Rivers Alliance of Connecticut

EXHIBIT 28

TO: CT DEP

February 3, 2010

FROM: Margaret Miner, Rivers Alliance of CT

RE: Revised CT Water Quality Standards, Public Hearing

Rivers Alliance of Connecticut is the statewide, non-profit coalition of river organizations, individuals, and businesses formed to protect and enhance Connecticut's waters by promoting sound water policies, uniting and strengthening the state's many river groups, and educating the public about the importance of water stewardship.

Thank you for this revision, which includes some welcome increases in protection, and for this opportunity to offer comments.

We believe that ongoing contamination of surface and ground water is a threat to human health, a diverse ecology, and economic growth. Therefore, we thank DEP for tightening standards in a number of areas.

However, the revision of language on nutrient standards is weak and disappointing. In particular, we feel that DEP nutrient standards should be distinct from drinking-water standards, with scientific explanation of the appropriate standards. We are suffocating aquatic life with the present permissible level of nutrients. Unfortunately, the revision does not grapple with this

Several groups and individuals have interacted with the DEP on a number of occasions, making the case for a protective state standard for phosphorus. We still ask the DEP to include numeric criteria for phosphorus, and we support the comments of CT Fund for the Environment and Richard Weisberg.

The section below on nutrients is weak and would be a challenge to enforce. (Incidentally the new term "cultural enrichment" is multiply euphemistic. What happened to "eutrophication"? Is this no longer a meaningful term?) But we do thank DEP for inserting the reference to "potential" in line 2.

19) Point and non-point sources of phosphorus and nitrogen, including sources of atmospheric deposition, which contribute or have the potential to contribute to the impairment of any surface water shall be apply Best Management Practices, discharge limitations or other reasonable controls that may be required by the Commissioner on a case-by-case basis as necessary to ensure maintenance and attainment of existing and designated uses, restore impaired waters, prevent culturally enriched conditions or impair downstream waters.

Other sections on nutrient loading are similarly vague.

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Standards for limiting contamination of waters by endocrine disrupters, neurotoxins, and the like, should be included. The goals should be limits that are ecologically protective not just limits presumed to be protective of human health. It appears that some provision for setting limits has been made but no specific limits are set.

There continues to be confusion between a factual or scientific definition of a condition and a definition that sounds scientific but is dependent on cost considerations. Thus,

" 8. Water Quality Criteria do not apply to certain conditions brought about by natural causes. Natural hydrologic and geologic conditions may cause excursions from established criteria. The meaning of the word 'natural' is not limited to only those conditions which would exist in water draining from pristine land. Conditions which exist in the surface water, in part due to normal uses of the land, may be considered natural, provided best management practices are used. [emphasis added] *It shall not be considered normal use of the land if excursions from established Criteria adversely impact an existing or designated use. "*

This is a key passage. Notice, that the meaning of "natural" (used with respect to flow or nutrient loading, or whatever) is significantly different from dictionary definitions of "natural." Basically the definition in the standards includes non-natural, man-made conditions if best management practices (BMPs) are in place. This would be objective (although fuzzy) and defensible if BMPs were defined as, say, "Highest-quality water-protection practices currently available." Given a stream flowing past a paved mall, one could come up with some kind of estimate of water conditions with and without best available stormwater management techniques." BUT here is the definition of BMPs.

Best Management Practices means those practices which reduce pollution and which have been determined by the Commissioner to be acceptable based on, but not limited to, technical, economic and institutional feasibility.

So, if the goal is to restore, say, a stream to its natural condition, this means to restore the stream to the condition the stream would enjoy if not-too-expensive, institutionally feasible (whatever that means) management practices were in place. This makes a science definition dependent on political judgments.

We ask that DEP revise these passages to avoid making the definition of "natural" dependent on economic and institutional considerations. Once an environmental goal is set, then the feasibility of attaining that goal can be considered separately.

In connection with the reference to BMPs, we will repeat the comment that we submitted (unsuccessfully) on the revision of the state list of impaired waters.

The natural flow of a river means the flow with BMPs in place. Some rivers are interrupted by hydro dams. A BMP for a hydro dam is run-of-the-river flow management. Pond-and-release, or peaking, management is not a BMP for hydropower. Therefore, river segments above and below a pond-and-release hydro

dam should be list e d as impaired. The segment above will be unnaturally large and warm. The segment below will suffer from off-on flows.

Standard 9 has new language that would allow discharge of domestic sewage to surface waters classified A or SA. These waters are potentially the source of new drinking water supply. The discharge would make them ineligible as source water. Would DEP explain whether there is some sort of pressing need to allow this kind of discharge?

Number 10 refers to Zones of Influence. These are areas where there is a discharge. The discharge may be permitted to exceed pollution limits and degrade w.q. within a certain area (zone of influence). For example, partially untreated sewage may be blended with fully treated sewage. A number of us have questioned the application of this concept in various permits. The decision is made on a case-by-case basis. I am pleased that a numerical limit on concentration has been added.

Standard 11 relates to flow, and gives as minimum flow the drought measure of 7Q10 unless a water or power utility may by law draw below that. It also cites the out-dated CT Minimum Flow Regulation, which DEP has testified is neither science-based nor protective. **We ask DEP to protect flows by adopting the narrative standard: Flows adequate to support existing and designated uses.**

It appears that the anti-degradation principle, which is the backbone of the water quality standards, has been weakened in numerous passages. We support the comments and recommendations of Richard Weisberg.

Sincerely,

Margaret Miner

Margaret Miner, Executive Director