



January 31, 2022

Hannah Brubach
Office of the General Counsel
1200 First St, NE
Washington, DC 20002

RE: Amendments to Nuisance Odor Requirements – § 903 Odorous and Other Nuisance Pollutants

Dear Ms. Brubach:

The District Department of Energy and the Environment (DOEE) published proposed amendments to 20 DCMR Section 903, Odorous and Other Nuisance Pollutants in DC Register Vol. 68 – No. 53 dated December 31, 2021. As the District's water and sewer service provider operating a regional wastewater treatment plant, Nineteen hundred (1,900) miles of sanitary and combined sewers, numerous flow-metering stations, and off-site wastewater pumping stations and appurtenances, the DC Water and Sewer Authority (DC Water) is one of the main sources within the District impacted by the proposed regulations. Having reviewed the proposed Section 903 regulations, DC Water finds that, as written, the proposed regulations are not practical and efforts to comply would impose a significant financial burden on the District's ratepayers. DC Water is therefore providing the following comments within 30 days as required. Below, we first set forth the language of the proposed regulation, then our proposed revision to the language, and finally our rationale for each suggested revision. As a general matter, DC Water is concerned about how the proposed amendment could impact critical wastewater treatment services which aim to protect public health and the environment. Accordingly, DC Water requests that wastewater collection systems operations be excluded from these proposed regulations entirely, including proposed §903.2 and the definition of wastewater treatment facility. DC Water requests that DOEE provide responses to these comments.

1. Citation and DOEE-Proposed Regulation

903.2 The Department may require an owner or operator of a stationary source of odorous air pollutants to submit an Odor Control Plan (OCP) to the Department if:

DC Water-Proposed Revision

903.2 The Department may require an owner or operator of a stationary source of odorous air pollutants, excluding wastewater collection systems, to submit an Odor Control Plan (OCP) to the Department if:

DC Water Rationale

The requirement of OCPs for wastewater collection systems could dramatically impede the critical wastewater treatment services offered by DC Water. It is infeasible and uneconomical to eliminate all odors during all operating scenarios at all times throughout the collection system.

2. Citation and DOEE-Proposed Regulation

903.2 (a) The source emits odorous air pollutants that are detected by a trained inspector using a field olfactometer when one (1) volume of odorous air has been diluted with two (2) or more volumes of odor-free air, as measured at a location or locations where it is likely odorous air pollutants will be detected given the prevailing atmospheric conditions; or

DC Water-Proposed Revision

903.2 (a) The source emits odorous air pollutants that are detected by a trained inspector using a field olfactometer when one (1) volume of odorous air has been diluted with **seven (7)** or more volumes of odor-free air, as measured at a location or locations where it is likely odorous air pollutants will be detected given the prevailing atmospheric conditions; or

DC Water Rationale

The proposed limit of 2 D/T that would trigger the requirement for an Odor Control Plan is unreasonably low. It is far lower than similar odor regulations in other jurisdictions, as shown in the table below.

Jurisdiction	Odor Threshold (D/T)
California	5
Colorado	7
Connecticut	7
New Jersey	5

DC Water recommends increasing to the threshold to 7 D/T to bring the regulation in line with regulations in other states.

3. Citation and DOEE-Proposed Regulation

903.4 (a) An owner or operator of a stationary source shall submit an OCP...
(2) For a source that falls within the regulated categories described in 903.3:
(A) Within sixty (60) days of effective date of the final rule, if the source was constructed before that date; or
(B) At least sixty (60) dates before commencing construction if the source is to be constructed after the effective date of the final rule, or with the source's permit application under 20 DCMR §§200.1 or 200.2, whichever is sooner.

DC Water-Proposed Revision

903.4 (a) (2) For a source that falls within the regulated categories described in 903.3:

(A) Within **four hundred fifty (450)** days of effective date of the final rule, if the source was constructed before that date; or

(B) At least sixty (60) days before commencing construction if the source is to be constructed after the effective date of the final rule, or with the source's permit application under 20 DCMR §§200.1 or 200.2, whichever is sooner.

DC Water Rationale

Based on DC Water's experience, 60 days is not a sufficient time period for compilation of an OCP for a facility as large and complex as Blue Plains and/or those subject to procurement regulations.

For existing facilities, budgets for projects are programmed 2 years in advance and therefore need a longer compliance window. The process for development of an OCP for DC Water facilities requires planning and hiring of a consultant prior to the development. This planning part of the process takes a minimum of 9 months, or 273 days including writing of a scope, RFQ/RFP process, selection of consultant, and issuance of PO and NTP prior to any work commencing. Up to a full year may be needed to develop the OCP for a facility such as Blue Plains.

Based on this process and expected schedule, DC Water requests a 450-day period from the date of final rule for development of OCPs for existing sources.

4. Citation and DOEE-Proposed Regulation

903.7 (b) Cease odor-emitting activities that are likely to cause a nuisance upon issuance of an order under §106 until the modified OCP is approved.

DC Water-Proposed Revision

Remove 903.7(b)

DC Water Rationale

DOEE should not have the ability to order a wastewater treatment plant or other facilities processing wastewater to shut down pending modification of an OCP because shutdown could have a serious impact on public health and safety that far surpasses any impact of odor. DC Water cannot stop the processing of wastewater if modifications to an OCP are deemed necessary by DOEE. DC Water would work with DOEE to resolve any concerns with the proposed OCP, but DC Water requests that this provision that would allow DOEE to require cessation of operation be removed. DC Water is required under federal regulations to provide wastewater treatment services to meet the Clean Water Act, National Pollution Discharge Elimination System (NPDES) permit, and Consent Decree.

5. Citation and DOEE-Proposed Regulation

903.12 The owner or operator shall report all deviations from the OCP to the Department within one (1) business day of the deviation;

DC Water-Proposed Revision

903.12 The owner or operator shall report all deviations from the OCP to the Department within **seven (7) business days** of discovery of deviation.

DC Water Rationale

DC Water has unmanned facilities and locations for which a deviation may not be noticed for up to 7 days from the deviation. DC Water requests this change to account for these facilities.

6. Citation and DOEE-Proposed Regulation

999.1 Wastewater treatment facility – publicly owned treatment works as defined in 40 C.F.R. § 63.1595, sewer lift-stations, wastewater pumping stations, and equipment for on-site treatment of wastewater.

DC Water-Proposed Revision

999.1 Wastewater treatment facility – wastewater treatment plants and facilities where wastewater is treated via biological or chemical processes.

DC Water Rationale

DC Water requests that collection system pumping stations operations be excluded from this proposed regulation. As a facility referenced in 903.3(e) that requires an OCP be submitted in all cases, DC Water is concerned about the all-encompassing nature of this definition. Under the 40 CFR 63.1595 definition of publicly owned treatment works, static sources such as manholes and combined sewerage overflow drop shafts would require OCPs. The sanitary and combined sewer system in the District comprises more than 1,900 miles of sewer and 54,000 manholes in a variety of different locations, conditions, and configurations. The system is also subject to variable flows under transitory rainfall conditions. Development of OCPs is highly burdensome for ratepayers and is technically impractical given these variable conditions. As noted, there are existing National Pollutant Discharge Elimination System (NPDES) permit conditions regarding operation and maintenance intended to require proper management of the systems. The sewer system is comprised of below grade pipes with limited opportunity to interact with receptors and further which are not expected to exceed the odor threshold in 903.2(a).

DC Water proposes the above language which includes the sources for which odor emissions are more likely based on the treatment of the wastewater that may release odorous pollutants.

7. Citation and DOEE-Proposed Regulation

999.1 Include definition of wastewater collection system.

DC Water-Proposed Revision

999.1 Wastewater collection system – sewer lift-stations, wastewater pumping stations, sanitary and combined sewers, manholes, flow-metering stations, and tunnel system diversion structures.

DC Water Rationale

For clarification of the text added to 903.2.

If you have any questions, or would like to discuss these comments further, please contact Salil Kharkar at (202) 787-4146.

Sincerely,

Marc Battle, Esq
Chief Legal Officer and Executive Vice President