



Pequannock River Coalition

P.O. Box 392, Newfoundland, NJ 07435 (973)492-3212

www.pequannockriver.org

September 29, 2011

Mr. Frederick Sickels, Acting Director
NJDEP
Division of Water Supply
P.O. Box 426
401 East State Street
Trenton, NJ 08625-0426

Dear Mr. Sickels,

We are in receipt of your letter dated September 23rd (attached) concerning flows and temperatures at the Oak Ridge Reservoir this past summer.

This letter admits that there were five different occasions where Newark exceeded permit conditions. We agree. Yet, we are disturbed that your letter also states “The referenced temperature overages have tended to coincide with the reservoirs spilling. Given the magnitude of stream flow during some of the periods when river temperature were elevated and the limits of the release mechanisms, making additional releases in the amounts necessary to ameliorate the water temperature issue may not have been feasible in all cases.”

In addition, the letter says that you have “...received assurances from Newark that they are committed to maintaining stream temperatures within acceptable ranges to the extent feasible given the climactic conditions that are present and the capability of their release structures.”

Our own investigation has concentrated on the two worst instances of permit violation, being May 31st when the river temperature reached 82.2 degrees and August 20th when the river temperature reached 80.2 degrees.

First, we must note that the Department anticipated problems caused by heated spillway flows, and included in the permit a condition that “*when Oak Ridge Reservoir is spilling water over the dam, the City of Newark shall... ..make additional bottom releases from the Oak Ridge Reservoir in order to maintain a water temperature immediately downstream of Oak Ridge Reservoir within the ranges described...* ”.

Of course, there may be instances where heated spillway flows are so great that bottom releases may be insufficient to counteract them. Fortunately, the permit makes allowances for such conditions with the language “*...to the extent feasible...*”. If a bottom release was initiated but proved insufficient to counter overwhelming volumes of hot spillway water, the City would not be held accountable.

However, on the occasions we mentioned the river flow was not particularly high (75 cubic feet per second on May 31st and 103 cfs on August 20th). In both cases a minimal bottom release of 25-30 cubic feet per second from the cone valves at Oak Ridge could have completely avoided temperature problems. And in fact, when the City did finally react by providing an additional release, temperatures were quickly reduced to acceptable levels.

Also, further investigation shows that truly high amounts of spillway flow have not been as much of a problem as anticipated. For example, flows on 06/24 reached 531 cfs, on 08/16 they reached 415 cfs, and on 08/24 they reached 2,000 cfs. Yet, the highest river temperature reached on any of these dates was 76.3 on August 16th—far below the temperatures seen on May 31st or August 20th. Based on this data, exceptionally high spillway flows do not seem to be the main concern. Instead, it is moderate spillway flows during periods of hot weather **combined with a failure to act by the City of Newark** that creates havoc in this river system.

As shown in the attached emails, in both cases where the highest river temperatures occurred the Pequannock River Coalition notified the City of Newark in advance and requested that additional releases begin immediately. On May 30th we called the City's offices in the afternoon and sent an email that evening. Despite the critical situation we faced, no additional release was made until late in the day on May 31st and only upon urging from the state. In August we notified the City on the 17th that additional releases were prudent. Again, they ignored our request and did not provide an additional release. Very high temperatures were the result on August 20th. The City's failure to respond to these requests in a timely manner is unconscionable.

Not only has the City failed to react to our reports of high river temperatures, they have also failed to check, anticipate, and avoid these temperatures as they are required to do. With flow and temperature readings available from the USGS on the internet, this requirement is not at all difficult to meet. As we have stated in the past, my organization should not be forced to serve as a watchdog on this issue. The City must take this monitoring seriously, with oversight provided by the Department. While we might understand some reluctance to manipulate flows in a time of drought, ample water was available this year for these purposes.

Merely stating that Newark has "...committed to maintaining stream temperatures within acceptable limits..." is not sufficient. To-date, no hard evidence of this has been provided, such as a new operational plan or new monitoring protocol, indicating any alteration in the City's methods. If the May 31st incident had been the only transgression, we might be more understanding. However, on August 20th the City had a perfect opportunity to show that the problems experienced in May would not be repeated. Instead, the identical scenario was reenacted. Nothing in the City of Newark's conduct had changed.

Our greatest concern is that, until the Department fines the City of Newark for non-compliance, they have no incentive to follow their permit. If the Department enforces the permit with penalties, then the City of Newark will understand that failure to comply has a cost attached. Without that, the Pequannock River will remain at risk and the permit will not accomplish its intended goal of protection.

We hope the Department will now take proper action. The Pequannock River is a resource far too valuable to be endlessly abused in this fashion.

Please contact me if you require additional information or would like to discuss these matters at greater length.

Sincerely,

A handwritten signature in black ink, appearing to read "Ross Kushner". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ross Kushner
Executive Director

cc: Mr. Bob Martin, Commissioner, NJDEP
Ms. Hilary Semel, Executive Director, Eastern Environmental Law Center

From:

ross kushner

To:

"Andrew Pappachen Manager-Operations NWCD";

cc:

"fred.sickels@dep.state.nj.us"; "michele.putnam@dep.state.nj.us"; Chuck Coronato

Subject:

Pequannock River flows and temperature

Date:

Monday, May 30, 2011 6:16:00 PM

Dear Mr. Pappachen,

Today the river temperature at Oak Ridge reached 76.3, and is in excess of the targeted temperature. I'm sure this is due to a combination of the hot weather and the thunderstorm that moved through the area this morning.

As you know, to avoid this we need to increase the flow from the bottom valves at Oak Ridge. I hope you can take care of this on Tuesday as early as possible to avoid any problems.

The need should diminish as the water level in Oak Ridge gets back to normal and less water is flowing over the spillway.

Please contact me if I can assist in any way or provide additional information.

Thanks,

Ross Kushner, Executive Director

Pequannock River Coalition

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Newfoundland, NJ 07435

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From:

ross kushner

To:

"Andrew Pappachen Manager-Operations NWCD";

CC:

"fred.sickels@dep.state.nj.us"; "Kimberly Cenno";

Subject:

Pequannock River flows and temperature

Date:

Wednesday, August 17, 2011 9:59:00 AM

Andrew,

As you are probably aware, recent heavy rains have once again pushed spillway flows over the Oak Ridge dam. Currently the water temperature there is at 74.8 and rising. To meet permit conditions, additional water must be released from the cone valves to lower temperatures.

I know this has been a difficult year for this with repeated heavy rainfall. At least the reservoirs are in great shape! Your cooperation is greatly appreciated.

If you need to discuss this you can reach me on my cell phone at 973-xxx-3380.

Thanks,

Ross Kushner, Executive Director
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