined mechanism for determining whether a facility's BMPs are ineffective and for requiring additional BMPs to improve any problems, (b) provides for quarterly sampling as suggested by Riverkeeper, (c) includes language requiring EPD's concurrence with a facility's plan for additional BMPs, and (d) provides for end-of-pipe sampling.

We look forward to hearing your thoughts on the proposal.