



June 3, 2022

[via email to deppermitting@dec.ny.gov](mailto:deppermitting@dec.ny.gov)

Scott Sheeley
New York State Department of Environmental Conservation
Chief Permit Administrator
Division of Environmental Permits
625 Broadway
Albany, NY 12233-3508

[via email to dep.r8@dec.ny.gov](mailto:dep.r8@dec.ny.gov)

Thomas Haley
New York State Department of Environmental Conservation
Regional Permit Administrator
6274 East Avon-Lima Road
Avon, NY 14414-9519

[via email to wong.virginia@epa.gov](mailto:wong.virginia@epa.gov)

Virginia Wong
EPA Region 2
Clean Water Division
NPDES Section Chief
290 Broadway
New York, NY 10007

[via email to Laureano.Javier@epa.gov](mailto:Laureano.Javier@epa.gov)

Javier Laureano
EPA Region 2
Division of Water
290 Broadway
New York, NY 10007

RE: Comments Regarding Draft Permit for the Village of Bath Wastewater Treatment Plant SPDES No. NY0021431

Dear Mr. Sheeley, Mr. Haley, Ms. Wong, and Mr. Laureano:

Seneca Lake Guardian respectfully submits these comments regarding the draft State Pollutant Discharge Elimination System Permit (“Draft Permit”) for the Village of Bath

Wastewater Treatment Plant (“the Facility”). Seneca Lake Guardian is a nonprofit organization that is dedicated to preserving and protecting the Finger Lakes and surrounding residents from potential environmental threats. Because PFAS is passing through the Facility into the Cohocton River, the Department of Environmental Conservation (“DEC”) must work with the Environmental Protection Agency (“EPA”) to develop a pretreatment plan. Seneca Lake Guardian is also concerned that the Draft Permit contains insufficient mercury and bacteria limits and monitoring requirements.

I. DEC Should Work with EPA to Address PFAS Discharges by Implementing an EPA-Approved Pretreatment Program.

As EPA and New York State have recognized, PFAS pose significant threats to human health and the environment.¹ Because the Facility accepts leachate that contains PFAS, and does not remove PFAS from influent, PFAS passes through the Facility into the Cohocton River. Moreover, the Draft Permit does not impose any monitoring, reporting, or treatment requirements related to PFAS. To address this known but as yet unregulated threat to human health and the environment, EPA—as the pretreatment authority for New York state—should develop a pretreatment program addressing PFAS.

A. PFAS is Passing Through the Facility to the Cohocton River.

Untreated PFAS from landfill leachate are passing through the Facility. The Facility accepts leachate from the Steuben County Leachate Treatment Facility (“LTF”).² The Steuben County LTF, in turn, accepts landfill leachate from three landfills at which testing has confirmed the presence of PFAS: the Seneca Meadows Landfill, the Hakes C&D Disposal, and the Hyland Landfill.³ Some test results were alarmingly high: for example, results from 2018 testing at the Hyland Landfill include 3170 ng/L of Perfluorobutanoic acid and 3050 ng/L of Perfluorohexanoic acid.⁴

¹ See EPA, *PFAS Strategic Roadmap: EPA’s Commitments to Action 2021-2024* (Oct. 2021), https://www.epa.gov/system/files/documents/2021-10/pfas-roadmap_final-508.pdf; N.Y. State Dep’t of Health, *Public Water Systems and NYS Drinking Water Standards for PFOA, PFOS, and 1,4-Dioxane* (Sep. 2020), https://www.health.ny.gov/environmental/water/drinking/docs/water_supplier_fact_sheet_new_mcls.pdf; DEC Releases *DRAFT Guidance Values to Advance New York State’s Regulation of Emerging Contaminants PFOA, PFOS, and 1,4-Dioxane*, N.Y. State Dep’t of Env’t Conservation, <https://www.dec.ny.gov/chemical/122803.html> (last visited May 27, 2022).

² See 2020-2024 Utilization Agreement between Bath Electric, Gas and Water Systems and the Village of Bath and Steuben County, attached to Sulkin Declaration as Exhibit A.

³ 2019 Annual Operations Report, Hakes C&D Disposal, attached to Sulkin Declaration as Exhibit C; Test America Analytical Report on Hyland Landfill, attached to Sulkin Declaration as Exhibit D; and Test America Analytical Report on Seneca Meadows Landfill, attached to Sulkin Declaration as Exhibit E.

⁴ Exhibit D at 9; Sulkin Decl. ¶ 13.

The Steuben County LTF does not treat for PFAS.⁵ Therefore, PFAS-laden leachate is traveling to the Facility, via the Steuben County LTF, without treatment.⁶

The Draft Permit describes a “Mini Industrial Pretreatment Program,” but does not contain any monitoring, testing, identification, or treatment requirements for PFAS.⁷ The Facility’s failure to remove PFAS from its influent means PFAS passes through the facility into the Cohocton River. Therefore the Draft Permit allows Steuben County LTF to violate the Clean Water Act’s prohibition on pass through. *See* 40 C.F.R. § 403.5(a)(1) (“A User may not introduce into a [publicly owned treatment works] any pollutant(s) which cause Pass Through or Interference.”).⁸

B. PFAS Threaten Public Health and the Environment, as EPA and New York State Have Recognized.

PFAS pose serious threats to public health and the environment. In October of 2021, EPA recognized the dangers of PFAS in issuing a PFAS Strategic Roadmap for 2021-2024.⁹ As EPA explained, exposure to PFAS can adversely impact human health and the environment.¹⁰

Recognizing that even very small quantities of these contaminants can threaten human health, the New York State Department of Health has set extremely low Maximum Contaminant Levels for two PFAS—PFOA and PFOS—in drinking water.¹¹ DEC has also proposed guidance values for PFOA and PFOS in SPDES permits, and in doing so, specified that landfills are a potential primary source of PFAS in the wastewater stream.¹²

⁵ The 2021 Fast Report on Significant Industries for the Steuben County Leachate Pretreatment Facility, attached to Sulkin Declaration as Exhibit B, indicates the facility uses flocculation to treat leachate. The American Water Works Association has acknowledged that flocculation provides “little PFAS removal.” *See* Am. Water Works Assoc., *Drinking Water Treatment for PFAS Selection Guide* 5 (2020), <https://www.awwa.org/Portals/0/AWWA/ETS/Resources/Technical%20Reports/Drinking-Water-Treatment-PFAS.pdf?ver=2020-11-10-100726-250>

⁶ *See* Sulkin Decl. ¶ 13.

⁷ Draft Permit at 12. According to EPA, the only effective treatments for PFAS in wastewater are anion exchange resin, reverse osmosis using high pressure membranes, and granular activated carbon designed for PFAS removal. Thomas Speth, EPA, *PFAS Science Webinar: PFAS Treatment in Drinking Water and Wastewater – State of the Science* 10 (2020), https://www.epa.gov/sites/default/files/2020-09/documents/r1-pfas_webinar_day_1_session_3_speth.pdf. The Draft Permit does not discuss any of these treatments.

⁸ *See also* Sulkin Decl. ¶ 14.

⁹ EPA, *PFAS Strategic Roadmap*, *supra* note 1.

¹⁰ *Id.* at 5.

¹¹ N.Y. State Dep’t of Health, *Public Water Systems*, *supra* note 1.

¹² DEC Releases DRAFT Guidance Values, *supra* note 1; N.Y. State Dep’t of Env’t Conservation, Div. of Water, *Permitting Strategy for Implementing Guidance Values for PFOA, PFOS, and 1,4-Dioxane* 3, 5-9 (2021), https://www.dec.ny.gov/docs/water_pdf/togs1313.pdf.

C. EPA Has Started Addressing PFAS in Pretreatment Programs.

EPA recently developed guidelines for addressing PFAS at publicly owned treatment works (“POTW”). In an April 28, 2022 memorandum, EPA detailed how it will address PFAS discharges at POTWs where it is the pretreatment control authority.¹³ EPA is the pretreatment control authority in New York.¹⁴ Specifically, EPA will require POTWs to monitor effluent, influent, and biosolids for each of the 40 PFAS parameters that are detectable by draft method 1633.¹⁵ The memorandum also commits that EPA-issued pretreatment permits will contain “permit requirements to identify and locate all possible [industrial users] that may be subject to the pretreatment program and identify the character and volume of pollutants contributed to the POTW by the” industrial users.¹⁶ EPA specifically notes that landfills may not be captured on an existing industrial user inventory and directs that the industrial user inventory “shall be revised, as necessary, to include all [industrial users] in industry categories expected or suspected of PFAS discharges.”¹⁷

D. EPA Should Develop a Pretreatment Program for the Facility.

EPA has the authority and obligation to develop a plan for the Facility.¹⁸ EPA is the pretreatment authority at the Facility: EPA has not delegated pretreatment authority to DEC, and has not approved a state pretreatment plan for the Facility.¹⁹ An EPA-approved pretreatment program for the Facility is necessary. DEC is not currently regulating PFAS discharges into POTW that pass through into surface waters, at the Facility or elsewhere in New York.²⁰ Although DEC has proposed guidance values for PFOA and PFOS in SPDES permits, the guidance would exclude POTWs and does not operate as an enforceable water quality standard.²¹

In failing to develop any plan to regulate PFAS sent to or discharged from POTWs, DEC has left a yawning regulatory gap. According to the American Water Works Association, current research shows that conventional wastewater treatment systems have limited effectiveness

¹³ See Letter from Radhika Fox, Assistant Adm’r, EPA, to Water Div. Dirs., EPA Regions 1–10, *Addressing PFAS Discharges in EPA-Issued NPDES Permits and Expectations Where EPA is the Pretreatment Control Authority* 3–4 (Apr. 28, 2022), https://www.epa.gov/system/files/documents/2022-04/npdes_pfas-memo.pdf (hereinafter “EPA Memo”); Sulkin Decl. ¶ 15.

¹⁴ Sulkin Decl. ¶ 11.

¹⁵ EPA Memo at 3; Sulkin Decl. ¶ 16.

¹⁶ EPA Memo at 3; Sulkin Decl. ¶ 17.

¹⁷ EPA Memo at 3; Sulkin Decl. ¶ 17.

¹⁸ See Sulkin Decl. ¶ 19.

¹⁹ See *NPDES Pretreatment Program in Region 2*, EPA, <https://www.epa.gov/npdes-permits/npdes-pretreatment-program-region-2> (last updated Dec. 7, 2021); see also Sulkin Decl. ¶¶ 11–12.

²⁰ Sulkin Decl. ¶ 18.

²¹ *DEC Releases DRAFT Guidance Values*, supra note 1; *Permitting Strategy for Implementing Guidance Values for PFOA, PFOS, and 1,4-Dioxane*, supra note 12, at 3, 5-9.

against PFAS.²² One study found, “the probability of detecting PFAS in United States public drinking supplies was significantly associated with higher numbers of wastewater-treatment plants within a watershed.”²³ DEC’s failure to regulate PFAS at POTWs puts New Yorkers and their environment at risk.²⁴

Additionally, as discussed above, the Mini Industrial Pretreatment Program described in the Draft Permit is insufficient. The Village of Bath has adopted a sewer use law, but that law is not consistent with the EPA Model Pretreatment Ordinance or the 1994 Revision of the DEC Model Sewer Use Law. For example, the Village of Bath sewer ordinance does not require pretreatment permits and does not address hauled waste, nor does it contain provisions for enforcement or penalties for violating pretreatment requirements.²⁵

At a minimum, the final permit should require the Facility to monitor PFAS in its influent, effluent, and biosolids.²⁶ It should also require all industrial users to test their discharges for PFAS and to remove PFAS from any discharges before that waste can be accepted at Facility. The Village of Bath should also be required to update its sewer ordinance.²⁷

E. EPA Should Require All Other New York POTWs Accepting Industrial Influent Likely to Contain PFAS to Develop Pretreatment Programs Addressing PFAS.

EPA should also develop a pretreatment plan for any POTW in New York State that accepts leachate. Under the Clean Water Act, an EPA-approved pretreatment plan is required only for facilities with a total design flow greater than 5 million gallons per day, creating a loophole for landfills with PFAS to send their leachate to smaller POTWs and escape treatment requirements. 40 C.F.R. § 403.8. However, “[t]he Regional Administrator or Director may require that a POTW with a design flow of 5 mgd or less develop” a POTW Pretreatment Program under certain circumstances, including where “the nature or volume of the industrial influent” warrant such a program in order to prevent a pass through. *Id.* § 403.8(a). Because PFAS are not regulated at New York State POTWs, as discussed above, the “nature of the...influent” warrants a pretreatment program to prevent an unlawful pass through. *See Id.*

²² See Am. Water Works Ass’n, *Per- and Polyfluoroalkyl Substances (PFAS) Treatment 1* (2019), [https://www.awwa.org/Portals/0/AWWA/ETS/Resources/Per-andPolyfluoroalkylSubstances\(PFAS\)-Treatment.pdf?ver=2019-08-14-090249-580](https://www.awwa.org/Portals/0/AWWA/ETS/Resources/Per-andPolyfluoroalkylSubstances(PFAS)-Treatment.pdf?ver=2019-08-14-090249-580).

²³ See Amila O. De Silva et al., *PFAS Exposure Pathways for Humans and Wildlife: A Synthesis of Current Knowledge and Key Gaps in Understanding*, 40 *Env’t Toxicology & Chemistry* 631, 634 (2020).

²⁴ In contrast, Michigan has developed a PFAS pretreatment program that requires identifying sources of PFAS, water sampling, and PFAS reduction. *See IPP PFAS Initiative*, Michigan.gov, <https://www.michigan.gov/egle/about/organization/water-resources/industrial-pretreatment/pfas-initiative> (last visited May 17, 2022).

²⁵ Sulkin Decl. ¶ 12.

²⁶ *Id.* ¶ 20.

²⁷ *Id.*

II. The Draft Permit Limits for Mercury are Too High.

The Draft Permit's mercury limits are too high and fail to protect the Cohocton River's designated use of protection of wildlife. The Draft Permit reflects a Mercury Daily Maximum of 50 ng/L and a 12-month rolling average of 12 ng/L.²⁸ These limits fail to protect the designated uses of the Cohocton River because they exceed the 0.70 ng/L Human Health Fish Consumption water quality standard and the 2.6 ng/L Wildlife water quality standard. The Facility's recent discharges show that the current mercury discharges are well below 50 ng/L and 12 ng/L. Specifically, "[b]etween March 2019 and March 2022, the highest reported mercury concentration was 2.32 ng/L on March 31, 2020."²⁹ Expert review of effluent data from the Facility demonstrates that the facility can comply with the 2.6 ng/L Wildlife water quality standard and is currently in compliance with that standard.³⁰ There is no justification to set the permit limit above the 2.6 ng/L Wildlife water quality standard, when the facility has demonstrated that compliance is achievable.³¹ Setting higher limits than necessary flies in the face of the required case-by-base technology based review and violates anti-backsliding and anti-degradation requirements.

III. The Draft Permit Should Lower Bacteria Limits to Protect Existing Primary and Secondary Contact Recreation on the Cohocton River.

The Draft Permit's limits do not conform with the applicable water quality standards for bacteria. The Draft Permit only requires fecal coliform sampling once a week, or four times a month, which does not meet the minimum sampling frequency required in the water quality standard.³² The fecal coliform water quality standard for Class C waters states, "The monthly geometric mean, from a minimum of five examinations, shall not exceed 200."³³ Once weekly grab sampling is not frequent enough to satisfy the water quality standard. Further, the Draft Permit does not include limits for Total Coliforms, as the water quality standard requires.³⁴

The Draft Permit's bacteria limits are also not protective of primary and secondary recreation in the Cohocton River and should be lowered to protect existing uses.³⁵ The Draft Permit proposes to measure fecal coliforms instead of *E. coli* to demonstrate the safety of the water for recreational uses.³⁶ However, measuring fecal coliform is an outdated method to measure bacteria levels in surface waters.³⁷ DEC should be requiring *E. coli* measurements to demonstrate the waters protect public health. Further, DEC has not provided information

²⁸ *Id.* ¶ 21.

²⁹ *Id.* ¶ 22

³⁰ *Id.* ¶ 23.

³¹ *Id.* ¶ 24.

³² *Id.* ¶ 26.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* ¶¶ 25–26.

³⁶ *Id.* ¶ 27.

³⁷ *Id.*

supporting limiting disinfection to May 31 and October 31.³⁸ Postings on social media reflect that people kayak on the Cohocton River earlier in the year than May 31 and that some kayakers also swim in the river during their kayak trips.³⁹

The Draft Permit must lower its bacteria limits to protect existing uses, including secondary contact recreation prior to May 31 and primary contact recreation during the summer.⁴⁰ To protect primary and secondary contact existing uses, Seneca Lake Guardian recommends the final permit contain bacteria limits equal to the water quality criteria minus 10% for a margin of safety.⁴¹ Additionally, an E. coli limit that would protect primary contact recreation would be a limit reflecting that “[t]he geometric mean of samples collected over any consecutive 30-day period shall not exceed 126, and no more than 10 percent of the samples collected in the same 30-day period shall exceed 410.”⁴²

IV. The Draft Permit Contains Insufficient Monitoring Requirements

The Draft Permit contains daily maximum limits for several parameters without imposing sufficient monitoring requirements to demonstrate compliance with those parameters.⁴³ Under Clean Water Act regulations, permits must specify “[r]equired monitoring including type, intervals, and frequency sufficient to yield data that are representative of the monitoring activity.” 40 C.F.R. § 122.48(b) (emphasis added). Similarly, under New York law, “[a]ny discharge authorized by a SPDES permit shall be subject to such requirements for monitoring the . . . discharge . . . as may be reasonably required by the department to determine compliance with effluent limitations.” 6 NYCRR § 750-1.13(a). In order to demonstrate compliance with a daily maximum, a pollutant should be sampled at least daily, but ideally multiple times per day, either through continuous recording or through multiple grab samples.⁴⁴ DEC should require at least daily sampling for each pollutant with a daily maximum effluent limit.⁴⁵

The Draft Permit includes daily maximum limits for settleable solids, total dissolved solids, mercury, nickel, cyanide, total phenols, chlorinated phenols, copper, lead, and zinc. The Draft Permit sets a varied monitoring frequency to demonstrate compliance with a daily maximum effluent limit. The twice per day grab sampling of settleable solids is defensible, whereas the quarterly 24-hour composite sampling cannot demonstrate compliance with a daily maximum total dissolved solids effluent limit. A quarterly grab sample is unable to give DEC enough information to know whether the facility is in compliance with a daily maximum mercury limit, particularly when mercury is coming to the facility from the VA Medical Center, the Ira Davenport Hospital, and the Steuben County Pretreatment facility. DEC has also provided no explanation of how monthly grab samples are sufficient to show compliance with cyanide, total phenols, and chlorinated phenols daily maximums, while monthly 24-hour composite samples

³⁸ *Id.* ¶ 28.

³⁹ *Id.* ¶ 29.

⁴⁰ *Id.* ¶ 30.

⁴¹ *Id.* ¶ 31.

⁴² *Id.* ¶ 27.

⁴³ *Id.* ¶¶ 32–33.

⁴⁴ *Id.* ¶ 34.

⁴⁵ *Id.*

are required for nickel, copper, lead and zinc. The Draft Permit should require more frequent monitoring to demonstrate compliance with the permit limits.⁴⁶

V. DEC Should Have Granted Seneca Lake Guardian's Extension Request

Finally, DEC should have granted Seneca Lake Guardian's request for a short extension of the public comment period in light of the holiday weekend and complexity of SPDES permits. The draft permit was published in the Environmental Notice Bulletin on May 4, 2022, and DEC requested public comment by June 3. On May 24, Seneca Lake Guardian requested an extension of the public comment period from June 3 to June 17. DEC told Seneca Lake Guardian that a decision would be reached by May 27. Nonetheless, DEC waited until June 1—two days before the comment deadline—to reject the extension request, reasoning that 30 days was adequate to review the proposed modifications to the SPDES permit.

Due to the Memorial Day holiday weekend, however, the public had only 21 business days to review and comment on the proposed permit modifications. As DEC well knows, in renewing a SPDES permit, DEC must review the whole permit, and the public may comment on any aspect of the review and renewal. 40 C.F.R. §§ 123.25(a), 124.6(d), (e). Moreover, to adequately review and comment on a proposed SPDES permit, members of the public might need to retain an expert and legal counsel, as Seneca Lake Guardian has done here. In denying Seneca Lake Guardian's request for a modest extension, DEC has needlessly truncated public participation.

For these reasons, Seneca Lake Guardian urges DEC to modify the permit to address these comments and submits that EPA should develop and implement a pretreatment plan to address PFAS at the Facility.

Respectfully submitted,

Jill Witkowski Heaps
Susan Kraham
Hillary Aidun
Earthjustice
48 Wall Street, 15th Floor
New York, NY 10005
jheaps@earthjustice.org
skraham@earthjustice.org
haidun@earthjustice.org

On behalf of Seneca Lake Guardian

⁴⁶ See *id.* ¶¶ 32–34; Draft Permit at 4–5, 8–9.

DECLARATION OF BARRY SULKIN

Qualifications

1. My name is Barry W. Sulkin. I am an expert in the field of environmental science and water quality and in all aspects of discharge permits under the federal Clean Water Act's National Pollutant Discharge Elimination System and related state programs.
2. I am an environmental consultant and also Director of the Tennessee office of PEER (Public Employees for Environmental Responsibility) and am working on behalf of the commenting parties in this matter.
3. I received my Bachelor of Arts in Environmental Science in 1975 from the University of Virginia where I received a du Pont Scholarship. During my undergraduate years, I worked as a Lab Technician and Research Assistant at the University of Virginia and Memphis State University conducting water and soil/sediment analyses and sampling.
4. In 1976 I joined the staff of what is now called the Tennessee Department of Environment and Conservation as a Water Quality Specialist. I worked in the Chattanooga, Knoxville, and Nashville field offices and the central office of the Division of Water Quality Control in positions that included field inspector, enforcement coordinator, assistant field office manager, and assistant manager of the Enforcement Section. My duties included compliance inspections of water systems and wastewater systems under the NPDES permit program, enforcement coordination for the water pollution and drinking water programs, as well as work with the drinking water, dam safety, underground storage tank, and solid/hazardous waste programs. I also conducted investigations regarding fish kills, spills, and general complaints, including problems of stream alteration and pollution, as well as scientific/research investigations regarding water quality.
5. In 1984 I was promoted to Special Projects Assistant to the Director, and in 1985 I became State-wide manager of the Enforcement and Compliance Section for the Division of Water Pollution Control. In this capacity I was responsible for investigating and preparing enforcement cases, supervising the inspection programs, participating in developing NPDES permits, monitoring permit compliance, and conducting field studies involving alterations and water quality of wetlands, rivers, streams, and lakes.
6. While in this position, I received a joint State of Tennessee and Vanderbilt scholarship and took an educational leave to obtain my Masters of Science in Environmental Engineering, which I received in 1987 from Vanderbilt University. My thesis was "Harpeth River Below Franklin, Dissolved Oxygen Study," which was a field and laboratory study and computer modeling of water quality and impacts of pollutants from an NPDES permitted facility. I returned to my position as manager of the Enforcement and Compliance Section in 1987, where I remained until 1990.

7. Since 1990 I have engaged in a private consulting practice primarily specializing in water quality problems and solutions, regulatory assistance, permits, stream surveys, and various environmental investigations mainly related to water.
8. I have reviewed and assessed the draft State Pollutant Discharge Elimination System Discharge Permit (“Draft Permit”) for the Village of Bath Wastewater Treatment Plant (“Bath POTW”) and various related documents.
9. This Declaration contains my expert opinions, which I hold to a reasonable degree of scientific certainty. My opinions are based on my application of professional judgment and expertise of sufficient facts or data, consisting specifically of a review of the regulations and documents related to the Draft Permit. These are facts and data typically and reasonably relied upon by experts in my field.
10. In my expert opinion, the Draft Permit fails to meet requirements of the Clean Water Act. Further, the Bath POTW should be subject to an EPA-approved pretreatment program based on the pollution received from industrial users. In preparing this declaration, I reviewed the Draft Permit and fact sheet for the Bath POTW, the April 28, 2022 EPA Memo regarding PFAS in Clean Water permits, the Village of Bath Sewer Ordinance, DMRs for the Bath POTW, and these additional documents:
 - 2020-2024 Utilization Agreement between Bath Electric, Gas and Water Systems and the Village of Bath and Steuben County, attached as Exhibit A;
 - 2021 Fast Report on Significant Industries for the Steuben County Leachate Pretreatment Facility, attached as Exhibit B;
 - 2019 Annual Operations Report, Hakes C&D Disposal, attached hereto as Exhibit C;
 - Test America Analytical Report on Hyland Landfill, attached as Exhibit D; and
 - Test America Analytical Report on Seneca Meadows Landfill, attached as Exhibit E.

Summary of Opinions

A. The Permit Should Directly Address PFAS by Implementing an EPA-Approved Pretreatment Program.

11. The EPA is the pretreatment authority for New York state. While the Bath POTW’s design flow is less than the 5 mgd that would trigger a mandatory pretreatment program, EPA can require a smaller POTW to develop a pretreatment program if the nature or volume of industrial influent warrants in order to prevent pass through.
12. The Draft Permit does not include an EPA-approved pretreatment program. Instead, the Draft Permit contains what DEC calls a “Mini Industrial Pretreatment Program.” The Village of Bath has adopted a sewer use law, but that law is not consistent with the EPA Model Pretreatment Ordinance or the 1994 Revision of the DEC Model Sewer Use Law.

For example, the Village of Bath sewer ordinance does not require pretreatment permits and does not address hauled waste, nor does it contain provisions for enforcement or penalties for violating pretreatment requirements.

13. The Bath POTW is accepting leachate that contains PFAS. This conclusion is based on my review of documents that discuss the lab confirmation of PFAS in the leachate at three landfills that send leachate to the Steuben County Leachate Treatment Facility—the Hyland Landfill, the Hakes Landfill, and the Seneca Meadows Landfill. *See* Exhibits A, B, C, D, and E. The Hyland landfill in particular had alarmingly high levels of PFAS in the testing results.
14. The Bath POTW does not remove PFAS contained in its influent. Therefore, any PFAS received by the facility will pass through the facility untreated into the Cohocton River.
15. On April 28, 2022, EPA issued a memorandum detailing how EPA will address PFAS discharges from industrial users where EPA is the pretreatment control authority.
16. Specifically, EPA recommends monitoring of effluent, influent, and biosolids for each of the 40 PFAS parameters that are detectable by draft method 1633. In my opinion, only requiring facilities to test for 40 PFAS is the bare minimum testing to start addressing the issue. However, given the thousands of PFAS compounds being used in commerce, 40 is certainly not enough PFAS to monitor to understand the full picture of PFAS contamination.
17. EPA also recommends that permits to POTWs should contain “permit requirements to identify and locate all possible [industrial users] that may be subject to the pretreatment program and identify the character and volume of pollutants contributed to the POTW by the” industrial users. The guidance memo specifically notes that landfills may not be captured on an existing industrial user inventory and directs that the industrial user inventory “shall be revised, as necessary, to include all [industrial users] in industry categories expected or suspected of PFAS discharges.”
18. DEC is not currently regulating PFAS discharges into POTWs that pass through into surface waters, at the Bath POTW or elsewhere in the state. According to DEC’s proposed guidance values for PFOA, PFOS, and 1,4-Dioxane, DEC has no current plans to regulate any PFAS sent to or discharged from POTWs.
19. Given that Bath POTW accepts leachate from the Steuben County Leachate facility, which in turn accepts PFAS-laden leachate from multiple landfills, the nature of these industrial discharges justifies an EPA-required pretreatment program addressing and ultimately eliminating PFAS discharges into and from the Bath POTW.
20. At a minimum, Bath POTW should be required to monitor PFAS in its influent, effluent, and biosolids. It should also require all industrial users to test their discharges for PFAS and to remove PFAS from any discharges before that waste can be accepted at Bath POTW. The Village of Bath should also be required to update its sewer ordinance.

B. The Draft Permit Limits for Mercury Are Too High.

21. The Draft Permit contains a Mercury Daily Maximum of 50 ng/L and a 12-month rolling average of 12 ng/L. This is higher than the 0.70 ng/L Human Health Fish Consumption water quality standard and the 2.6 ng/L Wildlife water quality standard.
22. Review of effluent data from the Bath POTW for the past several years demonstrates that the current mercury discharges are well below 50 ng/L and 12 ng/L. Between March 2019 and March 2022, the highest reported mercury concentration was 2.32 ng/L on March 31, 2020.
23. Review of effluent data from the Bath POTW demonstrates that the facility can comply with the 2.6 ng/L Wildlife water quality standard and is currently in compliance with that standard.
24. There is no justification to set the permit limit above the 2.6 ng/L Wildlife water quality standard when the facility has demonstrated that compliance is achievable. Setting higher limits than necessary flies in the face of the required case-by-case, technology-based review and violates anti-backsliding and anti-degradation requirements.

C. The Draft Permit Should Lower Bacteria Limits to Protect Existing Primary and Secondary Contact Recreation on the Cohocton River.

25. The Draft Permit's bacteria limits are not protective of both primary and secondary recreation which appear to be taking place in the Cohocton River and should be lowered to protect all existing uses. Per the Clean Water Act, all waters should be suitable for fishing and swimming, especially when there are indications of such actual uses.
26. The Draft Permit does not require frequent enough monitoring to comply with the existing water quality standard. The standard states, "The monthly geometric mean, from a minimum of five examinations, shall not exceed 200." The Draft Permit only requires sampling once a week, which is four times a month, which does not meet the minimum sampling frequency the water quality standard requires. Further, the Draft Permit does not include limits for Total Coliforms, as the water quality standard reflects.
27. The Draft Permit proposes to measure fecal coliforms instead of E. coli to demonstrate the safety of the water for recreational uses. However, measuring fecal coliform is an outdated method for measuring bacteria levels in surface waters. DEC should be requiring E. coli measurements to demonstrate the waters protect public health. To protect public health, the final permit should have limits for both total and fecal coliforms at least 10% lower than the criteria. The final permit should also contain protective E. coli limits to reflect the primary contact existing use. A limit for E. coli that would suffice would be a limit reflecting that "The geometric mean of samples collected over any consecutive 30-day period shall not exceed 126, and no more than 10 percent of the samples collected in the same 30-day period shall exceed 410."

28. DEC has not provided information supporting limiting disinfection to May 31 and October 31.
29. Postings on social media reflect that people kayak on the Cohocton River earlier in the year than May 31 and that some kayakers also swim in the river during their kayak trips.
30. The Draft Permit must lower its bacteria limits to protect existing uses, including primary and secondary contact recreation prior to May 31.
31. To protect primary and secondary contact existing uses, I recommend the final permit contain bacteria limits equal to the water quality criteria minus 10% for a margin of safety.

D. The Draft Permit Contains Insufficient Monitoring Requirements.

32. The Draft Permit contains daily maximum limits for several parameters, including settleable solids, total dissolved solids, mercury, nickel, cyanide, total phenols, chlorinated phenols, copper, lead, and zinc.
33. The Draft Permit sets a varied monitoring frequency to demonstrate compliance with a daily maximum effluent limit. The twice per day grab sampling of settleable solids is defensible, whereas the quarterly 24-hour composite sampling cannot demonstrate compliance with a daily maximum total dissolved solids effluent limit. A quarterly grab sample is unable to give DEC enough information to know whether the facility is in compliance with a daily maximum mercury limit, particularly when mercury is coming to the facility from the VA Medical Center, the Ira Davenport Hospital, and the Steuben County Treatment Facility. DEC has also provided no explanation of how monthly grab samples are sufficient to show compliance with cyanide, total phenols, and chlorinated phenols daily maximums, while monthly 24-hour composite samples are required for nickel, copper, lead, and zinc.
34. In order to demonstrate compliance with a daily maximum, a pollutant should be sampled at least daily, but ideally multiple times per day, either through continuous recording or through multiple grab samples. DEC should require at least daily sampling for each pollutant with a daily maximum effluent limit.



Barry W. Sulkin

June 2, 2022

Date

Exhibit B

