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October 31, 2006

Mr. Ray Nichols
NJDEP Division of Watershed Management
P.O. Box 418
401 East State Street
Trenton New Jersey 08625-0418

Re: New Jersey Clean Water Council Public Hearing
Improving Water Quality Planning and Management

Dear Mr. Nichols:

Malcolm Pirnie, Inc. (Malcolm Pirnie) wishes to enter the following testimony into the record of the October 10, 2006 New Jersey Clean Water Council (NJCWC) Public Hearing regarding Improving Water Quality Planning and Management on behalf of the Bergen County Utilities Authority (BCUA).

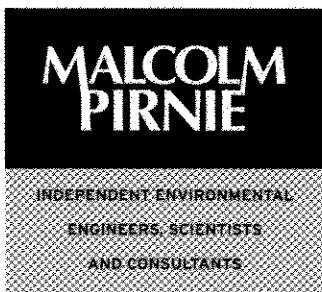
The BCUA is a regional wastewater utility which serves approximately 540,000 persons in all or portions of 51 municipalities in Bergen and Hudson Counties. The BCUA is a wastewater management planning entity that provides wastewater treatment services for its customer municipalities and industries. At present the BCUA has no responsibilities for non-point source pollution, or land use planning. The BCUA has been engaged in updating its Wastewater Management Plan (WMP) since the year 2003.

The BCUA's testimony regarding the NJCWC questions (**Bold** and *Italics*) posed in the announcement for the referenced hearing is as follows:

"Wastewater Management Plan (WMP) Amendment Process

Of the approximately 190 Wastewater Management Planning Areas located within the 12 Water Quality Management Planning (WQMP) areas, less than 10% have adopted updated WMPs within the past six years. How can the DEP increase compliance with the requirement that WMPs be reviewed and updated as needed every six years? How can DEP ease the burden on Local and Wastewater Management Planning entities to comply with these requirements while making the process more efficient and streamlined?"

The BCUA has spent significant time and effort since 2003 updating its WMP based on comments received from the NJDEP. The BCUA embarked upon the update in response to NJDEP prerequisite to the BCUA obtaining a modified discharge limit in its permit in



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alignment with the plant's design capacity. The modified discharge permit is the primary benefit the BCUA expects to realize from engaging in the planning process.

The BCUA believes that the WMP program should be revamped to take into account the associated efforts and costs if the NJDEP expects to increase compliance with the requirement that WMPs be reviewed and updated, as needed, every six years.

The NJDEP can ease the burden on wastewater planning entities and make the process more efficient and streamlined by making the components of the process related to determining which portions of the planning area can receive sewer service a separate process that it conducts with entities responsible for land use and regional planning. The wastewater planning entity could then focus on its mission: how to cost effectively provide the facilities which are needed to meet projected future flows.

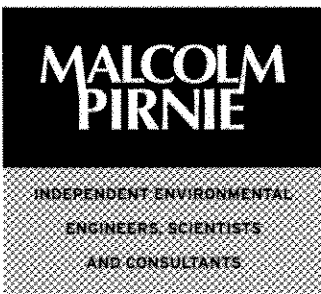
"Scale and Scope of Wastewater Management Plans

Should WMPs be done at a countywide scale, or would smaller regional WMPs be a more manageable and useful tool? Who should be the WMP agency for these smaller regional WMPs? Should the Department encourage counties to be more involved in the water quality planning process by becoming designated planning agencies? Consider the pros and cons of local control versus holistic perspective of regional WMPs. How should development that utilizes on-site wastewater management systems be regulated in WMPs?"

The BCUA's WMP addresses its physical service area that encompasses a majority but not all of Bergen County. This makes it a "smaller regional WMP" as described in the announcement.

The appropriate scale of WMPs depends upon their scope. If the NJDEP were to create a separate process related to determining which portions of the planning area can be served, as recommended in the BCUA's testimony regarding the "Wastewater Management Plan (WMP) Amendment Process", then a regional wastewater operating agency like the BCUA would be the appropriate entity to plan how to serve the identified need. If the NJDEP continues to expand the land use planning focus of WMPs then a regional planning agency like Bergen County would be the more appropriate entity to determine the population and commercial/industrial facilities that would be served. Once those numbers are known the wastewater operating entity would still need to translate the information into wastewater flow projections using a combination of measured flows and acceptable factors for new flow.

The BCUA believes that few wastewater operating entities have invested in maintaining their WMPs up to date partly to the regulation of development that utilizes on-site wastewater management systems in WMPs. This is another example of a planning cost without a



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commensurate reward. Development that utilizes on-site wastewater management systems should only be regulated by WMPs if the WMPs are the responsibility of entities able to enforce appropriate minimum lot sizes.

"Consistency with the State Development and Redevelopment Plan (SDRP)"

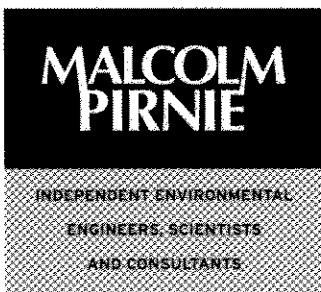
Should the areawide WQMPs and component WMPs be required to be consistent with the State Development and Redevelopment Plan as a mechanism to achieve consistency among State, regional and local planning? If so, how?"

Areawide Water Quality Management Plans and component WMPs should be consistent with the State Development and Redevelopment Plan (SDRP) because although they may be different plans, all are seeking to plan for the same real estate and the SDRP is the most comprehensive expression the state's planning goals. The BCUA used the cross acceptance documents for the SDRP generated by the Bergen County Department of Planning and Economic Development as the basis for the flow projections in its WMP. Likewise, our anticipated service areas are consistent with the development classifications shown on the SDRP's maps. We recommend this methodology as a way on achieving consistency among state, regional, and local planning.

"Adequacy of Nonpoint Source Pollution Control"

The Water Quality Planning Act at N.J.S.A. 58:1 1A-5c requires that areawide WQMPs must include the establishment of a regulatory program to provide control or treatment of all point and nonpoint sources of pollution. Point source regulation is accomplished through the New Jersey Pollutant Discharge Elimination System (NJPDES) permit. At present, nonpoint source pollution control is provided through required compliance with the Stormwater Management Rules (N.J.A.C. 7:8) and the imposition of riparian corridor protection. Are these nonpoint source pollution controls adequate? If not, what changes would you propose? Where the WMP agency is not a municipality, how should the Department implement the nonpoint source controls?"

The BCUA is not responsible for non-point source pollution control in its district, planning area or service area nor does it expect to assume the responsibility for non-point source pollution control in any of these areas. The BCUA would in principle like to see more effective non-point source pollution control because the NJDEP asks a point source discharger such as the BCUA to improve the quality of its discharge so that the receiving water can achieve water quality standards in spite of non-point source pollution. Non-point source pollution is intimately related to land use and urbanization. Counties and municipalities are better able to address the causes of non-point source pollution than regional wastewater utilities because of their broader public mandate and responsibility. The NJDEP should continue to pursue its present non-point source program patiently realizing that measurable improvements will take



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years if not decades as was the case for the improvements to point sources initiated in 1972 by the Clean Water Act. As recommended in the BCUA's testimony regarding the "Wastewater Management Plan (WMP) Amendment Process" if the NJDEP continues to expand the land use planning focus of WMPs then a regional agency like Bergen County would be the more appropriate entity to become responsible for non-point source pollution control.

"Controlling Saltwater Intrusion

The Water Quality Planning Act at NJ.S.A. 58:1 1A-5i requires areawide WQMPs to include a process to identify, saltwater intrusion into rivers, lakes and estuaries resulting from a reduction in freshwater flow from any cause, and to set forth procedures and methods to control such intrusion. What standards should be included in the Water Quality Management Planning Rules to achieve this objective?"

The BCUA understands that the NJDEP is seeking to control saltwater intrusion through the Water Quality Management plan process. Brackish water intrusion caused the abandonment of several wells along the Hackensack River decades ago. The BCUA does not know whether over-pumping, water supply diversions, wastewater diversions or some combination of these factors caused the abandonment of these wells. The BCUA does not think that the wastewater management planning process should be burdened with controlling salt water intrusion given that wastewater planning and operating entities like the BCUA lack the statutory authority to deal effectively with the potential causes. Saltwater intrusion can be addressed more effectively by regional water resource plans developed with the cooperation of water purveyors and wastewater dischargers which could then be incorporated into the water quality management plans in the same manner as wastewater management plans are at present.

"Coordination with Statewide Water Supply Plan

Should measures to protect source water supplies be included in an areawide WQMP or WMP? If so, how? When and where should water balance analysis be required? How should "beneficial reuse" be defined? When and where should it be required?"

Protecting Water Sources

Wells and other water sources can be protected by areawide Water Quality Management Plans through the same regional water resource plans recommended by the BCUA under the topic of "Controlling Saltwater Intrusion." The protection of wells and other water sources should not be addressed in WMPs; especially those being prepared by wastewater operating entities, except to the extent that wastewater discharges are directly threatening their potability. For example, the BCUA's sewer service area was extended to serve the watershed tributary to the Oradell Reservoir to protect the water supply from contamination originating from septic systems.

Balancing the Water Budget

Water balance analyses should be performed as part of every regional water resource plan as recommended by the BCUA under the topic of Controlling Saltwater Intrusion. The boundaries for balances, especially in northeastern New Jersey with its regional wastewater treatment facilities and regional water supply agencies make the water budget analyses inappropriate for inclusion as part of the WMP process.

Considering Beneficial Reuse

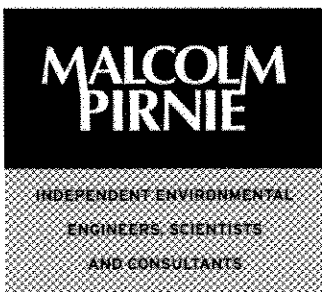
The NJDEP does not consider the indirect reuse of wastewater discharges for potable supply as a beneficial reuse unlike comparable agencies in several other states. The NJDEP should define beneficial reuse in the same manner as these other states, which include California, Florida and Texas, so that statistics from New Jersey can be compared more realistically with statistics from those other states.

The BCUA voluntarily became involved in reuse a decade ago when it began supplying cooling makeup water to Public Service Electric and Gas. The BCUA has investigated other opportunities to supply treated wastewater to entities seeking non-potable water. Unfortunately hydrological and economic realities limit the potential for beneficial reuse in the BCUA's service area and probably in most of New Jersey. The BCUA is troubled that the NJDEP may be entertaining requiring (emphasis added) reuse especially if it is considering placing that burden on wastewater operating entities without a mandate for water supply as well and having wastewater dischargers subsidize development of non-potable water supply systems. The obligation to develop non-potable water supplies should be placed on the entities seeking water allocations for non-potable purposes.

"Protecting Sensitive Environmental Features

How should the Department address protection of sensitive environmental features (Natural Heritage Priority Sites, Threatened and Endangered Species habitat, wetlands and floodplains, etc.) in the Water Quality Management Planning Rules?"

The NJDEP should be asking why the Water Quality Management Planning rules should be used to protect sensitive environmental features such as National Heritage Priority Sites, threatened and endangered species habitat, wetlands and floodplains except to the extent that these features are threatened by inadequate water quality not how the Water Quality Management Planning rules should be used for that purpose. The BCUA believes that the protection of sensitive environmental features is meritorious and should occur through regulations promulgated for those specific purposes under equally specific legislative authorization. The Water Quality Management Planning rules should only require that water quality planning be consistent with those other mandates, not make the rules the mechanism for their implementation.



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"E.O. 109

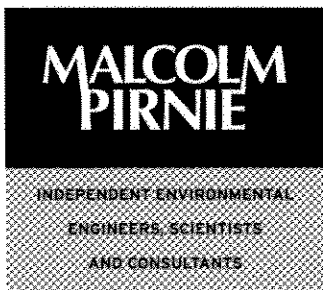
*How should the new Rules incorporate these requirements?
(see www.nj.gov/dep/watershedmgt/eo_109.htm)"*

Executive Order 109 (E.O. 109) required the BCUA having to perform additional analyses as part of its WMP update. Given its nature and intent, the application of E.O. 109 to the type of update being prepared by the BCUA seems inappropriate. E.O. 109 as written could be subjected to various interpretations that could establish requirements beyond the scope of the Water Quality Management Planning rules. Interpreted indiscriminately the NJDEP could use E.O. 109 to effectively require an environmental impact statement of any project requiring an amendment to a WMP. E.O. 109 by its nature is not the expression of a legislative mandate. The BCUA believes that the NJDEP should not incorporate E.O. 109 into the Water Quality Management Planning rules but should instead request the legislature to enact environmental impact statement legislation similar to that enacted in New York if it thinks it needs additional authority to regulate land use and development in New Jersey.

Point Source Analysis:

The BCUA does not completely reject the value of all of the analyses required by Executive Order 109. It does, for example, understand why a point source pollutant loading analysis is important under certain circumstances. However, the BCUA believes that the analysis should be part of the discharge permit process not the wastewater management planning process. The BCUA also believes that socio-economic analyses should not be required if the technical analyses indicate that the water quality standards will be satisfied with the increased load or concentration and the increase in load or concentration is below a threshold value of 10 percent. The BCUA has been working with the NJDEP to develop work plans for point source (anti-degradation) analyses to support additional loading to its receiving water. The NJDEP continues to reference its own and EPA policies that provide a general outline of requirements without clearly defining the criteria used to establish acceptable degradation. The BCUA is concerned with the prospect of providing a point source analysis when the ultimate decision after the expenditure of millions of dollars remains entirely a judgment call by the NJDEP.

The BCUA hopes the NJCWC considers the comments provided and finds such comments useful. The BCUA remains committed to providing high quality wastewater treatment protecting the environment.



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Very truly yours,

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