

May 1, 1990

Mr. Ronald E. Maylath, P.E.
Hearing Officer
New York State Deptmt of Environmental Conservation
Diveision of Water, Room 320
50 Wolf Road
Albany, New York 12233

Dear Mr. Maylath,

RE: Proposed Stream Reclassifications for the Lake Ontario Basin
and the Lake Erie and Niagara River Basin

Attached you will find a copy of our statement read in part
at the May 1, 1990 hearings in Buffalo, New York.

Thank you.

Sincerely,

Karen Murphy
Field Coordinator

Great Lakes United

Statement on the Reclassification of Certain Surface Waters in the Lake Erie-Niagara River Drainage Basin and in the Lake Ontario Drainage Basin

May 1, 1990

Good Morning. My name is Karen Murphy and I am a Field Coordinator for Great Lakes United, a bi-national coalition of over 180 groups from throughout the Great Lakes region dedicated to the conservation and protection of the Great Lakes-St. Lawrence River Basin. Our membership includes environmental organizations, community groups, unions, small businesses, academic and scientific groups and governmental bodies, and extends from Duluth at the western end of the Basin to Quebec City along the St. Lawrence River outflow of the system.

To begin, I would like to state our appreciation for the opportunity to present our views on the reclassification of surface waters in the Lake Erie and Niagara River drainage basin and the Lake Ontario drainage basin.

We would first like to state our overall objection to the stream classification system. We feel that it is contrary to the guiding principles of the Great Lakes Water Quality Agreement and to the goals of the Clean Water Act.

Even though we do not support the N.Y. State classification system, given that framework we support reclassifying rivers into a higher use designation and further state that streams and rivers within these drainage areas should not receive a classification lower than a B.

Clean Water Act

The objective of the U.S. Clean Water Act is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters". In order to achieve this objective, the Clean Water Act specifies that it is the "national goal that the discharge of pollutants into the navigable waters be eliminated by 1985".

The Act also spelled out an interim target achieving "water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides recreation in and on the water". This was to be achieved by July 1, 1983. Clearly the dates and targets in the Clean Water Act have not been met. Nonetheless the goals and objectives specified in the Act remain what we must be striving to achieve in our water quality programs.

It is important to remember that the stream classification system in New York is not simply a statement of the progress in cleaning up a waterway and the overall condition of a stream. It is a tool used to determine the extent of pollution control required. For this reason it is imperative that no stream have a designation lower than a B. Under the system streams designated as D are allowed greater levels of pollution discharge than those that are C and those that are B have more stringent effluent requirements than a C.

The goal of the Clean Water Act is to achieve fishable and swimmable waters. Any classification below this is therefore justifying pollution loads that are contrary to the intent of the Act.

Great Lakes Water Quality Agreement

The Great Lakes Water Quality Agreement clearly enunciates two guiding principles to achieve the cleanup and restoration of the Great Lakes-St. Lawrence River Basin -- zero discharge and the ecosystem approach. The stream classification system is contrary to these guiding principles for several reasons.

First, classification systems assume that different water bodies can receive different amounts of pollutant loadings. For example, a stream designated as a D can receive greater amounts of certain pollutants than a river that is classified as an A. Zero discharge mandates that all water bodies are treated equally and achieve the same goal in terms of pollutant loadings. That goal is zero.

Secondly, the classification system ignores the ecosystem principle which dictates that rivers and streams will carry pollutant loads to other bodies of water. Ironically, many of the tributary streams to the Niagara River are being reclassified to a C designation from a D even though the Niagara is classified as an A-special. We cannot ignore the fact that discharges of pollutants from the tributary streams will and are entering the Niagara River.

Thirdly, the classification system obscures the real goal of the Clean Water Act and the Great Lakes Water Quality Agreement, which is to stop pollution of the waters. Use designations serve only to legitimize and justify pollution.

Areas of Concern

The International Joint Commission (IJC) identified 42 Areas of Concern in the Great Lakes Basin. These are areas that are severely degraded and where the "beneficial uses" are impaired. The IJC established a process for cleaning up these areas

embodied by the development and implementation of Remedial Action Plans (RAPs). New York State has begun work on Remedial Action Plans for the Buffalo River, Niagara River, Oswego Harbor, Rochester Embayment, and the St. Lawrence River. The State has made a serious commitment to developing these plans and initiating implementation. Every Area of Concern in New York State will be affected by the reclassification of streams taking place now. It is therefore imperative that the Department of Environmental Conservation (DEC) take a long, hard look at the actions proposed.

The purpose of Remedial Action Plans is to restore all impaired beneficial uses for the Area of Concern. Essentially this means that the Area is to be restored to a level where the fish are safe to eat, the water safe to drink, and where people can swim and enjoy other recreational activities. Restoration of these uses would classify these waters as either A or B. Therefore, all AOCs should be classified as such based upon this desired future use.

Tributaries to the AOC should have the same classification in order to avoid a situation where pollutant loadings are continually transferred from areas upstream of the AOC. As one citizen put it, you don't try to mop up the bathroom floor while the faucet is still running.

All AOCs should receive the highest use designation in order to ensure a high rank on the Priority Water Problems list. The state and federal governments have already designated Areas of Concern as priority action areas in terms of cleanup and restoration. In many areas this attention and interest is being matched by the local municipalities and counties. It is important that AOCs obtain a high rank on the PWP to ensure that further funds and staffing are allocated from the state for cleanup and restoration.

Redefinition of Best Available Technology

The emphasis of pollution control must shift away from end-of-pipe strategies and implement aggressive pollution prevention programs.

Historically, BAT has referred to those control technologies "at the end of the pipe". Effluent limits are based upon the effectiveness of pollution control technology to collect or treat pollutants in the waste streams before being discharged into receiving waters or sewers.

If we are to achieve zero discharge BAT must be redefined. It must be redefined in such a way that it will ensure an overall reduction in loadings of toxic substances into the environment. More specifically, BAT must include a range of pollution prevention technologies and techniques at all stages of the

industrial process which reduces the pollutants at the source. In choosing among alternative technologies, therefore, priority must be given to source reduction techniques which seek to avoid the creation of toxic substances in the first place. These techniques include product reformulation, process modification, material substitution, good housekeeping, and in-process recycling.

Conclusion

Since passage of the Clean Water Act the water quality programs of New York State have brought about improvement in some waterways. The state is to be commended for this progress. That progress, however, has not achieved the goal outlined by Congress and desired by the Great Lakes public -- the elimination of pollution and the attainment of fishable, swimmable and drinkable waters.

In conclusion, we offer the following recommendations.

The stream classification system should be abolished and pollution programs should aim for achieving the elimination of toxic discharges into our waterways. Stream classification is an archaic method for guiding pollution control and ultimately serves only to allocate pollution rights to water bodies. We feel that all waters should be treated equally and that pollution abatement programs should be aimed at eliminating discharges. If the Department proceeds in the use of the classification system, it must use the system more aggressively to drive pollution reduction and to drive the restoration of our waters.

The emphasis of pollution control programs must shift to pollution prevention. BAT must be redefined to incorporate pollution prevention strategies.

AOCs and their tributary streams should receive the highest use designation.

AOCs and their tributary streams should receive a high priority for cleanup and restoration.

Timetables and programs for achieving zero discharge should be established and implemented.

Decisions made by DEC will have profound impacts on the restoration of Areas of Concern throughout New York State. We urge the State to take a more aggressive stand in protecting our waters and adopt more protective classifications.

Thank you.