

**Gelnett, Wanda B.**

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**From:** KDIBIASE@TELERAMA.COM  
**Sent:** Thursday, August 24, 2000 1:46 PM  
**To:** irrc@irrc.state.pa.us  
**Subject:** Support DEP Efforts to Reduce Water Pollution

Original; 1975

Independent Regulatory Review Commission Members

Dear Independent Regulatory Review Commission Members,

As a citizen of Pennsylvania, I am very concerned about the levels of water pollution that are dumped into the state's rivers, lakes and streams. It is unacceptable that Pennsylvania's waterways receive the highest levels of toxic pollution in the nation--this is not the legacy that we want to leave for our children. PLEASE pay attention to this vitally important issue. I am writing to ask you to support the DEP's current water quality standards that are being reviewed by the IRRC. It is critical that you oppose any efforts to weaken these regulations if we are going to take steps to protect and clean up Pennsylvania's waterways. I support the DEP's efforts to:

- \* Eliminate language that would have downgraded emission levels for 75 chemicals.
- \* Oppose the discharge of toxic chemicals under "General Permits." This type of permit does not afford enough protections for the environment or general public when it comes to pollution levels.
- \* Eliminate language that would allow for effluent trading by polluters.

Please take these important first steps to protect our waterways, our environment and our health. I look forward to hearing your response on this important issue.

Kathy Dibiase  
1600 Blackburn Heights Dr  
Sewickley, Pennsylvania 15143

**Gelnett, Wanda B.**

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**From:** KLONG@SHIPLEYSCHOOL.ORG  
**Sent:** Thursday, August 24, 2000 1:18 PM  
**To:** irrc@irrc.state.pa.us  
**Subject:** Support DEP Efforts to Reduce Water Pollution

Original: 1975

Independent Regulatory Review Commission Members

Dear Independent Regulatory Review Commission Members,

As a citizen of Pennsylvania, I am very concerned about the levels of water pollution that are dumped into the state's rivers, lakes and streams. It is unacceptable that Pennsylvania's waterways receive the highest levels of toxic pollution in the nation--this is not the legacy that we want to leave for our children.

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\* Eliminate language that would have downgraded emission levels for 75 chemicals.

\* Oppose the discharge of toxic chemicals under "General Permits." This type of permit does not afford enough protections for the environment or general public when it comes to pollution levels.

\* Eliminate language that would allow for effluent trading by polluters.

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Kate Ong  
207 S Jessup St  
none  
Philadelphia, Pennsylvania 19107

Original: 1975



Pennsylvania Public Interest Research Group  
1334 Walnut St., 6th Floor, Philadelphia, PA 19107 (215) 732-3747  
<pennpirg@pirg.org> <www.pirg.org>

RECEIVED

2000 AUG 21 AM 9:40

INDEPENDENT LABORATORY  
REVIEW COMMISSION

Comments of the Pennsylvania Public Interest Research Group to  
The IRRC on Final Rulemaking, PA Water Quality Standards and Toxics Management  
Strategy

The Pennsylvania Public Interest Research Group (PennPIRG) is a statewide non-profit, non-partisan environmental, consumer and democracy advocacy organization with nearly 12,000 citizen members throughout Pennsylvania. PennPIRG has a rich history of working to clean up the state's waterways, including lawsuits against the state's worst polluters, researching and writing multiple reports on water quality issues in Pennsylvania and mobilizing citizens around water protection issues. This summer, PennPIRG collected 15,000 comments to the DEP asking for greater enforcement of clean water permits, greater right to know about toxic pollution and stronger permit levels in Pennsylvania.

PennPIRG commends the DEP on its most recent efforts which take steps to protect Pennsylvania's waterways and we ask the IRRC to approve this rulemaking without any amendments or efforts to weaken this rulemaking.

Pennsylvanians are inextricably tied to the state's rivers, lakes and streams. They are used for recreational purposes, commerce, transportation and as a source of drinking water. Yet the state's waterways are becoming the dumping grounds for too many industrial polluters in Pennsylvania. This spring the EPA released its newest Toxic Release Inventory data which showed that Pennsylvania's waterways receive more pollution than the waterways in any other state. The TRI also showed that Pennsylvania is home to the nation's largest water polluter. This is not a legacy that we want to leave for our children.

It is critical that the DEP and IRRC listen to the 15,000 Pennsylvanians who wrote in this summer, and take steps to dramatically reduce the amount of pollution that is dumped into Pennsylvania's waterways in order to protect our environment and the public's health. PennPIRG supports the following actions of the DEP:

**Chapter 16:** PennPIRG supports the change that DEP has made in the final rulemaking, retaining aquatic life criteria for 75 toxic chemicals. Elimination of these criteria could have a serious impact on the health of aquatic life in streams and rivers across our state. This goes against the goals set forth in the 21st Century Environment Commission's report which called for reducing—towards a goal of eliminating—the exposure of people and other organisms to harmful levels of environmental contaminants. We applaud DEP's decision to retain these criteria until new data is available to update them using the newer methods.

**Section 92.2b:** PennPIRG opposes the change that DEP has made in the 2000 rulemaking which eliminates a suggestion in the 1998 rules that companies conduct a pollution prevention analysis. Pollution prevention analysis is a critical step in the effort to reduce water pollution. Experience in other states has found that pollution prevention is very cost effective, saving companies as much as \$7 for every dollar invested. We believe that this suggestion should have been strengthened to a requirement of NPDES permits, not eliminated.

The new proposal indicates that DEP will provide pollution prevention assistance to dischargers. While we believe this is a worthwhile goal, we do not believe it is practical, given the limited resources of the DEP in this area.

**Section 92.81:** PennPIRG strongly opposed the 1998 proposal to allow discharge of toxic chemicals using general permits. We applaud DEP's decision to rescind this proposal and to continue the current prohibition on the discharge of toxic chemicals using a general permit. As noted earlier, Pennsylvania is first in the nation for toxic discharges to our waterways.

We also support DEP's decision to rescind the 1998 proposal to allow general permits for discharges to High Quality streams. General Permits do not afford as much protection to waterways or to the public. They require less documentation by the polluter and provide less information to the public.

We strongly oppose the use of general permits in High Quality waters, and urged DEP to retain this prohibition in its final rulemaking. We believe, in order to prevent degradation of our HQ streams, that any permits for discharges to High Quality waters should go through the individual NPDES permit review process, with full scrutiny by regulators and the public.

**Section 92.83:** PennPIRG opposed the changes in the 1998 version that would have eliminated the requirement that companies who want a general permit must "demonstrate" that the permit will not cause a violation of water quality standards. The proposed language that would let companies "certify" rather than "demonstrate", was, we believe, a lower standard. We agree with DEP's decision to reverse this change and to retain the requirement to "demonstrate".

We also applaud the change reversing the 1998 proposal that would have restricted DEP's ability to deny general permits to companies with a history of violations of prior permits. The 1998 regulations would have limited DEP's review to just NPDES permits. This could allow companies who violate air or waste permits to get a general permit for new water discharges.

**Section 93.4:** We support DEPs' retention of the requirement that all streams and rivers be protected as "potable water" sources. We also support retention of Warm Water Fishes as a statewide water use. Both these standards provide important minimum levels of protection for our waterways, and we support their retention in the 1999 rulemaking.

**Section 96.4:** PennPIRG opposed the language in the 1998 rulemaking that would have given DEP authority to approve effluent trading. We do not support such trading. We strongly support DEP's decision to remove this proposal.

**Section 96.6:** We are confused by and concerned about the language in subsection (g)(3) that authorizes the Department to approve alternate allocation procedures without any clarification of what those procedures might be or how they might operate. We believe that the TMDL process is specifically outlined by federal law and regulations and should be followed, with any proposed deviations clearly spelled out in detail in DEP regulations. We also fear that this language might be used as justification for trading allocations among dischargers, and feel strongly that any such system is inconsistent with DEP's action removing effluent trading from Section 96.4.

**Section 96.7:** We are concerned that the language in this section on public participation in TMDLs only allows public participation after the draft TMDL has been developed. We urge DEP to establish a process that will allow interested watershed groups to participate in the development of the draft TMDL.

With these concerns in mind, PennPIRG applauds the efforts of the DEP which take steps to reduce pollution in Pennsylvania's waterways. PennPIRG requests that the IRRC does not weaken any of the improvements made by the DEP.



# CHESAPEAKE BAY FOUNDATION

Resource Protection  
Environmental Education

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William W. Warner

Pennsylvania Executive Director  
Jolene E. Chinchilli

August 21, 2000  
ORIGINAL: 1975

John R McGinley, Jr., Chairman  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor, Harristown 2  
333 Market Street  
Harrisburg, PA 17101

Dear Chairman McGinley,

The Chesapeake Bay Foundation would like to reiterate several of our comments regarding Water Quality Amendments, Chapters 92, 93, 95, 96 and 97. Our concerns for these proposed regulations are as follows:

### Section 92.5a – Concentrated Animal Feeding Operations

The NPDES permit requirements for Concentrated Animal Feeding Operations (CAFOs) have been determined by the Federal Clean Water Act to be a necessary means to provide water quality protection nationwide. The public participation process provided the Department of Environmental Protection (DEP) with comments from industry, environmental groups, and citizens who all agreed that large industrial animal farming operations and the manure they generate need to obtain permits. The Department developed a very user-friendly checklist for agricultural producers to use to assure the permit application was complete when it is submitted for review and approval.

Agriculture in Pennsylvania is very diverse, as are the management/ownership arrangements and the environmental factors of these operations. The feeding programs and the manure handling systems are unique to each operation and it is essential to allow the Department to have the ability to apply site-specific conditions to these permits. Otherwise, the permit truly becomes an exercise in paperwork and leaves the agriculture operator frustrated and the general public feeling as if there is not adequate protection of their water supplies. It seems that a farmer would certainly want a permit that reflects the management of "his" facility. Many operators are implementing management practices to assure water quality protection. Why should they be given a permit that is the same as one being given to a poor manager? The CAFO strategy provides minimum standards for a permit program. The CAFO permit must be site-specific to be valid or credible for everyone, including the permittee.

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

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Headquarters Office: 162 Prince George Street, Annapolis, Maryland 21401, 410.268.8816, fax 410.268.6687  
Maryland Office: 111 Annapolis Street, Annapolis, Maryland 21401, 410.268.8833, fax 410.280.3513  
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It is reasonable to address the economic consideration for facilities that are required to install best management practices on their property, as any landowner that is polluting would be required to do. Presently in Pennsylvania, the Pennsylvania Nutrient Management Program has millions of dollars available for implementation of these practices. The Governor's "Growing Greener" money is being used for this purpose in many watersheds and the Chesapeake Bay Program has been financially assisting farmers with management practices for over 10 years. Additional funding has been provided to farmers through the DEP Section 319 grant program. There is adequate money for farmers to implement environmental safeguards on their operations, if they are needed. Most credible publications credit industry consolidation and limited access to markets as having the greatest impact on the economic status of farm families nationwide, not CAFO permits. This permit program is not an explanation for the poor economic status of some farmers.

Most of rural Pennsylvanians rely on ground water for their family drinking water supply. **CBF strongly believes that CAFO permits, which may or may not contain site-specific conditions, are essential to a credible permit program that will actually address the protection of water quality. The language in chapter 92 should remain unchanged.**

#### Section 92.81 – General NPDES permits

Pennsylvania is fortunate to have abundant waters, over 83,000 miles of streams. "Special Protection" waters have been given this designation for good reason. These are typically streams where Pennsylvanians recreate with their families and where the tourist and sportsman industries provide substantial income to this state. "Exceptional value" waters and "high quality" waters are special and that designation must be upheld with adequate protection. Special protection designation does not necessarily prohibit the issuance of permits to operate large animal operations. Economic impacts to downstream municipalities to restore polluted water must be considered. Pennsylvania should use a proactive approach to pollution and prevent it from occurring. Pennsylvania could prioritize funding to "special protection" waters as is being successfully done in New York City Water Quality Program. The siting of new operations should not be considered in special protection watersheds, unless the water quality can be maintained.

CBF understands that the Environmental Protection Agency (EPA) may be discussing lowering the regulatory threshold from 1000 animal units to 500 animal units. Since Pennsylvania has only issued 6-8 individual CAFO permits in the first year of the CAFO program, perhaps the 500 AU criteria will more appropriately fit Pennsylvania agriculture.

#### Section 96.4 TMDLs

Section 96.4 gives the Department authority to require persons who discharge pollution to obtain an NPDES permit and conduct appropriate monitoring of pollutant sources. One of the constant comments raised in water quality discussions is "where is the science, we need more data and research?" In a new Total Maximum Daily Loads program, monitoring of water quality will be essential to demonstrate progress. Monitoring is the only actual way to judge if permit requirements are being met and water quality standards are being achieved. The success of the TMDL program for the entire state and all of the stakeholders will hinge on the Department's ability to require monitoring, when and where it is needed.

August 21, 2000

Page 3

**CBF strongly supports the authority of the Department to require monitoring as a permit condition, as in any other NPDES permit with any other industry. These permits will only apply to very large industrial scale operations, with a greater potential for discharge of pollutants.**

Section 96.5 – Nutrient Discharges

In Section 96.5(c) the discharge of phosphorus shall be limited and discharges may be adjusted as a result of a TMDL. Phosphorus is a nutrient of concern nationwide, and animal manures have resulted in excess phosphorus in many areas where livestock concentrations occur. Since phosphorus is the limiting nutrient of concern in degradation of fresh waters, it is essential to address phosphorus in Pennsylvania's TMDL program.

The nutrient management program, administered by the State Conservation Commission, is currently in the process of developing a "Phosphorus Report" to be presented to the Nutrient Management Advisory Board. The Advisory Board will then make recommendations to the State Conservation Commission about how to implement phosphorus management practices on farms in Pennsylvania. This demonstrates that Pennsylvania has recognized phosphorus as a water quality problem. Fifteen other states have implemented phosphorus standards, and others currently are in the process of doing so. In addition, the Natural Resource Conservation Service (NRCS), the Federal agriculture assistance agency, has been directed to have a "Phosphorus Plan" for each state by October 2000.

Since the State Conservation Commission (SCC) is chaired alternately by the Secretary of the Department of Agriculture and the Department of Environmental Protection (DEP), the link of program coordination is already established. The Nutrient Management Program will be a component of the TMDL program. **DEP must have the authority to impose water quality standards in its water quality programs. CBF recommends that Section 96.5 not be amended.**

Thank you for the opportunity to share our comments on these very important regulations. The CAFO strategy that is being included in this set of regulations was developed within a stakeholder process. Many of the sections represent compromise positions. While some may believe that these regulations go too far, others believe they do not go far enough. As a member of the stakeholder group that developed the strategy, CBF believes that the regulations in their current form represent a reasonable approach.

Please contact Melanie Wertz, CBF Agriculture Specialist, or me if you have any questions or we can be of any assistance on this issue.

Sincerely,

  
Jolene E. Chinchilli  
Pennsylvania Executive Director

Cc: John Jewett, IRRC

**Gelnett, Wanda B.**

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**From:** insearchofwater@wildmail.com  
**Sent:** Wednesday, August 16, 2000 12:28 AM  
**To:** irrc@irrc.state.pa.us  
**Subject:** Support DEP Efforts to Reduce Water Pollution

Original: 1975

Independent Regulatory Review Commission Members

Dear Independent Regulatory Review Commission Members,

As a citizen of Pennsylvania, I am very concerned about the levels of water pollution that are dumped into the state's rivers, lakes and streams. It is unacceptable that Pennsylvania's waterways receive the highest levels of toxic pollution in the nation--this is not the legacy that we want to leave for our children.

I am writing to ask you to support the DEP's current water quality standards that are being reviewed by the IRRC. It is critical that you oppose any efforts to weaken these regulations if we are going to take steps to protect and clean up Pennsylvania's waterways. I support the DEP's efforts to:

- \* Eliminate language that would have downgraded emission levels for 75 chemicals.

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- \* Eliminate language that would allow for effluent trading by polluters.

Please take these important first steps to protect our waterways, our environment and our health. I look forward to hearing your response on this important issue.

Owen Fox  
5023 Old Zuck Rd  
Apt 5  
Erie, Pennsylvania 16506

**List of Commentators – Regulation #1975**

**Jason Berstein  
Haverford College  
Haverford, PA 19041**

**Lynn Holdsworth  
310 Legion Heights  
Elkland, Pa 16920-1423**

**Catherine Devereaux  
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Easton, Pa 18045-2533**

**Gloria Guilbeaux  
1 Buttonwood Dr  
New Hope, PA 18938**

**Marti Reinfeld  
6329 Crombie Street  
Pittsburgh, PA 15217**

**Jane L. Bolin  
1683 Princeton Dr  
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**Joe Turner  
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**Joseph B. Kobsar  
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**Andrew C. Mills  
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Lower Gwynedd, PA 19002**

**Owen Fox  
5023 Old Zuck Road  
Apt 5  
Erie, PA 16506**

**Gelnett, Wanda B.**

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**From:** JBUDINGER@SRCARE.ORG  
**Sent:** Thursday, August 17, 2000 3:15 PM  
**To:** irrc@irrc.state.pa.us  
**Subject:** Support DEP Efforts to Reduce Water Pollution

Original: 1975

Independent Regulatory Review Commission Members

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Jennifer Budinger  
100 N Wade Ave  
Washington, Pennsylvania 15301

**Gelnett, Wanda B.**

---

**From:** KERRYSLINE@AOL.COM  
**Sent:** Thursday, August 17, 2000 11:10 AM  
**To:** irrc@irrc.state.pa.us  
**Subject:** Support DEP Efforts to Reduce Water Pollution

Original: 1975

Independent Regulatory Review Commission Members

Dear Independent Regulatory Review Commission Members,

I have been a register voter in the state of Pennsylvania for over a decade. I am very concerned about the levels of water pollution that are dumped into the state's rivers, lakes and streams. It is unacceptable that Pennsylvania's waterways receive the highest levels of toxic pollution in the nation--this is not the legacy that we want to leave for our children. I am writing to ask you to support the DEP's current water quality standards that are being reviewed by the IRRC. It is critical that you oppose any efforts to weaken these regulations if we are going to take steps to protect and clean up Pennsylvania's waterways. I support the DEP's efforts to: \* Eliminate language that would have downgraded emission levels for 75 chemicals. \* Oppose the discharge of toxic chemicals under "General Permits." This type of permit does not afford enough protections for the environment or general public when it comes to pollution levels. \* Eliminate language that would allow for effluent trading by polluters. Please take these important first steps to protect our waterways, our environment and our health. I look forward to hearing your response on this important issue.

Kerry Hendricks  
307 Joseph Dr  
West Chester, Pennsylvania 19380

**Gelnett, Wanda B.**

---

**From:** katahdin@ureach.com  
**Sent:** Wednesday, August 16, 2000 9:19 AM  
**To:** irrc@irrc.state.pa.us  
**Subject:** Support DEP Efforts to Reduce Water Pollution

Original: 1975

Independent Regulatory Review Commission Members

Dear Independent Regulatory Review Commission Members,

As a citizen of Pennsylvania, I am very concerned about the levels of water pollution that are dumped into the state's rivers, lakes and streams. It is unacceptable that Pennsylvania's waterways receive the highest levels of toxic pollution in the nation--this is not the legacy that we want to leave for our children.

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Harry Tucci  
220 Slonaker Rd  
Spring City, Pennsylvania 19475

**Environmental Quality Board  
Water Quality  
IRRC #1975**

<b>NAME</b>	<b>ADDRESS</b>	<b>DATE OF CORRESPONDENCE</b>
Harry Tucci	220 Slonaker Road Spring City, PA 19475	August 16, 2000
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Jeff Brown	14 Merwood Drive Upper Darby, PA 19082	August 16, 2000
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Charles & Nancy Cerino	2655 Terwood Hill Drive Willow Grove, Pa 19090	August 16, 2000
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Edward Torres	1354 Cinnamon Drive Fort Washington, PA 19034	August 16, 2000
Jessica Applebaum	12156 Waverly Walloway Phila, PA 19117	August 16, 2000
Mayra Santiago	6714 Crittenden St Phila, PA 19119	August 16, 2000
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Katherine Mulcare	18 Laurel Circle Malvern, PA 19355	August 16, 2000
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Caroline J. Haslett	1016 Larchmont Ave Havertown, PA 19083	August 16, 2000
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Michael Sullivan	1530 Powder Mill Lane Wynnewood, PA 19096	August 16, 2000
Arthur Alexander	7848 Spring Ave Elkins Park, PA 19027	August 16, 2000
Dave Ingegneri	604 Cadwalader Circle Exton, PA 19341	August 16, 2000

Carol Brannon	P O Box 332 2981 Cherry Lane Bryn Athyn, PA 19009	August 17, 2000
Richard Malloy	191 Pine Crest Lane Lansdale, PA 19026	August 17, 2000
Todd Clay	115 Kingsley Street Philadelphia, PA 17102	August 17, 2000
Rick Sell	1775 Lamplighter Drive Macungie, PA 18062	August 17, 2000
Greg Huey	500 Buck Island Ranch Road Lake Placid, FL 33852	August 17, 2000
Amy Broaddus	403 Great Springs Road Bryn Mawr, PA 19010	August 17, 2000
Sam Shaffer	115 Cedar Drive Richboro, PA 18954	August 17, 2000
Jonathan Weiss	28 Cooper Beech Drive Lafayette Hill, PA 19444	August 17, 2000
Nancy Martin	P O Box 285 Spring House, PA 19477	August 17, 2000
Katharine & Alan Muirhead	1501 Quaker Rdg West Chester, PA 19380	August 17, 2000
Ginny Trojan	627 General Weedon Drive West Chester, PA 19382	August 18, 2000
Rosie O'Sullivan	P O Box 425 Bryn Athyn, PA 19009	August 18, 2000
Concerned Citizen	e-mail: <a href="mailto:gil@ismd.ups.com">gil@ismd.ups.com</a> PA 17379	August 18, 2000
Pat Andrien	2342 Jones Road Pottstown, PA 19465	August 20, 2000
Yvonne Coleman	P O Box 1293 Ofallon, Missouri 63366	August 20, 2000
Keith Donnellan	4607 Spruce Street Philadelphia, PA 19139	August 20, 2000
Stephen Cavanagh	3303 Norma Drive Thorndale, PA 19372	August 19, 2000
Ed Salo	6507 Bronze Lane Plano, Texas 75023	August 19, 2000
William Detwiler	721 Little Shiloh Road West Chester, PA 19382	August 19, 2000
Beverly Bean	3118 Nottingham Road Norristown, PA 19403	August 19, 2000
Suzanne Dunleavy	212 Murray Drive Doylestown, PA 18901	August 18, 2000
William Bondinell	1512 Franklin Lane Wayne, PA 19087	August 18, 2000

Deborah Forst	211 Stefan Place North Wales, PA 19454	August 21, 2000
Norman Burke	705 E. Creamery Road Perkasie, PA 18944	August 21, 2000



Original: 1975

# CLEAN WATER ACTION

## COMMENTS TO IRRC ON FINAL RULEMAKING, PA. WATER QUALITY STANDARDS, AND TOXICS MANAGEMENT STRATEGY

2000 AUG 11 AM 8:42

INDEPENDENT REGULATORY  
REVIEW COMMISSION

Clean Water Action is a statewide environmental organization with over 80,000 members in Pennsylvania. We address a range of water quality and drinking water issues, working to promote a clean environment and safeguard public health. On behalf of our members, we commend DEP for the improvements it made in the rulemaking adopted by the EQB on June 20, 2000 and encourage the IRRC to approve this rulemaking without any weakening changes or amendments.

Clean Water Action strongly opposed the Water Quality Standards that DEP proposed in August 1998, believing that, in numerous ways, they weakened existing protections for our state's rivers, lakes and streams. We appreciate the changes that DEP made in the June 2000 version, remedying many of the shortcomings of the original version. We urge the IRRC not to weaken the June 2000 rulemaking, and to retain the changes that DEP made to strengthen its original 1998 proposal.

By way of context, it is important to note that, according to 1998 data from the EPA, Pennsylvania is now first in the nation for toxic discharges to our state's surface waters. In 1997, 38.5 million pounds of toxic chemicals were discharged into rivers, lakes and streams in our state; in 1998, this increased to more than 43 million pounds of toxic chemicals. Pennsylvania should be strengthening our regulations, not weakening them, and reducing toxic pollution of our water, not allowing more.

### SPECIFIC COMMENTS:

**Chapter 16:** Clean Water Action supports the change that DEP has made in the final rulemaking, retaining aquatic life criteria for 75 toxic chemicals. The 1998 proposal to downgrade these criteria to guidance values was not satisfactory because DEP cannot include an enforceable effluent limit in a permit based on guidance values. Consequently, there would not be enforceable limits in permits for these 75 chemicals.

In addition, elimination of aquatic life criteria for these chemicals would have made it impossible to regulate 20 of these chemicals for which there are not human health criteria; and would have reduced protection for another 20 chemicals for which the human health criteria is greater than the aquatic life values.

Elimination of these criteria could have a serious impact on the health of aquatic life in streams and rivers across our state. This is totally contrary to the goal in the 21st Century Environment Commission's report which called for reducing, towards a goal of eliminating, the exposure of people and other organisms to harmful levels of environmental contaminants. We applaud DEP's decision to retain these criteria until new data is available to update them using the newer methods.

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**Section 92.2b:** Clean Water Action is concerned with the change that DEP has made in the 2000 rulemaking eliminating the suggestion in the 1998 rules that companies conduct a pollution prevention analysis. We believe that this suggestion should have been strengthened to a requirement of NPDES permits, not eliminated.

The new proposal indicates that DEP will provide pollution prevention assistance to dischargers. While we believe this is a worthwhile goal, we do not believe it is practical, given the limited number of field staff in DEP's pollution prevention branch.

Further, we believe it is entirely appropriate to require NPDES dischargers to look for ways to reduce or eliminate their discharges; after all, NPDES does stand for National Pollution Discharge Elimination System. Experience in other states has found that pollution prevention is very cost effective, saving companies as much as \$7 for every dollar invested. Requiring NPDES permittees to conduct pollution prevention planning would be good for the environment and, at the same time, enhance the efficiency of companies in our state.

**Section 92.81:** Clean Water Action strongly opposed the 1998 proposal to allow discharge of toxic chemicals using general permits. We applaud DEP's decision to rescind this proposal and to continue the current prohibition on the discharge of toxic chemicals using a general permit. As noted earlier, PA is first in the nation for toxic discharges to our waterways. Allowing such discharges via general permits would only worsen this situation, and we strongly oppose it.

We also support DEP's decision to rescind the 1998 proposal to allow general permits for discharges to High Quality streams. General Permits do not afford as much protection to waterways or to the public. They require less documentation by the polluter and provide less information to the public.

We strongly oppose the use of general permits in High Quality waters, and urged DEP to retain this prohibition in its final rulemaking. We believe, in order to prevent degradation of our HQ streams, that any permits for discharges to High Quality waters should go through the individual NPDES permit review process, with full scrutiny by regulators and the public.

**Section 92.83:** Clean Water Action opposed the changes in the 1998 version that would have eliminated the requirement that companies who want a general permit must "demonstrate" that the permit will not cause a violation of water quality standards. The proposed language that would let companies "certify" rather than "demonstrate", was, we believe, a lower standard. We agree with DEP's decision to reverse this change and to retain the requirement to "demonstrate".

We also applaud the change reversing the 1998 proposal that would have restricted DEP's ability to deny general permits to companies with a history of violations of prior permits. The 1998 regulations would have limited DEP's review to just NPDES permits. This could allow companies who violate air or waste permits to get a general permit for new water discharges. We believe that a company with a history of noncompliance with any DEP permits, whether for air, waste or water issues, should not be trusted with a general permit.

Finally, there is no language in the regulations governing the use of general permits in impaired waters. Because these waters already have a serious pollution problem and do not meet designated uses, discharges into such waterways should be closely regulated, and general permits should not be allowed in such waters.

**Section 93.4:** We support DEPs' retention of the requirement that all streams and rivers be protected as "potable water" sources. We also support retention of Warm Water Fishes as a statewide water use. Both these standards provide important minimum levels of protection for our waterways, and we support their retention in the 1999 rulemaking.

**Section 96.4:** Clean Water Action opposed the language in the 1998 rulemaking that would have given DEP authority to approve effluent trading. As a matter of principle, we do not support such trading unless a series of very clear and specific safeguards are put into place. The 1998 proposed rulemaking included no details on how such trading would work, and what criteria and procedures would be used. We strongly support DEP's decision to remove this proposal and to convene a separate process to discuss any possible effluent trading scheme for Pennsylvania.

**Section 96.6:** We are confused by and concerned about the language in subsection (g)(3) that authorizes the Department to approve alternate allocation procedures without any clarification of what those procedures might be or how they might operate. We believe that the TMDL process is specifically outlined by federal law and regulations and should be followed, with any proposed deviations clearly spelled out in detail in DEP regulations. We also fear that this language might be used as justification for trading allocations among dischargers, and feel strongly that any such system is inconsistent with DEP's action removing effluent trading from Section 96.4.

**Section 96.7:** We are concerned that the language in this section on public participation in TMDL's only allows public participation after the draft TMDL has been developed. We urge DEP to establish a process that will allow interested watershed groups to participate in the development of the draft TMDL. To do this, we suggest the Department publish a schedule for TMDL development and a list of contact people for each region so that groups interested in working on a TMDL will know who to call and when.

#### **SUMMARY:**

Clean Water Action commends the Department for the improvements it made in this final rule-making, compared to the 1998 proposal, and urge the IRRC not to weaken any of the improvements DEP made. Given Pennsylvania's rank as the number one state for toxic water discharges, we cannot afford to weaken state regulations to protect our water quality.

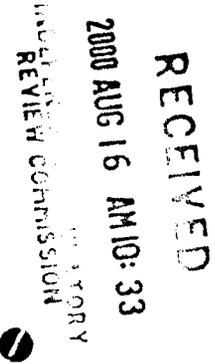
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**Pennsylvania  
Farm Bureau**

Original: 1975

August 15, 2000



John R. McGinley, Jr., Chairman  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor, Harrisstown 2  
333 Market Street  
Harrisburg, PA 17101

**Re: Regulation Number 7-338, Environmental Quality Board, Water Quality Amendments  
(Chapters 92, 93, 95, 96, and 97)**

Dear Chairman McGinley:

The Pennsylvania Farm Bureau wishes to submit the following comments regarding Chapters 92,93,95,96 and 97. Our concerns are as follows:

**Section 92.5a - Concentrated Animal Feeding Operations**

Subsections (a), (b) and (c) of Section 95.5a describe in detail the requirements to be met by a Concentrated Animal Feeding Operation ("CAFO") in order to apply for and obtain an NPDES permit. Although the preamble to the final proposed regulations recognize that Section 92.5a is attempting to incorporate the recently published CAFO strategy<sup>1</sup> and that the purpose of the CAFO strategy was to "create a simplified permit application process [for farmers to obtain permits] under the individual NPDES regulations while protecting the environment"<sup>2</sup>, we fear that Section 92.5 may be interpreted as identifying only the **minimum** regulatory requirements which a farmer must meet in order to obtain an NPDES permit for his or her CAFO, and that the Department would authority to impose additional and cost prohibitive requirements on farming operations under other provisions of Chapter 92.

The CAFO strategy was developed through an active process of public participation by representatives of agricultural and environmental organizations and government, including the Department of Environmental Protection. The participating parties came to the table with the knowledge and appreciation that larger animal farming operations need to demonstrate the operations

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<sup>1</sup> Pages 9 of the Preamble.

<sup>2</sup> Pages 14-15 of the Preamble.

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and animal manure generated from the operations will not cause pollution of surface waters but that requirements for farming operations to produce the types of studies and data that other industries are required to produce for NPDES permits would be cost prohibitive for farmers without any substantial environmental benefit. The CAFO strategy reflects an effective but pragmatic approach for farmers to meet environmental standards for their agricultural operations and demonstrate that their operations will not adversely impact surface waters without breaking the banks of farm families.

Section 92.5a clearly reflects the detail that participants in the development of the CAFO strategy tried to incorporate in the process and the intended objective of the process to identify **all** of the standards and requirements a farmer would need to meet in order to obtain an NPDES permit. No other section of the final form version Chapter 92 includes the detail of standards and requirements that are described for agriculture under Section 92.5a. Yet, in the context in which it appears, Section 92.5a is but one section contained in Chapter 92 – the chapter that proposes to establish all of the standards and requirements enterprises will need to meet in order to obtain an NPDES permit.

Without some clarifying language in Section 92.5a, many will view the section as only the **beginning** point of regulatory standards and requirements to be met by agricultural operations. The Department will be enabled to go far beyond what is prescribed in Section 92.5a, and demand additional, cost prohibitive, requirements on farmers whose operations require an NPDES permit <sup>3</sup> consistent with Chapter 92. Although we will not attempt to identify all of the regulations within Chapter 92 that could potentially be used to impose harsh consequences on agricultural operations, we will attempt to illustrate the point. Section 92.21, which outlines the minimum requirements for individual NPDES permits, gives the Department limitless discretion to require effluent assessments, installation of water monitoring wells and equipment and periodic testing and analysis, additional chemical and biological analysis for local habitat, and any “other information or data the Department may need to assess the discharges of the facility and any impact on receiving waters”. Any of these powers individually may be exercised in a manner that would prevent farm families from obtaining NPDES permits because of the resulting costs for compliance, thus prevent preventing farm families from operating their farms in a manner that would provide even a modest level of economic viability.

Farm Bureau strongly believes the open-ended allocation of regulatory power that the other sections of Chapter 92 would provide defeats intended spirit of the CAFO strategy to develop a single set of reasonable and identifiable standards that encompasses the entirety of requirements to be met by agricultural operations for which an NPDES permit is necessary. We strongly recommend that Section 92.5a be modified to specifically state that the requirements prescribed in this section constitute the entirety of requirements to be met by CAFOs pursuant to application and approval of NPDES permits.

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<sup>3</sup> Keep in mind that Chapter 92 would make any discharge from a CAFO a “point source” discharge. See the definition of “point source” contained in Section 92.1.

## **Section 92.81 - General NPDES permits**

Section 92.81(a) provides that the Department **may** issue a general NPDES permit, in lieu of issuing individual NPDES permits, for a clearly and specifically described category of point source discharges, if the point source meets certain conditions.

**Existing** language in Section 92.81(a)(8) prohibits the use of general NPDES permits in “special protection waters”. However, in the originally proposed rulemaking, Section 92.81(a)(8) would have been amended to narrow the scope of the paragraph’s prohibition to “exceptional value waters”. Land use activities near other regulated streams, including “high quality waters”, would not have been absolutely barred from acquiring a general NPDES permit for discharges into these streams. Now, in its final proposed rule, the Department has decided to **reinstate the language currently contained in Section 92.81(a)(8) to absolutely bar the issuance of general NPDES permits in high quality waters.**

The proposed retention of the current language of Section 92.81(a)(8) has direct implications for agriculture in Pennsylvania, because of proposed changes to other sections in Chapter 92 to regulate agriculture. The final version of this proposed rule will likely cause farming operations that are CAFOs to be regulated as a “point source” activity.<sup>4</sup>

Pennsylvania Farm Bureau continues to recommend that 92.81(a)(8)’s originally proposed version, which would allow the issuance of general NPDES permits in high quality waters, should be the version contained in the final rule. In support of our recommendation, we would point out to the Commission that current regulations governing maintenance of water quality recognize that degradation of high quality streams is not absolutely prohibited. Section 93.4c(b)(1)(ii), which was recently amended to comply with federal water quality standards, recognizes that the Department has the authority to reduce the standards of water quality standards in high quality streams if the lowering of standards is necessary to accommodate important economic or social development in the area in which the stream is located and if the lowered standard will continue to support existing and designated water uses in the stream. Secondly, the provisions of Section 92.81– whether in current form, originally proposed form, or finally proposed form – are enabling rather than restrictive in focus. The section provides that general permits **may be issued** by the Department, **except where** one of the conditions specified in the section is not met. Even where all of the conditions prescribed in Section 92.81 are met, the Department is not prohibited from requiring an individual permit and not a general permit where special circumstances or conditions warrant special regulation or oversight. Finally, the Commission should recognize that the opportunity for obtaining a general permit does not preclude the Department from being notified of the performance of activities that qualify for a general permit or from exercising regulatory and enforcement powers over the general permit activity and the person performing the activity. The person whose activity would otherwise qualify for general permit is required by law to notify the Department before performance of that activity. And, as with any other permit, the Department is authorized to review the person’s claims

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<sup>4</sup> See the proposed definition of “point source” contained in Section 92.1.

that the activity performed qualifies for a general permit rather than an individual permit and to take appropriate regulatory and enforcement action when the activity no longer qualifies for general permit or when the activity is being performed in a manner that does not meet the requirements prescribed for general permit.

In our experience, the general permitting of agricultural activities has been an effective means of balancing the need for environmental protection with the need for farmers not to be saddled with harsh costs in permit acquisition. Pennsylvania Farm Bureau continues to believe that agricultural operations should be given the opportunity to secure general permits for farming activities. If the circumstances are inappropriate for use of a general permit, then one should not be provided. But the Department should not be absolutely barred, as it would be under the final proposed version, to explore the opportunities to regulate agricultural activities through a general permit process.

Especially in light of the current allowances for general permits provided to agriculture under the Federal Clean Water Act, it makes little sense to require individual permitting of all discharges in any stream other than an exceptional value stream unless there are compelling reasons that are particular to waters of this Commonwealth..

Potential developments at the federal level also add importance to this permitting issue. It is Farm Bureau's understanding that the federal Environmental Protection Agency (EPA) plans to lower the regulatory threshold for CAFOs from 1000 animal units to 500 animal units as part of its December, 2000 CAFO regulations proposal. This change will, in turn, require Pennsylvania to modify its present CAFO strategy to adhere with federal requirements. As expensive and time consuming regulations continue to be placed on smaller agricultural operations, it is important that general permits be available to provide farmers with relief from permitting costs whenever possible.

#### **Section 96.4 TMDLs and WOBELS**

Section 96.4(k), as proposed, would give the Department authority to require any person whose discharges require an NPDES permit and any other person subject to the Clean Streams Law to conduct appropriate monitoring of pollutant sources and waters and report the results pursuant to the Department's regulation of total maximum daily loads on streams. We are concerned that such authority, without limitation, may be used to impose cost prohibitive requirements for installation and use of water monitoring devices upon farming operations near impaired waters, thereby preventing or discouraging continuation of farming practices and changes in practices that are necessary for the future viability of the farming operation.

As discussed above in our comments to Section 92.5, we believe the CAFO strategy and the development and establishment of standards under the CAFO strategy were intended to identify all of the requirements and standards that farms subject to regulation as CAFOs would need to meet in order to comply with law.

While we are not clear on the approach the Department will take in the regulation of farming practices within basins of streams in which total maximum daily loads have been established – which is a concern to us – it seems clear that the language contained in Chapter 96 and the responses offered to public comments on Chapter 96 contained in the Comment and Response Document are intended to reflect a more positive, less inhibiting regulatory approach with respect to farms located nearby a TMDL stream. Nowhere in the proposed amendments to Chapter 96 is there any regulation that mandates reduction of daily loadings by farms in the regulatory effort to control daily loadings to meet TMDL levels in streams. Farming operations whose practices are consistent with NPDES permitting requirements and who are otherwise in compliance with federal and state law are not intended to be additionally burdened with reducing the level of agricultural production or with being prevented from altering agricultural production practices to the greatest extent possible.

The authority to impose monitoring requirements should reflect the attitude generally reflected in Chapter 96 for agriculture. We would recommend Section 96.4 be amended to prohibit imposition of monitoring requirements on any farm that is in compliance with the terms and conditions of its NPDES permit and the standards established under the state Nutrient Management Act.

#### **Section 96.5 - Nutrient Discharges**

Section 96.5(c) provides that: “Where it is determined that the discharge of phosphorus alone or in combination with the discharge of other pollutants contributes or threatens to impair existing or designated uses in a free flowing surface water. Phosphorus discharges from point source discharges shall be limited to an average monthly concentration of 2 MG/L. More stringent controls on point source discharges may be imposed or may be otherwise adjusted as a result of a TMDL which has been developed.”

As mentioned in our comments to above, the proposed changes to Section 92.1 will cause agricultural operations meeting the definition of a CAFO will be considered to be a point source discharge. The limitations of phosphorus loadings proposed to be imposed upon “point source discharges” under 96.5(c) severely conflicts with the standards prescribed for farming operations under regulations to the state Nutrient Management Act (Act 6 of 1993). Although the Nutrient Management Act does not prohibit the establishment of standards to limit the quantity of phosphorus to be applied to land, there has been no attempt to limit phosphorus application at the current time.

The State Conservation Commission – not the Department of Environmental Protection – was granted the power under the Nutrient Management Act to establish and enforce standards for phosphorus application on farmland. Without further clarification, Section 96.5(c) would give the Department the power to establish and enforce a standard for limitation of phosphorus on farms – a power that the Nutrient Management Act did not intend the Department to have and that was reserved exclusively for the State Conservation Commission.

We do not believe the Department should be given the opportunity to exercise regulatory powers that the Nutrient Management Act did not intend to give it. Such an attempt to establish and enforce

loading standards for phosphorus or any other nutrient on farms violates the both the spirit and the intent of the Nutrient Management Act to limit the Department's regulatory role in the application and handling of nutrients on farms. Farm Bureau would recommend that Section 96.5 be amended to exclude agricultural operations from the phosphorus limitations the section would establish.

We appreciate the opportunity to comment on these proposed final form regulations. Please do not hesitate to contact me if you have questions on any of the above discussion.

Sincerely,

A handwritten signature in black ink that reads "Bill Adams". The signature is written in a cursive, slightly slanted style. The first name "Bill" is written in a larger, more prominent script than the last name "Adams". A long horizontal line extends from the end of the signature to the right.

William A. Adams

Director of Natural Resources