**Re: Program Coordination Between the Susquehanna River Basin Commission and the Pennsylvania Department of Environmental Protection**

 November 22, 2021

Andrew Dehoff
Executive Director
Susquehanna River Basin Commission

4423 N. Front Street
Harrisburg, PA 17110

**Re: Comments of Three Mile Island Alert, Inc.**

Dear Andrew:

The purpose of proposed Letter of Understanding (“LOU)” is to establish the terms under which the Susquehanna River Basin Commission (“Commission” or “SRBC”), a federal-interstate compact, and the Pennsylvania Department of Environmental Protection (“DEP”), acting through their proper officials, agree to cooperate and coordinate review of water resource projects, coordinate the collection and exchange of water use data, avoid duplication of efforts, and assure overall management and protection of water resources in the Pennsylvania portion of the Susquehanna River Basin.

The problems with the well intentioned proposal are two fold:

1) The modern day application of the term “duplication” is code for captured regulatory agencies advertising they intend to eliminate due process under the guise of “efficiency,” “paper work reduction,” and “unnecessary regulatory burdens”; and, 2) A document with a thirty day shelf life re-reciting existing protocols is duplicative, inefficient, and a waste of limited resources. Rather than navigate around the margins, resources would be better deployed to coordinate activities to deal with current violations including the discharge of sewage by the City of Harrisburg, sediment collection at the Conowingo Dam, and fish kills and the discharge of radioactive water, thermal pollution, and tritium plumes from nuclear power plants.

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Both the DEP and the SRBC are being held hostage by radical conservatives in the House of Representatives and state Senate who believe climate change is a gimmick. The missives and threats from Senator Gene Yaw - and the devastating cuts to the DEP’s staffing - are a matter of public record. Rather than surrender to the false notion that regulatory moats prevent the free passage of interstate commerce, it would be refreshing if both agencies would recommit to enforcing corporate accountability, equitable distribution of limited resources, and policing violators.

The DEP and the SRBC are not addressing the direct discharge of sewage from the City of Harrisburg, compelling Exelon to address sediment accumulation at the Conowingo Dam, and failing to acknowledge and monitor water pollution caused by the nuclear power plants on the Susquehanna River.

The Susquehanna River Basin Compact, P.L. 91-575, Section 3.7, Coordination and Cooperation, authorizes the Commission to enter into cooperative agreements with its member states to avoid duplication and enhance the efficiency of water resources management in the basin. Commission Regulation 18 CFR Section 806.7(b) implements Section 3.7 of the Compact, providing, in part, as follows:

“To avoid duplication of work and to cooperate with other government agencies, the Commission may develop administrative agreements or other cooperative arrangements with appropriate agencies of the member jurisdictions regarding joint review of projects. These agreements or arrangements may provide for joint efforts by staff, delegation of authority by an agency or the Commission, or any other matter to support cooperative review activities. “

Later in the document, “The coordination process is intended to promote intergovernmental cooperation, avoid unnecessary duplication of staff functions, minimize burdens on the regulated community, and generally allow for the efficient use of agency resources in completing the mission of each agency.”

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In the not-so-distant-past, cooperation did not have to be mandated; regulators picked-up the phone or met in person to discuss issues. Sponsors of ground water and surface water use applications were local agencies, corporations based, organized and operating in Pennsylvania or public utilities. Your offices are located minutes from each other.

However, many of the sponsors are based out-of-state, foreign owned, limited liability or private equity corporations. Many of these entities hide behind a corporate veil while making contributions to the folks that control funding for the DEP and the SRBC. The DEP and SRBC should consider codifying an LOU discussing the evolving terms of sponsor ownership.

 Painfully absent from this proposal are three notable contamination and pollution source points that remain unchecked and flow by the offices of the DEP or SRBC: 1) Sediment pollution at the Conowingo Dam; 2) Fish kills, effluent and radioactive releases, thermal discharges and tritium plumes from the Peach Bottom Atomic Power Station, the Steam Electric Steam Station, and Three Mile Island Nuclear power plants; and, 3) Sewage releases from the City of Harrisburg directly into the Susquehanna River.

“This LOU will serve as the administrative agreement or cooperative arrangement between the Commission and PADEP.”

Rather than recommit to words on paper, some of which you already collectively ignored, why not enter into meaningful Memorandums of Understanding (“MOU”) with the Federal Energy Regulatory Commission (“FERC”) to address sedimentation and water at the Conowingo Dam; the Nuclear Regulatory Commission (“NRC”) to address radioactive releases, monitor and regulate thermal pollution, radioactive waste discharges and tritium plumes; and engage the Harrisburg Intercooperation Authority (“ICA”) to curtail sewage discharges? In addition, it would be a healthy exercise in openness and transparency to post the LOUs and MOUS that have been enacted by the DEP and the SRBC.

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 STATUTORY AND REGULATORY AUTHORITIES

OF EACH AGENCY

“Commission statutory authority to regulate projects affecting the For the purpose of this LOU, PADEP statutory authorities to regulate the review of projects that include water withdrawals, diversions, consumptive use and to implement water resources planning includes, but is not limited to, the following…”

 Notably missing are three cornerstone documents: the Clean Water Act Section, 401, (2020), DER’s limited Interim Settlement Agreement with Metropolitan Edison at Three Mile Island, (1977), and the failure of the DEP and the SRBC to implement the terms of *Susquehanna Valley Alliance, v. Three Mile Island*, (1980.)

 “ In the event the Commission or PADEP adopt new regulations, policies or guidance that change the review criteria for water withdrawal projects, the Commission and PADEP will amend this agreement, as necessary, to address said changes**.”**

This is backwards**.** These protocols should be worked out prior to promulgating new agreements or regulations. Why is the pre-meeting proposed in this LOU not used prior to making rule changes?

Pre-decisional Coordination

SRBC determinations for most projects are made at regularly scheduled Commission business meetings. The commissioners have delegated authority for some actions to the Executive Director, including Approval by Rule determinations, minor modifications, and such. The SRBC Project Review Manager will notify PADEP of active applications on a quarterly basis, providing the results of Commission staff’s technical analysis and proposed final recommendations and determinations for the projects scheduled for action.

In general, agency staff will work together to resolve any issues regarding a project prior to the project being noticed for action by the Commission.

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 Dispute Resolution

 The following paragraph is imprecise and vague:

4. “With regard to projects under review by the Commission, the Commission and PADEP recognize and acknowledge that a primary objective of the coordination contemplated hereunder is to obtain consensus on all issues and conditions prior to the PADEP’s or the Commission’s approval of any withdrawal projects in the Pennsylvania portion of the basin. In the event a dispute should arise concerning this LOU, it will be elevated to the signing parties or their designees for negotiation. Any

dispute that the signatories are unable to resolve shall be submitted to the Executive Director of SRBC or his/her designee and the Pennsylvania Office of General Counsel or its designee for resolution. “

 What does consensus mean? Please identify the parties’ designees, the process, and the time line. What does negotiation look line, and is there an appeal process? Is there an Alternative Dispute Resolution option? How valid is a genuine consensus after a dispute? Has the DEP publicly advertised and vetted the LOU?

 Should the comments below be part of Standard Operating Protocol rather than a Letter of Understanding?

• Periodic status and continuous improvement checks and meetings;

• Interagency training (i.e., dedicated coordination meetings, participation in SRBC/PADEP program meetings, training workshops for the regulated community);

• Data and information sharing;

• Report development and sharing; and,

• Advanced planning and sharing of proposed changes to any regulations, policies, procedures or programs affecting water resources management in the basin.

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“To facilitate communication, the SRBC and PADEP will maintain and share up-to-date contact lists of key personnel for all relevant program areas. This document will be reviewed periodically and may be amended by the parties by mutual agreement at the staff level as long as it remains consistent with the LOU. On an ongoing basis, active communication and cooperation between agencies should result in continuous improvement to effective and efficient utilization of the staff resources of both agencies. The public will be apprised of updates through SRBC’s website.”

Do you really need a document to say “please” and “thank you”? Could the agencies schedule a document sharing training?

 “The SRBC and PADEP will work cooperatively, as technology is available and allows, to provide each other with reasonable access to appropriate data to fulfill planning, forecasting, and compliance monitoring functions.

What does “as technology is available and allows…” actually look like? Will the agencies be using identical RFPs for hard ware, software, and service contracts?

Water Quality Monitoring

“Commission and PADEP staff will continue to improve coordination for field data collection and analysis activities for water quality data. Examples of areas of collaboration include, but are not limited to, the exchange of information on chemical and biological data collection methods, side- by-side sample collection and analyses for quality assurance purposes, and sharing of trends information and other analytical results on an ongoing basis for studies conducted in Pennsylvania watersheds within the Susquehanna Basin.”

 When will the agencies coordinate the oversight fish kills, tritium monitoring, radioactive water discharges, raw sewage discharges, thermal pollution, and sediment creep? Or are these environmental challenges no longer clean water or water quality issues? 6

Water Resource Planning

“PADEP and SRBC will coordinate planning activities with regards to water availability and use throughout the Pennsylvania portion for the basin to best support sustainable water supply planning with regards to human, economic, and ecosystem needs. As population and domestic water demand in the basin continues to grow, there will be an ongoing need to increase water conservation and ensure public, commercial/industrial, livestock, and wildlife water supplies are sustainable into the future. This underscores the need to collaborate with tracking and forecasting water use to inform planning and regulatory decisions, in order to avoid future water use conflicts and impacts.”

Please provide dates, descriptions, and locations of past “water use conflicts and impacts” involving the DEP and the SRBC.

 Public Informational Meetings

“The public may provide comment on applications for water withdrawal and use to both agencies. As opportunities may arise, SRBC and PADEP staff may conduct or participate in joint informational meetings to further facilitate public participation and understanding of the proposed project. “

 What is the criteria or trip wire that sets off a round of public input hearings or public outreach? Which agency hosts and underwrites public participation events?

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 Pre-decisional Coordination

“SRBC determinations for most projects are made at regularly scheduled Commission business meetings. The commissioners have delegated authority for some actions to the Executive Director, including Approval by Rule determinations, minor modifications, and such. The SRBC Project Review Manager will notify PADEP of active applications on a quarterly basis, providing the results of Commission staff’s technical analysis and proposed final recommendations and determinations for the projects scheduled for action.”

“In general, agency staff will work together to resolve any issues regarding a project prior to the project being noticed for action by the Commission.”

 What does this process look like? Is there an appeal process or an Alternative Dispute Resolution option? Is this a weighted process where a Commissioner has more weight than a designee? How valid is a genuine consensus after a dispute? Has the DEP publicly advertised and vetted this proposal?

 Specific Coordination Procedures for Projects

“For water withdrawals and consumptive use applications subject to regulatory review by both SRBC and PADEP, the practices and procedures used by the agencies for coordinated review vary by project type. Specific procedures for synchronized and consistent reviews of the following project types are described in Appendices 1 through 6.”

Please provide past examples of the synchronized projects eligible for special treatment?

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 Joint Inspection Opportunities

“To the extent practicable, PADEP and SRBC may conduct joint facility and site compliance inspections. Participation in joint inspections by staff of the two agencies shall be governed by the legal authority for the same of the respective agencies, either statutory or regulatory, and otherwise by any policy adopted thereunder by the respective agencies. “

Will there be unplanned inspections as part of this protocol?

Compliance Notifications

“SRBC will continue to provide electronic notifications to its permit holders prior to the expiration date of an approval, along with notifications regarding changes in statutes, regulations, and fees that may affect a permit.”

Enforcement

 Will these alerts be publicly posted or limited to private communication?

Respectfully submitted,

Eric Epstein, Chairman

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