10-21-10

David Michelbacher
102 Bedford Rd
Oreland PA 19075
(215) 884-4949

EQB,
PO Box 8477
Harrisburg PA 17105

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08 NOV 10 PM 4:20
INDEPENDENT REGULATORY REVIEW COMMISSION

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Dear Sirs,

I urge you to Strengthen Standards To protect our waters!

The DEP Proposed new standards our to weak!

please Stop the New Standards proposed!!

Please Respond with your findings To The above Address

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2010 NOV 12 PM 2:18
ENVIRONMENTAL QUALITY BOARD

10/21/98

To- Environmental Quality Board

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any changes to lower water quality standards will definitely hurt Pennsylvanias water supply. I strongly plead with you not to go backwards, lets go forward. I read of polluted streams + rivers continualy in the paper. Also of continued chemical spills on farmland and in streams. Again please do not lower limits. Thank you

Craig Wilhide

Mellon Bank

CET Engineering Services

1240 N. Mountain Rd.
Harrisburg, PA 17112
717-541-0622
FAX 717-541-8004

October 21, 1998

Independent Regulatory Review Commission
333 Market Street
14th Floor
Harrisburg, PA 17101

Re: Pending PA DEP Regulation Revisions
25 Pa Code Chapters 92, 93, and 96

Dear Commission Members:

CET Engineering Services provides engineering and related services to municipal and non-municipal clients many of whom will be impacted by the proposed changes to Chapters 92, 93 and 95. The following are our comments concerning these proposed changes.

CHAPTER 92. NPDES PERMITTING, MONITORING AND COMPLIANCE

- §92.1 Definitions

  Conventional Pollutant - Definition does not include Ammonia Nitrogen.

- Section numbering method is awkward and confusing. For example, §92.2 is an all new section in the proposed regulations, yet it contains two different sections labeled, §92.2(a) and §92.2a.

- §92.4(a)(6)(ii) regarding DEP's right to issue NPDES permits to "indirect dischargers" that discharge to POTWs may conflict with federal pretreatment regulations which give the permitting authority to the POTW if the POTW has an EPA-approved pretreatment program. DEP does not have primacy over the pretreatment program, therefore, doesn't federal law take precedence?

- §92.21a.(f) requires POTWs with approved pretreatment programs to provide a written technical evaluation of the need to revise local limits as part of the NPDES permit application submittal. This is typically a requirement after the NPDES permit is issued, not before. It is more reasonable for the POTW to wait for DEP to run the model first and issue the permit limits so the POTW knows what pollutant monitoring and/or limitations would be required. It also conflicts with EPA requirements which state the reevaluation is to be submitted to EPA within one year of NPDES permit issuance. Again, DEP does not have primacy over pretreatment programs and should not be dictating specific pretreatment requirements to POTWs.

- §92.21a.(g) requires POTWs to submit a CSO plan as part of the NPDES permit application submittal. Since this is a long and detailed process, it would be probably be better to place the requirement for development and implementation of the plan in the permit, not require it prior to permit issuance.

- Currently, DEP requires additional monitoring for toxic pollutants by those NPDES permittees that meet certain criteria including, design flow capacity or whether the POTW has an approved pretreatment program. The particular set of toxic compounds (i.e. priority pollutants and local limits) required to be tested for are stipulated in the permit. Under proposed §92.41(b), DEP does not

specify which permittees would be subject to additional monitoring, nor does DEP specify which toxic, conventional, non conventional or other pollutants may be required. This section is too broad and could be interpreted differently from region to region throughout the state. More definitive guidelines should be provided. §92.41(B) also requires the permittee to provide a plan of action on how to prevent or eliminate any pollutants detected during this monitoring that are not currently contained in their NPDES permit. What does DEP consider to be a pollutant of concern under this proposed requirement? Would something as common as Iron be required to be eliminated from the wastewater?

- §92.91 - 92.94 Procedure for Assessing Civil Penalties - There seems to be a considerable amount of confusion in how civil penalties will be addressed. There appears to be an attempt by DEP to be more "informal" in this area, but there needs to be a more formal documented guideline for the notification, hearing and penalty procedures.

- As pointed out by others, there appears to be a general vagueness in the use of the words "shall", "will", "must", and "may" throughout the proposed new rules. These must be clarified more clearly in order for one to know what is a "must" do and what is a "may" do.

CHAPTER 93. WATER QUALITY STANDARDS

- DEP has requested public input on methods of determination for "Color". The current color standard criteria is in Platinum-Cobalt units. This particular test method only detects colors in the yellow or amber color range and does not measure reds or blues that may be produced by dyes and pigments used in the textile industry. A more reliable and accurate test method for Color is the Colorimetric (ADMI) Method (EPA 110.1 or Standard Methods, 18th Ed. 2120 E).

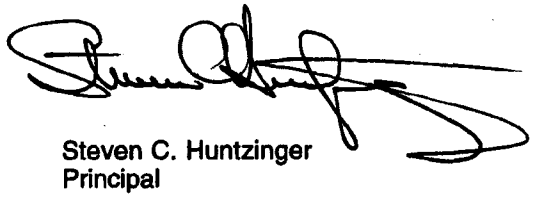
CHAPTER 96. WATER QUALITY STANDARDS IMPLEMENTATION

- §96.4(g)(3) There are concerns on how DEP will enact, monitor and control "effluent trading agreements". It is our opinion that the stakeholders, along with DEP regional offices, should be free to develop effluent trading plans that address site-specific issues.

Thank you for this opportunity to comment on the proposed regulations

Very truly yours,

CET ENGINEERING SERVICES



Steven C. Huntzinger
Principal

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10/21/88 Re: York Daily Record "Water standards"

To: Environmental Quality Board
Attn: Ed Brezing, chief EDP

Dear Sir:

I have a "severe" allersic reactions to chemicals. I see Dr. Cupher in York, also, I have Asthma also.

Because of my severe reaction to chemicals I am in great distress over the what appears to be not enough serious concern over the risks of such chemicals as cobalt and formaldehyde. Not to mention worrying over spending money on Newspaper Articles which could impede the aforementioned re-regulation.

I have 3 children, 9, 10½ & 13. I have enough worries with my asthma & allergies and basic day to day existence. My God in Heaven how can you possibly justify endangering my life and so many others so

especially! "Please" I beg you from the "bottom of my heart, "please" do not accept this plan. Can you imagine the loss and damages to human suffering caused by unknown factors which could endanger people you cherish including yourself.

"Please" do not "wash" your hands of this and allow us to be "coerced" by taking no responsibility that could ~~ensure~~ prohibit our safety and our children's safety.

Please don't think of "bottom lines" think rather of "healthy baby bottoms" growing and thriving the way God intended and for no other justification.

I personally vehemently object to this! I humbly implore you to get all the facts and allow "us the public" a choice in accepting or rejecting this.

Sincerely,

Mrs. Catherine Lundy
339 Kirkham Dr. York, PA. 17402 755-3585

10-13-98

TO DEP and The Environmental Quality Board I oppose The new proposed water quality Standards and Toxics Strategy you need to Strengthen The Standards That protect our water Not weaken Them, Deps proposed toxics strategy is To weak and will allow even more toxic discharge into our waters I want These new standards Stopped.

Please Respond!

KATHY SIPE
407 COLLINS DR
PSH PA 15235

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Clare N. Shumway, M.D.
20 Byers Road
Dillsburg, PA 17019-9538
clarens@voicenet.com (717) 432-8574

October 14, 1998

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Environmental Quality Board
P.O.B. 8477
Harrisburg,PA 17105

EQB:

I totally oppose the new proposals to amend the PA regulations on municipal waste and water quality. These regulations need to be made tougher not "streamlined" to pollute Pennsylvania sooner.

PA is one on the nation's biggest dumping grounds already. In 1997 this state received 8.7 million tons of waste from Puerto Rico, Canada,D.C. and 25 other states. Now the EQB wants to make this process easier and welcome more trash with less regulations? You must not allow this to happen!!!!

According to a study led by Dr. David Pimental, Professor of Ecology and Agriculture Sciences at Cornell University, 40% of world deaths are attributed to organic and chemical pollutants. Data for this September 1998 study came from sources such as the World Health Organization and the U.S. Centers for Disease Control and Prevention. This grim report states further that of the 80,000 pesticides and chemicals in use today, 10% are recognized as carcinogens. Lead at high levels are in the blood of 1.7 million U.S. children. The conclusion: "Without local,state,federal and international cooperative efforts, disease prevalence will continue its rapid rise throughout the world diminishing the quality of life for all humans."

I rest my complaint. Thank you.

Sincerely,

CNSh

Clare N. Shumway

8550 Trumbauer Drive
Wyndmoor, PA 19038

October 13, 1998

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ENVIRONMENTAL QUALITY BOARD
P.O. Box 8477
Harrisburg PA 17105

To whom it may concern:

Please be advised that I oppose DEP's new Water Quality Standards. We need stronger standards to protect our water with tougher restrictions and penalties for dumping toxics.

Please reconsider your position on rolling back the current water quality standards.

Sincerely,

Janice S. Jamison

I N T E R O F F I C E M E M O R A N D U M

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Date: 13-Oct-1998 11:43am EST
From: Captdol
Captdol@aol.com@PMDF@DER003
Dept:
Tel No:

TO: Brezina.Edward (Brezina.Edward@A1.dep.state.pa.us@PM

CC: JBarto (JBarto@savethebay.com.org@PMDF@DER00

Subject: Changes to Chap.92,93,95,96 and 97

Dear Mr. Brezina,
It has been brought to my attention that there are changes being considered in the regulatory regulations dealing with water quality that will weaken the current protections of our waterways... I am not a technical person by any matter of means but understand the proposal will allow such things as:

1. increased discharges of toxic chemicals,
2. eliminate regulation of 20 toxic items,
3. ignore regulation on non-point source pollution in impaired waters,
4. and other areas.

As mentioned above I am not technically trained but that in no way reduces my interest in improving the water quality of our waterways. I spend considerable time on the Chesapeake and Delaware Bays and have,thankfully, begun to see a small change for the better. I am also a speaker for the Chesapeake Bay Foundation and give talks to adult and student groups. My impression from all their comments, adult and children [especially the latter] is that they do not understand why we have permitted so many toxins to be released in the past and why don't we tighten the regulations. Accordingly, I am at a loss to understand why we now wish to loosen the regulations and not continue the improvements we are beginning to see in water quality. To now go backwards is mind boggling!

Perhaps the problem is that I do not understand the reasons for the proposed action. Accordingly, would you please enlighten me. If , or until, I can be convinced otherwise I sincerely request that:

YOUR REGULATORY BODY REFUSE TO WEAKEN THE EXISTING STANDARDS.

Very truly yours,

Harry. B. Nason
814 Cottonwood Dr.
Malvern, Pa. 19355

To: Environmental Quality Board. 10-13-98

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I oppose this new Proposed water quality standards and Toxics strategy. It doesn't take a Genius to know that our Environment is suffering Because of our Ignorance.

Thankyou For listening.

P.S

I would like a Response To this! Thankyou.

James D Stough
378 Collins Dr
Pgh PA 15235

October 13, 1998

Environmental Quality Board
P.O.B. 8477
Harrisburg,PA 17105

EQB:

I am totally against the new proposals to amend the PA regulations on municipal waste and water quality. These regulations need to be made tougher not "streamlined" to trash Pennsylvania sooner.

What on earth are you people in Harrisburg thinking? PA is one on the nation's biggest dumping grounds already. In 1997 PA received 8.7 million tons of waste from Puerto Rico,Canada,D.C. and 25 other states. Now the EQB wants to make this process easier and welcome more trash with less regulations? Is this the business PA wants to attract,because we certainly are. Is there that much money in trash and trashing PA that Harrisburg can't pull themselves out onto higher ground?

According to a study led by Dr. David Pimental, professor of ecology and agriculture sciences at Cornell University, 40% of world deaths are attributed to organic and chemical pollutants .Data for this September 1998 study came from sources such as the World Health Organization and the U.S. Centers for Disease Control and Prevention. This grim study further states that of the 80,000 pesticides and chemicals in use today,10% are recognized as carcinogens. Lead at high levels are in the blood of 1.7 millionU.S. children. The conclusion: "Without local,state,federal and international cooperative efforts, disease prevalence will continue its rapid rise throughout the world diminishing the quality of life for all humans."

I rest my complaint. Thank you.

Very sincerely a fellow Pennsylvanian,

Edward L Bosley III

October 13, 1998

Environmental Quality Board
P.O.B. 8477
Harrisburg,PA 17105

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FORM LETTER: 65

I am totally against the new proposals to amend the PA regulations on municipal waste and water quality. These regulations need to be made tougher not "streamlined" to trash Pennsylvania sooner.

What on earth are you people in Harrisburg thinking? PA is one on the nation's biggest dumping grounds already. In 1997 PA received 8.7 million tons of waste from Puerto Rico,Canada,D.C. and 25 other states. Now the EQB wants to make this process easier and welcome more trash with less regulations? Is this the business PA wants to attract,because we certainly are. Is there that much money in trash and trashing PA that Harrisburg can't pull themselves out onto higher ground?

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I rest my complaint. Thank you.

Very sincerely a fellow Pennsylvanian,

Gibson Smith II

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October 14 1998
8614 Trumbauer Dr.
Wyndmoor PA 19038

Environmental Quality Board
P.O. Box 8477
Harrisburg, PA. 17105

To Members of the Board,

With regard to the proposed new regulations protecting our water, I would urge you to strengthen the standards, not allow them to be lowered. The DEP's proposed toxics strategy is too weak and will allow even more toxic discharges into our waters.

Please let me know what the views of the Board are relating to this issue.

Sincerely,
Mrs. Veronica Meyer

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10-14-98

Dear Mr. Brezina,

I urge you to vote to strengthen, not weaken our standards for clean water.

Air + water quality are the two most important parts of our environment.

Pollution does not belong in our water. And any new proposal that allows more discharges is not in our best interest as a race of people.

Please vote to stop the new standards!

Thankyou

Scott E. Lentz

FOX BRUSH FARM
R.D.#1 Box 734
BROGUE, PA 17309
717-927-6412
E-MAIL: SANDYHCSMI@AOL.COM

October 14, 1998

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65 Form letters
Petition in file

EQB
P.O.B. 8477
Harrisburg, PA 17105

EQB:

Please accept 65 letters from people living in York County that are unhappy with the new proposals for residual and municipal waste. This being the last day to comment and no York County news media given this information by your board has forced this general comment. Please note one letter represents 5,000 people from the Recycling Service Inc. in the Pottstown area. This is the oldest community recycling center in PA and has been recognized by DEP, the GOV and the House of Rep. for their efforts.

The petitions represent over 1,000 York County people that were not pleased before with the standards to give you an idea of the concern York County has for their quality of life and their environment.

Please read my enclosed comment. I hope the EQB can do better for PA.

Thank you.

Encl: (2)

Very sincerely,

Sandy C. Smith

Sandy C. Smith

Sandy C. Smith
Fox Brush Farm
R.D. #1 Box 734
Brogue,PA 17309
717-927-6412 e-mail: SandyHCSmi@aol.com

NOTE: Written comments are due October 14 for Municipal Waste Amendments and due October 28 for Water Quality Amendments and should be sent to: Environmental Quality Board,P.O.B. 8477,Harrisburg,PA 17105. EQB hearings on Water Quality Amendments in Harrisburg will be October 20 at 3 p.m. and 7p.m. --DEP SC Regional Office,Susquahana Conference Room,909 Elmerton Ave. To testify register one week ahead by calling Kate Coleman at 717-787-4526.

Environmental Quality Board to Trash PA

The Pennsylvania Department of Environmental Protection (DEP) is proposing changes to its regulatory chapters dealing with municipal waste and water quality standards and permitting.These changes will significantly weaken our already inadequate protections. Public review and comment ends October 28.

The proposed regulatory changes are: Increased discharges of toxic chemicals to waterways,eliminate regulation of 20 toxic chemicals,ignore the regulation of non-point source pollution in impaired waters and issue general discharge permits in high-quality watersheds. PA is "redefining"(We've heard that word a lot lately!),sludge/biosolids including what is and is not waste.These proposals will allow industry to decide "co-product" determinations for classes of materials as Pennsylvania's Department of Environmental Protection (DEP) states that,"Sewage sludge modeling is appropriate for the application of residual waste.".

According to a study led by Dr. David Pimental, professor of ecology and agriculture sciences at Cornell University, 40% of world deaths are attributed to organic and chemical pollutants .Data for this September 1998 study came from sources such as the World Health Organization and the U.S. Centers for Disease Control and Prevention. This grim study further states that of the 80,000 pesticides and chemicals in use today,10% are recognized as carcinogens. Lead at high levels are in the blood of 1.7 millionU.S. children. The conclusion: "Without local,state,federal and international cooperative efforts, disease prevalence will continue its rapid rise throughout the world diminishing the quality of life

Toxic waste is making us sick

SANDY SMITH

Children are experiencing a huge rate increase in cancer, according to a March 1998 report from the National Cancer Institute and the Centers for Disease Control. The report of rates from 1973 to 1995 showed increases of:

- 53 percent in brain and nervous system cancers;
- 128 percent in non-Hodgkin's lymphoma;
- 78 percent in ovarian cancer;
- 65 percent in testis cancer;
- 39 percent in bone and joint cancers;
- 29 percent in thyroid cancer, to name a few.

Consumer Reports (June 1998) analyzed a dozen popular meat and poultry baby foods for dioxins, PCBs and related compounds. It found: "A baby who ate one jar — just 2.5 ounces — of an average meat-based baby food on a given day would consume around 100 times the Environmental Protection Agency's daily limit of dioxins."

The average person has no idea the severity of pollution in this country. Our waste piles up faster than we are safely disposing of it. While a few people — in and out of government — make millions of dollars under the guise of ridding us from sewage, the rest of us are giving up our rights to a healthy life.

Many farmers are talked into growing food in toxic waste. According to the York County Solid Waste and Refuse Authority, 77 farms are producing food municipal/industrial sewage w sludge.

Industrial countries have a disproportionately higher rate of cancers than countries with little or no industry — after adjusting for age and population. Increased health care, along with better diagnostic techniques can be credited for some of these "increases," but not all.

The International Agency for Research on Cancer, located in Lyon, France, is a branch of the World Health Organization. It has been collecting cancer mortality data from death certificates in 70 countries. According to this data, 80 percent of all cancer is attributable to environmental influences.

Lifestyle has some bearing on cancer and other diseases but we all breathe the same air and have little choice of which way the wind blows or what toxic particles are in it.

Our tap water gives little choice and could contain traces of dry-cleaning fluids, lead, weed killer, environmental carcinogens, etc. Many local townships derive drinking water from groundwater — the same groundwater that runs off from sludged farms and landfills.

Even if you drink bottled water, you cook and bathe with tap water. We absorb more toxic materials through our skin bathing then by drinking. Simple household filters cannot keep pollution out.

This Authority, hired by our York County Commissioners and paid for with our tax dollars, is trying to tell us that municipal/industrial sewage waste sludge, or biosolids as they prefer, is just great to grow our food.

Our commissioners insist they have no control over York County waste and sludge. If they don't, who does?

EPA's guidelines for sludge are controversial among doctors and scientists. It is legal to dump sludge on our farm land, but that does not meant we have to allow this cheap way of ridding industries of their toxic waste.

At least 10 out of 53 farms in the York County Agricultural Land Preservation Program are being or have been sludged. These sludge farms are "preserved" with our tax dollars. Last year York County Commissioners gave $600,000 of our tax dollars for this "preservation."

Pennsylvania is one of the nation's biggest dumping grounds. In 1997, Pennsylvania received 8.7 million tons of waste from Puerto Rico, Canada, the District of Columbia and 25 other states.

It will end up in our air, water, fc bodies and children one way or the other until we say NO.

Dumping sludge on York County farmland is the cheapest disposal. There is no liability on the part of the business, sewer authority, or farmer. If this same sludge is landfilled or incinerated, everyone down the line is liable if the expensive case for liability can be proven.

Write your county commissioners, representatives, and Gov. Ridge demanding sludge not be put on farmland and that Pennsylvania get out of the trash business.

Whether you buy food at the grocery stores, farmer's markets, or roadside stands, ask if the food was grown on sludge/biosolids. If they don't kno demand they find out. Make everyone aware. York County is our county. We can stop it from being trashed.

Sandy C. Smith lives on a farm in Chanceford Township.

No return address

Edward Brezina
PA DEP
PO Box 8555
Harrisburg, Pa 17105

Oct. 15, 1998

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Mr. Brezina,

I have recently found out that the DEP is proposing to roll back the water standards allowing industries to come in our state and pollute more, plus eliminate the publics right to be involved in the permit process. The obvious question is why weaken standards instead of strengthening them. Water should be treated as a precious resource not a dumping ground for toxic chemicals. The DEP is here to protect and not destroy. I want this ridiculous proposal stopped.

Sincerely,

Christopher L. Hopton

-8

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Joey Funk
923 Cliff Mine Rd
Coraopolis, PA 15108

October 15, 1998

Environmental Quality Board:

I have recently read the new proposal for Water Quality Standards + Toxics Strategy for Pennsylvania (the "Rollback"). I'm completely OUTRAGED at the new weak regulations that have been proposed. I can only assume that industrial + chemical companies have blinded those responsible for this proposal with money & lies. It's ridiculous to think that a "general permit" can be issued to a company regardless of their prior pollution record. Not to mention the fact that the standard for SEVENTY TOXIC CHEMICALS have been eliminated or weakened.

I believe everyone has a right to clean, safe water. Please make sure this right is maintained by stopping this proposal from going through.

Thank you,

Joey Funk

Joey Funk

P.S. Please send me a response as to how you plan to protect Pennsylvania's waterways.

Edward Brezina
PA DEP
PO Box 8555
Harrisburg, Pa 17105

Oct. 15, 1998

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Sincerely,

(Mrs.) Judith W. Scott

Please respond!

Judith W. Scott
221 Brook St.
Titusville, PA 16354

No return address

Edward Brezina
PA DEP
PO Box 8555
Harrisburg, Pa 17105

Oct. 15, 1998

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Sincerely, Jack Hardy

10/15/98

TO: ENVIRONMENTAL QUALITY BOARD

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STRENGTHEN STANDARDS TO PROTECT WATER, NOT WEAKEN. MORE TOXIC DISCHARGES WILL OCCUR IF PROPOSED DEP'S TOXIC STRATEGIES ARE FOLLOWED

EMILY GOODWIN
521 WYNDMOOR AVE.
WYNDMOOR 19038

HART CHEMICAL COMPANY

P.O. BOX 232 • CREEKSIDE, PA 15732 • 412-349-8600 • FAX: 412-349-8601

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October 25, 1998
15

Environmental Quality Board
PO Box 8477
Harrisburg, PA 17105-8477

Re: Comments on Proposed Rulemaking for Water Quality Amendments
(Chapters 92, 93, 95, 96, and 97)

Dear Sirs:

Hart Chemical Company would like to submit the following comments on the proposed rulemaking for the water quality amendments contained in Chapters 92, 93, 95, 96, and 97 of the PA Code:

Chapter 92:

92.2 (c). Minimum Sewage Treatment Requirements:

A paragraph should be added that addresses treatment of contaminants added to a POTW or privately owned treatment works by industrial users. Although many large POTW's require a pretreatment program for industrial dischargers into their system, smaller sewage plants may be treating industrial wastes without these programs. Since secondary treatment may not adequately remove industrial contaminants from either the effluent or the sludge generated from the treatment, 92.2 (c) should include a statement that makes a reference to additional treatment requirements for a sewage plant if an industrial discharger uses the treatment plant as a means of disposal. This type of statement would be consistent with the proposed language in 92.4 (6) (ii) that indicates that a permit may be required by an indirect discharger of sewage, industrial waste, or other pollutants into a POTW or privately owned treatment works.

(b)
92.41 Monitoring:

Hart Chemical agrees with the statement made by the Water Resources Advisory Committee (WRAC) that DEP should not require additional monitoring beyond that required by the NPDES permit, unless the additional monitoring has been made a condition of that permit. The purpose of Section C (Required and Optional Chemical Analysis section) of the NPDES permit application should initially identify any problem pollutants and at that point DEP should regulate the pollutants by establishing limits and monitoring requirements, or by adding a special permit condition for additional monitoring. Since any change in the permitted facility due to production increases or process modifications requires dischargers to notify DEP as stated in 92.7, no additional pollutant analyses should be required of dischargers who make no changes to their operations. In the event that new regulations would take effect, 92.8 (a) already addresses the fact that permited facilities must take steps to comply with the new water quality standards or treatment requirements.

92.61 Public Notice of Permit Application and Public Hearing:

We agree with the Department's decision not to add an additional public notification and comment period before an NPDES permit is submitted for review. Publication of the intent to apply for an NPDES permit under Section 307 of the Pennsylvania Clean Streams Law and notification of Municipal and County officials under Act 14 already gives the public adequate time to comment. Since the Department requires a notarized copy of the newspaper notice and statement of publication dates to be sent with the permit application, the public has had a minimum of 30 days to comment on the permit application to the permittee or the Department.

92.8 (c) Changes in Treatment Requirements:

If the proposed regulation is adopted, and NPDES dischargers must meet more stringent effluent limitations when a potable water supply is identified, the discharger must be notified as early as possible to be able to make timely changes in order to achieve compliance. We suggest that the NPDES permittee be notified immediately whenever an application for a Water Allocation Permit is submitted to the Department or the State Water Plans are updated and new potable water supplies are identified.

Chapter 93:

93.4 Statewide Water Uses:

We agree with members of the WRAC and the RBI report that the Potable Water Supply criteria be applied only at the point of potable water withdrawal and that the statewide PWS use be removed. Proposed paragraph 92.8 (c) states that whenever a new potable water supply is identified, the discharger "shall meet more stringent effluent limitations needed to protect the point of withdrawal". Therefore the comments made by other members of the WRAC who indicated that maintaining the statewide PWS use would prevent degradation of water quality should the body of water be used for drinking water in the future, would not be applicable in this case.

LOOK AT TOO OTHER

Chapter 96:

96.1 Definitions:

A general explanation of the term "effluent trading" should be included in the definitions.

96.4 (k) Total Maximum Daily Loads:

This proposed requirement may impose undue economic hardship on smaller dischargers if there are a number of pollution sources (point and non-point) contributing to a receiving stream segment that has to be analyzed to develop TMDLS. Also, the phrase "to determine their (TMDL) effectiveness" is highly subjective language and may be subject to broad interpretation that could result in additional costs. If one of the objects of this reevaluation of the regulations is "that pollution control costs are equitably distributed", then the Department should assume the costs to determine the TMDLS, not individual dischargers. We do agree, as outlined in 96.4 (l), that anyone challenging a TMDL, etc. should assume the burden of proof, however development and documentation of the TMDLS should be the responsibility of the Department.

Thank you for the opportunity to comment on the proposed changes to the regulations. Overall we believe the changes make the regulations more concise and readable.

Sincerely,

Becky Snyder
Operations Manager

Testimony by:
Paul Hart

No return address

Edward Brezina
PA DEP
PO Box 8555
Harrisburg, Pa 17105

Oct. 15, 1998

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Sandusky
Legal

Mr. Brezina,

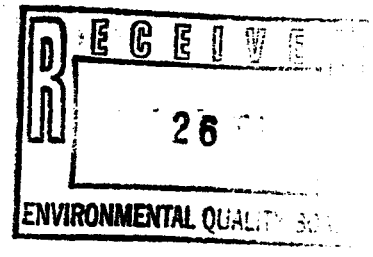
I have recently found out that the DEP is proposing to roll back the water standards allowing industries to come in our state and pollute more, plus eliminate the publics right to be involved in the permit process. The obvious question is why weaken standards instead of strengthening them. Water should be treated as a precious resource not a dumping ground for toxic chemicals. The DEP is here to protect and not destroy. I want this ridiculous proposal stopped.

Sincerely,

Danielle Sanna

October 16, 1998

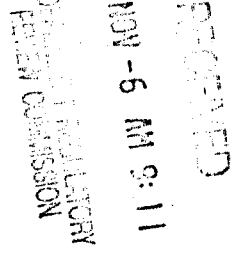
ORIGINAL: 1975
No copies per FEW



To Whom it may Concern:

I have lived in Pennsylvania for all of my 21 years of life. Pennsylvania is beautiful to me and to so many other people. Many have said its the "Greenest" state they've ever seen. I am also an avid camper, hiker and mountain biker. Which means I spend alot of time outdoors. I wasn't always this way but as I am growing as a person, spiritually and physically, I have come to appreciate nature in a much more serious way. Don't you remember as a kid going down to the nearby creek to catch cray fish? We took it for granted then becuase we were just children. But we're grown up now and need to protect these memories for our children. Please don't pass the proposed Water Quality Standards and Toxic Strategy all it's going to do is send us two steps back when we should be taking two steps forward by now.

I have a dream that one day I will have children. I would like to take my children camping, hiking and fishing with me and show them how not to take this beautiful planet, and environment for granted. Please make that possible and make the standards tougher for our childrens future.



Sincerely,

Heather Tapfy
7607 Front St.
Cheltenham, Pa
19012

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Sandusky
Legal

10-16-98

Enviormental Quality Board

I am oposed to the new Proposed Water Quality Standards and Toxic Standards We home to strenghten the standards not weaken them even more toxic discharges into our Water.

We want these new standard stopped.

Please respond

Emma Muller
7500 new Secound St.
Elkins Park Pa 19027

7309 Oak Ave.
Melrose Park, PA
19027

Oct. 16, 1998

ORIGINAL: 1975
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Dear Friends,

We oppose the new proposed water quality standards and topics strategy. We are spoiling our natural water sources at an alarming rate. We urge you to strengthen the standards that protect our water. Do not weaken them!

Sincerely yours,
Debbie and
Dave Poxmontier

FTMSA

Franklin Township Municipal Sanitary Authority
3001 Meadowbrook Road
Murrysville, Pennsylvania 15668-1698

Allan J. Sarver, Chairman
John J. Zebroski, Vice-Chairman
James S. Hamilton, Secretary
Dennis Pavlik, Treasurer
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October 19, 1998

Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17 105-8477

Re: Proposed changes to DEP Regulations, Chapters 92, 93, *95*, 96 and 97 Comments

Dear Board Members,

I have reviewed the proposed regulations published in the *Pennsylvania Bulletin* on August 29, 1998.

The primary purpose of the proposed regulatory changes is to implement the Department's Regulatory Basics Initiative (RBI). I have concluded that the goals of the RBI would provide a useful framework. Therefore, my comments are arranged generally under areas of concern under the RBI. These areas of concern are regulations that: are more stringent than equivalent Federal regulations, without good reason; impose economic costs disproportionate to the environmental benefit; are prescriptive rather than performance-based; are obsolete or redundant; lack clarity; or are written in a way that causes significant noncompliance.

Some of the proposed regulations are objectionable for several of these reasons. In such cases the discussion is placed under the topic that is most relevant and the issue is either not repeated or only mentioned briefly under other headings. Also, some of the comments address issues that do not properly fall under one of the RBI headings. These comments follow those provided under the RBI classifications. Within each topic, I have tried to address the regulations in numerical order, and have listed both the section number and the heading (or subject) of the regulation to make reference easier.

If you have questions regarding any of the comments and wish clarification or further explanation, I can be reached during working hours at the above phone numbers, by facsimile at above, and by e-mail at ftmsa@westol.com.

RBI CONCERN: MORE STRINGENT THAN FEDERAL REGULATIONS WITHOUT GOOD REASON

§ 92.] — Definition of Best Available Technology (BAT): Congress developed a system of imposing technology-based limits in the Clean Water Act. In general, there are two classes of technology-limits established under the Act: BAT (along with BCT and BPT) is applied to all dischargers other than POT Ws. See, e.g., §§ 301(b)(2)(A) and 304(b)(2)(B) of the Clean Water Act (33 U.S.C.A. §§ 1311(b)(2)(A) and 1314(b)(2)(B)). Publicly owned treatment works, on the other hand, are subject to secondary treatment requirements. §§ 301(b)(l)(B) and 304(d) (33 U.S.C.A. §§ 1311 (b)(1)(B) and 1314(d)). This scheme, established twenty-five years ago, has been observed uniformly by EPA and the states. Every discharger and consultant is aware of the meaning and limitations of the terms BAT and Secondary treatment.

The proposed definition is incompatible with the Act and with EPA's regulations. By including the phrases "or other category of discharger," "For sewage treatment plants, BAT is secondary treatment [as defined below]," and "Dischargers of total residual chlorine, including sewage treatment plants, may establish BAT. . . ." DEP has mixed two separate and distinct definitions together in a confused way. No valid reason is provided for changing nationally-recognized definitions that are included not only in EPA regulations, but in the primary statute itself

DEP has the power to define terms as it wishes. That is not the issue. The comment is simply that the purpose of the RBI is not met when standardized, nationally recognized terminology is arbitrarily changed, with no discernable purpose. The result is only confusion and the purposes of the RBI are thereby thwarted.

§ 92.1 — Definitions of Conventional and Toxic Pollutant: Like Best Available Technology, EPA and Congress have defined the terms Conventional Pollutant, Toxic Pollutant, and Nonconventional Pollutant. These definitions are universally recognized and relied on by permittees, attorneys, consultants, and regulators. Only the most compelling reason should justify changing these definitions. None is provided.

The definition of conventional pollutant that is proposed adds the parameters nitrites, nitrate nitrogen, and phosphorus to the national definition (BOD, TSS, pH, fecal coliform and oil & grease). If this definition is retained as proposed, notices to permittees that address control or reporting of conventional pollutants (e.g., under § 92.41(b)) will surely result in violations because the permittees will be unaware that DEP has changed the terminology to call certain nonconventional pollutants "conventional" pollutants. No sound reason is stated in the Department's discussion document, nor can any reason for this confusing change be surmised.

Similarly, the definition of toxic pollutant is a legacy from the past that requires changes to comport with the national definition, found in the Clean Water Act at § 307(a) (33 U.S.C.A. 1317(a)). If the purpose of these regulatory changes is to make the rules compatible with EPA's, then the definition of toxic pollutant, one of the most important definitions in current use, must necessarily be changed so as not to conflict with the national rules.

§ 92.8a Changes in discharge requirements without order or amendment of Permits . The proposed section indicates that, if new discharge limitations are necessary because of regulatory changes, the permittee will be notified and will be required to submit a schedule for compliance. Whatever schedule is "approved" by DEP must be complied with by the Permittee. No mention is found in the rule of the necessity of modifying the

NPDES permit to impose such new limitations. Under the national NPDES regulations, 40 CFR §§ 122.62 and 124.5, changes to the discharge requirements are to be made through the process of Permit modification. Furthermore, major modifications that are made to incorporate changed standards or regulations may only be made when the permittee requests the modification. 40 CFR § 122.62(a)(3)(I).

The proposed rule subverts the purpose of the NPDES program by effectively creating a new method of imposing discharge requirements—through notice and imposition of a schedule. This is not only a serious and substantial conflict with the federal regulations, it is a denial of the protections afforded dischargers through the permitting process. These protections include the opportunity to review DEP's decisions in a preliminary form, through a draft permit subject to review and challenge, and to negotiate final permit conditions. The process in this rule is that DEP will make a final determination and the permittee's only task is to determine how to comply. My experience with the NPDES process is that DEP frequently makes erroneous decisions based on inadequate data. Pre-decision review by the permittee is vital to proper final discharge limitations.

The rule also interferes with one of the substantive protections afforded by the permitting process—that of reliability. An issued permit provides some stability in expectations, allowing dischargers to plan, for at least five years, based on a known set of requirements. The proposed rule promises no more than ninety days notice of substantive changes. Permits will no longer have meaning because their requirements can be changed at any time.

Furthermore, it is doubtful that DEP has a power to impose limitations in this way under the Clean Streams Law. The proper method of imposing discharge standards is through the imposition of NPDES permits. The proposed rule does not provide for permit amendment. Neither does it provide even rudimentary due process for the permittee. The procedure that is imposed is: (1) the permittee is notified of new treatment requirements developed by DEP; (2) the permittee (if it cannot already meet the new requirements) must submit a schedule to plan and construct necessary facilities; (3) DEP approves a schedule (not necessanly the one submitted by the permittee); (4) the permittee is required by this regulation to obey the schedule. No Order is issued, no agreement is reached, and no permit is amended. Yet the Permittee can find itself facing a construction requirement entailing significant cost. What clause in the Clean Streams Law gives DEP the power to force a permittee to undertake extensive planning and construction without any finding that such is necessary, without providing for a hearing on the merits, and without issuing an order or a permit or entering an agreement?

I recognize that the proposed rule is simply a renumbering of existing regulations. However, the fact remains that the regulation violates the terms of the Regulatory Basics Initiative for the reasons outlined above. One purpose of the RBI is to "fix" just such onerous and irrational existing regulations. This is one that definitely needs "fixing."

§ 92.21a(e) (1) Whole Effluent Toxicity Testing for Industrial Dischargers. The cited section of the proposed regulations requires whole effluent toxicity testing (WETT) for "sewage dischargers." This requirement therefore encompasses both POTWs and industrial dischargers that treat sewage, either solely or along with their industrial wastes. Because the language is mandatory ("Sewage dischargers shall provide the results of (WETT) . . . the industrial dischargers that meet item (I) (flow rates of 1 mgd) will be required to conduct these tests.

The corresponding federal regulations at 40 CFR § 122.21(j) apply only to POTWs. Thus, the proposed regulation, by being more inclusive than the federal rule, is more stringent and imposes more costs. The regulation should be revised to be compatible with the EPA regulations by specifying that it applies only to POTWs and not to all "sewage dischargers."

§ 92.21a(f) Submission in NPDES applications of local limits evaluations by POTWs with pretreatment programs. The cited section generally follows the applicable EPA regulation at 40 CFR § 122.2 1(j)(4). However, incorporation of this regulation invites serious conflict between EPA and DEP in enforcement of the rule. The regulation, in fact, is a pretreatment program rule, not an NPDES rule. It only applies to POTWs that have EPA-approved pretreatment programs and it regulates pretreatment program activity (development of local limits). Chapter 94 was recently revised to remove all of the pretreatment program provisions because the state does not intend to seek primacy in this area. This decision should not be undermined by adding new rules on the same subject in Chapter 92.

The provision is of concern because EPA Region III has interpreted the corresponding federal regulation to require that an evaluation of local limits be performed subsequent to the issuance of an NPDES Permit, so that the local limits can be reviewed in light of the latest applicable effluent limitations. The concern with promulgation of the regulation by the state is that it may be literally applied: providing that a review of local limits shall be a required part of an NPDES permit application (and that without such a report the application is incomplete). Relying on EPA policy, a hundred municipalities with approved pretreatment programs in Pennsylvania have not been submitting local limits reviews with NPDES applications, but have been performing the reviews subsequent to Permit issuance. However, if DEP chooses to interpret this rule strictly according to its terms, it would result in widespread noncompliance. Thus, although there is no literal incompatibility between the proposed rule and the federal regulations, the opportunity for mischief through differing interpretations of the rule can lead to the same result. For the same reason that Chapter 94 was amended, this pretreatment rule should be omitted from Chapter 92. Omission of the regulation would not affect compliance since the federal rule would still apply, as it has since it was promulgated in 1990.

In the event that this section is retained, DEP should publish an acknowledgment that it will adhere to the protocol developed by EPA in enforcing the pretreatment regulations (40 CER Part 403) in Pennsylvania and will not independently develop any policy for regulations related to the pretreatment program.

§ *92.2 Incorporation by reference* It would seem that incorporating the federal regulations by reference would eliminate the problem of state regulations being different than the federal regulations. However, this section is highly objectionable to the additional provision that future EPA regulations are conditionally incorporated as well.

RBI CONCERN: IMPOSE ECONOMIC COSTS DISPROPORTIONATE TO ENVIRONMENTAL BENEFIT

§ *92.41(b) Requirement to eliminate all pollutants not limited in the Permit.* It is difficult to understand the intent or expected effect of this section. The preamble discussion provides no hint, it merely recites the proposed regulation without further comment. The proposed regulation would require that, if a pollutant not limited by the NPDES Permit was detected in effluent, then the permittee would be forced to "eliminate the pollutant from the discharge within the permit term [or] seek a permit amendment" (presumably to add an ...

effluent limit for that pollutant). Every POTW in the Commonwealth discharges pollutants that are not regulated by their permits. All domestic sewage contains trace quantities of copper, zinc, sodium, calcium iron, and other common pollutants, some of which pass through the treatment process and are discharged. It is rare, however, for the effluent concentrations of these pollutants to exceed a tiny fraction of the concentration that would threaten water quality standards.

The proposed regulation makes no distinction between pollutants discharged in acceptable quantities and those that threaten to cause pollution. By its terms, the regulation states plainly that "If the monitoring results indicate the existence of pollutants which are not limited in the permit, the permittee shall [provide] an explanation of how the permittee will prevent the generation of the pollutant, or otherwise eliminate the pollutant from the discharge." Even worse, the "elimination" must take place within the term of the permit. For both POTWs and industrial dischargers, this provision, if actually enforced, would result in wholesale violations. It is simply ludicrous to require the elimination of all pollutants from all discharges.

Although it is obvious that no environmental benefit at all would accrue from incurring the costs associated with compliance, perhaps discussion of this clause under the heading of "disproportionate economic costs" is inappropriate. Since compliance is impossible, this proposed rule could also be objected to on the ground that it violates the following goals of the RBI:

- It is prescriptive rather than performance-based;
- It inhibits pollution prevention strategies; and
- It is written in a way that causes significant noncompliance.

While the ability to request effluent monitoring is acceptable (within reason, see discussion under "Department Discretion adversely affecting Dischargers" below), the last portion of this section must be modified. The last sentence of the paragraph and the text of the next-to-last sentence following the phrase "the permittee shall separately identify the pollutants, and their concentration, on the monitoring report"should be stricken.

RBI CONCERN: ARE PRESCRIPTIVE RATHER THAN PERFORMANCE BASED

§§ 92.2b(b) and 92.4(a) (6) (ii): Pollution Prevention required. The Department's increasing orientation toward and encouragement of pollution prevention is admirable. It must be remembered, however, that dischargers have more information about their pollution generating processes than DEP. In many cases, pollution prevention techniques are not possible while maintaining product or process quality. When pollution prevention becomes a mandatory goal in itself, rather than a tool to be used intelligently to control and eliminate pollution, problems inevitably arise. Of particular concern in this regard is proposed section 92.2b(b). The problems with ambiguity and inappropriateness regarding this section are discussed elsewhere in these comments. However the language of this paragraph should also be reviewed carefully under the heading "prescriptive rather than performance-based, "especially in light of the section discussed next.

In proposed § 92.4(a)(6)(ii), one sees that DEP intends to require discharge permits for indirect dischargers that have "failed to take adequate measures to prevent, reduce or otherwise eliminate the discharge through pollution prevention techniques.. . ." It appears that DEP will require pollution prevention by threatening industrial indirect dischargers with burdensome permits. This is exactly what is meant by "prescriptive rather than performance-based" regulation. The performance-based parts of the rule are acceptable, allowing such permitting by the State when the indirect discharge "results in interference with proper operations of the POTW, upsets at the POTW or pass-throughs of pollutants." However, requiring an industrial user to obtain a permit merely because it has not implemented what DEP considers to be "adequate" pollution prevention measures is not in accord with the goals of the Regulatory Basics Initiative. DEP's mission is to prevent pollution, not to arbitrarily require specific actions and practices merely for the sake of taking action. How an industry chooses to reduce pollution is a decision that is more complicated than these regulations can contemplate. This is why the RBI goal of eliminating prescriptive rules in favor of performance-based rules is so wise.

RBI CONCERN: ARE OBSOLETE OR REDUNDANT

The definition of toxic pollutant (§ 92.1) is obsolete, unworkable, and in serious conflict with the federal definition. This topic is discussed in detail under the heading "More stringent than Federal regulations," above.

The proposal at §92.8a, to retain the existing regulations providing for imposition of significant new discharge limitations without providing for due process protections and conflicting with the provisions for NPDES permit modification, is discussed under the heading "More Stringent Than Federal Regulations" above. This obsolete and objectionable rule should be rescinded, not renewed.

§ *92.1 Definition of Average Monthly Discharge Limitation.* Included in the definition is the following: "a minimum of 4 daily discharge sample results is recommended for toxics; 10 is preferred. . . ." Although the rule says "recommended," it is not clear that the permittee is regulated by its permit conditions, not this definition. Discussion of the number of samples to be obtained for permit compliance properly belongs in guidance, or in the permit, not in the regulation. The parenthetical phrase should be deleted.

§ 92.2b Pollution Prevention. Extensive use of "should." In conjunction with § 92.4(a)(6)(ii), this section appears to be mandatory rather than the mere exhortation that it was probably intended to be. See the discussion under "Prescriptive rather than performance-based" above.

§ 92.3 Permit Requirement, § 92.3 1(a) Approval of Applications, § 92.73 Prohibition of certain discharges. Absolutely clear and unambiguous language in the existing regulations has been changed to be less so, for no apparent reason.

§ 92.22(e) Amount of permit fee. Does the change in language from shall to may indicate that DEP may change the permit fee to exceed $500? If not, why was the text changed?

§ 92.81(a) General NPDES Permits The original text of this section required that all of the conditions be met to acquire a general permit. The proposed revision is to remove the words "all of," so that the rule would read "if the point sources meet the following conditions." The only rational interpretation of the act of

removing the phrase "all of" is that not all of the conditions need to be met in order to receive a general permit, that only one or more of them are required. If this is indeed DEP's intention then it should say so explicitly in the rule. If such an interpretation is not DEP's intention, then the specific instruction to meet all of the conditions should not be deleted.

§ *92.93 Procedures for informal hearing on proposed civil penalty.* The rules proposed in this section are discussed in detail separately in these comments.

§ *96.4(b) Development of TMDLs* The section provides that DEP will develop TMDLs "when the following apply" and provides two separately numbered subsections. Neither "and" nor "or" appears in the text. Must both conditions be met, or only one?

§ *96.4(e) and* (f) *TMDL development and loading allocation procedure.* Are these elements prescriptive, or merely a narrative account of what DEP intends to do most of the time? Must all of the steps be followed, or does DEP have discretion? If DEP fails to consider one of the elements when developing a TMDL, does the permittee have the right to challenge the process as not in accord with the regulation? How would a permittee (or for that matter a Department employee charged with doing the work) know what she could expect DEP to do? What rights and duties are created, if any? Proposed section 96.4(1) places the burden of proof on a challenger of a DEP TMDL, WLA or LA calculation. But how is it possible to tell if the regulation was complied with? Perhaps DEP policy documents may provide some of the answers?

§ 96.40) Modeling techniques I am pleased to see DEP acknowledge that mathematically and scientifically sound techniques are preferred. But does this regulation require that such techniques be used, or is it merely an aspiration? Does a permittee have a right of action if DEP uses arbitrary and non-accepted techniques to develop a TMDL?

§ 96.1 Definitions — Dilution ratio. The formula for calculating a dilution ratio is "the sum of the surface water flow and the pollutant source flow, divided by the pollutant source flow." The definition provided in the proposed rule (surface water flow divided by source flow) is incorrect.

§ *92.1 Definition of Bypass.* This is of concern because the definition is not the same as the one just adopted in the revised Chapter 94 regulations. Unless a sound reason exists, commonly-used terms should have the same meaning from one rule to the next.

§§ *96.1 and 92.1 -Definitions of LA (Load Allocation).* The definition in Chapter 92 indicates that LA is that load assigned to nonpoint sources and natural quality, while the same definition in Chapter 96 indicates that it is the load assigned to nonpoint sources or natural quality. I believe that the chapter 92 definition is correct.

RBI CONCERN: WRITTEN IN A WAY THAT CAUSES SIGNIFICANT NONCOMPLIANCE

§ *92.1 Definition of Complete Application* The definition requires that a complete application include, among other things "proof of local newspaper publication." No such publication is required for POTW dischargers. However, § 92.25 provides that "[t]he Department will not complete processing of an

application.. that is incomplete. POTWs following the requirements for preparing an application will not make a local newspaper publication and their applications will be incomplete for that reason.

§ *92.21(a) Submission of applications 180 days prior to expiration.* The proposed change would delete the words "not less than," so that the requirement is that the application must be submitted exactly 180 days prior to commencing discharge. Filing early is a violation, as is filing late. What possible point is there in making it a violation to give DEP more than 180 days to process the permit application?

§ *92.21a (g) Application requirements for dischargers with CSOs.* The proposed rule requires that a POTW with combined sewer overflows complete a full-fledged system-wide study including: sampling; planning; development and implementation of, among other things: an operation and maintenance program, a "high flow management program," measures to restrict inflow and infiltration, and measures to minimize or eliminate discharges of solids and floating materials; and development of a long term plan to eliminate the CSO discharge. Such a program requires (depending on system complexity and size) anywhere from two to more than five years to complete. However, the rule requires that all of these activities be completed prior to submitting an application for a permit. This requirement is impossible to meet. Combined with the requirement to submit a complete application (§ *92.25),* this requirement will cause noncompliance to attend every POTW application where the POTW has combined sewer overflows.

Even where the POTW has completed a long term CSO plan and has something to submit, one requirement is literally impossible and mandates noncompliance. This is the requirement that the long term plan must eliminate the CSO discharge. Note the language in subparagraph (vi) requiring that the CSO discharge must be minimized and eliminated.

NON-RBI CONCERNS

The following topics are not directly addressed by Regulatory Basics Initiative goals, but are nevertheless important problems identified in the regulations.

CONCERN: PROPOSED INFORMAL HEARING PROCESS FOR ASSESSMENT OF CIVIL PENALTY

There are two major issues to be addressed in this section (§ 92.91 et seq.). First, the proposed rule violates the Clean Streams Law provision for a hearing prior to administrative assessment of a civil penalty. Second, several procedural provisions are vague and require clarification.

§ *92.93 Informal Hearing before imposition of civil penalty.* In order to assess a civil penalty administratively, without filing a civil action, DEP is mandated by the Clean Streams Law (CSL) to provide a hearing before the penalty is assessed (35 P.S. 691.605(a)). The form and nature of the hearing is not specified in the Act, and the hearing procedure chosen by DEP does not appear to be so minimal as to deny basic due process protections (but see the comments below regarding vague provisions that may affect this conclusion). A primary concern in this regard is the limitations on the right to a hearing, which go beyond the Department's authority and violate the terms of the Clean Streams Law.

First, there is no provision in the Clean Streams Law that penalties may be assessed without a hearing. "[T]he Department, after hearing, may assess a civil penalty upon a person or municipality.. . ." § 691.605(a). The proposed rules, however, establish methods by which DEP may assess a penalty while

avoiding provision of a pre-determination hearing. There are two ways in which DEP can avoid providing a hearing: failure to meaningfully notify the person to be assessed and the presumptive waiver. I believe that both of these methods are an expression of powers not granted to DEP, would violate the express provisions of the Clean Streams Law (and other laws).

There are at least two substantial deficiencies in the paragraphs regarding notice and the right to a hearing that must be remedied to make the regulation acceptable under the Clean Streams Law. These are: failure to notify the affected party and failure to provide an adequate notice. Each concern is discussed separately below.

§ 92.93(a) Failure to notify the party affected. Under the terms of the proposed regulation, DEP may avoid giving proper notice to the person affected, thereby denying her the opportunity to be heard that is mandated by the CSL. DEP may assess a civil penalty against a "person" (which of course includes municipalities and corporations as well as individuals). The notice, however, may be served "at the address in the permit or at an address where the discharger is located... If the mail is "tendered" at either of these addresses, notice shall be deemed to have been made. The problem is obviously one of proper notice to the person against whom the penalty will be assessed, who may not be the "permittee" or the "discharger." Only if service is made (or attempted) upon the proper person should the notice provision be deemed complied with. Simply mailing a notice to the address on the permit may be inappropriate, as may mailing to a business office of a corporate or municipal permittee, especially when the person who is being charged is an individual. At a minimum, DEP must make a genuine attempt to notify the person against whom the penalty is intended to be assessed, and the regulations must require this in explicit terms.

§ *92.93 (a) Adequacy of the Notice.* A second issue regarding the right to a hearing is that the notice of assessment of penalty must include a notice of the right (not the "opportunity" as the regulation states) to have a pre-assessment hearing. The proposed rule, however, only states that DEP "will serve a copy of the proposed civil penalty assessment." Merely stating that DEP intends to impose a penalty, without more, is inadequate to inform the party that it has a right to a pre-assessment hearing established, indeed mandated, by law. That is, since the statute requires that a hearing be held, the notice must include the following: (1) the proposed penalty; (2) the alleged basis for the penalty; (3) that a hearing will be held; (4) the time and place of the hearing; and (5) the nature of the hearing. The proposed regulation mentions none of this and is therefore deficient.

§ *92.93(b) Requirement to request hearing, presumption of waiver.* A third substantive objection to the hearing provisions as proposed is the issue of where the burden for holding a hearing lies Since the hearing is mandated by the CSL, it is incumbent upon DEP to hold such a hearing – unless the other party explicitly waives its rights. The rule as proposed is quite the opposite. It requires that the party (without notice that the right to a hearing exists) request the hearing by certified or registered mail in order to preserve its rights under the law. This has the process backwards. DEP must hold the hearing. As described above, the notice must state that a hearing _will be held, and provide the party the opportunity to attend the hearing, present relevant evidence, and question DEP's evidence. If the person elects to forego her rights and not attend the hearing, she may choose to so notify DEP of that decision or she may simply decide not to attend the hearing. This action constitutes a waiver; the procedure outlined in the rule does not. Waiver requires a voluntary, knowledgeable, affirmative act; it is not laches. Thus, even if DEP has the power to limit the way in which rights are effectuated (as it does by limiting the time available between the notice and the hearing), it cannot create a presumptive waiver.

The rule as proposed places a heavy burden on the person to be assessed merely to preserve a right granted by statute. There is no important interest by DEP in making the process so burdensome. Indeed, DEP has a duty to comply with the law and hold the hearing. Furthermore, it might be expected that penalties assessed after a hearing would be less likely to be appealed, thus the informal hearing procedure would save the Department time and money. DEP therefore has not only a legal duty, but an important interest in holding a hearing and encouraging the party to attend. DEP's procedures and practice should be such that it would be burdensome not to hold a hearing because a hearing is in the best interests of both parties.

Finally, there is no substantial burden placed on DEP by requiring that it comply with the law and actually hold a hearing. An informal hearing requires only that DEP schedule a meeting room in its own offices and that a hearing officer show up with the files at the appointed time. If the party to be assessed does not appear, the hearing officer notes this, makes her decision based on the record, and leaves. Total time of the process is fifteen minutes. Total cost, zero. The questionable "waiver" provision, and all of its attendant legal consequences, can be avoided by simply complying with the law as it is written. DEP has not alleged that any important interest exists to justify the attempt to circumvent the clear mandate of the Clean Streams Law.

In addition to the important issue of due process discussed above, the hearing procedures proposed in this section need some clarifying revisions to make them acceptable. While some of these items might be clarified by published policy, most of them should be addressed in the regulation itself.

Exhaustion of Administrative Remedies. First is the effect that the hearing procedure has upon the formal appeal process. The proposed rule clearly provides that the procedure will not interfere with an appeal to the Environmental Hearing Board, which can be made after the proposed assessment becomes final (§ 92.93(d)). However, the issue of exhaustion of administrative remedies is not explicitly addressed in the rule. That is, if the person notified of a proposed civil penalty chooses not to participate in the pre-determination hearing, does this limit her right to file an appeal with the EHB when the penalty becomes final? I think that it should not, since the informal hearing is a legal requirement placed upon DEP as part of its penalty assessment process; it is not a duty for the person assessed. However, this issue should be clarified in the rule.

§ 92.93(c) The hearing process. While the procedures for an informal hearing need not be explicit, and I recognize the advantages of keeping the procedures both informal and flexible, the regulation should provide clarification of the following: (1) may the person requesting the hearing be represented by counsel, or have the right to have counsel present and participate in the hearing? (2) may a party cross-examine testimony presented by the other party, or otherwise be allowed to question the other and compel answers? (3) must the final decision be made "at the hearing" as the rule states, or may the decision be delayed until additional information is collected? (4) may the proceeding be adjourned and continued for collection of additional information, or must it be performed in a single "sitting"? (5) Does the person requesting the hearing have the opportunity to request information regarding the Department's proposed penalty for review before the hearing?

§ 92.94(b) payment of penalties. The cited section states that penalties, including those due following judicial review, shall be paid within thirty days after the order is mailed to the person. Further, the requirement is that "the person to whom the notice or order was issued shall pay the amount... ." The first question involves the meaning of this phrase, specifically which "notice" is referred to: the original notice of

proposed assessment, or the notice of the final adjudicatory decision? The party to whom the original notice was issued might not be the party who is finally determined to be responsible for payment. Secondly, the manner in which penalties are assessed may be the subject to a settlement agreement or judicial order. When the regulations are as explicit as they are here, a conflict between the regulation and the final determination can occur. The regulation should not attempt to instruct the courts or the parties as to how to assess penalties in all situations; in fact, it is questionable whether DEP has the power to do so. The regulation should provide only that penalties that are assessed as a result of formal adjudications must be paid within thirty days of the receipt of the final order, unless the tribunal or the parties by stipulation have determined another time period for payment.

CONCERN: UNREGULATED DEPARTMENT DISCRETION ADVERSELY AFFECTING DISCHARGERS

§ *96.4(g) Effluent Trading.* DEP has proposed a new rule that promises flexibility and rationality in protecting the water environment, but then placed unreasonable restrictions on implementation. Essentially, paragraph (g)(3) requires that effluent trading only can be accomplished after DEP has published for comment a description of the procedure. Why cannot dischargers, working with DEP in their local area, addressing local concerns and conditions, find methods that are acceptable and proceed to implement them? It seems unduly burdensome and limiting to not allow for an effluent trading process to be developed by those immediately concerned with it.
Furthermore, the Department can stifle the entire process simply by doing nothing. The purposes of the regulation would be enhanced if the limitations on effluent trading were only those in paragraphs (1) and (2). Perhaps a requirement that the effluent trading agreement be enforceable through NPDES Permit conditions or a consent order would be a useful addition.

§ 92.41 Requesting monitoring. The provision allowing DEP to request one complete effluent evaluation annually is acceptable. Monitoring effluent is an important tool in identifying problems, and limiting these requirements to NPDES permits unnecessarily restricts the ability of DEP to develop needed information. The concern with this section is the broad power it grants to DEP, with no concurrent requirement of responsibility and accountability. Specifically, DEP may require such monitoring (which can cost over $3,000 for one set of analyses) "on a more frequent basis" simply by "request." This apparently unlimited power to request that tens of thousands of dollars be spent is not acceptable. DEP must have a genuine, documented reason for making such a request, and must be required to justify both the extent of the analysis and the frequency of sampling.

Thank you for considering all of the above. I trust that, upon reflection and consideration of these concerns, DEP will endeavor to make the changes necessary to produce a set of regulations that will provide sound, reasonable, and professional direction and control well into the next century.

Very truly yours,

James C. Brucker
Manager

ORIGINAL: 1975
No copies per FEW

Nvironmental Quality Board 10.18.98
P.O. Box 8477
Harrisburg PA 17105

Dear Sir(s)/Madame(s),

I am writing in my reponse for the opposition of the new proposed water quality standards and toxics strategy. I am urging you to strengthen the standards that protect our water. I want stiffer standards and will taylor my future votes to constituents that protect my enviroment. I would like a response if possible.

Thank you,
Matthew Miller
402 west Garden Road
Oreland Pa. 19075
215-233-3680

M. Miller
402 West
Oreland

A. Weston
126 Azalea Way
Flourtown, PA 19031

Environmental Quality Board
P. O. Box 8477
Harrisburg PA 17105

ORIGINAL: 1975
MIZNER
COPIES: Wilmarth
Jewett
Sandusky
Legal

Oct. 19, 1998

Dear Sirs.

I am writing to urge you to strengthen the standards that protect our water, not weaken them. I believe that DEP's proposed toxic shategy is too weak and will allow even more toxic discharges into our waters. Kindly ~~~~ stop these new standards.

Looking forward to your response.

Sincerely,

Akhi Weston

10/19/98

Environmental Quality Board
PO Box 8477
Harrisburg PA 17105

ORIGINAL: 1975
No copies per FEW

To Whom It May Concern:

It saddened me to hear this evening that not only is there not a bill on the table to tighten restrictions on water pollution, but instead that there is a bill to ease restrictions on polluting in PA. I was already disheartened at the lax recycling standards, and I have been trying for months to talk to someone about the disgusting water quality in my home. Please do us, your constituents, a favor and don't let this bill pass.

To give an example: my water is so chlorinated that it's blue-green. But when I got it tested, they told me it was safe to drink. Would you drink blue water? This is just one example of the pollution in the water here. Please do not make it worse.

Thank you, and please let me know that you have received my plea.

Alexa Zimmerman

Alexa Zimmerman
306 S. Fairmount St. #1
Pittsburgh PA 15232

10.18.98

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DEAR E.Q.B.,

I OPPOSE THE PROPOSED WATER QUALITY STANDARDS AND TOXICS MANAGEMENT STRATEGY! WE CANNOT AFFORD, ON ANY LEVEL, TO WEAKEN OUR STANDARDS FOR DISCHARGING TOXIC CHEMICALS!

SINCERELY,
Willard S Byrd

723 Cliff Mine Rd.
Canonsburg, Pa 15108
Oct 17, 1998

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Hagen

Environmental Quality Board;

I have recently read the new proposal for Water Quality Standards and Toxics Strategy, for Pa, also known as the "Rollback." I'm appalled; the "new" weak, poorly written regulations are UNEXCEPTABLE. I can only believe, that the big companies, with lots of money, are behind this, with no concern for the people or wildlife in "our" state.

I've lived my life here, and can't believe that a "general permit" can be issued to ANY company, regardless of their past pollution record. And to make more insult to injury, the standards for 70 toxic chemicals have been elimated/or lessened.

We all have the right to clean/safe water. Please maintain this for us all. STOP this proposal NOW. Please let me know how you'll do this.

Thank you,
Debi Chojnicki

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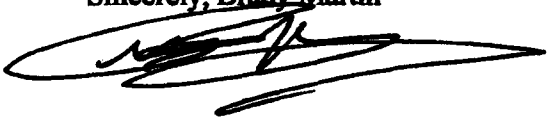
Edward Brezina
PA DEP
PO Box 8555
Harrisburg, Pa 17105

Oct.18, 1998

Mr. Brezina,

This is a letter referring to the proposal from the DEP wanting to weaken the water quality standards. We are supposed to be more environmental aware of issues and take action on protecting our waterways, they are a precious resource. To have the DEP want to weaken standards just makes me sick. They are not doing their job. We are already second in the nation for toxic waste in our waterways, apparently the state wants to be number one. I want an answer on why the DEP wants to roll back the water standards, and why they want to take away our right to be involved in the permit process. I want these new standards stopped. We need to strengthen the standards that protect our water.

Sincerely, Brady Martin



Please respond to:
Brady Martin
Robert Morris College
Box 383
Moon Township,. Pa 15108

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10-19-98

ENVIRONMENTAL QUALITY BOARD
P.O. Box 8477
HARRISBURG PA 17105

Dear EQB,

I am writting this letter in opposition of the new proposed water quality standards + toxics strategy. If anything, these standards should be strengthened to protect our water for my children + theirs. Weakening the standards will eventually prove to be disasterous in the long run. Please reconsider + put a stop to this new proposal. Do it for our most precious resource ... our children. Please respond to this plea.

Thank you,
Jeff Bisdee
5456 UPSAL PL.
Pittsburgh, PA 15206

JB

October 19, 1998

Environmental Quality Board
P. O. Box 8477
Harrisburg, PA 17105

To Whom It May Concern:

I want to go on record in opposition to the new proposal relating to water quality standards and toxics strategy. If anything the standards should be increased so that our water is better protected.

Please take whatever measures are necessary to make sure that these new proposals do not become law.

Very truly yours,

Joanne Gilligan

Joanne Gilligan
129 Azalea Way
Flourtown, PA 19031

J. AMES & TERESA MENDEZ-QUIGLEY
401 Longfield Road
Erdenheim, PA 19038

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October 19, 1998

Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105

To whom it may concern:

This is to strongly urge that you make all efforts to strengthen all standards that protect our drinking, bathing and recreational water sources from any discharges, including pollutants, toxins and toxic materials into any Pennsylvania creek, stream, river, lake, or other water way.

The proposed weakening of standards are completely unacceptable. The Department of Environmental Protection is proposing to permit the discharge of toxics and toxins into our water sources and granting "general permits" to industry for toxic releases. This is indisputably unacceptable.

We request that you respond to our concerns in writing at the address above. Please be aware that we will make our voices heard through our state legislative representatives because we will not tolerate any damage to our most fundamental resource - water.

Sincerely,

James J. Quigley

Teresa Méndez-Quigley

c: Lawrence Curry, State Representative
Stewart J. Greenleaf, State Senator

CHESTER ENGINEERS

October 19, 1998

Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105

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To Whom It May Concern:

As you may be aware, the Water Resources Advisory Committee (WRAC) submitted comments on the proposed RBI changes to Chapters 16, 92, 93, and 95 on July 11, 1997. As Chair of WRAC, I signed those comments on behalf of WRAC. While WRAC was in general agreement on most of the issues described in that letter, there were some issues on which compromise language was drafted because of differences in opinion among the members. I'd like to take this opportunity to offer my personal comments on one of these issues.

I feel strongly that the Potable Water Supply (PWS) should not be applied to all waters of the Commonwealth. DEP's position contradicts the RBI Report (June 10, 1996) which stated that such protection is not required by EPA and is not used in most other states. The report concluded that, *"Therefore, this statewide use designation, which can result in additional treatment costs, may no longer be appropriate or necessary to protect all streams of the Commonwealth for potable water supply use."* While protection of the quality of drinking water is critically important, it must be remembered that the criteria for protection of human health for drinking water consumption are based on consumption of two liters of water per day. Incidental ingestion of water by swimmers or waders in small streams which do not serve as public water supplies would not result in any threat to human health. The criteria are only appropriately applied at the point of drinking water withdrawal. To apply them statewide is to require more stringent NPDES permit limits, resulting in potentially substantial treatment costs, with no known benefit to public health. I disagree with the "dissenting" opinion in the WRAC comments, that the designation be maintained to prevent degradation of water quality in the event that a water body be used for drinking water in the future. A use can be "upgraded" at any time if it is determined to be appropriate, and any necessary additional controls could be required at that time. This is no different from upgrading an aquatic life use when water quality and habitat conditions improve.

I appreciate the opportunity to provide these comments. Please call me at (412) 269-5848 if you have any questions.

Sincerely,

James B. Whitaker

James B. Whitaker
Manager, Water Quality

JBW:ml-3322

600 Clubhouse Drive
Pittsburgh, Pennsylvania 15108
412-269-5700; Fax 412-269-5749

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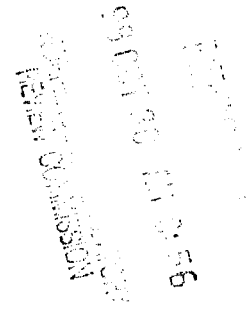
Testimony of the Pennsylvania Office of the Chesapeake Bay Foundation to the Environmental Quality Board On the Proposed Changes to Water Quality 25 PA Code Chapters 92, 93, 95 – 97 October 20, 1998



On behalf of the Chesapeake Bay Foundation(CBF), I would like to thank the Environmental Quality Board for the opportunity to discuss the Department of Environmental Protection (DEP) Regulatory Basics Initiative on water quality. The Chesapeake Bay Foundation is the largest nonprofit conservation organization working to Save the Bay. Because the Susquehanna River supplies about half of the fresh water entering the Bay, what happens in Pennsylvania is important to the Bay. For years CBF has championed the concept of toxics use reduction as the approach needed to help Save the Bay. In fact, CBF has set a goal of 50% reduction in the use of toxic chemicals in order to help restore the Bay to health. In 1996 CBF released a report analyzing Pennsylvania's efforts to control toxic chemicals in our waterways and found many shortcomings. The proposed changes to the water quality and permitting regulations not only fall short of implementing any of the improvements called for in our report, the changes actually roll back the current protection of our waterways from the effects of toxic chemicals.

There are a number of items contained in the state's proposed changes that would decrease the protection we currently have for our streams. I would like to discuss some of them briefly now. More details on these and other issues will be contained in our written comments.

The proposed regulations would roll back current water quality protection.

1. By allowing toxic chemicals to be discharged under general permits.
General permits by design get very little oversight by the Department. Allowing toxic chemicals to be discharged under general permits could allow the discharge of toxic chemicals into our waterways with practically no oversight and no way to look at the cumulative effect of these discharges. There is no mention in the proposal if or how DEP would put restrictions on the amount of toxic chemicals that could be discharged under a general permit. As currently proposed, we oppose the inclusion of toxic chemicals in general permits.

2. By deleting the requirement to document that general permits will not violate water quality standards.

Currently, all permits issued, including general permits, need to have documentation showing that the discharge will not violate water quality standards. With no explanation, this requirement is proposed to be deleted for general permits in the State's proposal. This is particularly troublesome when taken with the other actions proposed regarding toxics. Due to the lack of oversight on general permits, it is very important that DEP demonstrate that these permits will not cause water quality violations, and this requirement should be retained.

3. By not addressing the issue of mixing zones.

The Environmental Protection Agency gives states the authority to allow an area below a discharge to have pollutant concentrations above water quality criteria(i.e. mixing zones). The mixing zones must be consistent with the Clean Water Act and are subject to approval by EPA Regional Administrator (p. 5-1, Water Quality Standards Handbook, 2nd edition).

Pennsylvania regulations do not contain any mention of mixing zones. In fact, section 93.5(e)(1) gives what could be considered a substantial mixing zone for specific chemicals related to potable water supplies. The current regulation then states "Criteria necessary to protect other designated uses shall be met at the point of wastewater discharge." This can be interpreted to mean no mixing zone is allowed for other designated uses. This sentence is deleted in the current proposal.

As stated, this requirement is not implemented by the state. The State currently gives extensive mixing zones to all dischargers. Through the use of the PENTOXSD model, DEP gives dischargers a 15 minute travel time downstream to meet acute aquatic life criteria and a 12 hour travel time downstream to meet chronic aquatic life criteria.

Although mixing zones may be appropriate in some circumstances, they are particularly inappropriate for chemicals that are persistent or bioaccumulate in the environment, such as many toxic pollutants.

This proposal not only remains silent on mixing zones, but deletes without any explanation the one sentence that can be construed to apply to mixing zones. The state should either leave the requirement of meeting instream criteria at the point of discharge and implement it, or craft regulatory language to cover its current policy and have appropriate public participation and federal review.

Inadequate regulation of impaired waters

1. By completely omitting nonpoint sources from regulation.

The state is required to identify impaired waters, and to develop a total maximum daily load (TMDL) to bring the water quality back to meet water quality standards. All sources of pollutants may be examined, both point sources such as industries and sewage treatment plants and nonpoint sources such as agricultural or urban runoff. The state's proposal includes nonpoint source pollution in the calculation of the TMDL, but it is completely silent on how it proposes to control nonpoint source pollution.

This is a very crucial point, because according to the 1998 305(b) Report of Water Quality Assessment, the second leading source of impairment in waters in the state is agriculture – a nonpoint source of pollution. In addition, due to an agreement with the EPA, the state is required to write TMDLs this year dealing with nonpoint source impaired waters. The silence on the topic of controlling nonpoint sources is a serious and critical omission. The State needs to include an approach to controlling nonpoint source pollution in this regulatory package.

2. By allowing the use of general permits in impaired waters.
As stated previously, general permits by their nature receive little oversight. Currently, there are no restrictions on their use in impaired waters. Depending on the cause of the impairment, use of general permits in impaired waters could contribute to the problem. DEP should add a condition on the use of general permits prohibiting their use in impaired waters if the discharge could add to the impairment of the stream.

Broadening the general permit program
1. By allowing toxics to be discharged under general permits.
As mentioned above, without specific restrictions, toxic pollutants cannot be adequately regulated through general permits due to the lack of oversight. We oppose deletion of the current prohibition.

2. By allowing the use of general permits in high quality waters.
Currently, general permits cannot be used in exceptional value or high quality waters. The proposal changes the status quo by allowing the use of general permits in high quality waters. Once again, DEP is silent on how this will be implemented. Will they track the use of the general permits? Will they limit the number that can be used? There is no mention of any controls on the use of these permits in high quality waters.

In addition, there is no explanation of how DEP would allow the use of general permits in high quality waters and still meet the requirement that discharges will not cause a measurable change in water quality. Nor is there an explanation of how, through the general permit process, it could be determined that the use of the general permit would be justified under a social and economic test. Due to the generality of the proposal, and lack of detail on how the change will meet the current requirements for high quality waters, we oppose the changes allowing the use of general permits in high quality waters.

3. By deleting the documentation requirement for general permits.
As discussed above, we oppose the deletion of the requirement that the Department provide documentation showing the discharge will not cause a violation of water quality standards.

Effluent trading given blanket approval by only listing minimal requirements.

The approach taken by this proposal regarding effluent trading is minimal – the only two requirements listed are that standards be met instream and that procedures be made public. In this case, a minimalist approach is not appropriate. The issue of effluent

trading is very controversial, there are many different types of trades, and EPA, after working on the issue for a number of years, has not finalized their guidance. DEP is moving ahead with effluent trading before any of the details about how it will be implemented are given and before enough information about a program is available to even raise questions. Before any effluent trading program is approved, the details need to be seen and discussed openly and publicly. In this case, the only way to determine if a program is protective is to see the details. In fact, the details of an effluent trading program should be proposed in regulation. We oppose the blanket approval proposed in these regulations.

This concludes the oral testimony. Once again we thank the Environmental Quality Board for the opportunity to comment on this regulatory package, and we will submit more detailed written testimony.

Original: 1975

88 Evans Street
Pringle, PA 18704
September 12, 2002

To whom it may concern,

We believe that the IRRC must not weaken clean water regulations on toxic chemicals, must prohibit pollution trading by industries and must keep polluters under strict permits in order to protect the public health.

Thank you.

Joseph D Sabol
Mary M Sabol

PENNSYLVANIA BUILDERS ASSOCIATION

Original: 1975

600 N. Twelfth Street • Lemoyne, Pennsylvania 17043
717-730-4380 • 800-692-7339 • 717-730-4396 (Fax) • Internet: www.pahomes.org

Forthcoming
Nyce
Sandusky
Gelnett

March 14, 2000

Mr. Stuart Gansell, Director
Bureau of Watershed Conservation
Pennsylvania Department of Environmental Protection
P.O. Box 8555
Harrisburg, PA 17105-8555

Dear Mr. Gansell:

The Pennsylvania Builders Association (PBA) has reviewed the list of impaired waters proposed by the Pennsylvania Department of Environmental Protection (the Department). The Department intends to refer this list to the U.S. Environmental Protection Agency (EPA) in presumed compliance with section 303(d) of the federal Clean Water Act. PBA recommends that the Department not submit the list for the reasons enumerated below. Rather, we recommend the Department commit sufficient resources to resolve the identified issues in time for compliance with 303(d) requirements in the year 2002.

1. The proposed 303(d) listing is neither warranted nor prudent. The U.S. Environmental Protection Agency (EPA) is not requiring the submission of 303(d) lists for 2000. In its proposed rulemaking (65 FR 4919, 2000), EPA emphasizes that states should focus their resources on establishing TMDLs for waters already listed on [previous] 303(d) lists. This rulemaking raises significant questions regarding the legal and regulatory statuses of a federal list not required by the federal government.

2. Neither the proposed 303(d) list nor the technical assessment methodology (provided by the Department at the special request of PBA) provide standard definitions for impairment causes. This leads to a great deal of confusion in determining the potential impairments of streams. For example, how is a stream that is impaired by "flow alterations" different from a stream impaired by "water/flow variability"? Clearly, the EPA intends differentiation as it has developed different coding for these impairments. But, without consistent definitions, there exists no public assurance that the Department uses these definitions appropriately when it has provided no means for differentiation of these terms.

3. Similarly, neither the proposed list nor the DEP assessment methodology provide for consistent and uniform definitions regarding impairment sources. For example, what are the similarities and differences between "land development" and "construction" and between "small residential runoff" and "urban runoff/storm sewers"? These differences appear to be subtle and subjective but they will make significant regulatory differences when the Department must develop TMDLs to correct them.

4. The DEP methodology provides no guidance on establishing causal relationships between impairment causes and impairment sources. Best professional judgement even when correct is a qualitative and subjective assessment. As such, it forms a poor basis for the development of quantitative TMDLs.

5. The proposed 303(d) list does not meet the minimum requirements for federal submission.
   a. The list as proposed fails to provide information about the methodology used to develop the list (PBA had to request this in addition to the proposal).
   b. The list provides no site-specific data used in the determination of a water's impairment.

6. The proposed listing has not provided for adequate public participation.
   a. The proposed 303(d) list was available only by request, it was not published in the *Pennsylvania Bulletin*.
   b. The Department held no public meetings or hearings on the proposed list.
   c. The Department allowed only a forty-five day comment period on a listing that contained over five hundred pages of data.
   d. The Department did not provide adequate technical background as a part of the listing. Potential commentators had to initiate contact with the Department to obtain the detailed data necessary for informed technical review of the document.
   e. There is no generally accessible geographic reference (e.g. municipality, latitude/longitude, UTM Grid, etc.) for the stream segments on the proposed list.

7. Unlike metals or organic pollutants, sediment and hydrologic modifications have no quantitative water quality criteria. That is, there is no set level of concentration or variability at which impairment occurs by regulatory definition. In order to establish impairment, it is necessary to demonstrate that a concentration or variability impairs the functionality of the assessed stream segment. The technical methodology used by the Department is incapable of determining whether this type of impairment exists. Based upon conversations between PBA staff and Department personnel it is PBA's understanding that the Department determined these impairments through best professional judgement. Again, PBA emphasizes that best professional judgement is an inadequate methodology for the 303(d) listing process because streams so listed will face the mandatory development of quantitative TMDLs. The Department's assumption that a quantitative TMDL can be developed for a

qualitative impairment presumed by best professional judgement without benefit of an established methodology to ensure consistent and replicable results is significantly mistaken.

8. A disproportionately large percentage of streams appearing for the first time on the proposed 303(d) list are presumed impaired due to some form of hydrologic flow modification. Given that: typically, data was collected only once per assessed segment, and that the data for newly listed streams was collected in 1998 and 1999; and that the dates of collection coincide with the most severe drought recorded for the state; and that a standardized methodology to determine impairment by hydrologic modification does not exist; the PBA believes that the Department must remove impairments related to hydrologic flow modification from the list to restore credibility to the proposal.

9. EPA intends streams on 303(d) lists to be chronically impaired, not temporarily impaired by short duration events. To the extent that the Department presumes impairment by sediment is attributable to construction, the PBA recommends deferring such stream segments from listing until 2002. Such impairment is typically associated with acute events for which the Department has more effective and efficient remedies than 303(d) listing.

The Pennsylvania Builders Association respectfully requests the Department address these concerns before finalizing this proposal. If you wish to discuss this matter further, or if you have any questions or concerns regarding these comments, please feel free to contact me at the address or telephone number above, or by e-mail at mmaurer@pahomes.org.

Sincerely,

Mark Maurer
Assistant Director of Governmental Affairs

cc: Senator Mary Jo White
Senator Raphael J. Musto
Representative Arthur D. Hershey
Representative Camille George
Mr. Robert Nyce, Executive Director, IRRC
Mr. Bradley Campbell, Regional Administrator, EPA Region 3

Original: 1975

IRRC

From: Debbie [gbinney1@velocity.net]
Sent: Friday, September 01, 2000 1:44 AM
To: IRRC@irrc.state.pa.us
Subject: Water Pollution

This letter is from a Mom who is asking you to regulate stricter pollution
guide lines for Pennsylvania. We ask that these levels need to be limited to the extent that pollution decreases. The levels need to be set so we start seeing decreasing effects within Pa.

To think that we are allowing this toxic waste to flow into our waterways, it is the same as feeding it to our children and our children's children.

Water, we can't go without it, we need this our children need it. To know and see the damage that this toxic waste has already done to us, and to watch it slowly kill our children. The large number of people who die from liver and kidney cancers. Why, so we can all save a buck. My children, my family, my friends and everyone's life is so much more important.

I sit and read my daughters 3rd. grade Social Studies book, it tells how bad things were in the 70's how all the adults learned how important our waterways are. How everyone has worked to clean-up our waterways. Then I pick-up the newspaper and read in 1998, 40 million pounds of toxic pollution was dumped into our waterways.

Our teenagers today read these same history books, they read and are taught that adults know what can happen if we don't take care today. Then they see, read, and here what is actually going on. We adults are destroying, worse then our forefathers. We know, they didn't.

Then we wonder why kids are killing kids. What do they have to believe in? When they are taught one thing and they see what the RESPECTED ADULTS are really doing. Help take the anger away from our children. Let them start hearing positive turn around, that we here in Pennsylvania are responsible for. Let them believe in what the teachers are teaching them. Our children today have little respect for adults, and we wonder why?
Help teach what Respect means! Respect are Waterways, its our link to life!

These toxic chemicals are slowly destroying our little ones, their little minds, the behavioral problems are all blamed on the parents. We are trying to raise good children but, What are they drinking??? Look at our trees, they are drinking the same water!!!!!

Please make a regulation from the heart. We are asking you to please think of our children.

P.S. A mother who takes drugs while pregnant is harming here unborn child. She can lose her rights as a Mother to that child. This is because we know what can happen.
Well, we know what is happening now, we need to stop poisoning our children. Please stop the pollution into our water ways!!!!!!!

Thank you.

Sincerely yours,

Just a Mom

—

Return address

Edward Brezina
PA DEP
PO Box 8555
Harrisburg, Pa 17105

Oct. 15, 1998

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Jewett
Sandusky
Legal

Mr. Brezina,

I have recently found out that the DEP is proposing to roll back the water standards allowing industries to come in our state and pollute more, plus eliminate the publics right to be involved in the permit process. The obvious question is why weaken standards instead of strengthening them. Water should be treated as a precious resource not a dumping ground for toxic chemicals. The DEP is here to protect and not destroy. I want this ridiculous proposal stopped.

Sincerely,

Chris Yonka

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10-15-98

James M. Seif, Chairman
Pennsylvania Department of Environmental Protection
Environmental Quality Board
P O Box 8477
Harrisburg, PA 17105-8477

Re: Proposed Water Quality Regulations Changes
Pennsylvania Bulletin 8-29-98

Dear Chairman Seif,

Please make the following changes to the proposed water quality regulations.

92.51(6) Language should specify that compliance with all water quality standards is required.

92.61 We support the recommendation of the Water Resources Advisory Committee to allow additional public comment when a NPDES application is submitted.

92.81 General permits should not be permitted for High Quality (HQ) streams or impaired waters. Toxics, should never be permitted under the general permit provisions.

93.5(e) Provisions limiting mixing zones should be retained from the old regulations

93.6 Language must be added to protect insream habitat and to maintain existing flows. Water quality alone is not sufficient to prevent waterways from being degraded.

Please make these changes to the revised water quality regulations. Standards must be maintained if we are to improve Pennsylvania's waterways. Maintaining the status quo for already degraded streams is not an acceptable course of action.

Sincerely,

Richard G. Myers,
Riverkeeper Assistant

DELAWARE RIVERKEEPER® NETWORK - *with offices in the Schuylkill Watershed and the Delaware Estuary*
PO Box 326 • Washington Crossing, Pennsylvania 18977-0326
Phone: 215-369-1188 Fax: 215-369-1181
E-mail: drkn@libertynet.org WWW: http://www.libertynet.org/~drkn
An American Littoral Society Affiliate

October 15, 1998

Cynthia S Kane
8102 Eastern Avenue
Wyndmoor, PA 19038

Environmental Quality Board
PO Box 8477
Harrisburg, PA 17105

Dear Sir or Madam!

I am opposed to the new proposed water quality standards and Toxics strategy. I urge you to strengthen the standards that protect our water, not weaken them! The DEP's proposed toxics strategy is too weak and will allow even more toxic discharges into our waters.

I want these new standards stopped! I would appreciate a reply which addresses these concerns.

Sincerely,
Cynthia S Kane

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Legal

Edward Brezina
PA DEP
PO Box 8555
Harrisburg, Pa 17105

Oct. 15, 1998

Mr. Brezina,

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Sincerely,

Laura Scott

Please respond:
Laura Scott
202 Mill St. #1
Edinboro, Pa
16412

October 15, 1998

Environmental Quality Board
PO Box 8477
Harrisburg, PA 17105

Please strengthen the standards that protect our water. The proposed toxics strategy is too weak and will allow the weakening of good protective standards for our water. No "general permits" should be given to companies that haven't complied with other permits and may discharge pollutants into our water. This is *our* drinking water; please do everything in your power to protect it.

Please do everything in your power to live up to your name: *Environmental Quality* Board. Thank you.

Sincerely,

P.S. I would appreciate a response. Thanks

Mary R. Madeira • 602 Wyndmoor Avenue, Wyndmoor, PA 19038 • 215.233.0927

No return address

Edward Brezina
PA DEP
P.O Box 8555
Harrisburg, Pa 17105

Oct. 15, 1998

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Sincerely,

Edward Brezina

No return address

Edward Brezina
PA DEP
PO Box 8555
Harrisburg, Pa 17105

Oct. 15, 1998

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Legal

Mr. Brezina,

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Sincerely,

Kevin H. Goodridge

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David W. Mills Oct. 16, 199

Mr. Edward Brezina;

As concerned citizens we are writing to you, letting you know that we oppose the new Proposed Water quality standards and toxics Strategy. We urge you to Strengthen the Standards that Protect our water, not to weaken them. The DEP's Proposed toxics strategy is too weak and it will only allow more toxic discharge into our waters.

To EQB & DEP, we want these standards stopped!

Freeman, Sharon

From: David Talley(SMTP:dtalle00@nimbus.ocis.temple.edu)
Sent: Friday, October 16, 1998 5:02 PM
To: REGCOMMENTS
Subject: Proposed Changes to PA's Wastewater Discharge Regulations

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Chairman James M. Seif

Environmental Quality Board

P.O. Box 8477

Harrisburg, PA 17105-8477

Dear Mr. Seif:

I am commenting on the proposed changes to the water quality regulations as described in the August 29, 1998, Pennsylvania Bulletin.

Chapter 92.2d(3). I support retention of the technology-based limit (0.5 mg/l) for total residual chlorine.

92.51(6) The language in the proposed regulation needs to be simplified to say that compliance with all water quality standards is required.

92.61 I strongly support an additional public comment period when someone intends to submit an NPDES application, as recommended by the Water Resources Advisory Committee.

92.81 I strongly oppose allowing "general" permits in High Quality streams or impaired waters. Neither should general permits allow the discharge of toxic materials. Individual permits should be required in these cases. Documentation for these permits should not be reduced.

Chapter 93.4 I support the present protection of all of our waters as "potable water" sources.

93.5(e) The proposal moved most of this section to the new Chapter 96, but did not include a sentence that presently limits mixing zones. Pennsylvania's regulations need to retain this sentence and prohibit mixing zones. At the least, regulations are needed to govern their permitting.

93.6 It is very disappointing to see no language protecting instream flows and instream habitat. Other states have such protection, and the U.S. Supreme Court has ruled that states are permitted to protect instream flows. Governor Ridge's 21st Century Environment Commission recommended protecting aquatic habitat and instream flow. Because the water quality standards are the basis for clean water and healthy streams, lakes and rivers, Pennsylvania needs language protecting instream flow and aquatic habitat in our water quality standards!

I hope that the EQB will make these and other changes to improve our water quality, and not relax protection of it.

Yours truly,

David Talley
1034 W. Upsal St.
Phila.,PA 19119
dtalle00@nimbus.ocis.temple.edu

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Oct 15 1998

Edward Breyna

It's very important to protect are future. With bad drinking water people will become very sick or even died because of dirty water. So please protect are drinking water. Keep it Clean!

Thank you
Mrs. Roxana Pellegino

By Facsimile

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15 October 1998

Governor Thomas Ridge
Main Capitol Bldg, Room 225
Harrisburg, PA 17120

Dear Governor,

As part of a state-wide review of all regulations, the PA Department of Environmental Protection (DEP) is proposing changes to its regulatory chapters dealing with water quality standards and permitting. These changes will significantly weaken current protections to PA waterways and the Chesapeake Bay.

I submit these comments to the Revisions to Water Quality Standards - Major Regulatory Chapters, Changes, and General Concerns.

Chapter 92, NPDES Permitting, Monitoring, and Compliance

92.25 (3): For total residual chlorine, the technology cap of .5 mg/l is proposed to be retained. I support keeping the cap, since chlorine, although needed for disinfection purposes, can be extremely toxic to aquatic life if discharged in high concentrations.

92.51 (6): This "narrative criterion" language which is in every discharge is good, but needs strengthening. DEP should add that compliance with all water quality standards is required.

92.61: Additional public comment should be solicited, in particular when an application is filed. It is important to know about specific public water quality concerns before all the calculations have been done and a draft permit published.

92.81: This section on general permits is greatly expanded and therefore weakens protection. Specific proposals include:

- for the first time allowing general permits to include limits for toxic chemicals. Since there is no easy way to track who uses these permits, DEP should not allow toxics in general permits.
- for the first time allowing general permits to be issued in high quality waters with no indication of how water quality

will be maintained. Once again, due to the nature of general permits, the use of these permits needs to be followed closely, which is very difficult. DEP in general should not allow the use of general permits in high quality waters.

- deleting the requirement for documenting that the general permit will not violate water quality standards. Right now, there is a requirement that all permits must document that they will not cause a violation of water quality standards. Because this is a difficult task for a general permit, where the use of the permit is not tracked or followed closely, DEP proposes to delete it and reduce protection of PA waters. DEP needs to retain the documentation provision to ensure water quality standards will not be violated by the use of general permits.
- not including in the proposal a prohibition of the use of general permits in impaired waters. Because these waters have water quality problems, the use of general permits should not be allowed in impaired waters.

Chapter 93 Water Quality Standards

- 93.4: DEP currently protects all PA waters as potential "potable water" sources, and is soliciting comments on whether to retain this protection. Because of the extra protection it gives streams, this provision should be retained.
- 93.4: DEP proposes deleting warm water fishes as a statewide water use. DEP states that aquatic life will be protected for each stream listed in the stream list, but this leaves no basement protection for any stream that for one reason or another doesn't get on the list. It just makes sense that a basement level of protection should be afforded, and warm water fishes should be retained as a statewide water use.
- 93.5 (e): The current wording of this section spells out that there will be no mixing zones - "Criteria necessary to protect other designated uses shall be met at the point of wastewater discharge." This section was moved to Chapter 96, but this mixing zone statement was deleted. DEP currently allows mixing zones for every discharge, but this policy has never come under

public scrutiny. DEP should retain and implement this language, or if DEP wants to institute a mixing zone policy, then it should go out to public comment and be incorporated into policy.

- 93.6: One area not covered by PA regulations is instream flow and habitat. Because PA has no comprehensive water resources management, the DEP should develop instream flow and habitat criteria and incorporate them into this chapter of regulation.

Chapter 96 Water Quality Standards Implementation

- 96.4: This section on Total Maximum Daily Loads completely ignores nonpoint source problems. The design conditions are tested for low flow conditions, but are silent on how modeling will be done for rain-induced pollution. In addition, it is unclear whether the design flows apply only for impaired waters. DEP should include a separate section for modeling done on waters that are not impaired, should incorporate nonpoint sources into their modeling in particular for impaired waters, and should include how clean up activities dealing with nonpoint source pollution will be implemented.
- 96.4: This section also gives DEP authority to approve effluent trading, with only minimal requirements. Blanket authority is premature, and should not be given without the opportunity to comment on the procedure. In addition, due to the potential problems with trading, the procedure should be incorporated into these regulations.

Thank you for the opportunity to bring my views to the attention of your administration.

Yours sincerely
Robert E. Rutkowski Esq

cc: Environmental Quality Board
Carol Browner

2527 Fapon Court
Topeka, Kansas 66605-2086
Fax: 1785 379-9671
e-mail: r_e_rutkowski@hotmail.com

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MEMO FROM PATTY DAVIS

7821 Flourtown Ave
Wyndmoor, PA
19038

10-15-98

To Whom It May Concern:

Please strengthen our standards for protecting our water. Don't weaken them!!! DEP's proposed toxics Strategy is too weak & will allow even more toxic discharges into our waters. Please help us protect our water & don't go through with these new Standards.

Thank you.

Sincerely
Patty Davis

no return address

Edward Brezina
PA DEP
PO Box 8555
Harrisburg, Pa 17105

Oct. 15, 1998

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Mr. Brezina,

I have recently found out that the DEP is proposing to roll back the water standards allowing industries to come in our state and pollute more, plus eliminate the publics right to be involved in the permit process. The obvious question is why weaken standards instead of strengthening them. Water should be treated as a precious resource not a dumping ground for toxic chemicals. The DEP is here to protect and not destroy. I want this ridiculous proposal stopped.

Sincerely,

Nathan Bell

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To: Enviromental Quality Board
PO Box ~~8555~~ 8477 Harrisburg, Pa. 17105

From: Moises Levy, PE
7410 Richards Rd., Melrose Park, Pa 19027-3430

Date: October 15, 1998

Dear Responsible person:

It has been brought to my attention that your department is involved in WATERING DOWN, the existing pollution laws of Pennsylvania, for the sake of Jobs. Our present and future water supplies should not be played with. I rather change JOBS for the better quality of WATER.

In our household we are at present 3 voters:
Moises Levy
Carol Levy
Suzana Levy
We are very and STRONGLY OPPOSED to lower the standard. Please make it more stringent.

Should you have any questions please contact us.

Sincerely, Suzana Levy
MOISES LEVY

Moises Levy
Suzana Levy

Subj: **EQB Petition**
Date: 10/16/98 9:31:04 AM Pacific Daylight Time
From: SandyHCSmi
To: dbaxter@cyberia.com, mck440@redrose.net
To: bertmeister@juno.com, adamson@desupernet.net
To: JGB1051, arlsalbr@juno.com, FDaly1880
To: fasching@fast.net, ajgoeke@igc.apc.org
To: doloreskrick@juno.com, Squoch
To: ajgoeke@pop.igc.apc.org, bmunchel@juno.com
To: cacjdavis@juno.com, clarens@voicenet.com
To: yoda@cyberia.com, t1gger@blazenet.net, CEREBROLAB
To: Digger7657, ebwise@christcom.net
To: markiris@sprintmail.com, woolenmill@earthlink.net
To: hayesrg@netrax.net, steveb@greenlinepaper.com
To: RCYCLNGSRV, Dstermersr, ldinino@hotmail.com
To: catalyst@envirolink.org, cleiden@igc.apc.org
To: treehug@epix.net, gwwills@penn.com
To: adp@envirolink.org, jfwarren@usaor.net, FRudolph
To: dipretor@sgi.net, novakpen@crosslink.net
To: mbproact@penn.com, ahwl@lehigh.edu
To: PEN@ENVIROLINK.ORG

ENVIRONMENTAL QUALITY BOARD HEARINGS

Peter H. Pasquoche III
RD #1 Box 149.
Airville PA 17302-9770

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1998 Legal

We, the people listed below, have asked Peter H. Pasquoche III to speak for us on this very important matter regarding the proposed rulemaking by the Environmental Quality Board (EQB). We believe strongly that these proposals will greatly weaken the already too weak regulations for Water Quality, Residual Waste and Municipal Waste. Further more, we believe that the present environmental regulations should be made much tighter, not "streamlined" to encourage trash as Pennsylvania's number one business under the guise of recycling. The EQB, DEP and PA government have a duty to preserve a safe and healthy quality of life for every person in PA. Students Against Sludge

NAME:	ADDRESS
Leann Pasquoche	RD 1 box 149 Airville Pa 1730
Sarah Pasquoche	RD 1 box 149 Airville Pa 1730
Kasey L Kauffman	252 E McKinley RD. Delta pa 1731
Jessica Knisely	142 Johnson RD Delta pa 17314
Dan Silver	3834 RD Delta pa
Evan Bupp	RD 1 Box 464 Brogue PA 17309
[illegible]	[illegible]
Heather Quinlan	4161 Delta RD Airville, PA.
[illegible]	[illegible]
Kayla Kauffman	252 E mckinley RD Delta PA 17
Trina Mallorff	849 Dellinger school rd Brouge, PA 1730

Jeremy Sechrist [illegible] Delta PA 17314

Ashley Skiles [illegible]

Brian Meredith 266 Crocker RD Delta PA 17314

Brittney Adams 741 Bridgeton Rd Fawngrove PA 17325

Nick Wise [illegible]

Shane McCormick 478 Slab Rd. Delta PA. 17314

Matt Keller 105 Kennedy Airville, PA 17302

[illegible]

Jerrica Billet 604 Goram Rd Brogue PA 17309

Maryellen Leonard 5022 Delta RD, Delta, PA 17314

Wilson Burns collinsville Rd, Brouge PA 17309

Casey Cordrey 250 Goram RD Brogue Pa 17309

Ben Converse 16 Creek RD Delta PA 17314

Justin Whitesel Right Rock PA Brogue PA 17309

Jon Bird Hively Road Brogue PA 17309

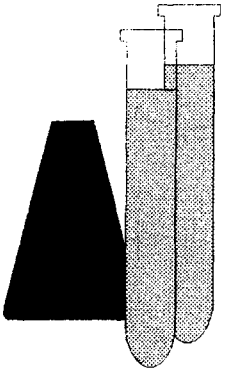
John Wilson 1996 Atom R.D. Delta PA 17314

Subj: **EQB Petition**
Date: 10/16/98 9:31:04 AM Pacific Daylight Time
From: SandyHCSmi
To: dbaxter@cyberia.com, mck440@redrose.net
To: bertmeister@juno.com, adamson@desupernet.net
To: JGB1051, arlsalbr@juno.com, FDaly1880
To: fasching@fast.net, ajgoeke@igc.apc.org
To: doloreskrick@juno.com, Squoch
To: ajgoeke@pop.igc.apc.org, bmunchel@juno.com
To: cacjdavis@juno.com, clarens@voicenet.com
To: yoda@cyberia.com, t1gger@blazenet.net, CEREBROLAB
To: Digger7657, ebwise@christcom.net
To: markiris@sprintmail.com, woolenmill@earthlink.net
To: hayesrg@netrax.net, steveb@greenlinepaper.com
To: RCYCLNGSRV, Dstermersr, ldinino@hotmail.com
To: catalyst@envirolink.org, cleiden@igc.apc.org
To: treehug@epix.net, gwwills@penn.com
To: adp@envirolink.org, jfwarren@usaor.net, FRudolph
To: dipretor@sgi.net, novakpen@crosslink.net
To: mbproact@penn.com, ahwi@lehigh.edu
To: PEN@ENVIROLINK.ORG

ENVIRONMENTAL QUALITY BOARD HEARINGS 1998

We, the people listed below, have asked Peter H. Pasquarche III to speak for us on this very important matter regarding the proposed rulemaking by the Environmental Quality Board (EQB). We believe strongly that these proposals will greatly weaken the already too weak regulations for Water Quality, Residual Waste and Municipal Waste. Further more, we believe that the present environmental regulations should be made much tighter, not "streamlined" to encourage trash as Pennsylvania's number one business under the guise of recycling. The EQB, DEP and PA government have a duty to preserve a safe and healthy quality of life for every person in PA.

NAME:	ADDRESS
Pamela Barton	RR1 Box 148 Apt C Airville Pa 17302
[illegible]	Rt Box 151, Airville, PA 17302
[illegible]	RD 1 Box 152, Airville, PA 17302
Lonnie Cox	RD 1 Box 152 AIRVILLE PA 17302
Theresa Pasquarche	Rd 1 Box 149 Airville Pa 17302
Walter L Lanham	Rd 1 Box 149 Airville PA 17302



THIS IS A UPDATE ON SLUDGE !!!

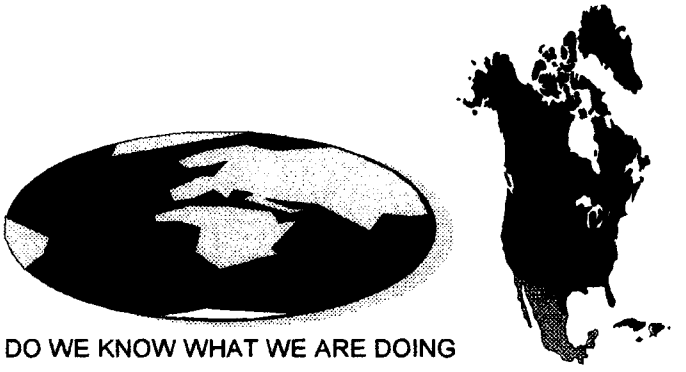
Last week I received a letter from the Department of Environmental Protection . The letter is about a complaint that I sent in . In the letter it states that they do not have enough information to proceed with my complaint . They want to know who owns the property and he wants to know how to get to the property from Harrisburg . The mans name is Jeff Minskey and he's a Service Representative , 909 Elmerton Ave. Harrisburg PA. 17110 phone# 1-717-705-4709 . Southcentral Region . July 13, 1998..

ANOTHER UPDATE !!!

This week I received a letter from the Environmental Protection Agency . The letter is about the complaint that I filed with the EPA. and it was to Mr. Alvin R. Morris of the EPA. he referred it to the Pennsylvania Department of Environmental Protection . PADEP and they are going tocheck into the operation's . To make sure that the permits are in order and that they are in compliance . They are going to check into the permits and make sure that they are followed to the letter The mans name is Greyson T. Franklin a civil Engineer, Water Protection Division at the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III 1650 ARCH STREET PHILADELPHIA PA 19103-2029

PERSONAL NOTE!!!

I will see what happens when they get through with what they say they are going to do . Because something has to be done before it is to late. My feelings are that it is to late . I have been doing some investagating on my own and the things that I have found out is as follows In ENGAND they have been SLUDGEING for the past 80 years and the fact is that they are having problems with whats called MAD COW DISEASE . The experts say that it is caused by feeding cows the brains of sheep and other animals . But some people have suggested that the problems are from the sludgeing of the feilds . Because all the affects that the cows go through can be traced to the by product . like LEAD , MERCURY and other HEAVY METALS and along with DIOXIN ,PCB's TOXIC CHEMICALS and RADIOACTIVE WASTE . Thats were the disease comes from . WE NEED TO STOP IT BEFORE IT TAKES AFFECT OVER HERE . That's my opinion. Peter H. Pasquoche III R.D. 1 Box 149 Airville , PA 17302-9770 phone# 1-717-927-9242 E-mail . squoch@aol.com



DO WE KNOW WHAT WE ARE DOING

ARE WE IN CONTROL ?

When you look back in history. Man has been the worst creature to ever inhabit the earth. Being that we have done nothing but destory everything that we lay our hand on. From the begining of man we have done nothing but take & not put back anything . In the begining we needed wood to start fires & build homes, so we cut down the forests. We started & we have not stop. It goes on to this day. Look at the rain forest they are being destoryed so fast that we don't know what medicine & other benefits could come out of the forest. But those poor South Americans don't even know what harm they are doing . So they cut the forest down for pennies . Just to put alittle food on the table to feed their children . While some rich lumber company is making millions , while those poor people don't even know what millions are , becuse they will never see any real money . And then it's too late . When the rain forest are gone the rich will move . All the while saying why did they cut the forest down. But thats just the begining know we move on to the Oil supply's & natural gas . But once again thats controled by the rich . And now we use oil &gas to run everything that we use in life to make our lifes easyer , but the problem is that it's causeing the green house effect . But once again we don't think about what affect on the environment that it causes . So we burn more oil & gas . Now people are saying wait . We need to do something . But the rich are saying there is still monie to be made . So they spend alittle bit of money & buy the right people off and it's put off until it's to late . Then after the monies been made they move on to something else . That something else is Sludge .But the problem that this contanes is this is going to kill more things on this earth then anyone realizes . This stuff contains a cocktail of every know chemical that is hazardies to everything living . What this stuff contains is as followed :

LEAD , CADMIUM , HEAVY METALS , PCB's , DIOXIN , TOXIC CHEMICALs , ASBESTO's , PESTICIDE's , & also Hospitals waste such as fungal spores , hepatitis A , & lets not forget radioactive waste , & salmonella

. And thats just for starter's . What ever goes into the sewage , goes on the fields . Because thats what is being put on the field's around my house & probably also around you house . People lets wake up this is something that can't be left alone . Because this will kill us all . You know yourself what you put in the tiolet & the sewage & it's not safe for it to be put on the field's and then food to be grown on it and then we consume the food . Please people don't let this continue to happen or we all will be DEAD THANK YOU for reading this . But know we must all do something to stop this . My name is Peter Pasquoche III On this day 4th of August 1998

ORIGINAL: 1975
No copies per FEW

923 Cliff Mine Rd.
Coraopolis, Pa. 15108
Oct.16, 1998

Environmental Quality Board;

I have recently read the new proposal for Water Quality Standards and Toxics Strategy for Pennsylvania, aka the " Rollback ." The "new" weak, poorly written regulations are pathetic. I can only assume that these were written for big money companies, certainly not for the people and wildlife in "OUR" state. I, as a citizen of this state find this ridiculous, to think that a" general permit " can be issued to a company, regardless of their prior pollution record. And to make matters worse, the standards for SEVENTY TOXIC CHEMICALS have been elimated or weakened.

I believe that everyone, human or animal has the RIGHT TO CLEAN, SAFE WATER. Please make sure our rights to this is maintained. STOP this proposal from going through.Please let me know , "how you plan to continue to protect our waterways ?"

Thank You,

Wayne S. Chojnicki

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Legal

6251 Parkedge Rd.
Pittsburgh, Pa.
15220
Oct. 16, 1988

Environmental Quality Board;

I have recently read the new proposal for Water Quality Standards and Toxics Strategy for Pennsylvania, aka the " Rollback ." The " new weak ", poorly written regulations are pathetic. I can only assume that these were written for big money companies, certainly not for the people and wildlife in " OUR " state. I , as a citizen of this state find this ridiculous, to think that a " general permit " can be issued to a company, regardless of their prior pollution record. And to make matters worse, the standards for SEVENTY TOXIC CHEMICALS have been elimated or weaken.

I believe that everyone, human or animal has the RIGHT TO CLEAN, SAFE WATER . Please make sure our rights to this is maintained. STOP this proposal from going through. Please let me know, " how you plan to continue to protect our waterways ? "

Thank You,

Veronica Bradley
Veronica Bradley

October 21, 1998

John Widman III
1602 Buttonwood Rd
Flourtown, Pa. 19031

Environmental Quality Board
PO Box 8477
Harrisburg, Pa. 17105

I am writing to voice my opposition to the newly proposed water quality standards and toxics strategy.

The DEP's proposed toxics strategy is too weak and will allow even more toxic discharges into our waters.

I want these new standards stopped! I urge you to strengthen the standards that protect our water, not weaken them.

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Sincerely.

John Widman III

John W. Widman III

Pennsylvania Coal Association
212 North Third Street • Suite 102 • Harrisburg, PA 17101

(717) 233-7909
(717) 236-5901
(800) COAL NOW (PA Only)

GEORGE ELLIS
President

MICHAEL G. YOUNG
Director of Regulatory Affairs

October 28, 1998

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Environmental Quality Board
P.O. Box 8477
Rachel Carson State Office Building
Harrisburg, PA 17105-8477

Re: Notice of Proposed Rulemaking: Water Quality Regulations, 25 Pa. Code Chapters 92, 93, 95-97, *Pennsylvania Bulletin August. 29,, 1998*

Members of the Board:

Thank you for giving the Pennsylvania Coal Association (PCA) an opportunity to submit written comments on above-referenced Notice of Proposed Rulemaking (the "Draft Rules"). PCA represents 39 bituminous coal producers and more than 80 associate members, including power generators, engineers, consultants and other entities which may be subject to the Department of Environmental Protection's water quality regulations. PCA submits the following written comments in response to the above-referenced Notice of Proposed Rulemaking.

General Comments

In numerous aspects, the Draft Rules represent a welcome shift from the command and control approach taken in the past. PCA hopes that these changes will allow greater flexibility, will protect water quality without unreasonable restrictions on economic activity and will encourage greater cooperation in addressing longstanding, challenging water quality problems.

Specific Comments

92.1: Definitions. This section should add a definition and should revise several others.

Stream definitions should be added as follows: "Perennial Stream: a stream or part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff. The term does not include *intermittent stream* or *ephemeral stream.*" "Intermittent stream: (a) a stream or reach of a stream that drains a watershed of at least one square mile, or (b) A stream or reach of a stream that is below the water table for at least some part of the year, and obtains its flow from both surface runoff and groundwater discharge." These definitions are contained in 30 CFR §701.5, and their application in this chapter will be consistent with Executive Order 1 of 1996, the Regulatory Basics Initiative (RBI) in that they will help reduce the inconsistency and

confusion which has arisen from the application of different definitions in the mining program, and then applying or seeking to apply those definitions to other regulatory programs.

"Best Management Practices": The definition should be revised to be consistent with the definition at 40 CFR §122.1.

The addition of a definition for "surface waters" as a substitute for "navigable waters" adds confusion by adding yet another term, without any clear reason (since the term appears in neither the Clean Streams Law or the Clean Water Act). The definition is overbroad without a clear reason or justification. The reference to seeps, intermittent streams and springs does not seem necessary to the intent of the program.

"Toxic pollutant": The EPA's Section 307 list should be used to eliminate confusion and to adhere to the intent of RBI. Alternatively, this definition should be revised as follows: "Those pollutants . . . through food chains, **[may] present a demonstrated risk, based on information generally accepted within the scientific community, [cause] of** death . . . " The definition as written is too broad. There is no limit placed on the source or type of information, so long as it is available to the Department, and characterizing any substance which "may" cause death, disease, etc. in any organism could be construed to include virtually any substance and is an invitation to speculation, conjecture and the application of "junk" science.

92.2. Incorporation of federal regulations by reference: PCA supports this provision. A clause should be added at the end, consistent with the intent of RBI: **"However, whenever possible under Pennsylvania law, ambiguous provisions and definitions shall be construed so that they are no more stringent than corresponding federal provisions."** Furthermore, this provision should expressly state the intent to conform state standards to less stringent federal standards, unless a compelling or unique state interest supports the more stringent standard.

92.11. Duration of standards for certain new sources: PCA is opposed to the substitution of "requirements" for "standards of performance." The new language is not necessary to effect the purpose of 40 CFR §129.29(d) and, in fact, imposes more stringent standards than the federal provision.

92.21. Applications: Subsection (c) presents great potential for abuse. The Department's ability to require production of additional information should be qualified by providing that such information may be "reasonably available to, or efficiently and economically obtained by" the Applicant.

92.41. Monitoring: In addition to providing for annual monitoring and more frequent monitoring as specified in the permit, subsection (b) allows DEP to *require* more frequent monitoring simply because it requests it. There is then a self-reporting clause for *all* pollutants not limited in the permit. Monitoring costs may be substantial and should not be imposed arbitrarily. Here, the corresponding federal regulation, 40 CFR

§122.41(*i*)(2), does not require a provision for additional monitoring . More frequent monitoring and reporting requirements should be clearly spelled out in the permit.

92.63. Public access to information. Subsection (b) should be further revised as follows: "The Department . . . physical properties of coal (excepting information regarding the mineral or elemental content which is potentially toxic in the environment and **which is therefore required by law to be made available to the public) . . ."** The vagueness and breadth of the present language could allow the exception to swallow the rule.

92.72a. Cessation of discharge. This section should be revised or deleted. The Department should recognize that various circumstances could justify a different notification period, depending on the type and source of the discharge, the programmatic requirements and the reason for discontinuation. For example, a company could be required to disclose a facility closing well in advance, which could cause competitive or labor problems. PCA suggests that the definition should require notification within 90 days *after* a discharge or operations cease, unless an earlier notification is required to allow DEP to coordinate actions in response to the termination. In that case, the earlier notification should be spelled out in the terms of the permit, or in program guidance where an entire program areas requires earlier notification.

92.81. PCA supports this streamlining of the general permit process.

92.93. Procedure for civil penalty assessments. Subsection (a) should allow a "good cause" exception for mail which is not collected -- i.e., if the permittee can demonstrate good cause for not collecting the mail, it should not be bound. Furthermore, nothing in this section requires the Department to expressly inform the permittee of its right to request an informal hearing and the procedure for so doing. This is a minimal due process requirement, and there is no reason for not including it in the regulations. Additionally, there should be a provision that a notice of "final" assessment, including notice of the right to appeal the EHB, in a manner which provides a reasonable likelihood of personal service.

Subsection (c) is inadequate in requiring that the Department "post" notice of the hearing at least 5 days in advance. Where will this be posted? In the *Pennsylvania Bulletin?* On the Internet? At the courthouse? By mail? The permittee's rights are at stake and due process requires that there be a reasonable certainty of actual notice and the opportunity to be heard.

Since this is an informal conference, subsection (d) should specify that the Department's representative will provide written notice of a determination, and that the appeal period commences with the person's receipt of the written notice. *See* 25 Pa. Code §1021.52 (a)(2). Furthermore, the Draft Rules should clarify whether the hearing before the EHB will be *de novo*.

93.4. Statewide water uses. PCA supports the streamlining of this section by eliminating the redundant and unnecessary statewide warm water fishes use. Additionally, PCA strongly recommends that "potable water supply" be deleted as a statewide water use. Other human health and fish consumption/recreation standards are more than adequate to protect existing uses.

Where there is an actual or potential potable water supply intake, drinking water standards may be imposed. But the imposition of drinking water standards to all waters statewide is not realistic or necessary. Furthermore, such reduction may limit flexibility in addressing issues such as excessive treatment costs for manganese in order to meet secondary drinking water standards. This drastically increases water treatment costs without providing a demonstrable environmental benefit, since the aquatic life and human health criteria would permit a higher concentration of manganese without adverse consequences.

93.5. PCA supports the streamlining by deletion and reorganization of the provisions of this section. In particular, the deletion of the requirement in subsection (e)(1) that "Criteria necessary to protect other designated uses shall be met at the point of wastewater discharge," clarifies present policy of allowing mixing zones.

93.7 The manganese standard, at least for coal mining operations, should be revised to permit concentrations to the maximum extent permitted by federal water quality standards. A substantial body of independent scientific research indicates that higher concentrations of manganese do not pose a risk to human health or aquatic life, and demonstrate that manganese is not a very good surrogate for demonstrating the removal of other pollutants from mine discharges. DEP should have flexibility in addressing manganese treatment in the context of the operator's treatment responsibilities, the quality of the receiving stream and the opportunity to more efficiently treat manganese elsewhere within the affected stream, where the discharge does not present a risk of harm to aquatic life, human health or the uses met by the receiving stream.

95.4-95.5. PCA opposes the deletion of these sections without an explanation or a replacement which serves the intent of the existing sections.. There does not appear to be an explanation in the Notice of Proposed Rulemaking which provides a rationale or basis for these deletions. Other provisions of Chapter 95 appear to be relocated, not deleted, as set forth in the preamble -- which is silent on 95.4 and 95.5.

96.4, TMDLs: Subsection (b)(1) should be clarified to read "As a result of a watershed assessment or other evaluation **performed by the Department or at its direction . . .**"

Subsection (e)(4) should be changed to read that the Department "May consider any **[increases] changes** in pollutant loading that may be reasonably expected over a ten-year period. This will allow planned, proposed or anticipated water quality improvements to be taken into account, to the extent allowed by law and regulations,

along with increased discharges. This may also encourage cooperation and water quality planning among dischargers.

Subsection (f)(1) should be revised to read "WLAs and LAs assigned or allocated to individual sources of **specific pollutants** shall be . . ." The focus of TMDLs should clearly remain on the specific pollutants which impair the use achievement of the surface water in question.

Subsection (f)(2) should be revised to provide that "WLAs and**/or** LAs for significant **[pollutant]** sources **of specific pollutants** shall be made more stringent if the cumulative loading **of those specific pollutants**, determined after the application of paragraph (1) exceeds the TMDL." This allows LAs to be adjusted, as well as WLAs and again focuses on the TMDL for specific pollutants.

Subsection (g) is a welcome approach, but PCA is concerned that the Department may render it impractical by these regulations before it has an opportunity to develop. Specifically, (g)(2)'s requirement that "water protection levels specified in §96.3 are achieved in all portions of the surface water under consideration" will make it difficult or impossible to trade effluent units in some circumstances where it would be highly desirable. That is because §96.3 requires the protection of *designated* uses. Thus, where an impaired stream segment is not meeting designated uses, no trading may be allowed to further the impairment, even if there would be a net environmental benefit to the overall stream quality or the watershed. This is in accordance with the the Clean Water Act's conveyance of "broad authority to develop long-range, area wide programs to alleviate and eliminate existing pollution." *Arkansas v. Oklahoma,* 503 U.S. 91, 108 (1992), *citing* 33 USC §1288(b)(2)

There should be some flexibility here. DEP should allow, at a minimum, for the approval of watershed improvement plans, experimental or pilot projects or coordinated efforts to remediate difficult treatment problems -- even where a segment of the water under consideration may fail to meet all of the criteria in §96.3. This may be developed through the notice and comment procedure provided in (g)(3).

Subsection (h) should be revised to provide that "Steady state modeling . . . determined that continuous point source**[s] discharges of specific pollutants . . .**" Again, this is in accordance with the purpose of the TMDL program.

Subsection (i.) should be revised to read that "The Department will revise WLAs and LAs **[because of] when necessary to address changes in pollutant loadings. . .**" The regulations should also clarify that revised WLAs will be imposed in the permit renewal.

Subsection (j) should apply to any modeling technique or method of developing TMDLs, LAs and WLAs instead of "mathematical" modeling.

Subsection (*l*) inappropriately intrudes on the EHB's authority, pursuant to the Environmental Hearing Board Act, to adopt regulations and rules governing practice before the Board. Because the issues at hand would be subject to *de novo* review by the EHB, the EQB may not promulgate regulations allocating the burden of proof on those issues.

96.7. Public participation. The public comment period should be a minimum of 60 days. Draft lists and TMDLs are intensely technical and detailed, and details concerning listed waters are usually not readily available. A 30-day comment period has been demonstrated to be woefully inadequate both in Pennsylvania and in other states -- particularly since the 30 days commences with the publication in the *Pennsylvania Bulletin* of a notice of *availability* of the lists and draft notices, rather than publication of the actual list. The effective comment period is therefore almost always less than 300 days.

Thank you again for considering these comments. We do wish to receive the final-form regulations when they are available.

Pennsylvania Coal Association

BY: _____

Michael G. Young
Director of Regulatory Affairs

One-Page Summary of Comments by Pennsylvania Coal Association To Proposed Rulemaking, 25 Pa. Code Chapters 92,93, 95-97

- Definitions of "perennial" and "intermittent" streams should be added. Dfinitions of "best management practices" and "toxic pollutant" should be revised to correspond to federal definitions.
- The incorporation of federal regulations is supported, but express reference to the intent of the Regulatory Basics Initiative (RBI), clarifying the intent of the incorporation, is needed.
- PCA opposes the substitution of "requirements" for "standards of performance in §92.11 as unnecessary and inconsistent with federal regulations.
- The Department's ability to require the production of additional information on applications under §92.21 and additional monitoring under §92.41 should be qualified and limited.
- The qualification of the exemption from public disclosure of the physical and chemical properties of coal in §92.63 has been unnecessarily drained of its vitality and should be limited.
- The provisions requiring 180 days notice of cessation of operations or discharge under §92.72a is unnecessary and could cause problems.
- The general streamlining of permits under §92.81 is supported.
- Substantial revisions to the procedures for civil penalty assessments are necessary to provide fundamental due process protection and to clarify the procedure.
- PCA supports the deletion of warm water fishes and potable water supply from §93.4 as unnecessary statewide water uses.
- PCA supports the deletion and reorganization of the provisions of §93.5.
- Maximum flexibility for the discharge of manganese is required under §93.7, due to the unnecessary burdens imposed by excessive manganese treatment.
- PCA questions the deletion of §§95.4 and 95.5 without explanation or replacement of their purposes and functions.
- Revisions to §96.4 are necessary to track the intent of the federal TMDL program, to clarify the application of TMDLs, to facilitate watershed imrpovement through effluent trading and to return the determination of burdens of proof to the EHB.

21 Oct 95

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Mr Edward Brezera

Stop the new weaker DEP regulations that are being proposed
Don't allow general permits for toxic release of waste. We
need clean water. Protect our streams, dump the waste
somewhere else. Better get clean up the toxic waste. We
need stronger DEP regulations not weaker ones!

Donald McSwiggen

I would like a reply to this letter

Thank You

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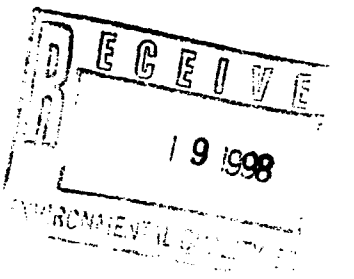
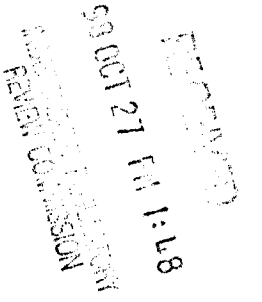
79 Bryn Mawr Ave.
Lansdowne, PA 19050
October 14, 1998



Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105



Dear EQB:

I would like to make it clear as a voting Pennsylvanian, that I am **against** the proposed **lowering** of Water Quality Standards.

Thank you for your time.

Sincerely,

Laurence Buxbaum, MD-PhD

Policy

Hartman, Shirley
From: Lauderbach, Cindy
Sent: Friday, October 23, 1998 8:16 AM
To: Hartman, Shirley
Subject: FW: Hearings on Proposed Changes to Water Regulations

Shirley -- here's another one to forward -- Cindy

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From: KUJACKO(SMTP:KUJACKO@aol.com)
Sent: Thursday, October 22, 1998 11:39 PM
To: SEIF JAMES
Subject: Hearings on Proposed Changes to Water Regulations

Dear Secretary Seif:

I wish to express my concern regarding the Department of Environmental Protection's proposed changes to Pennsylvania's water regulations. My primary concern is not with the changes per se, but with the agency's cavalier attitude toward making sure that the public is well informed about them. This is a matter which will have a tremendous impact on the quality of life in the state and therefore the citizens have a need to have access to the proposed changes and time to asses what effect they will have. Your agency, however, does not appear to think that communicating with the public on such fundamental issues as the quality of drinking water is important. According to an article published on October 21 in the York Daily Record, unnamed officials from your department stated that they did not run ads detailing how to acquire a copy of the changes and where comments on them could be made in
all of the state's newspapers because this would waste taxpayers money. This is a terrible decision since it is exactly the responsibility of the DEP to keep the citizenry informed of changes in environmental policy which will affect it in a such a major way. Therefore, I urge you to extend the deadline for public comment on the new rules, which ends on October 28, for a period sufficient for the department to correct its mistake by publicizing statewide the changes to the state's water regulations and any new hearings which may come from the extension.

Sincerely,

Joshua Sakolsky
119 West Jackson Street
York, PA 17403
717-843-0732

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98 NOV 10 PM 3:59
INDEPENDENT REGULATORY
REVIEW COMMISSION

Tell the people in Harrisburg that DEP proposed Toxics Strategy is too weak and will allow even more toxic discharges into our waters.

Thank You
From a Nazareth
resident.

Nazareth, Pa.

Robin Mease
158 S. New St.
Nazareth, PA 18064

RECEIVED
99 NOV 10 PM 3:59
INDEPENDENT REGULATORY
REVIEW COMMISSION

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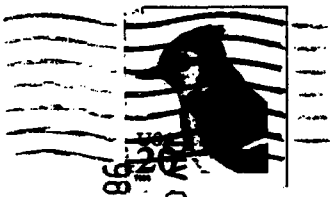
I oppose the proposed Water Quality Standards + Toxics Mgmt. Strategy.

We cannot afford to weaken our standards for discharging toxic chemicals.

Patricia Schaedler
252 Beechwood Dr.
Rosemont, PA 19010

PHILADELPHIA PA 19
1990



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OFF OF ADMIN & ASSESS & STDS
98 OCT 28 PM 1:48

Edward Brezina DEP
PO Box 8555
Harrisburg, PA 17105

M.C. Escher: Puddle, 1952
Pfütze · Flaque d'eau
Woodcut printed from three blocks, 24 x 32 cm

Also reproduced in *M.C. Escher*, Benedikt Taschen Verlag

Dear E.Q.B.

NO Name + address

Please strengthen the standards that protect our waters, not weaken them. We want standards strengthened so that toxic waste cannot be discharged into our waters.

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Concerned Citizen
Matt Shay

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To whom it may concern,

To even consider lowering the standards for toxic chemicals is inconceivable to me. As a person who spends so much time fishing and hunting, this proposed change threatens my most cherished past time. As I witnessed streams and rivers so polluted not a fish could survive, and finally, after years of hard work fish can live in these same waterways. Now, so somebody can make a few extra dollars, we are going let this all go to waste. Toxic chemicals have no place in one of the most beautiful states in the country. Please don't let this happen. So many people rely on the out-door recreation the waterways of Pennsylvania provide. I would appreciate a response in writing.

Sincerely,

John Marg
157 Cedarbrook Rd.
Ardmore, PA 19003

MARTIN BERGER
141 CEDARBROOK ROAD
ARDMORE, PA. 19003-1636

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Edward Brezina
Pa. D.E.P.
P.O.Box 8555
Harrisburg,Pa. 17105

I am writing to inform you of my opposition the new proposed water quality standards and toxics strategy.

The new regulations proposed by the Dept. of Environmental Protection will allow for more toxic discharges.

This is no time for our state to reduce the quality of our life, the air we breathe and water we drink.

If the intention is to make our state more"business friendly" then it should not be at the expense of the health of the population.

I stand for stronger regukation not less.

Let me hear from you as to why you are doing this and let me know when and where a hearing will be held on the regulations so I can appear with my neighbors.

Thank you,

Sincerely yours,

Martin Berger

no return address

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I EMPHATICALLY OPPOSE the NEW PROPOSED WATER QUALITY STANDARDS AND TOXICS STRATEGY. WE NEED TO STRengthen the STANDARDS THAT PROTECT OUR WATER. WEAKENING them is RIDICULOUS. PLEASE USE Some Common SENSE, NOT CAMPAIGN MONEY.

Mark J. Walsh

Widener University

4601 Concord Pike, P.O. Box 7474 • Wilmington, DE 19803-0474
3800 Vartan Way, P.O. Box 69382 • Harrisburg, PA 17106-9382

School of Law
Environmental Law Clinic

(302) 477-2100
Fax: (302) 477-2255

(717) 541-3900
Fax: (717) 541-1970

November 18, 1998

By Hand Delivery

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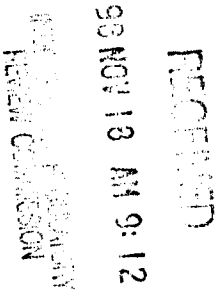
Mr. John Jewett
Independent Regulatory Review Commission
14th Floor, Harristown 2
333 Market Street
Harrisburg, PA 17101



Dear Mr. Jewett:

At the request of Barb Kooser of the Chesapeake Bay Foundation, I am enclosing a copy of the Environmental Hearing Board's Adjudication in William and Mary Belitskus, et al. v. Department of Environmental Protection and Willamette Industries, Inc., which the EHB issued on August 20, 1998. Please note that the name "Belitskus" appears in boldface throughout this copy only because it was used as a search term in retrieving the document.

Sincerely,

Kurt J. Weist
Director, Environmental Law Clinic

Enclosure

Citation Search Result Rank(R) 1 of 9 Database
--EHB-- PAENV-ADMIN
(Cite as: 1998 WL 525574 (Pa.Env.Hrg.Bd.))

Environmental Hearing Board
Commonwealth of Pennsylvania

*1 WILLIAM AND MARY **BELITSKUS**, RONALD AND ANITA HOUSLER, PROACT
v.
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION AND WILLAMETTE INDUSTRIES, INC., PERMITTEE
EHB Docket No. 96-196-MR
August 20, 1998

ADJUDICATION

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By Robert D. Myers, Administrative Law Judge

Synopsis:

Two Appellants have standing as individuals to challenge the Department's approval of coverage under a general NPDES permit for storm water discharges from a Chip Plant into a stream. The two Appellants have shown that storm water runoff from the Chip Plant may adversely affect their use and enjoyment of the stream. The standing of a third Appellant was not addressed in Appellants' post-hearing brief; therefore, that issue was waived.

The Department's regulation at 25 Pa. Code s 92.83(b)(2) requires that the Department deny any application for coverage under a general NPDES permit when the discharger has a significant history of noncompliance with prior "permits" issued by the Department. This means that, before approving coverage under a general NPDES permit, the Department must consider the applicant's compliance history for any and all permits issued by the Department for any site in the state. The Department's attempt to limit this review is inconsistent with the plain language of the regulation and is clearly erroneous in light of section 609 of the Clean Streams Law, 35 P.S. s 691.609.

In failing to consider any and all permits issued by the Department before approving coverage under the general NPDES permit, the Department misapplied 25 Pa. Code s 92.83(b)(2). Because the Department misapplied the law, it also abused its discretion. Where the Board finds that the Department has abused its discretion, the Board may properly substitute its discretion for that of the Department based upon the record made before it.

An applicant has a "significant" history of noncompliance when past or continuing permit violations indicate that the applicant cannot be trusted with a permit. Therefore, evidence which shows that the applicant violated the terms and conditions of prior permits issued by the Department is relevant here. If such evidence demonstrates that the applicant lacks the ability or intention to comply with the law, then the Department cannot approve coverage under a general NPDES permit. However, if the Department is satisfied that the applicant's past or continuing unlawful conduct has been or is being corrected, the Department may approve coverage. 35 P.S. s 691.609. In this case, the evidence shows that the applicant does not lack the ability and intention to comply with the law, that the applicant's past or continuing violations are being corrected to the satisfaction of the Department, and that the applicant does not have a

--EHB--
(Cite as: 1998 WL 525574, *1 (Pa.Env.Hrg.Bd.))

"significant" history of noncompliance with prior permits issued by the Department. Accordingly, the Board will not disturb the Department's decision to approve coverage under the general NPDES permit.

*2 Ordinarily, the Board will not revisit an issue on equitable grounds after granting summary judgment on that issue. Indeed, the Board lacks judicial power to act in equity. However, because the Board may substitute its discretion for that of the Department when the Board finds that the Department abused its discretion, the Board may decide to adjudicate the issue where the Appellants were not represented by legal counsel when the Board entered summary judgment, and where the parties presented sufficient scientific evidence at the hearing. Here, Appellants ask the Board to consider whether storm water runoff from the Chip Plant has adversely affected the stream used and enjoyed by Appellants. Having weighed the evidence presented at the hearing, the Board concludes that there is no adverse impact on the stream due to storm water runoff associated with Chip Plant activities authorized by the Storm Water Permit.

PROCEDURAL HISTORY

On September 30, 1996, William and Mary **Belitskus,** Ronald and Anita Housler, and PROACT, an unincorporated group of concerned citizens, filed a pro se [FN1] Notice of Appeal with the Board, challenging the Department of Environmental Protection's (Department) August 14, 1996 approval of coverage under General National Pollutant Discharge Elimination System (NPDES) Permit No. PAR228325 (Storm Water Permit) for storm water discharges from Willamette Industries, Inc.'s (Willamette) North Chip Plant (Chip Plant) into the West Branch of the Clarion River in Hamlin Township, McKean County. In the Notice of Appeal, Appellants set forth five objections to the Department's action.

On June 13, 1997, Willamette filed a Motion to Dismiss and/or for Summary Judgment (Motion) with the Board. In an Opinion and Order dated October 21, 1997, the Board entered summary judgment in favor of Willamette on most of the issues raised in the Notice of Appeal. However, the Board ruled that a hearing was necessary to decide: (1) whether the Houslers, Mr. **Belitskus,** and PROACT have standing to challenge the Department's action; and (2) whether the Department properly considered Willamette's compliance history in approving coverage under the Storm Water Permit. See **Belitskus** v. DEP, 1997 EHB 939. With respect to the latter issue, the Board stated that the Department was obligated under 25 Pa. Code s 92.83(b)(2) to consider Willamette's compliance with any and all permits issued by the Department to Willamette for any site in the state. Id.

On December 26, 1997, the Department filed a Motion in Limine to Preclude Testimony and Evidence at Hearing. The Department asserted therein that it interprets 25 Pa. Code s 92.83(b)(2) to require only a review of the applicant's history of compliance with prior NPDES permits. (Department's Motion in Limine at para. 13.) The Department asked the Board to give deference to its interpretation of the regulation and to limit testimony and evidence at the hearing to Willamette's history of compliance with prior NPDES permits. (Department's Motion in Limine at para. 14-15.) Appellants filed a Response on January 9, 1998. On the same date, the Department requested leave to amend its Motion in Limine, which the Board granted.

*3 On January 14, 1998, the Department filed its Amended Motion in Limine. The

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Department stated that:

[B]y serendipity, Department staff discovered last week a document entitled "DER Permit Guide to Stormwater Discharges from Nonconstruction Industrial Activities...." The Permit Guide was published sometime in 1994, and was given to prospective general NPDES permittees to describe the procedures for obtaining coverage under a general NPDES permit for stormwater discharges for industrial activities.

(Amended Motion in Limine at para. 8.) The Permit Guide states that storm water discharges are not eligible for coverage under a general permit if they are discharges "from persons with a significant history of noncompliance with prior coverage under the NPDES general stormwater permit issued by DER." (Amended Motion in Limine at para. 10.) (Emphasis added.) Based on this language, the Department then asserted that 25 Pa. Code s 92.83(b)(2) only requires the Department to review an applicant's history of compliance with prior general NPDES permits. (Amended Motion in Limine at para. 13.) Accordingly, the Department asked the Board to limit testimony and evidence at the hearing to Willamette's history of compliance with prior general NPDES permits. (Amended Motion in Limine at para. 16.) On January 14, 1998, the Board denied this request. However, the Board allowed the Department and Willamette to present evidence at the hearing related to the Department's interpretation of 25 Pa. Code s 92.83(b)(2).

On February 2, 1998, Willamette filed a Motion in Limine asking the Board to preclude compliance history evidence involving incidents that occurred after the Department's August 14, 1996 approval of coverage. On February 6, 1998, the Board granted this motion. On the same date, the parties filed a Joint Stipulation of facts. In the Joint Stipulation, the parties agreed that any compliance history evidence involving violations that occurred prior to May 1, 1990 should not be considered. (Joint Stipulation F.)

The Board held a hearing on February 10, 11, and 12, 1998. At the hearing, Appellants agreed to strike PROACT as a party to this appeal. (N.T. at 84.) Thus, it is no longer necessary for the Board to consider whether PROACT has standing in this matter.

On April 20, 1998, Appellants filed their post-hearing brief with the Board. Appellants' brief does not address Mrs. Housler's standing. Thus, the Board will not address Mrs. Housler's standing here. Lucky Strike Coal Co. v. Department of Environmental Resources, 547 A.2d 447 (Pa. Cmwlth. 1988) (holding that an issue not raised in a post-hearing brief is deemed waived). Willamette filed its post-hearing brief on June 19, 1998, and the Department filed its post-hearing brief on June 23, 1998.

FINDINGS OF FACT

1. The Department is the agency with the duty and authority to administer and enforce the Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. ss 691.1-691.1001; the Air Pollution Control Act, Act of January 8, 1960, P.L. 2119 (1959), as amended, 35 P.S. ss 4001-4015; Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended, 71 P.S. s 510-17; and the rules and regulations promulgated thereunder. (Joint Stipulation A.)

***4** 2. Willamette is a corporation organized and existing under the laws of

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Delaware. Its principal place of business is located at 500 First Interstate Tower, Portland, Oregon, 97210. (Joint Stipulation B.)

3. Keystone Chipping, Inc. (Keystone) is a corporation organized and existing under the laws of Pennsylvania. Its principal place of business is located at Pennsylvania State Route 6, Kane, McKean County, Pennsylvania. (Joint Stipulation C.)

4. Appellants William **Belitskus** and Ronald Housler are individuals who reside in Hamlin Township, McKean County, Pennsylvania. (Joint Stipulation D.)

5. Willamette owns a parcel of real property located approximately one-half mile south of Pennsylvania State Route 6 and approximately one and one-half miles west of Pennsylvania State Route 219 in Hamlin Township, McKean County. This property consists of approximately 110 acres, buildings, and various structures used to manufacture wood chips. Keystone operates this Chip Plant. The chips manufactured at the Chip Plant are transported to a Willamette pulp mill located in Johnsonburg, Pennsylvania (Johnsonburg Mill). The Johnsonburg Mill was previously owned and operated by Penntech Papers, Inc. (Penntech). Willamette acquired Penntech as a subsidiary on May 1, 1990. Penntech was merged into Willamette on December 31, 1992. (Joint Stipulation E.)

6. Willamette owns and operates a total of five plants in Pennsylvania. In addition to the Chip Plant and the Johnsonburg Mill, Williamette owns and operates: a second chip plant located in Woodland; a facility to convert rolls of paper into sheets of paper located in Dubois; and a second converting facility located in Langhorne. (Joint Stipulation G.)

7. The Department has issued no permits to either the Dubois or Langhorne converting facilities. (Joint Stipulation H.)

8. Between May 1990 and August 14, 1996, Willamette submitted applications and the Department approved the following permits:

a. Johnsonburg Mill - Air Quality Permit Nos. 24302008, 24302021A, 24309007, 24315001, 24315006, 24306003, 24315007, 24315008, 2435009, and individual NPDES Permit No. PA0002143 for discharge of industrial waste from industrial activities;

b. Chip Plant - general NPDES Permit No. PAR104100 for storm water discharges from construction activities and general NPDES Permit No. PAR28325 for storm water discharges from industrial activities (Storm Water Permit);

c. Woodland Chip Plant - general NPDES Permit No. PAR101708 for storm water discharges from construction activities.

(Joint Stipulation I.)

9. The Department has determined that Willamette has not violated the terms and conditions of NPDES Permit Nos. PAR104100, PAR28325, or PAR101708. (Joint Stipulation J.)

10. A small unnamed tributary of the West Branch of the Clarion River known as Lanigan Brook originates, in part, from springs situated on or around portions of the Chip Plant. (Joint Stipulation K.)

11. Lanigan Brook is classified as a cold water fishery pursuant to 25 Pa. Code s 93.9r. Lanigan Brook is not classified as "high quality" or "exceptional value" waters as defined in 25 Pa. Code s 93.3. (Joint Stipulation L.)

***5** 12. William **Belitskus** lives "probably three-quarters of a mile" from the Chip Plant. He moved to that location 13 or 14 years before the Chip Plant was built after spending a lot of time looking in several states for a place to live that was "clean and green," with "peace and quiet" and a "high quality life." On

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really hot days in the summertime, when the temperature reaches 90 degrees, **Belitskus** enjoys driving down to Lanigan Brook at Burning Well, where Lanigan Brook runs into Buck Run, about five miles downstream from the Chip Plant. There in the cool shade, he stands and watches the water go by; he observes the five and six-foot-high ferns, the moss-covered logs, and the insects; and, sometimes, he wades into the water. (N.T. at 44, 64-66, 69-70, 85, 102.)

13. Ronald Housler has lived on a farm near Lanigan Brook for his entire life. During those 44 years, Housler has used and enjoyed Lanigan Brook and its environs for hunting, camping, riding horses, and fishing. Housler goes fishing in Lanigan Brook every year. Over the years, he has caught brook trout, brown trout, suckers, catfish, and mudpuppies. Housler has taken his son and daughter fishing and would like them to be able to enjoy fishing in Lanigan Brook in the future. (N.T. at 17-19, 22-23, 46-49.)

14. Before Willamette began construction of the Chip Plant in 1993, Lanigan Brook and its tributaries ran clear. In 1995, Housler began to notice that there is no more clear water. The water is red, and a reddish-orange color hangs on every stick and rock. There are bark chips and wood particles in the water; there is mud and sedimentation. When Housler goes fishing: "You don't get as many bites. You don't get as many ... little ones." As a result, Housler does not enjoy fishing at Lanigan Brook as much as in the past. (N.T. at 21, 28, 40, 61.)

15. Since Willamette constructed the Chip Plant, there is a layer of loose sediment on the streambed and rocks in Lanigan Brook at Burning Well, and some of the rocks are discolored. There is mud, foam, white scum, red slime, and black rocks in Lanigan Brook downstream of the Willamette property line. (N.T. at 66, 68-69.)

16. Appellant **Belitskus** asked Peter John Hutchinson, Ph.D., to investigate the changes to Lanigan Brook since construction of the Chip Plant. Hutchinson is an expert in hydrogeology with a related specialty in biology and aquatic systems. (N.T. at 152, 155; Exhibit A-3.)

17. Hutchinson visited Lanigan Brook on January 14, 1998 and took some field measurements at several locations. Hutchinson did not take any water samples; however, water samples were taken on January 20, 1998 by Charlene Ann Sheppard, a science teacher, under the supervision of **Belitskus**. (N.T. at 164, 167; Exhibit A-3 at 1.)

18. Hutchinson concluded that "two discharge areas considered to be downgradient of the [Chip Plant] site showed some impact from site operations" with "elevated levels of conductivity, pH, turbidity and organic acids and depressed levels of dissolved oxygen." Hutchinson testified that there is "something" in the water of Lanigan Brook, and he attributed it to storm water runoff from the Chip Plant site. However, Hutchinson acknowledged that, because of winter conditions, his field measurements could be spurious and his conclusions false. (N.T. at 166, 174-75, 182-83, 200; Exhibit A-3 at 4-5.)

***6** 19. David C. Hails, an expert in aquatic surveys, concluded that there is no impact whatsoever to Lanigan Brook. Hails noted that Hutchinson failed to consider relevant biological and physical factors in reaching his conclusion. Hails explained that the pH, conductivity, turbidity, organic acid and dissolved oxygen levels in the water samples taken from Lanigan Brook could be attributable to certain biological or physical factors. (N.T. at 315, 330-45.)

20. Steven Kepler, a fish biologist for the Pennsylvania Fish and Boat

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Commission, conducted electrofishing at two sites on Lanigan Brook on September 23, 1997. Electrofishing is a process whereby a small generator with a voltage regulator and two electrodes stuns the fish with an electric current. Trained individuals then collect, examine, identify and count the fish. Through this process, Kepler found wild brook trout and brown trout of varying sizes in Lanigan Brook. Kepler noted that the numerous size classes indicate "a fairly good system" and concluded that Lanigan Brook had a viable trout population. (Joint Exhibit G; N.T. at 291, 295-96, 301-02, 309-10.)

21. In 1994, the Department published the DER Permit Guide to Stormwater Discharges From Nonconstruction Industrial Activities. This Permit Guide was given to at least some prospective general NPDES permittees to describe the procedures for obtaining coverage under the general NPDES permit for storm water discharges from industrial activities. (Joint Stipulation N.)

22. The Permit Guide provides on page 5, paragraph 5, that: "Storm Water discharges associated with industrial activities that are not eligible for coverage under the general permit [include] ... [d]ischarges from persons with a significant history of noncompliance with prior coverage under the NPDES general stormwater permit issued by DER." (Joint Stipulation O.)

23. The parties have stipulated that Appellants' Exhibits 4-22 describe or pertain to permit violations at the Johnsonburg Mill. (N.T. at 385.)

24. Appellants' Exhibit 23 is a Notice of Violation which begins: "I conducted an inspection on December 3, 1992 .... The inspection revealed the facility to be in violation of your NPDES Permit No. PA0002143." The notice goes on to say that a boiler precipitator discharged wash water into a storm sewer and into the East Branch of the Clarion River, and that "[t]his discharge is not authorized by your Permit or any permit issued by the Department."

25. Appellants' Exhibits 24 and 25 are Consent Assessments of Civil Penalties involving industrial discharges into the East Branch of the Clarion River. The captions of these exhibits refer to the Johnsonburg Mill NPDES Permit.

26. Appellants' Exhibits 26, 27, and 28 are letters from Willamette to the Department reporting unauthorized discharges from an evaporator, a pipe, and a drain valve into the East Branch of the Clarion River.

27. Appellants' Exhibit 29 is a Notice of Violation advising Willamette that it violated 25 Pa. Code s 123.2 on October 18, 1994 when fugitive particulate emissions, i.e., wood dust, from an air contamination source at the Johnsonburg Mill were visible at the point the emissions passed outside Willamette's property.

*7 28. Appellants' Exhibit 30 is a Notice of Violation which states in pertinent part that: "Operation of the sources, as specified above, without incineration constitutes a violation of permit and plan approval conditions as set forth in Department permit # 24-315-008."

29. Appellants' Exhibits 31-49 are Continuous Emissions Monitoring (CEM) reports and related documents for the following air contamination sources: a recovery furnace, a lime kiln, and two boilers. The boilers operate under Air Quality Permit # 24-302-021A. See Appellants' Exhibit 32. The lime kiln is covered by Air Quality Permit # 24-315-007. See Appellants' Exhibit 6. The recovery furnace operates under Air Quality Permit # 24-306-003. See Appellants' Exhibit 22.

30. When Willamette acquired the Johnsonburg Mill in 1990, some of the equipment had been in operation since 1928, and waste water was being pumped

into a 243-acre lake known as the Dill Hill Lagoon. In order to ensure compliance with future permits issued by the Department, Willamette immediately began to install a waste water treatment plant and embarked on a program to replace all of the major processing equipment associated with making pulp or recovering chemicals. Willamette has spent $550 million on these projects, including roughly $110 million on environmental control technology and permit compliance. (N.T. at 372-77.)

31. Willamette completed construction of the waste water treatment facility in April 1992. The violations enumerated in Exhibit 4 did not continue after the new treatment plant was constructed. (N.T. at 374, 395.)

32. Half of the exhibits presented to show violations of the Johnsonburg Mill NPDES Permit pertain to exceedences for "total suspended solids." See Appellants' Exhibits 7-10, 15-21. Willamette has taken short-term and long-term measures to address those violations, and, for the most part, the measures have been successful in reducing the violations. (N.T. at 399-401.)

33. The exhibits indicate that some of Willamette's Johnsonburg Mill NPDES Permit violations were due to: the failure of a pipe; a broken drain valve; a loose pipe flange; a power outage; and an incorrect setting on a new piece of equipment. Appellants' Exhibits 11, 24-28.

34. On September 26 and 27, 1995, Willamette exceeded allowable NPDES Permit effluent limits during its annual shutdown of the Johnsonburg Mill. When Willamette discovered the problem, it held up the scheduled shutdown in spite of possible economic hardship to Willamette. (N.T. at 402-03; Appellants' Exhibit 12).

35. On November 12, 1995, Willamette violated the provisions of Air Quality Permit No. 24-306-003 when black liquor concentrate was released from a pressure relief valve on a new piece of equipment. Because of a design flaw in the equipment, Willamette could not accurately monitor the build-up of pressure. Approximately 65 homes and numerous vehicles were impacted by the release. The release also resulted in the discharge of contaminated water into the Clarion River. Willamette immediately began to wash the streets and vehicles; arranged to have an outside firm wash the homes and vehicles; and circulated handouts on the streets to explain the release and the arrangements for cleanup. Willamette also corrected the design flaw in the equipment and ensured that any future release would not escape into the atmosphere. (N.T. at 417-19; Appellants' Exhibits 13-14, 18, 22.)

***8** 36. With respect to Willamette's CEM exceedences, the record shows that they compare quite favorably with similar facilities in some areas and are on a par with similar facilities in other areas. (N.T. at 477; Appellants' Exhibits 31-49.)

37. Patrick G. Williams, Permits Chief in the Department's Bureau of Water Management, who made the decision to approve coverage under the Storm Water Permit, testified that Willamette's permit violations do not represent a significant history of noncompliance for purposes of approving coverage under a general NPDES permit. (N.T. at 503-06.)

38. William McCarthy, Regional Monitoring and Compliance Manager, testified that Willamette's compliance history between 1992 and August 1996 for the Johnsonburg NPDES Permit has been good, and that he would recommend that the Department grant coverage to Willamette under the Storm Water Permit. (N.T. at 447-48.)

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39. William Snyder, an Air Quality Specialist for the Department, who has performed inspections at the Johnsonburg Mill since 1993 and has been responsible for determining permit compliance there, testified based on his inspections that Willamette's compliance history at the Johnsonburg Mill is "very favorable." Snyder agreed that Willamette worked diligently to address any permit violations he identified at the Johnsonburg Mill and has been very cooperative. (N.T. at 456-58, 465-66.)

40. Ronald Gray, an Air Quality District Supervisor for the Department, who has had oversight of the CEM reports from the Johnsonburg Mill for the past five years, testified that none of the Johnsonburg Mill exceedences have been significant, that he is satisfied with steps that Willamette took to address various problems, that he considers the air permit compliance history at the Johnsonburg Mill to be good, and that the site is now thoroughly modernized. (N.T. at 472-73, 475, 477-81.)

DISCUSSION

I. Standing

The first issue is whether **Belitskus** and Housler have standing to challenge the Department's approval of coverage under the Storm Water Permit.

In order to have standing to challenge a Department action, an appellant must be "aggrieved" by that action. This means that the appellant must have a direct, immediate and substantial interest in the litigation challenging the action. A "substantial" interest is an interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law. For an interest to be "direct," it must have been adversely affected by the action. An "immediate" interest means one with a sufficiently close causal connection to the challenged action, or one within the zone of interests protected by the statute at issue. Wm. Penn Parking Garage, Inc. v. City of Pittsburgh, 346 A.2d 269 (Pa. 1975); Barshinger v. DEP, 1996 EHB 849.

Both the Pennsylvania Supreme Court and the United States Supreme Court have recognized that aesthetic and environmental well-being are important ingredients of the quality of life in our society. Therefore, a member of society may challenge a government action which threatens to harm that person's use and enjoyment of natural resources. See Wm. Penn Parking Garage, Inc., 346 A.2d at 281, n. 20 (quoting United States v. Students Challenging Regulatory Agency Procedures, 412 U.S. 669, 686-87 (1973)); see also Sierra Club v. Morton, 405 U.S. 727 (1972). The Board, too, has held that an individual may challenge a Department action which may adversely affect the person's recreational and aesthetic use and enjoyment of an area. See Barshinger, 1996 EHB 849, 855-56; Heasley v. DER, 1991 EHB 1758, 1763. Indeed, the Board has conferred standing where a Department action was alleged to have an adverse effect on the recreational use of a stream for trout fishing. Pohoqualine Fish Association v. DER, 1992 EHB 502, 504-505.

***9 Belitskus** lives "probably three-quarters of a mile" from the Chip Plant. (N.T. at 65.) He moved to that location 13 or 14 years before the Chip Plant was built after spending a lot of time looking in several states for a place to live that was "clean and green," with "peace and quiet" and a "high quality life." (N.T. at 64, 102.) On really hot days in the summertime, when the temperature

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reaches 90 degrees, **Belitskus** enjoys driving down to Lanigan Brook at Burning Well, where Lanigan Brook runs into Buck Run, about five miles downstream from the Chip Plant. [FN2] (N.T. at 44, 65-66, 69.) There in the cool shade, he stands and watches the water go by; he observes the five and six-foot-high ferns, the moss-covered logs, and the insects; and, sometimes, he wades into the water. (N.T. at 65-66, 69-70, 85.)

Belitskus' use and enjoyment of Lanigan Brook in this manner may be properly characterized as either recreational or aesthetic in nature. Whatever the case, his use and enjoyment of Lanigan Brook on really hot days in the summertime is sufficient to give **Belitskus** a substantial, direct and immediate interest in the outcome of this litigation. It is one facet of the "high quality life" he sought years ago. Lanigan Brook is a place for him to go on hot summer days that is "clean and green" with "peace and quiet." Lanigan Brook gives **Belitskus** what the Pennsylvania and United States Supreme Courts called a sense of aesthetic and environmental well-being. If nothing else, **Belitskus'** particular use and enjoyment of Lanigan Brook gives him an interest in this litigation that surpasses the common interest of all citizens in procuring obedience to the law.

Housler has lived on a farm near Lanigan Brook for his entire life. During those 44 years, Housler has used and enjoyed Lanigan Brook and its environs for hunting, camping, riding horses, and fishing. (N.T. at 17-18, 22-23.) Indeed, Housler goes fishing in Lanigan Brook every year. (N.T. at 18, 46-49.) Over the years, Housler has caught brook trout, brown trout, suckers, catfish, and mudpuppies. (N.T. at 19.) Housler has also taken his son and daughter fishing and would like them to be able to enjoy fishing in Lanigan Brook in the future. (N.T. at 19.) Housler's fishing of Lanigan Brook gives him a substantial, direct and immediate interest in the outcome of this litigation. Pohoqualine Fish Association.

To support their individual testimony, **Belitskus** and Housler asked Dr. Peter John Hutchinson to investigate the matter. (Exhibit A-3.) He is an expert in hydrogeology with a related specialty in biology and aquatic systems. (N.T. at 152, 155.) Hutchinson concluded that there is "something" in the water of Lanigan Brook downstream of the Chip Plant which he attributed to storm water runoff from the Chip Plant site. (N.T. at 166, 174-75, 182-83; Exhibit A-3 at 4.)

This testimony was unnecessary. In our October 21, 1997 Opinion and Order, we granted summary judgment to Willamette on Appellants' contention that the issuance of the Storm Water Permit will adversely affect the water quality of Lanigan Brook. **Belitskus**, 1997 EHB at 955. This was done because Appellants had not shown that they could make out a prima facie case on that issue. Pa. R.C.P. No. 1035.2(2). As a result, that issue is no longer before us.

***10** We also held that, in order to prove standing on the only remaining substantive issue, Willamette's compliance history, **Belitskus** and Housler did not have to show a specific impact upon Lanigan Brook's recreational uses. "The Storm Water Permit's conditions may be entirely appropriate to protect the brook and still [the Department's] approval of coverage would be unlawful and an abuse of discretion if Willamette's compliance history shows that it cannot be trusted with a discharge permit." **Belitskus**, 1997 EHB at 955-56. **Belitskus** and Housler have demonstrated sufficient interest to confer standing to raise this issue.

II. Significant History of Noncompliance

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The second issue is whether the Department properly considered Willamette's compliance history in approving coverage under the Storm Water Permit.

The Department's regulation at 25 Pa. Code s 92.83(b)(2) mandates that the Department deny "any application for coverage under a general permit when ... [t]he discharger ... has a significant history of noncompliance with a prior permit issued by the Department." In our October 21, 1997 Opinion and Order, we explained: "Since the disqualification is based upon noncompliance with a prior DEP permit, it is relevant to consider any and all permits issued by DEP to Willamette for any site in the state." **Belitskus** v. DEP, 1997 EHB 939, 956-57 (emphasis in original). However, in our January 14, 1998 Order, we allowed Willamette and the Department to present evidence on the Department's interpretation of 25 Pa. Code s 92.83(b)(2). The Department claims that the word "permit" in the regulation means "general NPDES permit," and the Department urges the Board to give deference to this interpretation. This we cannot do.

A. "Permit" in 25 Pa. Code s 92.83(b)(2)

When reviewing the validity of the Department's interpretation of its own regulation, the Department's interpretation is to be given controlling weight unless it is plainly erroneous or inconsistent with the regulation. Department of Environmental Protection v. City of Philadelphia, 692 A.2d 598 (Pa. Cmwlth. 1997). In this case, the Department's interpretation is plainly erroneous and inconsistent with the regulation.

First, it is inconsistent with the regulation. The plain language of the regulation refers to "a significant history of noncompliance with a prior permit issued by the Department." 25 Pa. Code s 92.83(b)(2) (emphasis added). There is nothing ambiguous about this language. As we stated in our earlier Opinion and Order, it means any and all permits previously issued by the Department.

There is absolutely no reason to change the single word "permit" into the phrase "general NPDES permit." In the regulations which specifically govern general NPDES permits, the word "permit" appears by itself only at 25 Pa. Code s 92.83(b)(2). In every other instance, the phrase "general permit" or "general NPDES permit," "individual permit" or "individual NPDES permit" is used. See 25 Pa. Code ss 92.81-92.83. Certainly, if the Environmental Quality Board (EQB) intended the word "permit" to mean "general permit" or "general NPDES permit," it would have used those phrases as it did everywhere else.

***11** Second, the Department's interpretation of 25 Pa. Code s 92.83(b)(2) is plainly erroneous because it conflicts with the compliance history review requirements of section 609 of the Clean Streams Law. [FN3] Section 609 provides in pertinent part as follows:

> The department shall not issue any permit required by this act ... if it finds, after investigation and an opportunity for informal hearing that:
>
> ....
>
> (2) the applicant has shown a lack of ability or intention to comply with such laws as indicated by past or continuing violations. Any person ... which has engaged in unlawful conduct as defined in section 611 ... shall be denied any permit required by this act unless the permit application demonstrates that the unlawful conduct is being corrected to the satisfaction of the department.

Section 611 of the Clean Streams Law defines "unlawful conduct" as follows: "It shall be unlawful ... to fail to comply with any ... permit ... of the

department, to violate ... any ... permit ... of the department, [or] to cause air or water pollution ...." 35 P.S. s 691.611 (emphasis added). In other words, by statute, the Department must investigate violations of any and all permits before approving coverage under a general NPDES permit.

The Department argues that the thorough investigation required by section 609 of the Clean Streams Law does not apply to the general NPDES permit program because the general permit process was intended to reduce paperwork, procedures, and delays. We agree that general permit applications are not intended to receive the level of scrutiny accorded to individual permit applications, but we find no language in the Clean Streams Law or the regulations that authorizes a condensed review of compliance history for these types of permits.

We have considered the other arguments made by the Department and Willamette, including the language of the 1994 Permit Guide, and are not persuaded by them. The Board reaffirms its previous holding that, under 25 Pa. Code s 92.83(b)(2), the Department must review an applicant's history of compliance with any and all prior permits issued by the Department. Because the Department misinterpreted the compliance history review requirements of 25 Pa. Code s 92.83(b)(2), the Department's approval of coverage was improper. [FN4] Moreover, because the Department failed to act in accordance with applicable law, the Department's approval of coverage constitutes an abuse of discretion. Concerned Residents of the Yough, Inc. v. DER, 1995 EHB 41, 77.

Because the Department abused its discretion, Appellants ask the Board to vacate the Department's approval of coverage under the Storm Water Permit and remand this case to the Department for a proper review of Willamette's compliance history. However, in this case, it is not necessary for the Board to vacate and remand. When the Board finds, based on the evidence presented at a hearing, that the Department has abused its discretion, the Board may properly substitute its discretion based upon the record made before it. Pequea Township v. Herr, ____ A.2d ____ (No. 1912 C.D. 1997, Pa. Cmwlth. filed July 10, 1998); Warren Sand & Gravel Co., Inc. v. Department of Environmental Resources, 341 A.2d 556, 565 (Pa. Cmwlth. 1975). Therefore, we shall next examine the evidence presented by Appellants at the hearing to determine what is relevant here.

B. Compliance History Evidence

***12** Appellants have presented Exhibits 4 to 49 as evidence that Willamette had a significant history of noncompliance with prior permits issued by the Department when the Department approved coverage under the Storm Water Permit on August 14, 1996. All of these exhibits pertain to operations at Willamette's Johnsonburg Mill. (See Joint Stipulations G, H, and J.) The Department has issued an individual NPDES permit and various air quality permits to Willamette for the Johnsonburg Mill. (Joint Stipulation I.)

The parties agree that Exhibits 4 to 22 are relevant here. (N.T. at 385.) However, Willamette and the Department contend that Exhibits 23-49 are unrelated to any prior permit issued by the Department and, therefore, are not relevant here. [FN5] We disagree.

Exhibit 23 is a Notice of Violation which begins: "I conducted an inspection on December 3, 1992 .... The inspection revealed the facility to be in violation of your NPDES Permit No. PA0002143." Appellants' Exhibit 23 (emphasis added). On its face, then, Exhibit 23 is notice of a permit violation. The notice goes on to say that a boiler precipitator discharged wash water into a storm sewer and

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into the East Branch of the Clarion River, and that "[t]his discharge is not authorized by your Permit or any permit issued by the Department." Appellants' Exhibit 23 (emphasis added). In other words, to the Department, an unauthorized discharge violates the Johnsonburg Mill NPDES Permit. We do not have the NPDES permit before us; therefore, we have no reason to conclude otherwise.

Exhibits 24 and 25 are Consent Assessments of Civil Penalties involving industrial discharges into the East Branch of the Clarion River. The exhibits, in their captions, refer to the Johnsonburg Mill NPDES Permit. Thus, as with Exhibit 23, the unauthorized discharges are violations of the Johnsonburg Mill NPDES Permit.

Exhibits 26, 27, and 28 are letters from Willamette to the Department reporting unauthorized discharges from an evaporator, a pipe, and a drain valve into the East Branch of the Clarion River. Because unauthorized discharges violate the Johnsonburg Mill NPDES Permit, Exhibits 26, 27, and 28 are relevant here.

Exhibit 29 is a Notice of Violation advising Willamette that it violated 25 Pa. Code s 123.2 on October 18, 1994 when fugitive particulate emissions, i.e., wood dust, from an air contamination source at the Johnsonburg Mill were visible at the point the emissions passed outside Willamette's property. See Appellants' Exhibit 29. Under 25 Pa. Code s 127.441, every air quality permit incorporates by reference the emission standards of the regulations. Therefore, a fugitive particulate emissions violation is a permit violation, and Exhibit 29 is relevant here.

Exhibit 30 is another Notice of Violation. It states: "Operation of the sources, as specified above, without incineration constitutes a violation of permit and plan approval conditions as set forth in Department permit # 24-315-008." Therefore, Exhibit 30 involves a permit violation and is relevant here.

***13** Exhibits 31-49 are CEM reports and other CEM documents. It is apparent that these are related to specific air contamination sources at the Johnsonburg Mill: a recovery furnace, a lime kiln, and two boilers. It is equally apparent that the Department has issued air quality permits for these sources. Exhibit 32 indicates that the boilers operate under Air Quality Permit # 24-302-021A. Exhibit 6 indicates that the lime kiln operates under Air Quality Permit # 24-315-007. Exhibit 22 indicates that the "recovery boiler and related equipment" is covered by Air Quality Permit # 24-306-00003 [sic]. [FN6] Therefore, all of these exhibits are relevant here.

C. Willamette's Compliance History

We now must decide whether this evidence shows that Willamette had a significant history of noncompliance with prior permits issued by the Department when the Department approved coverage under the Storm Water Permit on August 14, 1996.

In our October 21, 1997 Opinion and Order, we stated that the Department's approval of coverage under the Storm Water Permit would be unlawful under 25 Pa. Code s 92.83(b)(2) if Willamette's compliance history shows that it cannot be trusted with a discharge permit. **Belitskus**, 1997 EHB at 956. Indeed, we read 25 Pa. Code s 92.83(b)(2) in conjunction with section 609 of the Clean Streams Law, which states that the Department shall not issue a permit if the applicant has shown a lack of ability or intention to comply with the law as indicated by past or continuing violations. 35 P.S. s 691.609(2); see Western Pennsylvania Water

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Company v. DER, 1991 EHB 287, 335-36 (finding that permittee had no intention to comply with permit conditions). Where there are past or continuing violations, section 609 allows the Department to issue a permit if the applicant's unlawful conduct is being corrected to the satisfaction of the Department. 35 P.S. s 691.609(2). [FN7]

First, the record does not show that Willamette lacks the intent to comply with the law. In 1990, when Willamette acquired the Johnsonburg Mill, some of the equipment was antiquated, and waste water from the mill was being pumped into a lake. (N.T. at 372-74.) In order to ensure future permit compliance, Willamette spent more than $500 million to install a waste water treatment plant and to replace all of the major processing equipment associated with making pulp or recovering chemicals. (N.T. at 373-76.) In 1995, when the mill's annual shutdown caused an environmental problem, Willamette held up the process despite possible adverse economic consequences to Willamette. (N.T. at 402-03; Appellants' Exhibit 12). Indeed, according to the Department, Willamette has worked diligently to address permit violations and has been very cooperative with the Department. (N.T. at 465-66.)

Second, the evidence does not establish that Willamette lacks the ability to comply with the law. We note, for example, that Willamette has not violated in any way the permits issued by the Department for the two chip plants. Moreover, at the Johnsonburg Mill, the new waste water treatment plant has prevented the continuation of certain NPDES permit violations there. (N.T. at 395.) Other measures have been successful, for the most part, in reducing exceedences for "total suspended solids." (N.T. at 399-401.) With respect to CEM exceedences, Willamette thoroughly modernized the mill and has been able to maintain a record that is at least as good as at similar facilities. (N.T. at 477, 481; Appellants' Exhibits 31-49.)

***14** It is true that, between May 1990 and August 1996, Willamette violated its Johnsonburg Mill permits when a pipe failed, a drain valve broke, a pipe flange became loose, and the power went out. Willamette also had trouble when a new piece of equipment had a design flaw and when new equipment was not properly installed. (N.T. at 417-19; Appellants' Exhibits 11, 13-14, 18, 22, 24-28). In each instance, however, Willamette acted responsibly to control the situation and to repair the problem. Moreover, only one of these occurrences had a severe environmental impact, i.e., the release of black liquor condensate into the atmosphere on November 12, 1995 because of the design flaw. One serious occurrence over six years for permits at several sites does not constitute a significant history of noncompliance.

Finally, we note that Department officials have expressed their satisfaction with Willamette's ability and intent to comply with the law. The Permits Chief in the Department's Bureau of Water Management does not consider Willamette's permit violations to be "significant." (N.T. at 503-06.) The Regional Monitoring and Compliance Manager considers Willamette's compliance history between 1992 and August 1996 for the Johnsonburg Mill NPDES Permit to be good; he would recommend that the Department grant coverage to Willamette under the Storm Water Permit. (N.T. at 447-48.)

The Air Quality Specialist who has performed inspections at the Johnsonburg Mill since 1993 and who has been responsible for determining permit compliance there testified that Willamette's compliance history at the Johnsonburg Mill is "very favorable." (N.T. at 456-58, 465.) The Air Quality District Supervisor,

who has had oversight of the CEM reports from the Johnsonburg Mill for the past five years, testified that none of the Johnsonburg Mill exceedences have been significant, that he is satisfied with steps that Willamette took to address various problems, and that he considers the air permit compliance history at the Johnsonburg Mill to be good. (N.T. at 472-75, 477-81.)

Appellants characterize the testimony of Department officials as "post hoc assertions" made years after issuance of the Storm Water Permit that should be viewed skeptically. This may be appropriate with respect to laudatory adjectives like "good," "very favorable," and others, but the factual evidence in the record stands on its own merits.

Because the record establishes that, when the Department approved coverage under the Storm Water Permit on August 14, 1996, Willamette did not lack the ability or intent to comply with the law and any problems were being corrected to the satisfaction of the Department, we conclude that Willamette did not have a significant history of noncompliance with prior permits issued by the Department at that time. Therefore, Willamette's compliance history was no bar to its receipt of the Storm Water Permit.

D. Equitable Relief

Finally, Appellants ask the Board to order the Department to deny approval of coverage under the Storm Water Permit because of evidence that storm water runoff from the Chip Plant is causing harm to Lanigan Brook. In the alternative, Appellants ask the Board to vacate the Department's approval of coverage and remand the case to the Department for consideration of the impact of storm water runoff on Lanigan Brook.

***15** As noted earlier, we granted summary judgment to Willamette on this issue in our October 21, 1997 Opinion and Order. But in that same decision, we reserved our power to bestow equitable relief on Appellants if we were persuaded that the appeal required such treatment. **Belitskus**, 1997 EHB at 951- 52. The Herr case we cited for this proposition has since been reviewed by Commonwealth Court, Pequea Township v. Herr, ____ A.2d ____ (No. 1912 C.D. 1997, Pa. Cmwlth. filed July 10, 1998), which instructed us that we do not have judicial powers to act in equity but do have the power to substitute our discretion for that of the Department when we find that it has been abused. This includes the "power to modify the department's action and to direct the department in what is the proper action to be taken." Pequea Township, slip op. at 15.

Here we have determined that the Department abused its discretion with regard to its review of Willamette's compliance history and have exercised our own discretion on that issue. That abuse of discretion does not involve any impact on the water quality of Lanigan Brook, and we have no justifiable basis for revisiting that issue after having granted summary judgment to Willamette. Nevertheless, at the risk of being criticized for rendering an advisory opinion, we are induced by the circumstances of this appeal to consider the issue on the basis of the current record.

Appellants were not represented by legal counsel at the time we entered summary judgment for Willamette and were clearly prejudiced by that fact. While litigants assume the high risk of failure whenever they choose to proceed pro se, we believe these particular individuals may not have fully appreciated the extent of the risk until after our October 21, 1997 Opinion and Order was

issued. They retained legal counsel promptly thereafter and were represented throughout the remainder of the proceedings.

It is clear that Appellants' chief concern is what they perceive to be a threat to the brook that is the focus of their recreational and environmental interests which, as we have held, gives them standing in this appeal. The other persuasive factor is the body of scientific evidence that was presented at the hearing. Appellants presented it for the purpose of proving standing although, as noted earlier, it was unnecessary for that purpose. Willamette responded with its own scientific evidence. As a result, the record is sufficient for us to adjudicate the issue.

Both **Belitskus** and Housler testified to changes in Lanigan Brook after the Chip Plant was built in 1993. By 1995 the water appeared orange-red and contained bark chips, wood particles, sedimentation, foam and white scum. (N.T. at 21, 28, 66, 68-69.) Housler experienced fewer bites when fishing and his enjoyment of the sport in Lanigan Brook diminished. (N.T. at 40, 61.)

Dr. Hutchinson got into the case very late, visiting the site less than a month before the hearing commenced. (Exhibit A-3 at 1.) While he personally took some field measurements at several locations, he did not take any water samples. These were taken on January 20, 1998 by Charlene Ann Sheppard, a science teacher, under the supervision of **Belitskus.** (N.T. at 164, 167.) The manner of taking the samples, the details of their preservation, and their chain of custody cannot be substantiated by Hutchinson or any other highly- trained expert.

***16** Based on his own field measurements and the results of the water sampling, Hutchinson concluded that "two discharge areas considered to be downgradient of the site showed some impact from site operations" with "elevated levels of conductivity, pH, turbidity and organic acids and depressed levels of dissolved oxygen." (Exhibit A-3 at 5.) In his words, there was "something" in the water which he attributed to runoff from the Chip Plant site. (N.T. at 166, 174-75.)

While Hutchinson's investigation suggests the presence of constituents in Lanigan Brook that could adversely affect its water quality, there is no scientific data to show the background quality of the stream before the Chip Plant was built. Moreover, Hutchinson acknowledged in his report and at the hearing that, because of winter conditions, his field measurements could be spurious and his conclusions false. (N.T. at 200.) The claim that the waters are degraded, thus, hangs by a very slender scientific thread.

Contrary testimony from David C. Hails, an expert in aquatic surveys, maintains that the constituent levels found in the water samples do not show any impact on Lanigan Brook. (N.T. at 334.) This seems to be confirmed by the testimony of Steven Kepler, a fish biologist with the Pennsylvania Fish and Boat Commission, who conducted electrofishing [FN8] at two locations on Lanigan Brook on September 23, 1997. Wild brook trout and brown trout of varying sizes were found indicating a viable reproducing trout population. (Joint Exhibit G.) As Kepler explained, the numerous size classes indicate "a fairly good system." (N.T. at 310.) It is hard to believe that this fairly good system for trout that was present in September 1997 was degraded by January 1998.

Weighing all of the evidence, we are convinced that Appellants have not shown any adverse impact on the water quality of Lanigan Brook. The argument that the degradation may be taking place so slowly as to be as yet scientifically undetectable is too speculative to give serious consideration.

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Housler's and **Belitskus'** observations, while sincere, cannot be given much weight without scientific data to support them, especially since the conditions observed can be explained by factors unrelated to runoff from the Chip Plant. (N.T. at 330, 334-345.) In addition, their observations relate to changes that began in 1993 and were very apparent by 1995, long before the Storm Water Permit was issued in August 1996. The cause, obviously, was something other than the activities authorized by the Storm Water Permit.

Since the scientific evidence before us fails to show any adverse impact to Lanigan Brook and since Housler's and **Belitskus'** observations relate to conditions existing prior to the issuance of the Storm Water Permit, we find no basis for remanding the matter to the Department for reconsideration.

CONCLUSIONS OF LAW

1. Mr. **Belitskus** and Mr. Housler have standing to challenge the Department's approval of coverage under the Storm Water Permit because storm water runoff from the Chip Plant may adversely affect their use and enjoyment of Lanigan Brook. Wm. Penn Parking Garage, Inc. v. City of Pittsburgh, 346 A.2d 269 (Pa. 1975); Barshinger v. DEP, 1996 EHB 849; Pohoqualine Fish Association v. DER, 1992 EHB 502; and Heasley v. DER, 1991 EHB 1758.

***17** 2. Because Appellants' Post-hearing Brief fails to address Mrs. Housler's standing, Appellants have waived that issue. Lucky Strike Coal Co. v. Department of Environmental Resources, 547 A.2d 447 (Pa. Cmwlth. 1988).

3. The Department's regulation at 25 Pa. Code s 92.83(b)(2) requires that the Department deny any application for coverage under a general permit when the discharger has a significant history of noncompliance with a prior "permit" issued by the Department. This means that, in this case, the Department had to consider any and all permits issued by the Department to Willamette for any site in the state. **Belitskus** v. DEP, 1997 EHB 939.

4. The Department's contrary interpretation of 25 Pa. Code s 92.83(b)(2) is clearly erroneous because it conflicts with section 609 of the Clean Streams Law; therefore, it is not to be given controlling weight in this case. Department of Environmental Protection v. City of Philadelphia, 692 A.2d 598 (Pa. Cmwlth. 1997).

5. The Department's contrary interpretation of 25 Pa. Code s 92.83(b)(2) is inconsistent with the plain language of the regulation; therefore, it is not to be given controlling weight in this case. Id.

6. The Department misapplied 25 Pa. Code s 92.83(b)(2) because it did not consider any and all permits issued by the Department to Willamette for any site in the state before approving coverage under the Storm Water Permit.

7. The Department abused its discretion in approving coverage under the Storm Water Permit because it misapplied 25 Pa. Code s 92.83(b)(2).

8. Where the Board finds that the Department has abused its discretion, the Board may properly substitute its discretion for that of the Department based upon the record made before it. Pequea Township v. Herr, ____ A.2d ____ (No. 1912 C.D. 1997, Pa. Cmwlth. filed July 10, 1998); Warren Sand & Gravel Co., Inc. v. Department of Environmental Resources, 341 A.2d 556 (Pa. Cmwlth. 1975.)

9. The violations of law set forth in Appellants' Exhibits 23-49 are related to specific permits issued by the Department; therefore, the exhibits are relevant here.

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(Cite as: 1998 WL 525574, *17 (Pa.Env.Hrg.Bd.))

10. The Department shall not issue a permit under the Clean Streams Law if the applicant has shown a lack of ability or intention to comply with the law as indicated by past or continuing violations. Where the Department is satisfied that the applicant's past or continuing unlawful conduct has been or is being corrected, the Department may issue the permit. 35 P.S. s 691.609.
11. Because the record establishes that, when the Department approved coverage under the Storm Water Permit on August 14, 1996, Willamette did not lack the ability or intent to comply with the law and any problems were being corrected to the satisfaction of the Department, we conclude that Willamette did not have a significant history of noncompliance with prior permits issued by the Department.
12. Because Willamette's past and continuing violations do not indicate that Willamette cannot be trusted with a permit and do not constitute a significant history of noncompliance with prior permits issued by the Department, the Board will not disturb the Department's decision to approve coverage under the Storm Water Permit.
***18** 13. Ordinarily, the Board will not revisit an issue on equitable grounds after granting summary judgment on that issue; indeed, the Board lacks judicial power to act in equity. However, because the Board may substitute its discretion for that of the Department when the Board finds that the Department abused its discretion, because Appellants were not represented by legal counsel when the Board entered summary judgment, and because the parties presented sufficient scientific evidence on the issue, the Board concludes that it is proper to consider whether storm water runoff from the Chip Plant has harmed Lanigan Brook.
14. Weighing the evidence presented at the hearing, the Board concludes that there is no adverse impact on Lanigan Brook from storm water runoff associated with activities at the Chip Plant authorized by the Storm Water Permit.

ORDER

AND NOW, this 20th day of August, 1998, it is ordered that the above-captioned appeal is dismissed.

George J. Miller
Administrative Law Judge
Chairman

Robert D. Myers
Administrative Law Judge
Member

Thomas W. Renwand
Administrative Law Judge
Member

Michelle A. Coleman
Administrative Law Judge
Member

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(Cite as: 1998 WL 525574, *18 (Pa.Env.Hrg.Bd.))

FN1. Appellants retained legal counsel who entered an appearance with the Board on October 27, 1997.

FN2. Buck Run eventually runs into the West Branch of the Clarion River. (N.T. at 43.)

FN3. Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. ss 691.609.

FN4. Appellants contend that the record contains evidence that the Department conducted no compliance history review at all. See Appellant's Post-hearing Brief at 44-47. We need not determine whether the Department did or did not conduct a compliance history review. In either case, the Department failed to comply with 25 Pa. Code s 92.83(b)(2).

FN5. In our October 21, 1997 Opinion and Order, we stated that, in order to prove that Willamette had a significant history of noncompliance with prior permits issued by the Department, Appellants have to: (1) relate any alleged violation of law to a specific permit issued by the Department; and (2) establish the severity of the violations. **Belitskus**, 1997 EHB at 957.

FN6. It seems self-evident that the "recovery furnace" is related to the "recovery boiler."

FN7. Appellants ask the Board to hold, as a matter of law, that a long series of permit violations and large civil penalties attributable to negligence or to behavior that is not even "blameworthy" is sufficient to establish that Willamette is unable to comply with the law and, therefore, cannot be trusted with a discharge permit. (Appellants' Post-hearing Brief at 35-36, 43.) However, this formulation of the law fails to take into account the severity of the permit violations, Willamette's efforts to correct its unlawful conduct, and the Department's satisfaction with those efforts.

FN8. This is a procedure whereby fish are stunned by electric current, then examined, identified and counted by trained individuals.
1998 WL 525574 (Pa.Env.Hrg.Bd.)
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106TH CASE of L...l 1 printed in FULL format.

ALASKA CLEAN WATER ALLIANCE, ALASKA CENTER FOR THE ENVIRONMENT, and TRUSTEES FOR ALASKA, Plaintiffs, v. CHARLES C. CLARKE, Administrator, U.S. Environmental Protection Agency, Region X, the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION X, and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Defendants.

NO. C96-1762R

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, SEATTLE DIVISION

1997 U.S. Dist. LEXIS 11144; 45 ERC (BNA) 1664; 27 ELR 21330

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Sandusky
Legal

July 8, 1997, Decided
July 8, 1997, FILED; July 8, 1997, ENTERED

DISPOSITION: [*1] Plaintiffs' motion for summary judgment DENIED as to Claim I and GRANTED as to Claim II. Defendants' cross-motion for summary judgment GRANTED as to Claim I and DENIED as to Claim II.

COUNSEL: For ALASKA CLEAN WATER ALLIANCE, ALASKA CENTER FOR THE ENVIRONMENT, TRUSTEES FOR ALASKA, plaintiffs: Todd D. True, SIERRA CLUB LEGAL DEFENSE FUND, SEATTLE, WA. Stephen Koteff, TRUSTEES FOR ALASKA, ANCHORAGE, AK. Eric Paul Jorgensen, SIERRA CLUB LEGAL DEFENSE FUND, JUNEAU, AK.

For CHARLES C CLARKE, Administrator, United States Environmental Protection Agency, Region X, ENVIRONMENTAL PROTECTION AGENCY - REGION X, ENVIRONMENTAL PROTECTION AGENCY, defendants: Brian C Kipnis, U. S. ATTORNEY'S OFFICE, SEATTLE, WA. Michael James Sevenbergen, US DEPARTMENT OF JUSTICE c/o NOAA/GCNW, SEATTLE, WA.

JUDGES: BARBARA JACOBS ROTHSTEIN, UNITED STATES DISTRICT JUDGE

OPINIONBY: BARBARA JACOBS ROTHSTEIN

OPINION: ORDER GRANTING IN PART AND DENYING IN PART CROSS-MOTIONS FOR SUMMARY JUDGMENT

THIS MATTER comes before the court on cross-motions for summary judgment. Having reviewed the motions together with all documents filed in support and in opposition, having heard oral argument, and being fully advised, the court finds and rules [*2] as follows:

I. FACTUAL BACKGROUND

Plaintiffs Alaska Clean Water Alliance and Alaska Center for the Environment are nonprofit environmental organizations whose mission is to protect Alaska's water quality. Plaintiff Trustees for Alaska litigates cases on behalf of groups interested in environmental issues. Defendants are the United States Environmental Protection Agency (EPA), the EPA's administrator and its Region X office (collectively "EPA").

The underlying facts are undisputed. The Clean Water Act (CWA), 33 U.S.C. @@ 1251-1387, is a comprehensive statute intended to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" through reduction and eventual elimination of the discharge of pollutants into those waters. Section 101(a), 33 U.S.C. @ 1251(a). Pursuant to the CWA, each state must complete a triennial review of water quality standards and then submit any new or revised standards to EPA for its review. Section 303(c)(1) and (2), 33 U.S.C. @ 1313(c)(1) and (2).

In July of 1993, Alaska announced an intent to revise certain standards. Numerous organizations, including plaintiffs in this case, filed opposition to the proposed revisions. [*3] On December 5, 1993, the proposed standards were certified and filed as state regulations. On January 26, 1995, the Alaska Department of Environmental Conservation formally submitted the regulations to EPA for review as required under section 303(c)(2) of the CWA. 33 U.S.C. @ 1313(c)(2). n1

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n1 On September 26, 1996, Alaska submitted to EPA some additional water quality standards which had been adopted on February 14, 1996. These additional revisions were in response to comment and criticism received from environmental organizations about the original proposals.

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Section 303(c)(3), 33 U.S.C. @ 1313(c)(3), provides that, after a state has submitted officially adopted revisions of water quality standards for EPA review, EPA must either notify the state within sixty days that the revisions have been approved or indicate within ninety days that they have been disapproved. When EPA had still not acted to approve or disapprove Alaska's new regulations by November of 1996, plaintiffs filed suit against EPA to force [*4] a decision.

On January 30, 1997, the court issued a minute order declining to schedule a trial in this case and directing the parties to file summary judgment motions by April 17, 1997. On April 7, 1997, ten days before the summary judgment motion filing deadline, EPA issued a letter approving all of Alaska's revised water quality standards with one exception not relevant to this litigation. The parties thereafter filed cross-motions for summary judgment which are now pending before the court.

II. LEGAL DISCUSSION

A. Claim I

Plaintiff's first claim is that EPA failed to carry out its mandatory duty to review and approve or disapprove the proposed revisions in a timely fashion. EPA acknowledges the duty, but argues that the claim has been mooted by the April 7, 1997 letter approving the standards.

Plaintiffs respond that the claim is not moot because EPA still has to complete consultation with the United States Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act (ESA). Final approval is conditional on successful conclusion of ESA consultation. EPA

1997 U.S. Dist. I S 11144, *; 45 ERC (BNA) 1664

standards from those in effect under the CWA. While recognizing that section 510 prohibits this result, EPA argues that the lowered standards can still become effective immediately because states typically rescind their existing standards before adopting new ones. Thus, according to EPA's interpretation, the lower standards are acceptable under section 510 since no standards are in effect at the time under the CWA. Given that the stated purpose of the CWA is to eliminate discharge of pollutants from all waters, the court finds it extremely dubious that Congress could have intended such a result.

Finally, EPA raises the spectre of practical difficulties which would ensue if the court were to accept plaintiffs' interpretation of section 303(c)(3). While EPA's concerns may have some merit, they are more appropriately addressed to Congress. This court's role is to construe the language which Congress saw fit to enact in the CWA, not to weigh in on the question of how best to achieve the goals of the CWA.

III. CONCLUSION

Plaintiffs' motion [*13] for summary judgment is DENIED as to Claim I and GRANTED as to Claim II. Defendants' cross-motion for summary judgment is GRANTED as to Claim I and DENIED as to Claim II.

DATED at Seattle, Washington this 8th day of July, 1997.

BARBARA JACOBS ROTHSTEIN

UNITED STATES DISTRICT JUDGE

PA Dept. of Environmental Protection 15th Fl, RCSOB 400 Market St. PO Box 2063, Harrisburg PA 17105-2063

Pennsylvania Department of Environmental Protection

FAX

Date/Time: 11/18 - 1015

Number of pages including cover sheet: 8

To: John Jewett

Phone:

Fax phone:

CC:

From: Sharon Freeman

Phone: 717-

Fax phone: 717-783-8470

REMARKS: ☐ Urgent ☐ For your review ☐ Reply ASAP ☐ Please comment

FACSIMILE COVER PAGE

To :	**John Jewett Fiona Wilmarth**	**From :**	**Krista Jones**
Sent :	**12/1/98 at 11:28:32 AM**	**Pages :**	**5 (including Cover)**
Subject :	**Water Quality comments**		

I was wondering if you ever received a copy of our comments, which we submitted to the EQB regarding Water Quality Amendments, Ch. 92, (et al), particularly the sections that address NPDES Stormwater Permits for Construction Activities as required for oil and gas extraction activities. I'm pleased with your comments on this matter, but notice you reference POGA comments. Perhaps we did not take the proper channels in getting our ideas to you.

I would appreciate your suggestions for future contacts. Please contact me at 232-0137.

Thanks for your help and keep up the consistently fine work that you folks generate.

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Jewett
Sandusky
Legal

Louis D. D'Amico
Independent Oil and Gas Association of PA
234 State Street
Harrisburg, PA 17101

October 28, 1998

Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

Re: Comments on Proposed Rulemaking for Water Quality Amendments
(25 PA Code, Chapters 92, 93, 95, 96, and 97)

Dear Board Members:

The Independent Oil and Gas Association of Pennsylvania (IOGA) supports the Department of Environmental Protection's efforts to streamline and update regulatory requirements for NPDES permitting, water quality standards development and water quality standards implementation. IOGA is a non-profit trade association that represents the natural gas and oil producing industry in Pennsylvania. Its member companies drill wells, produce and market natural gas, and service the industry to provide a valuable, clean-burning source of energy.

Many of the proposed revisions to Pennsylvania's water quality program represent improvements in clarity and organization. Streamlining the administrative aspect of environmental regulatory compliance is an important step towards fostering truly responsible management of our natural resources.

We support the Department's effort to limit extended NPDES permit reporting and public notification requirements. Repetitive permitting tasks and unwarranted delays do nothing to protect the environment; on the contrary, they waste time, energy and money. Pennsylvania's economy relies on the ability of its business and industry to function efficiently, responsibly and competitively. Consolidation and elimination of overlapping reporting requirements in the permitting process make good economic and ecological sense.

However, this regulatory package (specifically, Chapter 92, National Pollutant Discharge Elimination System Permitting, Monitoring and Compliance) contains a glaring omission, which, if left uncorrected, could have serious detrimental effects on our industry in the very near future. Activities associated with natural gas and oil producing operations are currently subject to NPDES stormwater permit requirements, although the identical activities are exempt from permitting for the silviculture industry. Sections 92.4(a)(1) and 92.4(a)(2) provide exclusions from NPDES permit requirements for pollutants from non-point source agricultural activities and silvicultural activities. Natural gas and oil producing activities that are identical to those defined as non-point silvicultural activities in Section 92.1 -- i.e., construction of temporary access roads and other earth moving

activities from which there is (the potential for) runoff – should be added to the exclusions from NPDES permit requirements. Currently, the regulations represent unjustified favoritism and special treatment for the logging industry. If the current exclusions are environmentally valid, they should be extended to include identical activities of the natural gas and oil producing industry.

Although current NPDES stormwater permitting for construction activities applies to earth disturbances larger than five acres, EPA has proposed expanding the NPDES permitting program to include operations that disturb one acre or more. If adopted, this rule would cause serious problems for Pennsylvania's natural gas producing industry. Without the specific exclusions that are now afforded to the silviculture industry, EPA's proposed stormwater permit rules could apply to virtually every new well site. The resulting delays in operations would severely cripple Pennsylvania's production of natural gas.

In proposing the rule change, EPA cited a growing concern over pollution from urban stormwater runoff; its rationale was not based on evidence of excessive pollution from rural stormwater runoff related to oil and gas construction activities. Without some corrective action by the state to prevent this unfortunate oversight, Pennsylvania could be hurt economically and hampered in its efforts to meet new federal air quality mandates. From a more holistic perspective, it seems counter-productive to stymie an industry that plays such an important role in providing Pennsylvania with a valuable, clean-burning energy source.

In addition to highlighting these concerns, IOGA wishes to submit the following comments on other aspects of the proposed rulemaking contained in Chapters 92, 93, 95, 96 and 97 of the Pennsylvania Code.

92.41 Monitoring:

IOGA agrees with the statement by the Water Resources Advisory Committee (WRAC) that DEP should not require additional monitoring beyond that required by the NPDES permit unless the additional monitoring has been made a condition of that permit. The purpose of Section C (Required and Optional Chemical Analysts) of the NPDES permit application is to initially identify any problem pollutants. At that point, DEP should regulate the pollutants by establishing limits and monitoring requirements or by adding a special permit condition for additional monitoring. Since any change in the permitted facility, such as production increases or process modifications, requires dischargers to notify DEP, as stated in 92.7, no additional pollutant analyses should be required of dischargers who make no changes to their operations. In the event that new regulations would take effect, 92.8(a) already requires permitted facilities to take steps to comply with the new water quality standards or treatment requirements.

92.61 Public Notice of Permit Applications and Public Hearings

We agree with the Department's decision not to add an additional public notification and comment period before an NPDES permit is submitted for review.

Publication of the intent to apply for an NPDES permit under Section 307 of the Pennsylvania Clean Streams Law and notification of Municipal and County officials under Act 14 already give the public adequate time to comment. Since the Department requires a notarized copy of the newspaper notice and statement of publication dates be sent with the permit application, the public is guaranteed a 30-day notification period to express any interest or concerns with the permit application.

92.8(c) Changes in Treatment Requirements:

If the proposed regulation is adopted and NPDES dischargers are required to meet more stringent effluent limitations when a potable water supply is identified, then the discharger must be notified as early as possible in order to make timely changes to achieve compliance. We suggest that the NPDES permittee be notified immediately whenever an application for a Water Allocation Permit is submitted to the Department or when the State Water Plans are updated and new potable water supplies are identified.

93.4 Statewide Water Uses:

We agree with members of the WRAC and the RBI report that the Potable Water Supply (PWS) criteria should be applied only at the point of potable water withdrawal and that the statewide PWS use should be removed. Proposed paragraph 92.5(c) states that whenever a new potable water supply is identified, the discharger "shall meet more stringent effluent limitations needed to protect the point of withdrawal." Therefore, the rationale that maintaining the statewide PWS use is necessary to prevent degradation of water quality should the body of water be used for drinking water in the future is not applicable.

Chapter 96. Definitions:

A general explanation of the term "effluent trading" as it applies to implementation of Pennsylvania's water quality standards should be included in the definitions.

96.4(k) Total Maximum Daily Loads:

This proposed requirement may impose undue economic hardship on smaller dischargers if there are a number of pollution sources (point and non-point) contributing to a receiving stream segment which must be analyzed to develop TMDLs. Also, the phrase "to determine their (MDL) effectiveness" is highly subjective language, open to broad interpretation that could result in additional costs. If one of the goals of this regulatory reevaluation is to ensure "that pollution control costs are equitably distributed," then the Department, not the individual dischargers, should assume the costs of determining TMDLs. Development and documentation of the TMDLs should be the responsibility of the Department. As outlined in 96.4(1), anyone challenging a TMDL determination should by required to assume the burden of proof. The state should only require a discharger to determine the TMDL of a receiving stream if the discharger disagrees with the TMDL assigned by the State.

Thank you for the opportunity to comment on the proposed changes to these regulations.

Sincerely,
IOGA of Pennsylvania

Louis D. D'Amico
Executive Director

Cc: Independent Regulatory Review Commission
Chair, PA Senate Environmental Resources and Energy Committee
Chair, PA House Environmental Protection Committee

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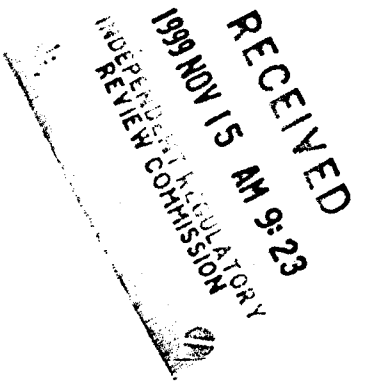
November 12, 1999



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Independent Regulatory Review Commission
14th Floor, 333 Market Street
Harrisburg, PA 17101

Gentlemen:

Re: DEP ANFR
Pa Code Title 25, Chapters 16, 92, 93, 95, 96 & 97

Enclosed are comments I have provided to the Department of Environmental Protection regarding the referenced rulemaking. I would like to call your attention especially to the comments manually indicated with an arrow, as these issues are those with which the IRRC is particularly concerned. The most important of these are two: the second comment (starting at the bottom of page 1) and the fifth (first full comment on page 4). The first-mentioned involves a significant change in regulations that affect over 400 municipal wastewater treatment plants. To abide by the new rule to reduce all pollutants "to the maximum extent practicable" would cost tens, if not hundreds of millions of dollars. DEP has not provided an economic analysis of this most onerous new rule. I hope that you will remind DEP of its duty to assess the economic impact of major new regulations.

The second most important comment regards DEP's attempt to deny due process mandated by the Clean Streams Law. The proposed rule at §92.93 is self-explanatory and requires correction to be in accord with the statute.

In the past, it has been my experience that DEP has not been very responsive to comments unless the IRRC took an interest. I hope that you will find these comments relevant to your role in regulatory oversight, and that you will include these important issues in your comments to DEP on this rulemaking.

If you wish to discuss any of the comments, I can be reached at the number above during normal working hours.

Very truly yours,

Randall G. Hurst

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COMMENTS ON ADVANCED NOTICE OF FINAL RULEMAKING
25 PA CODE CHAPTERS 16, 92, 93, 95, 96 & 97

Prepared by Randall G. Hurst, Esq.

INTRODUCTION

The 9/18/99 revised version of this proposed rulemaking is significantly improved over the initial 1998 draft. Many substantive concerns expressed in the comments have been addressed. However, the proposed final version still requires correction to be technically correct, practical and implementable, and to meet the goals of the Regulatory Basics Initiative. Given the emphasis placed on the RBI by Secretary Seif and other top officials, it is somewhat disheartening to see the actual rulemaking process continue to defy these admirable and worthwhile goals. In particular, the proposal to add extensive new requirements to the Secondary Treatment rules (proposed §92.2c(b)) is especially troublesome, especially when the potential effect of the proposal — significant additional cost to Pennsylvania municipalities — has received no consideration by DEP.

The comments below were prepared with the interests of the members of the Pennsylvania Water Environment Association in mind. Due to the very limited time allowed for review of these complex rules and development of comments, however, there was insufficient time to both prepare the comments and provide for the Association to review and approve them. Therefore, the comments are my own, and do not represent the position of the PWEA or its members.

COMMENTS

Comments on Proposed Chapter 92

→ **§ 92.2(a) Improper delegation of State Authority to a Federal Agency.** The proposed regulation will incorporate all federal regulations, "including all . . . future amendments . . . ." This language appeared in the initial draft and I provided a comment that the Department may not delegate its rulemaking authority to a federal administrative agency. Doing so is an apparent violation of Tenth Amendment state sovereignty. Surprisingly, DEP failed to acknowledge this comment or to respond to the issue in any way. Merely ignoring a problem, however, does not make the problem disappear. The concern remains that if EPA promulgates changes to the federal regulations, and DEP fails to take appropriate rulemaking actions to adopt these changes into the Pennsylvania rules, a serious issue will arise as to whether the new EPA rules are applicable and enforceable by DEP, and as to whether the failure to adopt the new rules in an enforceable fashion is a violation of the MOU between EPA and DEP. The clause cited increases the risk that DEP will fail to follow the appropriate rulemaking procedures under the mistaken impression that it need not do so, risking its enforcement authority and inviting litigation.

→ **§ 92.2c (b)(4) Unlimited expansion of Secondary Treatment Requirements.** Federal secondary treatment standards only establish discharge limitations for BOD (and C-BOD), TSS,

and pH. The current State secondary treatment standards at §95.2(b) exceed the federal requirements, adding requirements for disinfection, sludge disposal, and for reduction of the discharges of oils, greases, acids, alkalis, toxics, and taste and odor producing substances so as not to cause pollution. Although not addressed in DEP's sparse discussion documents, it was apparently the determination of DEP that easing the existing rule to make it consistent with the federal rule (a major goal of the Regulatory Basics Initiative) was not appropriate. However, DEP was not content to leave the rule alone: the proposed regulation represents a significant expansion of the rule, in a manner that is of great concern.

The proposed rule amends the current rule regarding the reduction of polluting substances to say "Reduction to **the maximum extent practicable** of the discharge of oils, greases, acids, alkalis and toxic, taste or odor-producing substances inimical to the public interest." In addition to the obvious conflicts with the goals of the RBI (primarily the goals to improve clarity and to make rules more compatible and not more onerous than the EPA rules), there is a significant practical problem with the proposed rule. The rule change is significant in that it replaces an acceptable, performance-based standard, with a vague mandate to implement the best technology available, regardless of necessity or environmental benefit, and possibly without regard to cost.

• The proposed rule establishes an impermissibly vague standard of performance unrelated to environmental protection

In this rule, DEP proposes to replace an acceptable environmental protection-based standard — "which will not pollute the receiving stream" — with a general guideline consisting of the mandate, "reduction to the maximum extent practicable." Obviously, this is unrelated to environmental protection, since discharges of small amounts of many substances, including the so-called toxics (many of which are, in fact, important micro-nutrients), has no environmental impact. DEP has provided no guidance on, nor even a general discussion of, what it intends this important new term to mean. Is it intended to be the POTW equivalent of BAT, or will it go beyond that standard? Will the determination of the "practicable" include the consideration of costs, efficacy, and availability of funds to construct additional treatment units? How is the "maximum extent" determined? What will DEP use in deciding if the performance of a particular POTW is deficient? Simply stating that one must do the "maximum" is not setting a standard, it is simply a vague hope, one that cannot meet the minimum requirements for a regulation, especially one that will be enforceable against hundreds of POTWs across the Commonwealth.

• The proposed standard is in fact a pollutant elimination requirement, not a secondary treatment standard, and cannot be met by most POTWs without extensive (and expensive) modifications. Since literally all substances in the known universe are defined as "toxic" under the DEP definition (e.g., air, pure water and sand are "toxic"), this new regulatory requirement will in effect add a "minimization of all substances" requirement to the secondary treatment standards. Even if the more rational Clean Water Act definition of toxics (limited to the 136 listed substances) was intended, the scope of this new rule remains extremely broad. Simply put, this is not a secondary treatment requirement, but a virtual pollutant elimination requirement. It goes far beyond the concept of secondary treatment envisioned in the Clean

Water Act, and attempts by subterfuge to reinstate the requirement that appeared in the first draft of the regulations in section 92.41(b), which was deleted from the proposed final rule in response to comments. It is not only unreasonable to add such a broad requirement to the definition of secondary treatment, it is in fact irrational to try to radically change the treatment capabilities of hundreds of existing POTW secondary treatment plants simply by changing a regulatory definition.

• **The rule could impose millions of dollars in additional treatment costs to Pennsylvania municipalities.** It is an unfortunate fact that regulatory agencies often believe that cost burdens to municipalities are not worthy of consideration in determining if technologies are "practicable," and only technological feasibility is meaningful. If this is so, then the broad-brush regulation proposed could impose tens of millions of dollars of unfunded treatment costs on the municipalities of the Commonwealth, ironically just at the time that the Secretary is campaigning to reduce the amount of state funding provided to these same municipalities under the Act 339 program. In spite of the potentially massive increase in costs, *DEP has provided no financial analysis of the potential impact of this extensive new regulatory requirement.*

→ **§ 92.7. Reporting of New Pollutants Requirement is Too Vague to Comply With.** Typically, when NPDES Permits are issued, the DEP permit engineer reviews all of the pollutants reported as being present in the effluent, and determines which, if any, of these pollutants require regulation or monitoring through the imposition of effluent limitations. The proposed rule would require obtaining a new or revised NPDES Permit when a "new pollutant not covered by the NPDES permit" is proposed to be discharged. It is impossible to determine what this requirement is supposed to mean. If a pollutant was reported as present in the most recent permit application, but is not regulated by a discharge limit, is it a "new pollutant?" Or is a "new pollutant" only one that was not previously reported as present? More importantly, what is meant by "covered by the NPDES permit?" If a pollutant was evaluated during the Permit development process and no effluent limitation is required, is it "covered?" If so, how does a permittee determine which pollutants were evaluated?

While the apparent intent of the new requirement — at least as I interpret it — is acceptable, the requirement must be stated in a sensible fashion that the regulated community and the Department's many regulators can understand to mean one thing. The rule as proposed is open to multiple interpretations, potentially leading to unnecessary confrontation and litigation to determine its meaning. One ostensible goal of the Regulatory Basics Initiative was to "clarify" regulations; this proposed rule would establish a rule subject to many different and equally reasonable interpretations, inviting confusion, not clarity.

§ 92.21a(f)(1) Information to be Submitted by CSO dischargers to Include All Stormwater Inlets. The proposed requirement would mandate that all CSO dischargers identify all of the points of **inflow** into combined systems. Since even in small cities, this may involve hundreds of

inflow points, this requirement is senseless. What use would hundreds of pages listing all of the stormwater inlets in the City of Philadelphia be to DEP? How would this mass of information enhance the permit development process? Perhaps the drafters intended to require the identification of the points of DISCHARGE (i.e., the CSOs) in the combined system?

→ **§ 92.93 Procedure for assessment of a civil penalty violates the specific provisions of the Clean Streams Law.** The Clean Streams Law specifies that the Department may assess a civil penalty "after hearing." 35 P.S. §691.605. The proposed regulation would allow DEP to assess a civil penalty **without a hearing** unless the person assessed "serves" DEP with a "request" to hold a hearing, using a particular method of notice, within 30 days. This is too obvious a statutory violation to require additional comment.

Comments on Proposed Chapter 93

§93.7, Bac1 and Bac2 standards establish extremely low limits for bacteria during the non-contact season. The Bac1 proposal purports to establish a maximum discharge standard during periods of no public exposure of 2000 per 100 ml as a geometric mean. While questionably low from an environmental protection standpoint, this limit does not present a practical difficulty for treatment plants. However, in fact, **the actual regulatory limit is less than 700**, an unnecessarily low limit. This is because the standard also provides that no more than ten percent of the samples may exceed 400. **Mathematically, if nine samples gave the maximum result of 400, and the tenth sample is 100,000 (the highest result typically encountered) the geometric mean is 695.** (The single maximum would have to be 3.98 billion to result in a geometric mean of 2000!) Thus, the rule does not establish a discharge standard of 2000, but effectively establishes a non-contact season fecal coliform limit of no more than 700 (as a geometric mean). Whether this irrational rule is an attempt to camouflage a proposal to establish a non-contact limit of 700, or simply the result of innumeracy on the part of the drafters is not apparent. In any event, the current rule setting the geometric mean at 2000 and restricting the maximum discharge to no more than ten percent of results above 10,000 is fully adequate to provide protection during the non-contact season. Since DEP provided no information supporting the new significantly more stringent limits, nor any analysis of the additional costs to achieve the increased disinfection limits for the several hundred affected POTWs, the new rule violates the spirit and letter of the RBI as well as concepts of rational rulemaking.

It is possible that the figure was intended to be 4000, not 400 (this would provide a mathematically possible scenario). If so, the error illustrates the validity of the comment I provided on the initial proposal, in which I noted that spelling out numbers, as proper English grammar dictates, results in fewer errors than using numerals.

Comments on Proposed Chapter 95

§95.2(1) Prohibits discharges of industrial wastes within normal and acceptable pH range; conflicts with succeeding rule. The proposed rule would prohibit the discharge of "wastes which are acid." A pH less than 7.0 is acid. The following paragraph would allow discharges in a range of 6 to 9, with certain exceptions. So a discharge with a pH of 6.2 would be prohibited under paragraph (1) and specifically allowed under paragraph (2). Since paragraph (2) provides specific standards, paragraph (1) serves no purpose other than to totally confuse the issue. Delete paragraph (1).

Comments on Proposed Chapter 96

§96.1 Definition of Dilution Ratio is mathematically incorrect. The dilution ratio is calculated as the sum of the stream and discharge flows, divided by the discharge flow. I understand that in its models DEP actually calculates dilution ratios by dividing the stream flow by the discharge flow, *and then adding one*. That method is mathematically identical to the formula cited above. However, whether the "sum of the flows" method, or the "adding one" method is used, the regulation should specify a mathematically correct definition. Establishing a mathematically incorrect term by law with an unspoken assumption that some different calculation technique will in fact be used is irresponsible.

→ **§96.1 Definitions of Load Allocation and TMDL are incompatible.** The definition of TMDL is the sum of Waste Load Allocations, Load Allocations, and Natural Quality (plus a safety factor). The definition of Load Allocation includes both nonpoint sources and Natural Quality. Thus, a TMDL would include Natural Quality twice, once in the LA calculation and again in the TMDL summation! The TMDL definition can be easily corrected by adding the word "and" where indicated:

> "the sum of individual waste load allocations for point sources, load allocations for nonpoint sources ***and*** natural quality, and a margin of safety, expressed in terms of . . . ."

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PENNSYLVANIA BUILDERS ASSOCIATION

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November 16, 1999

Ms. Carole Young
Division of Assessment and Standards
Bureau of Watershed Conservation
Rachel Carson State Office Building, 10th Floor
400 Market Street
Harrisburg, PA 17101

Dear Ms. Young:

The Pennsylvania Builders Association has reviewed the Advanced Notice of Final Rulemaking for 25 PA. Code, Chapters16, 92, 93, 95, 96, and 97 and offers the following comments.

§92.8a (a) and (b) – We believe that, since construction permits are temporary in nature, they should be exempt from the requirement to comply with higher water quality standards that the Department changes once a project is underway. Any additional water quality protection would not be balanced with the environmental risks and operational effort of reworking pollution prevention measures already in place for an ongoing project.

§92.21(c) – The allowance for the Department to demand any additional data is unduly burdensome to the applicant. Worse, the regulations do not establish specific conditions under which the Department can make such a demand. The public has a right to regulatory reliability. This reliability should ensure that when an applicant meets established requirements, the Department will make a timely decision. This directionless and open-ended process fails to provide this reliability and discourages a participatory and proactive approach to environmental stewardship on the part of the applicant. We recommend that specific guidance that limits the types of information that the Department can request and defines the conditions under which DEP can request them.

§92.21(d)(1) – The Department is transferring the burden of a responsibility that should be its own to the permit applicant. Application for a permit should not subject an individual to undertaking an extensive research effort in support of the Department's regulatory program. We recommend the Department delete this section from the final regulations.

§92.41(f) – The Department provides neither the list of potential monitoring requirements nor the parameters it will use in determining the appropriateness of those requirements. The proposed regulations again unduly compromise regulatory reliability for the permit applicant. We recommend the Department specify potential monitoring requirements and establish the parameters the Department will use in deciding to require them.

§92.81(a)(8) and §92.83(b)(9) – Negotiations held in support of the Department's promulgation of antidegradation standards led to an agreement between the Department and the public that General Permits could be appropriate in special protection waters. After so recently completing that process, the prohibition of general permit applicability in special protection waters, as proposed by this ANFR, seriously undermines the integrity of the Department's regulatory dialogue process. General Permits, by regulation, are no less protective of the environment. Further, the antidegradation regulations have not been in effect long enough for the Department to have categorically determined General Permits to be inappropriate. We recommend that the Department amend the ANFR to reflect the Department's decision, made earlier this year, to allow general permit applicability in special protection waters.

Thank you for your attention to these issues. If you have any questions or concerns regarding our comments, please contact me.

Sincerely,

Mark Maurer
Regulatory Specialist

cc: Senator Mary Jo White, Chair,
Senate Environmental Resources and Energy Committee
Representative Arthur D. Hershey, Chair,
House Environmental Resources and Energy Committee,
Senator Raphael J. Musto, Minority Chair,
Senate Environmental Resources and Energy Committee
Representative Camille George, Minority Chair,
House Environmental Resources and Energy Committee,
Mr. Robert E. Nyce, Executive Director,
Independent Regulatory Review Commission

William Wekselman
5624 Hempstead Rd., Apt. 3
Pittsburgh, Pa. 15217

Edward Brezina
DEP
Box 8555
Harrisburg, Pa. 17105

Dear Mr. Brezina,

I am writing in regard to proposals for lowering water quality and toxics management standards. They are designed to roll back standards to the minimum level required by the the federal government. They would allow quick general permits for discharges, eliminate protection of streams as potable water sources, and reduce or eliminate standards for many toxic chemicals. I requestthat you take appropriate action to maintain standards.

Sincerely,
William Wekselman

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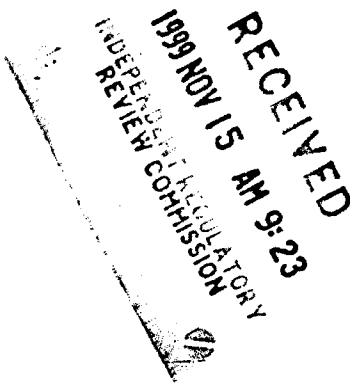
November 12, 1999



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COMMENTS ON ADVANCED NOTICE OF FINAL RULEMAKING 25 PA CODE CHAPTERS 16, 92, 93, 95, 96 & 97

Prepared by Randall G. Hurst, Esq.

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Water Act, and attempts by subterfuge to reinstate the requirement that appeared in the first draft of the regulations in section 92.41(b), which was deleted from the proposed final rule in response to comments. It is not only unreasonable to add such a broad requirement to the definition of secondary treatment, it is in fact irrational to try to radically change the treatment capabilities of hundreds of existing POTW secondary treatment plants simply by changing a regulatory definition.

• **The rule could impose millions of dollars in additional treatment costs to Pennsylvania municipalities.** It is an unfortunate fact that regulatory agencies often believe that cost burdens to municipalities are not worthy of consideration in determining if technologies are "practicable," and only technological feasibility is meaningful. If this is so, then the broad-brush regulation proposed could impose tens of millions of dollars of unfunded treatment costs on the municipalities of the Commonwealth, ironically just at the time that the Secretary is campaigning to reduce the amount of state funding provided to these same municipalities under the Act 339 program. In spite of the potentially massive increase in costs, *DEP has provided no financial analysis of the potential impact of this extensive new regulatory requirement.*

→ **§ 92.7. Reporting of New Pollutants Requirement is Too Vague to Comply With.** Typically, when NPDES Permits are issued, the DEP permit engineer reviews all of the pollutants reported as being present in the effluent, and determines which, if any, of these pollutants require regulation or monitoring through the imposition of effluent limitations. The proposed rule would require obtaining a new or revised NPDES Permit when a "new pollutant not covered by the NPDES permit" is proposed to be discharged. It is impossible to determine what this requirement is supposed to mean. If a pollutant was reported as present in the most recent permit application, but is not regulated by a discharge limit, is it a "new pollutant?" Or is a "new pollutant" only one that was not previously reported as present? More importantly, what is meant by "covered by the NPDES permit?" If a pollutant was evaluated during the Permit development process and no effluent limitation is required, is it "covered?" If so, how does a permittee determine which pollutants were evaluated?

While the apparent intent of the new requirement — at least as I interpret it — is acceptable, the requirement must be stated in a sensible fashion that the regulated community and the Department's many regulators can understand to mean one thing. The rule as proposed is open to multiple interpretations, potentially leading to unnecessary confrontation and litigation to determine its meaning. One ostensible goal of the Regulatory Basics Initiative was to "clarify" regulations; this proposed rule would establish a rule subject to many different and equally reasonable interpretations, inviting confusion, not clarity.

§ 92.21a(f)(1) Information to be Submitted by CSO dischargers to Include All Stormwater Inlets. The proposed requirement would mandate that all CSO dischargers identify all of the points of **inflow** into combined systems. Since even in small cities, this may involve hundreds of

inflow points, this requirement is senseless. What use would hundreds of pages listing all of the stormwater inlets in the City of Philadelphia be to DEP? How would this mass of information enhance the permit development process? Perhaps the drafters intended to require the identification of the points of DISCHARGE (i.e., the CSOs) in the combined system?

→ **§ 92.93 Procedure for assessment of a civil penalty violates the specific provisions of the Clean Streams Law.** The Clean Streams Law specifies that the Department may assess a civil penalty "after hearing." 35 P.S. §691.605. The proposed regulation would allow DEP to assess a civil penalty **without a hearing** unless the person assessed "serves" DEP with a "request" to hold a hearing, using a particular method of notice, within 30 days. This is too obvious a statutory violation to require additional comment.

Comments on Proposed Chapter 93

§93.7, Bac1 and Bac2 standards establish extremely low limits for bacteria during the non-contact season. The Bac1 proposal purports to establish a maximum discharge standard during periods of no public exposure of 2000 per 100 ml as a geometric mean. While questionably low from an environmental protection standpoint, this limit does not present a practical difficulty for treatment plants. However, in fact, **the actual regulatory limit is less than 700**, an unnecessarily low limit. This is because the standard also provides that no more than ten percent of the samples may exceed 400. **Mathematically, if nine samples gave the maximum result of 400, and the tenth sample is 100,000 (the highest result typically encountered) the geometric mean is 695.** (The single maximum would have to be 3.98 billion to result in a geometric mean of 2000!) Thus, the rule does not establish a discharge standard of 2000, but effectively establishes a non-contact season fecal coliform limit of no more than 700 (as a geometric mean). Whether this irrational rule is an attempt to camouflage a proposal to establish a non-contact limit of 700, or simply the result of innumeracy on the part of the drafters is not apparent. In any event, the current rule setting the geometric mean at 2000 and restricting the maximum discharge to no more than ten percent of results above 10,000 is fully adequate to provide protection during the non-contact season. Since DEP provided no information supporting the new significantly more stringent limits, nor any analysis of the additional costs to achieve the increased disinfection limits for the several hundred affected POTWs, the new rule violates the spirit and letter of the RBI as well as concepts of rational rulemaking.

It is possible that the figure was intended to be 4000, not 400 (this would provide a mathematically possible scenario). If so, the error illustrates the validity of the comment I provided on the initial proposal, in which I noted that spelling out numbers, as proper English grammar dictates, results in fewer errors than using numerals.

Comments on Proposed Chapter 95

§95.2(1) Prohibits discharges of industrial wastes within normal and acceptable pH range; conflicts with succeeding rule. The proposed rule would prohibit the discharge of "wastes which are acid." A pH less than 7.0 is acid. The following paragraph would allow discharges in a range of 6 to 9, with certain exceptions. So a discharge with a pH of 6.2 would be prohibited under paragraph (1) and specifically allowed under paragraph (2). Since paragraph (2) provides specific standards, paragraph (1) serves no purpose other than to totally confuse the issue. Delete paragraph (1).

Comments on Proposed Chapter 96

§96.1 Definition of Dilution Ratio is mathematically incorrect. The dilution ratio is calculated as the sum of the stream and discharge flows, divided by the discharge flow. I understand that in its models DEP actually calculates dilution ratios by dividing the stream flow by the discharge flow, *and then adding one*. That method is mathematically identical to the formula cited above. However, whether the "sum of the flows" method, or the "adding one" method is used, the regulation should specify a mathematically correct definition. Establishing a mathematically incorrect term by law with an unspoken assumption that some different calculation technique will in fact be used is irresponsible.

→ **§96.1 Definitions of Load Allocation and TMDL are incompatible.** The definition of TMDL is the sum of Waste Load Allocations, Load Allocations, and Natural Quality (plus a safety factor). The definition of Load Allocation includes both nonpoint sources and Natural Quality. Thus, a TMDL would include Natural Quality twice, once in the LA calculation and again in the TMDL summation! The TMDL definition can be easily corrected by adding the word "and" where indicated:

> "the sum of individual waste load allocations for point sources, load allocations for nonpoint sources ***and*** natural quality, and a margin of safety, expressed in terms of . . . ."

Randall G. Hurst, Esq.
37 South Linden Street
Manheim, PA 17545-1613

(717) 231-5215
rghurst@mette.com

lushed out of state's water pollution proposal

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Environmentalists' fears led to removal of recommendations

mental groups, which maintained the revisions would cause an increase in toxic chemicals being dumped into rivers and streams.

The Department of Environmental Protection acknowledged yesterday that there was reason to doubt the integrity of the two recommendations.

"Frankly, we are better off with original language," said David Hess, executive deputy secretary for policy and communications for DEP.

"We were very encouraged to hear that," said Jolene Chinchili, executive director of the Pennsylvania office of the Chesapeake Bay Foundation.

The Bay Foundation was among a handful of environmental groups across the state that testified against the proposed recommendations last week before the state Environmental Quality Board.

The organizations warned that the changes would weaken the state's water quality protection regulations.

"Toxic substances are so tremendously harmful to public health that to regulate them in a general basis" would be wrong, Chinchili said.

DEP officials denied that, but agreed there was enough confusion over some of the proposals to warrant withdrawing them, Hess said. Pennsylvania ranks No. 2 behind Louisiana for the amount of toxic chemicals released into its rivers and streams, 22 million pounds, according to EPA data.

"I guess the potential could be there for toxics to increase," Hess said.

It was doubtful, however, because the oversight built into the program and because industry would have no incentive to cut back on its water treatment processes.

Other proposed changes that environmentalists say would weaken pollution

See **RULES** / Page B2

"We were very encouraged to hear that."

— JOLENE CHINCHILI, EXECUTIVE DIRECTOR OF THE PENNSYLVANIA OFFICE OF THE CHESAPEAKE BAY FOUNDATION

#1975

THE PATRIOT-NEWS OCTOBER 30, 1998

Revisions flushed out of state's water pollution

"Frankly, we are better off with original language."

— DAVID HESS, EXECUTIVE DEPUTY SECRETARY FOR POLICY AND COMMUNICATIONS FOR DEP

BY GARRY LENTON
OF THE PATRIOT-NEWS

Environmentalists' fears led to removal of recommendations

Two proposed revisions to Pennsylvania's water protection rules, which environmentalists said would expose more people to toxic chemicals, will be withdrawn, Ridge administration officials said yesterday.

Gone are a proposal to drop 20 chemicals from the list of those that must be reported by industries, and a recommendation that would have allowed businesses to obtain a single permit for all of their toxic releases, instead of individual permits.

Both drew complaints from environmental groups, which maintained the revisions would cause an increase in toxic chemicals being dumped into rivers and streams.

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See **RULES** / Page B

Freeman, Sharon

From: Marilyn Skolnick(SMTP:marilyn@concentric.net)
Sent: Thursday, October 29, 1998 11:40 AM
To: REGCOMMENTS
Subject: WaterRegs

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TO: The Environmental Quality Board
and
Edward Brezina,DEP

FROM: Marilyn Skolnick for the Sierra Club, Allegheny Group
109 South Ridge DR.
Monroeville, PA. 15146
TEL.& FAX 412-373-7714

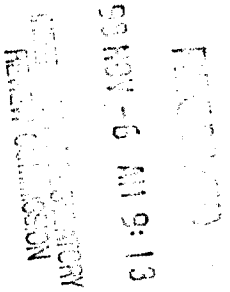
THE SIERRA CLUB Allegheny Group is opposed to the proposed changes, that would in effect weaken , the quality of our water standards and the Toxic Management Strategy.

At a time when the record shows that Pennsylvania is second in the United States for toxic discharges to our water, (about 23 million pounds of toxics) it is absolutely inappropriate to call for a weakening of our standards. If we are already polluting our water ways, why is it necessary to make it even easier to pollute.

Because the Federal Government is not doing enough to protect the public water ways is no reason for Pennsylvania to lower its standards. Instead, we should be working to improve the federal standards Remember the name of the agency is the Department of Pollution PREVENTION !

Industry already has not been regulated enough as regards human health.Let us not make it even easier for industry with these proposals.For once , please worry about the public, and not industry.

Thank you for your attention.



Freeman, Sharon

From: LCHIP(SMTP:LCHIP@aol.com)
Sent: Wednesday, October 28, 1998 9:04 AM
To: REGCOMMENTS
Subject: Revisions to Water Quality Standards

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10/26/98
Chairman James M. Seif
Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477
Email: RegComments@A1.dep.state.pa.us

Layfield Family
58 Oakford Rd.
Wayne, PA 19087
Phone/Fax: 610-293-1367
Email: lchip@aol.com

Dear Mr. Seif:

As concerned citizens, regular voters, and watershed advocates, our family is commenting on the proposed changes to the water quality regulations as described in the August 29, 1998, Pennsylvania Bulletin.

Chapter 92: NPDES Permitting, Monitoring, and Compliance.

92.2d(3) The technology-based limit (0.5 mg/l) for total residual chlorine is proposed to be retained.
We support keeping the cap, since chlorine, although needed for disinfection purposes, is so toxic to aquatic life. Its discharge should be limited even if plenty of dilution exists.

92.51(6) We recommend this "narrative criterion" standard condition needs to be strengthened, stating simply that dischargers should not be permitted to violate water quality standards by their discharges.

92.61 We suggest an additional public comment period is needed when an applicant intends to submit an NPDES (discharge permit) application, as recommended by the Water Resources Advisory Committee. We believe it is important to know about specific public water quality concerns before all the calculations have been done and a draft permit published.

92.81 We feel this is a VERY BAD SECTION. "General" permits (permits with little or no oversight) would be allowed in High Quality streams, waters that are already "impaired," and would allow the discharge of toxic materials while loosening the documentation requirements.

We feel very strongly that DEP needs to retain the documentation provision to ensure water quality standards will not be violated by the use of general permits and the proposed changes should be dropped!

Chapter 93: Water Quality Standards.

93.4 DEP presently protects all our waters as potential "potable water" sources. However, DEP proposes deleting warm water fishes as a statewide water use. DEP states that aquatic life will be protected for each stream listed in the stream list, but this leaves no basement protection for any stream that for one reason or another doesn't get on the list. It just makes sense that a basement level of protection should be afforded, and warm water fishes should be retained as a statewide water use.
Because it gives our waters additional protection, we recommend the provision should be retained.

93.5(e) The current wording of this section spells out that there will be no mixing zones - "Criteria necessary to protect other designated uses shall be met at the point of wastewater discharge." This section was moved to Chapter 96, but this mixing zone statement was deleted. DEP currently allows mixing zones for every discharge, but this policy has never come under public scrutiny.

We recommend DEP should retain and implement this language, or if DEP wants to institute a mixing zone policy, then it should go out to public comment and be incorporated into policy.

93.6 One area not covered by Pennsylvania regulations is instream flow and habitat.

Because PA has no comprehensive water resources management, we recommend DEP develop instream flow and habitat criteria and incorporate them into this chapter of regulation. We also recommend that DEP include language here protecting instream flows and instream habitat.

Other states have such protection, and the U.S.Supreme Court has ruled that states are permitted to protect instream flows.

Chapter 96: Water Quality Standards Implementation.

96.4 This section gives DEP authority to approve effluent trading, with only minimal requirements. DCVA's position is that trading cannot be permitted until there is a mechanism to enforce it. Since we don't have enforceable controls on nonpoint pollution in PA, a trade whereby pollution reductions are allocated to nonpoint sources from point sources cannot be inserted into permit conditions and enforced. DCVA feels this section on Total Maximum Daily Loads (TMDLs, which deal with how clean up will occur on waters determined to be impaired) completely ignores nonpoint source problems. The design conditions (for calculating discharge limits) are listed for low flow conditions, but are silent on how modeling will be done for rain-induced pollution. In addition, it is unclear whether the design flows apply only for impaired waters.

We recommend that DEP should include a separate section for modeling done on waters that are not impaired, should incorporate nonpoint sources into their modeling in particular for impaired waters, and should include how clean up activities dealing with nonpoint source pollution will be implemented.

The Layfield family is dedicated to working with government agencies and local environmental groups to protect and preserve our valuable watershed resources. We know
firsthand that high quality water resources means clean water for more economic growth
and protection of human health in Pennsylvania.

Thus, we hope that the EQB will make the above and any other changes to improve our
water quality, and not relax protection of it.

Sincerely,

The Layfield Family
Chip
K.C.
Kit
Caroline

cc: Greg Vitali, State Representative
Delaware County Commissioners

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Environmental Quality Board
Harrisburg, PA

My wife and I are against quality water standards.

Yours truly
Warren Jershky

SMS

R. James Macaleer
Chairman

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October 30, 1998

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Mr. James Sief
Secretary
Department of Environmental Resources
P. O. Box 2063
Harrisburg, PA 17105-2063

Dear Secretary Sief:

I am astonished, very disappointed, and, yes, outraged at the planned changes in clean water regulations that would permit a higher level of discharge of toxic materials into Pennsylvania streams. I am not at all convinced that these changes are "just bringing our regulations up to date". A lot of Pennsylvanians have worked very hard to improve the quality of the water in Pennsylvania streams. This is clearly a step backward. I strongly urge you to do whatever it takes to stop these changes.

Sincerely,

R. James Macaleer

RJM/pap

MAIL TO: ENVIRONMENTAL ACTION ... (E.A.C.)
LENHARTSVILLE PA 19534

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I have brought with me petitions signed by people who support my feelings on what I am about to say. These people have entrusted me to speak for them, just as we in Pennsylvania have entrusted you, the EQB, with the task of creating tough standards and regulations for not only preserving but also improving our water, land, and air. I am here today because I do not think you have served Pennsylvania or its people well. These proposed amendments delete and re-define what are toxic, waste, and pollution all under the guise of "streamlining", "beneficial use" and let us not forget that word, "recycle". The deleting of Chapter 97(on page 4445)--Industrial Wastes--has me quite concerned because provisions seem obscure. Who will benefit--industry to discharge? Why hasn't the Department received "delegation from the EPA to administer an industrial waste pretreatment program"? Why doesn't the Department plan to seek delegation to administer this program? The EPA sets minimum standards on everything. I hope Pennsylvania would always be on the maximum standard. This brings me to the distressing statements (on page 4431) giving the background and purpose of this amendment. It reads: "A new chapter on water quality standards implementation is needed to consolidate Total Daily Loads into the regulatory calculus." The word "consolidate" in this case means take out important regulations. "The Regulatory Basics Initiative is a multi step process to evaluate regulations considering several factors including whether requirements are more stringent than Federal Regulations without good reason; impose economic costs disproportionate to the environmental benefit, etc." When it comes to these industrial waste requirements, it is always better to err on the side of "stringent". How often do we hear not to "impose economic costs to the industry disproportionate to the environmental benefit"? In other words, don't step on the toes of industry. Industry is providing jobs. Industry is providing mountains of toxic waste that the EQB, DEP and EPA are trying to "streamline" into every corner of our life under the guise of "beneficial use". Industry is providing great sums of money to all our politicians. That is what is DISPROPORTIONATE! The environment needs every stringent regulation that EQB can give industry. Even the CEO's and their families breath the Pennsylvania air that has become more and more polluted, they drink the Pennsylvania water that the EQB wants to pour more toxic chemicals into and they eat the Pennsylvania food grown on municipal/industrial sewage waste sludge "Without local, state, federal and international cooperative efforts, disease predominance will continue its rapid rise throughout the world diminishing the quality of life for all humans." The EQB is intending to lessen its standards to "streamline"? Are we streamlining to allow more trash to be brought into Pennsylvania? In 1997 Pennsylvania received 8.7 million tons of waste from Puerto Rico, Canada, the District of Columbia and 25 other states. Privatizing PA landfills means landfills have to make a profit so let's streamline that trash so our landfills fill up quicker and we can expand. The landfills PA can't expand become golf courses and soccer fields covered with the EQB's proposed regulations of "clean fill" which is little dirt and a lot of toxic waste. These golf courses are fertilized with sewage sludge and watered with heaven only knows what kind of discharges.

The proposed amendments to increase discharges of known toxic chemicals into the waterways and to eliminate regulation of 20 toxic chemicals are also very disturbing. DEP is proposing a major roll back regarding criteria for toxins, which includes deleting aquatic life criteria for about 70 chemicals with the reasoning that there isn't enough data. What has happened to the idea of erring on the side of caution? These are people's lives and health we are talking about. Of the 80,000 chemicals, the US EPA has

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criteria for only 99. Pennsylvania has standards for only 140 chemicals thus there are no standards or discharge limits for over 99% of all chemicals in use today. According to the Federal Government's General Accounting Office, 77% of toxic pollutants being discharged into water are not listed on permits, so their release is uncontrolled and unknown. The permitting process does not address the accumulation of persistent toxic chemicals in sediments or aquatic life. DEP doesn't evaluate the effects of multiple discharges to the same stream. How can you ignore the regulation of non-point source pollution in impaired waters? We feel our tax dollars are being used to devaluate our land. PA Farmland Preservation Program is actually "preserving" these farming dumps along with the added support of $600,000 from you, our commissioners. All this sludge money, preservation money & county money is our tax dollars, and we do not approve! The bottom line is that Berks County is not pleased with the way the EQB or the DEP are handling the fragile environment of Pennsylvania. The proposed EQB regulation must not be streamlined for beneficial use. The amendments should be thrown out, started over again with input from us. They should be written in simple terms without cross-referencing and hiding; then put on display (libraries, schools, colleges & other such public places) for the public to read and comment on. An 800 number would also be helpful. The EQB should at least hold 6 statewide public hearings and allow 60 more days to further comment. The EQB is a very important part of our environmental protection process. The EQB is the people's only forum for speaking--please give us a chance. With open arms, Pennsylvania is welcoming trash and cleaning up toxic waste for "beneficial use" and now the EQB is loosing up on all regulations under the guise of "streamlining" red tape. Is this the business PA is looking for? Pennsylvania's quality of life is being "streamlined "and" recycled" into oblivion!

Thank you.

ENVIRONMENTAL ACTION COMMITTEE [EA.C]
BX 200
LENHARTSVILLE PA 19534
610 756685

ENVIRONMENTAL QUALITY BOARD HEARINGS 1998

We, the people listed below, have asked MATT POLIS [EA.C.] to speak for us on this very important matter regarding the proposed rulemaking by the Environmental Quality Board (EQB). We believe strongly that these proposals will greatly weaken the already too weak regulations for Water Quality, Residual Waste and Municipal Waste. Further more, we believe that the present environmental regulations should be made much tighter ,not "streamlined" to encourage trash as Pennsylvania's number one business under the guise of recycling. The EQB,DEP and PA government have a duty to preserve a safe and healthy quality of life for every person in PA.

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