

Original: 1975

88 Evans Street
Pittsboro, PA 18704
September 12, 2000

To whom it may concern,

We believe that the IRRE 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.

Gary W. Sabol
Mary M. Sabol



Original: 1975

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

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Washington County BA

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2000 MAR 16 AM 8:48

REGULATORY REVIEW COMMISSION

March 14, 2000

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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.

Building Today For A Better Tomorrow



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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INDEPENDENT LABORATORY
REVIEW COMMISSION

Mr. Brezina,

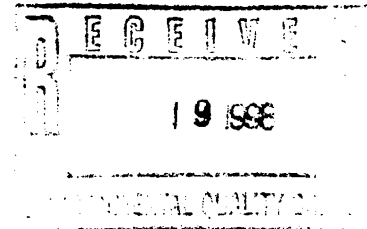
I have recently found out that the DEP is proposing to roll back the water standards allowing industries to come in our state and pollute more, plus eliminate the public's right to be involved in the permit process. The obvious question is why weaken standards instead of strengthening them. Water should 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 Yonko

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INDEPENDENT ENVIRONMENTAL
REVIEW COMMISSION



10-15-98

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

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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

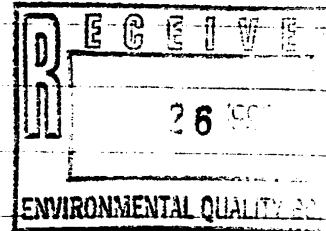
October 15, 1998

Cynthia S Kane
8102 Eastern Avenue
Wyndmoor, PA 19038

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REGULATORY
REVIEW COMMISSION



Environmental Quality Board
PO Box 8477
Harrisburg, PA 17105

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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

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 public's 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,

Laura Scott

RECEIVED PA DEP
DIV OF WQ ASSESS & STDS

98 OCT 28 PM 1:39

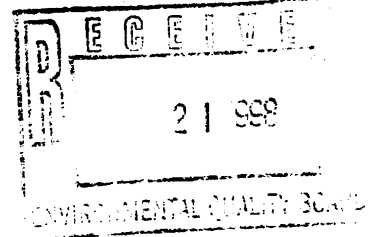
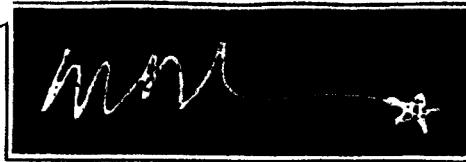
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Please respond:
Laura Scott
202 Mill St. #1
Edinboro, Pa
16412

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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,

A handwritten signature in black ink, appearing to be 'Mary R. Madeira'.

P.S. I would appreciate a response. Thanks

no return address

Edward Brezina
PA DEP
PO Box 8555
Harrisburg, Pa 17105

Oct. 15, 1998

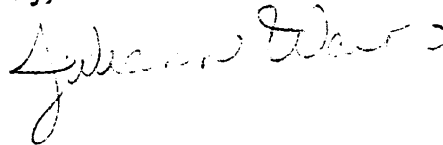
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Mr. Brezina,

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 public's 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,



RECEIVED PA DEP
DIV OF WQ ASSESS & STDS
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NO return address

Edward Brezina
PA DEP
PO Box 8555
Harrisburg, Pa 17105

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Sincerely,

Kevin H. Goodridge

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REVIEW COMMISSION



David W. Mills

Oct. 16, 1975

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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 discharges 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

9300721 AM 11:30

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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

Oct 15 1998

Edward Breigina

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

96
12

Thank you
Mrs. Roxana Pellegrino

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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 on 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

15 October 1998

Page Two

- 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 baseline protection for any stream that for one reason or another doesn't get on the list. It just makes sense that a baseline 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

15 October 1999

Page Three

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 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. 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 Faxon 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

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OCT 27 1998
INDEPENDENT REGULATORY
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no return address

Edward Brezina
PA DEP
PO Box 8555
Harrisburg, Pa 17105

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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 public's 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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18

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

From: **Moises Levy, PE**
7410 Richards Rd., Melrose Park, Pa 18027-3430

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.

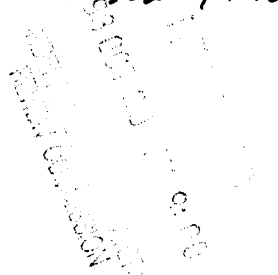
Should you have any questions please contact us.

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, artsalbr@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: markins@sprintmail.com, woolenmill@earthlink.net
 To: hayesrg@netrax.net, steveb@greenlinepaper.com
 To: RCYCLNGSRV, Dsternersr, 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

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



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ENVIRONMENTAL QUALITY BOARD HEARINGS

We, the people listed below, have asked Peter H. Pasquocche 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 Pasquocche	RD #1 box 149 Airville Pa 17302
Sarah Pasquocche	RD #1 box 149 Airville Pa 17302
Kasey K. Kauffman	252 E. McKinley RD. Delta pa 17314
Jessica Knisely	142 Johnson RD Delta pa 17314
Tom Silver	3834 RD Delta pa
Evan Rupp	RD. 1 Box 464 Brogue PA 17309
Heather Quinlan	4161 Delta RD Airville, PA.
Kayla Kauffman	252 E mckinley RD Delta pa 17314
Tricia Haulorff	849 Dellinger school rd Brogue, PA 17309

Jeremy Sechrist 223 Buckers Delta PA 17314
Ashley Skiles 14 Wilsporting Pipes Felson PA 17314
Brian Meredith 266 Buckers RD Delta PA 17314
Brittney Adams 741 Bridgeton Rd Fawngrave P.A. 17322
Nick Wilson 3343 Delta Pa 17314
Shane McCormick 478 Slab Rd. Delta PA, 17314
Matt Keller 105 Kennedy Airville, PA 17302
Matt Keller 4507 D. J. Airville
Jerrica Billet 604 Goram Rd Brogue, PA 17309
Maryellen Leonard 5022 Delta RD, Delta, PA 17314
Wilson Burns collinsville Rd, Brogue PA 17309
Casey Cordrey 250 Goram RD Brogue Pa 17309
Ben Converse 16 Creek RD Delta PA 17314
Justin Whiteel High Brook Rd Brogue PA 17309
Jan Kirt Hively Road Brogue PA 17309
John Wilson 1996 Atom R.D. Delta PA 17314

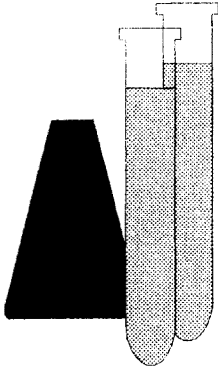
Subj: **EQB Petition**
 Date: 10/16/98 9:31:04 AM Pacific Daylight Time
 From: SandyHCSmi
 To: dbaxter@cyberia.com, mck440@redrose.net
 To: bertmeister@juno.com, adamson@desupernet.net
 To: JGB1051, arisaibr@juno.com, FDaly1880
 To: fasching@fast.net, ajgoeke@igc.apc.org
 To: doloreskrick@juno.com, Squoch
 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, Dstemersr, 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, ahwt@lehigh.edu
 To: PEN@ENVIROLINK.ORG

ENVIRONMENTAL QUALITY BOARD HEARINGS

1998

We, the people listed below, have asked Peter H. Pasquodre II 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
<u>Pamela Boston</u>	<u>RD1 Box 148 Aptc Airville Pa 17302</u>
<u>[Signature]</u>	<u>Rd box 151 Airville Pa 17302</u>
<u>[Signature]</u>	<u>RD 1 BOX 152, Airville, PA 17302</u>
<u>[Signature]</u>	<u>RD 1 BOX 152 AIRVILLE PA 17302</u>
<u>Theresa Pasquodre</u>	<u>Rd 1 Box 149 Airville Pa 17302</u>
<u>Walter L Lanham</u>	<u>Rd1 Box 149 Airville PA 17302</u>



THIS IS A UPDATE ON SLUDGE !!!

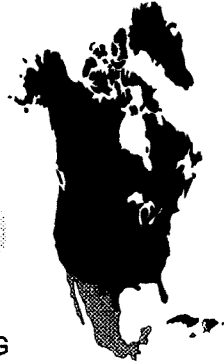
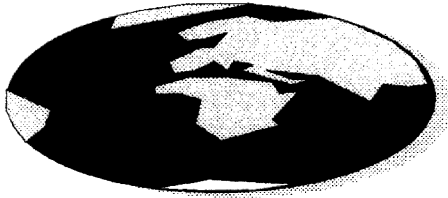
Last week I received a letter from the Department of Environmental Protection . The letter is about a complaint that I sent in . In the letter it states that they do not have enough information to proceed with my complaint . They want to know who owns the property and he wants to know how to get to the property from Harrisburg . The mans name is Jeff Minsky 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 destroy everything that we lay our hand on. From the beginning of man we have done nothing but take & not put back anything . In the beginning 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 destroyed 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 a little 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 , because 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 that's just the beginning know we move on to the Oil supply's & natural gas . But once again that's controlled by the rich . And now we use oil & gas to run everything that we use in life to make our lives easier , but the problem is that it's causing 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 money to be made . So they spend a little bit of money & buy the right people off and it's put off until it's too late . Then after the money has been made they move on to something else . That something else is **Sludge** . But the problem that this contains is this is going to kill more things on this earth than anyone realizes . This stuff contains a cocktail of every known chemical that is hazardous to everything living . What this stuff contains is as follows :

LEAD , CADMIUM , HEAVY METALS , PCB's , DIOXIN , TOXIC CHEMICALS , ASBESTOS , PESTICIDES , & also Hospitals waste such as fungal spores , hepatitis A , & let's not forget radioactive waste , & salmonella

. And that's just for starters . What ever goes into the sewage , goes on the fields . Because that's what is being put on the fields around my house & probably also around your house . People let's 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 toilet & the sewage & it's not safe for it to be put on the fields 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 Pasquoché III On this day 4th of August 1998

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No copies per FEW

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98 NOV -6 AM 9:11

INDEPENDENT REGULATORY
REVIEW COMMISSION

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

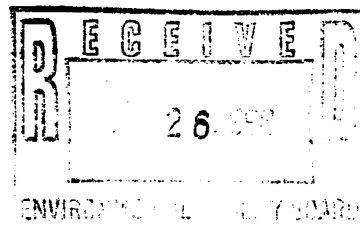
Environmental Quality Board;

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 eliminated 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
Wayne S. Chojnicki



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RECEIVED
NOV 10 PM 3: 56251 Parkedge Rd.
Pittsburgh, Pa.
15220
OCT. 16, 1988
REGULATORY
REVIEW COMMISSION

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 eliminated or weakened.

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Thank You,

Veronica Bradley
Veronica Bradley

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October 21, 1998

RECEIVED
90 NOV 10 PM 3:55

INDEPENDENT TECHNOLOGY
REVIEW COMMISSION

John Widman III
1602 Buttonwood Rd
Flourtown, Pa. 19031

Environmental Quality Board
PO Box 8477
Harrisburg, Pa. 17105

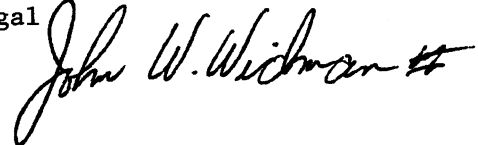
I am writing to voice my opposition to the newly proposed water quality standards and toxics strategy.
The DEP's proposed toxics strategy is too weak and will allow even more toxic discharges into our waters.
I want these new standards stopped! I urge you to strengthen the standards that protect our water, not weaken them.

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MIZNER

Sincerely,

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John Widman III



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3:55 PM

October 21, 1998

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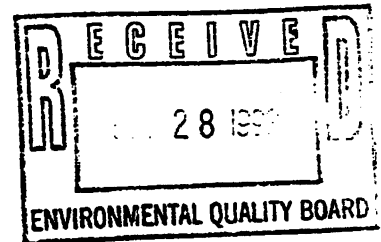
Yvonne Widman RN, MHS
1602 Buttonwood Rd
Flourtown, Pa. 19031

Environmental Quality Board
PO Box 8477
Harrisburg, Pa. 17105

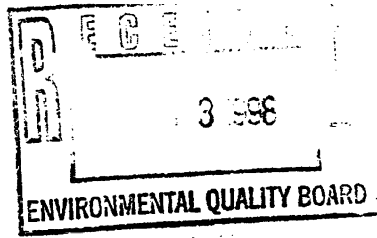
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weaken them.

Sincerely,

Yvonne Widman RN MHS
Yvonne Widman RN, MHS



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98 NOV 10 PM 3:55
INDEPENDENT REGULATORY
REVIEW COMMISSION



900 Melrose Avenue
Melrose Park, PA 19027
October 8, 1998

Environmental Quality Board
PO Box 8477
Harrisburg, PA, 17105

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Jewett
Sandusky
Legal

Dear Sirs:

We urge you to strengthen, not weaken the standards that protect our water. Please do not roll back the standards and make it easier to discharge toxins into our water or allow quick general permits for toxic releases.

The strategy proposed by the DEP is too weak and we urge you to stop these new standards.

Sincerely,

Joseph Falso
Joseph Falso
Katherine Falso
Katherine Falso

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98 OCT 21 AM 11:48
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REVIEW COMMISSION

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98 NOV -3 AM 9:06

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10-21-98

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

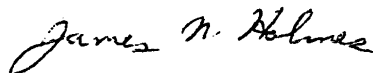
Dear Sirs,

I am writing this letter as a response to your proposed changes in the standards you place on Pennsylvania's waterways. It concerns me greatly that you would give a "free pollution ticket" to people just because you don't know the exact levels in which known toxins become dangerous. **Please don't wait for the bureaucracy of the Federal Government to establish guidelines that you can use to protect Pennsylvania residents.**

I understand that the toxins you will no longer regulate include cobalt and formaldehyde, along with some 18 other chemicals plus an additional 50 that you propose to reduce your restrictions on. **Don't let this state become another New Jersey where my wife and I lived with an uncertainty as to the quality of our environment. Our 3 month old son does not need anymore challenges than what already exist!**

Please reconsider and at the very minimum, delay the proposed changes to the water regulations. Something of the severity which you propose to do might best be brought before the voting people of Pennsylvania. If you, the *Environmental Protection Agency*, do not maintain and place limits on these pollutants, *Who will?*

Sincerely,



James N. Holmes

James N. Holmes
55 E. Crestlyn Dr.
York, PA 17402

Environmental Quality Board
PO Box 8477
Harrisburg, PA 17105

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98 OCT 21 AM 11:50

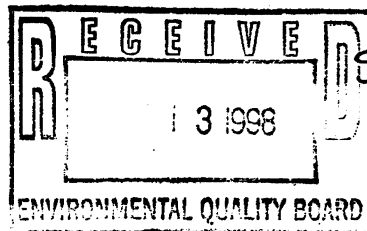
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REVIEW COMMISSION

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To whom it may concern:

I vehemently oppose the new proposed water quality standards and toxics strategy which weaken standards. Clean, pure water is, perhaps, the most vital of aspects in a decent quality of life.

To weaken standards is unconscionable! If this proposal is enacted, remove "quality" from your Board's title. Change it to Environmental "Watering" Down Board.



Sincerely,

Diane B. Foster
141 Hewitt Rd
Wyncote, PA 19095

10/9/98

10-21-70

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

EQB,
PO Box 8477
Harrisburg PA 17105

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NOV 10 1970
PA 17105
REVIEW COMMISSION

Dear Sirs,

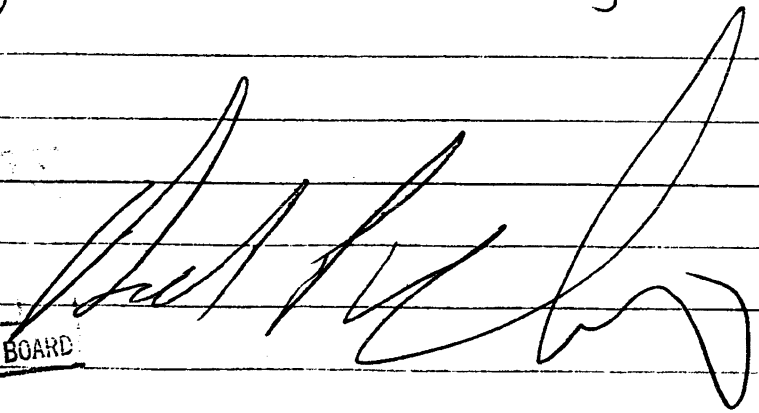
I urge you to Strengthen Standards
To protect our waters!

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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NOV 10 1970
PA 17105
ENVIRONMENTAL QUALITY BOARD



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10/21/98
Environmental Quality Board

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



Craig Withde
Mellon Bank



**CET Engineering
Services**

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

RECEIVED
98 OCT 26 AM 9:12
INDEPENDENT REGULATORY
REVIEW COMMISSION

October 21, 1998

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

ORIGINAL: 1975
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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

CET Engineering Services

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).

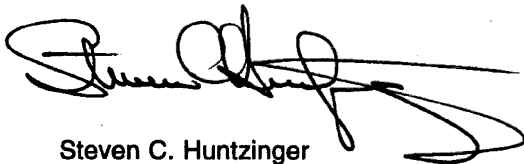
CHAPTER 96. WATER QUALITY STANDARDS IMPLEMENTATION

- §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

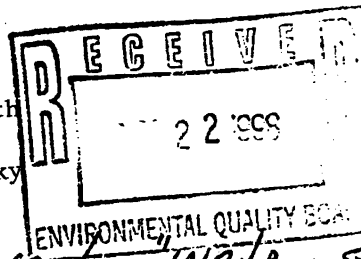
Very truly yours,

CET ENGINEERING SERVICES



Steven C. Huntzinger
Principal

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Sandusky
Legal



10/21/98

Re: York Daily Record "Water Standards"

To: Environmental Quality Board

Attn: Ed Brezing, Chief EDP

Dear Sir:

I have a "severe" allergic reactions to chemicals. I see Dr. Cappher in York, 9150, 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, 10 1/2 & 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

effortlessly! "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 "excused"
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 & profusely 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 Peruda
339 Kirkham Dr. York, PA. 17402 717-3585

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INDEPENDENT REGULATORY
REVIEW COMMISSION

10-21-98

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To Whom it may Concern,

Since I am a CWA member

I oppose the proposed Water
Quality Standards and Toxics
Management Strategy. We cannot
afford to weaken our standards
for discharging toxic chemicals.

Thank You
Carol Wlaza

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98 NOV -6 AM 9:15

INDEPENDENT LABORATORY
REVIEW COMMISSION

To
10/21/98
Department of the Environment
Quality Board.

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Legal

I oppose the two proposed
Water Quality Standards
and Toxic Strategy.

You must strengthen the
standards that protect our
water, not weaken them.
The Dept's proposed toxic
strategy is too weak and
will allow even more toxic
discharges into our water.

I want these new standards
stopped. I would like a
response.

Sincerely

Mr. Travis Detmer
305 ^{Lyster} Lyster Road
Oreland Pa. 19045

ORIGINAL: 1975
No copies per FEW

October 21, 1998

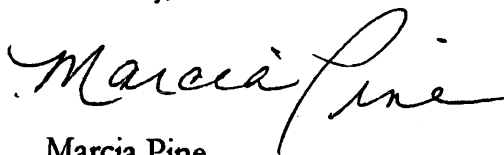
Environmental Quality Board
PO BOX 8477
Harrisburg, PA 17105

RECEIVED
98 NOV -6 AM 9:11
REGULATORY
REVIEW COMMISSION

Dear Environmental Quality Board,

I strongly oppose the new proposed water quality standards and toxic strategy. I strongly urge you to strengthen the standards that protect our water—Definitely not weaken them in any way shape or form, The DEP's proposed toxic strategy is far too weak and will allow even more TOXIC DISCHARGES into our waters—which can lead to a number of HEALTH PROBLEMS Including LAW SUITS--- that will cost them more money than their will receive for the dumping!!!! We want these new standards stopped and strongly recommend stronger ones put in place!!!!

Sincerely,



Marcia Pine

ORIGINAL: 1975
No copies per FEW

October 21, 1998

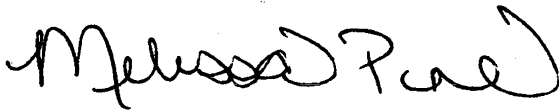
Environmental Quality Board
PO BOX 8477
Harrisburg, PA 17105

RECEIVED
98 NOV -6 AM 9:11
INDEPENDENT REGULATORY
REVIEW COMMISSION

Dear Environmental Quality Board,

I strongly oppose the new proposed water quality standards and toxic strategy. I strongly urge you to strengthen the standards that protect our water—Definitely not weaken them in any way shape or form, The DEP's proposed toxic strategy is far too weak and will allow even more TOXIC DISCHARGES into our waters—which can lead to a number of HEALTH PROBLEMS Including LAW SUITS--- that will cost them more money than their will receive for the dumping!!!! We want these new standards stopped and strongly recommend stronger ones put in place!!!!

Sincerely,



Melissa Pine

Environmental Quality Board
PO Box 8477
Harrisburg, PA. 17105

10/21/98

ORIGINAL: 1975
MIZNER
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Jewett

To whom it may concern,

Our family opposes the new proposed water quality standards and toxics strategy. We urge you to strengthen the standards that protect our water, not weaken them. We want the new standards stopped.

Sincerely,

Luke Wilson
1109 Summit La.
Orland Pa 19075

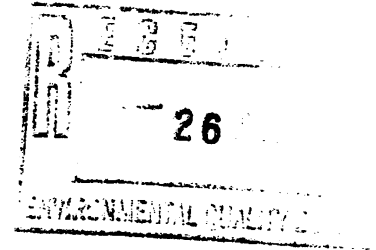
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98 NOV -6 AM 9:15
REVIEW COMMISSION

625 Stetson Road
Elkins Park, PA 19027

October 22, 1998

Environmental Quality Board
PO Box 8477
Harrisburg, PA 17105

ORIGINAL: 1975
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Jewett
Sandusky
Legal



Dear Sirs:

I am greatly opposed to the new proposed water quality standards and toxic strategy. Please strengthen standards that protect our water! Do not weaken them. We want to reduce the toxic discharges in our water to protect future generations.

STOP THE NEW, WEAKER STANDARDS!

Sincerely,


Bunny van Adelsberg

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98 NOV -6 AM 9:15
PALENTINE & REGULATORY
REVIEW COMMISSION

no return address 10-21-98

I oppose the new proposed
water quality standards and
toxics strategy.

June Schwager

ORIGINAL: 1975

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98 NOV 10 PM 3:54

INDEPENDENT GOVERNMENT
REVIEW COMMISSION

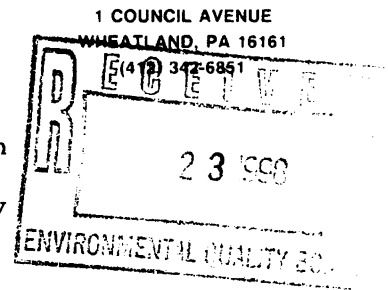
WHEATLAND *Tube Company*



October 21, 1998

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

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Subject: Proposed Amendments to 25 PA CODE Chs. 92, 93 and 95-97

Gentlemen:

The following are our comments on the subject amendments:

Chapter 92. NPDES Permitting, Monitoring and Compliance:

92.1. Definitions

Under *Applicable effluent standards and limitations*, it is proposed to add "best management practices" as one basis for permit limits. There is nothing in the definition of Best Management Practices (BMP) that requires promulgation or public review and comment, as required for water quality-based or technology-based effluent limitations. Permit limits based on some BMP have the potential to be subjective and arbitrary, depending upon the whims of the permit writer(s), and could exceed Federal requirements. This term should be deleted unless BMPs are adopted as regulation and published

92.41. Monitoring

Paragraph (b) is proposed to read: "...If the monitoring results indicate the existence of pollutants which are not limited in the permit, the permittee shall separately identify the pollutants..." In the application for an NPDES permit, expected concentrations of numerous chemical parameters, which may or may not be "pollutants", are provided to the Department, which then selects the appropriate parameters for limitation. If the Department determines that a pollutant present in the discharge is at a low enough concentration that it will not adversely affect the receiving stream and is not covered by a treatment standard, it typically is not specifically limited in the NPDES permit. The language in this paragraph should be revised to require reporting only if the concentration of a pollutant exceeds that contained in the NPDES application.

Paragraph (e)(2) requires retention of "original strip chart recordings". The current trend is toward "paperless" recorders that store data on magnetic media. This form of record retention should be allowed.

92.52a. Site Specific Permit Conditions

This paragraph allows the Department to establish permit conditions requiring implementation of BMPs. Unless BMPs are developed through the regulation process, this language should be deleted.

92.57. Effluent Limitations

This paragraph allows the Department to establish effluent limitations based upon BMP. Our previous comments on this apply.

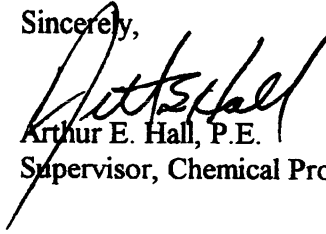
Chapter 93. Water Quality Standards:

93.7. Specific Water Quality Criteria, Table 3

It is proposed to split iron criteria into two categories to differentiate between aquatic life protection and potable water supply. It is clear that the 0.3 mg/l for dissolved iron is necessary to prevent staining of plumbing fixtures. It is not clear what purpose the 1.5 mg/l for total recoverable iron serves. If the concern is for toxic effects to aquatic life, it should be expressed in its bioavailable (dissolved) form and included in Chapter 16 with other metals. This criteria serves no useful purpose in its present form and should be deleted. Having this criteria for total recoverable iron results in unnecessary treatment of industrial wastewater to remove inert forms of iron oxides, producing negligible benefit to the environment.

We hope the Board will respond favorably to our comments. If any clarification is needed, please let me know.

Sincerely,



Arthur E. Hall, P.E.

Supervisor, Chemical Processing

Dear Environmental Quality Board,

My family and I oppose the new proposed water quality standards and toxic strategy. We want 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. We want new standards!

Sincerely,

The Brown-Lieberson Family

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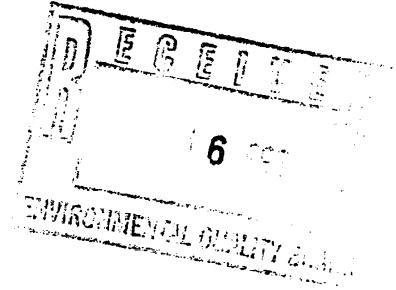
98 OCT 21 AM 11:31

REGULATORY
REVIEW COMMISSION

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TO EQB,

I oppose changes to Regulation Chapter 22.93.95.446
because they will permit general discharge into high quality
BOD sheds, allow general discharge of toxic chemicals, ignore
the requirement of low-polluting source pollution in impaired
water and eliminate regulation of 89 toxic chemicals

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98 OCT 21 AM 11:51
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Sincerely,

Stephen Mizner

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13 1998
ENVIRONMENTAL QUALITY BOARD

911 Hampton Court
Cockeysville, PA 19347



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

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98 OCT 21 AM 11:51

INDEPENDENT REGULATORY
REVIEW COMMISSION

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Legal

Dear Sir

I oppose the new
proposed water quality
standards + toxic strategy.

Please strengthen the
standards, not weaken
them, Please stop the
proposed legislation +
protect our water.

Sincerely

Rich Shaffer
9 Deaver Pl
Wynote PA 19095

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98 NOV 10 PM 3:59

10-27-98
PA DEPARTMENT OF ENVIRONMENTAL PROTECTION
LEGISLATIVE REVIEW COMMISSION

Tell the EQB and DEP
that many people along
with myself would like
if these new standards
would be brought to a
stop! Before it is too late
and our water is thoroughly
contaminated.

Thank You,
From a resident
of Nazareth
Nazareth, PA

RECEIVED PA DEP
DIV OF W & ASSESS & STDS
98 OCT 26 PM 2:19

10-21-98

Dept. of Environmental Protection:

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Legal

I oppose the new proposed water quality standards & toxics strategy. The standards that protect our water need to be strengthened not weakened. The DEP's proposed toxics strategy is too weak & will allow even more toxic discharges into our water. The new standards should be stopped.

Sincerely,
Robin M Cottone

211 Spruce Rd
Houton, PA 19031

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98 NOV 10 PM 1:01
INDEPENDENT REGULATORY
REVIEW COMMISSION

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NOV 10 1998
ENVIRONMENTAL QUALITY BOARD

Randy Gardner
520 54th St
Pgh Pa 15201

RECEIVED PA DEP
DIV OF WQ ASSESS & STDS

98 OCT 13 PM 3: 32

Edward Brezina
PA DEP
Box 8555
Harrisburg Pa. 17105

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98 OCT 21 AM 11:47
INFORMATION
REVIEW COMMISSION

Dear Sir,

I have just been informed of the
PA DEP's new water quality Destruction Program.

Its ridiculous to think that the DEP
is meant to protect and conserve our
natural resources. We are already second
in the nation in tonnage of toxic waste
discharges are you trying to be #1!!!
You a fool if you think the people of
Pennsylvania will sit still for this. Don't ruin
our wonderful state. Do the right
things!! For ONCE.

Randy Gardner

P.S. Please respond before
the 28th of OCT 98.

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Environmental Quality Board
PO Box 8477
Harrisburg, Pa. 17105

October 21, 1998

To All Concerned

It's been brought to our attention that the standards of our water quality are in jeopardy. We feel the DEP'S proposed toxics strategy is too weak and will allow even more toxic discharges into our waters. With all the successes that have recently been accomplished through years of hard work in the Delaware River, local creeks and streams, the Susquehanna River and the Chesapeake Watershed area it seems disgrace to even consider lessening the toxic waste standards. We want these new proposed standards stopped! Despite the claims by big business and farmers and others that contaminate our ground waters and rivers, business has thrived and new ways to process and collect hazardous runoff have been developed. This has created yet more new business opportunities.

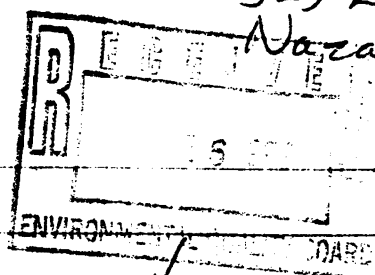
Sincerely,

Mr. and Mrs. Thomas Clinefelter
306 Lyster Rd.
Oreland, Pa. 19075

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9 10 13 PM 3:55
REVIEW COMMISSION

ENVIRONMENTAL

114ron Parker
23 E. Walnut St
Nazareth PA 18064



98 NOV -6 AM 9:11

Dear Sirs,

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REVIEW COMMISSION

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It has come to my attention that the DEP is about to weaken our water quality standards. If anything they should make the standards higher for our most important resource.

I grew up on the West Branch of the Susquehanna river. I saw first hand; fish kills due to toxic chemicals, raw human sewage, & therefore no swimming & no fishing for entire seasons.

The river would come back & clean itself in time but then it would happen again.

After years of regulations & the interest of many environmental water quality is better than ever.

Please continue strong regulations never weaken them. We need clean water. Thank You
Byron Park

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Lynsey Kral
7615 Steubenville Pike
Oakdale, PA 15065

Oct. 22, 1998

Environmental Quality Board:

I'm writing in regards to the DEP's new proposal on PA's water Quality Standards. It will weaken the protection on our waterways + be harmful to the public. I urge you to strengthen the standards to protect our drinking water + public health. Please don't let this proposal go through.

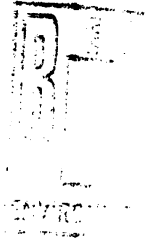
Thank you,

Lynsey Kral

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INDUSTRIAL REGULATORY
REVIEW COMMISSION



OCT. 22, 1998

ORIGINAL: 1975

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TO ENVIRONMENTAL QUALITY BOARD!
TO WHOM IT MAY CONCERN!

I OPPOSE THE NEW PROPOSED WATER
QUALITY STANDARDS AND TOXICS STRATEGY!
I URGE YOU TO STRENGTHEN THE STANDARDS THAT
PROTECT OUR WATER IN PENNSYLVANIA, NOT WEAKEN
THEM. THE DEP'S PROPOSED TOXICS STRATEGY
IS TOO WEAK AND WILL ALLOW EVEN MORE TOXIC
DISCHARGES INTO OUR WATERS.

PLEASE STOP!

Kenneth R. Wismer

KENNETH R. WISMER
209 S. WHITFIELD ST
NAZARETH PA. 18064

return address

10/29/98

Environmental Quality Board -

I heartily
oppose the new proposed water
quality standards and
Toyle's strategy.

Karen Coleman

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John P. Kristofich, MD
859 Clearview Lane
Bethlehem, PA 18017
October 22, 1998

Mr. Edward Berzina
PADEP
PO Box 8555
Harrisburg, PA 17105

RECEIVED
NOV 10 PM 3:59
HEALTH COMMISSION

Dear Sir:

I am a Clear Water Action member and was recently informed about the proposed changes to the water quality standards and I feel we need to strengthen our resolve to protect the waters from polluters and industry, and not loosen the standards or their enforcement. I look forward to a reply on this matter and would appreciate any information you can afford to me. Thank you for your attention.

Respectfully,



John P. Kristofich, MD



IRON FURNACE CHAPTER • TROUT UNLIMITED

P.O. Box 324, Clarion, PA 16214

October 22, 1998

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Mr. James M. Seif
Chair, Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

Dear Mr. Seif:

I have been directed by the Iron Furnace Chapter of Trout Unlimited to provide you with its reaction to proposed changes in water quality regulations as described in the August 29, 1998, Pennsylvania Bulletin, particularly changes in Chapters 92 and 93.

In general, we are disappointed. Pennsylvania Trout was one of the few conservation groups to participate in the "21st Century Environment Commission"; and our volunteer participants worked hard to assure that the commission's report provided strong protection to the state's cold water resources. DEP appears to have drafted its changes without regard to the commission's report.

Among significant changes or omissions, we note the following:

Chapter 92, NPDES Permitting and Monitoring.

92.2d(3): we are pleased that the limit for total residual chlorine (0.5 mg/l) is being retained.

92.5(6): "narrative criterion" standard condition language should be stronger. It should state simply that dischargers should not be permitted to violated water quality standards.

92.61: an additional public comment period should be provided when an applicant intends to submit an NPDES application.

92.81: This section is bad and should be dropped. It allows "General" permits with little or no oversight in High Quality streams, waters that are already impaired. It would allow the discharge of toxic materials and relax documentation requirements.

Chapter 93, Water Quality Standards.

93.4: DEP currently protects all our waters as potential "potable water" sources. Because the current provision gives our waters additional protection, it should be retained.

93.5(e): while DEP moved most of the language to Chapter 96,

it neglected to move a key sentence. That sentence limits mixing zones, areas where protection of aquatic life is reduced. Mixing zones should be allowed rarely if ever, and then only under the most limited circumstances.

93.6: DEP should include language giving protection to in-stream flows and in-stream habitat. The U.S. Supreme Court has ruled that states are permitted to protect in-stream flows, and many states have codified such protection.

Yours truly,



James H. Knickerbocker, Ph.D.
Secretary, Iron Furnace Chapter
Trout Unlimited

Date: [REDACTED] Oct 22, 1998

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

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FORM LETTER 2

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INDEPENDENT REGULATORY
REVIEW COMMISSION

REGISTRATION
23 1998
ENVIRONMENTAL QUALITY BOARD

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.

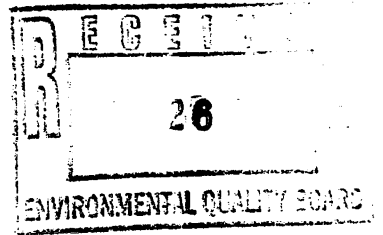
93.6 It is very disappointing to see no language protecting instream flows and instream habitat. Other states have such protection, and the U.S. Supreme Court has ruled that states are permitted to protect instream flows. Governor Ridge's 21st Century Environment Commission recommended protecting aquatic 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,

John J. Kennedy
Southwest Regional
Vice President
Penna. Trout.

169 S. Grandview Ave.
Pittsburgh, PA 15205
October 22, 1998



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

To Whom it May Concern:

I am opposed to the strategy proposed by the Water Quality Standards and Toxics Management Program, to weaken standards for discharging toxic chemicals into our water. If anything, I believe we need to strengthen our standards, not weaken them!

Sincerely,

A handwritten signature in cursive script that reads "Heidi Munn".

Heidi Munn

cc: Mr. Edward Brezina

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99 NOV -6 AM 9:11
HEALTH COMMISSION

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98 NOV -6 AM 9:12

INDEPENDENT REGULATORY
REVIEW COMMISSION

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~~EQB:~~

10/22/98

I oppose the new
proposed water quality
standards and toxics
strategy. Please respond.

Anna Johnston
53 East High St.
Nazareth, PA 18064

100 E High St.

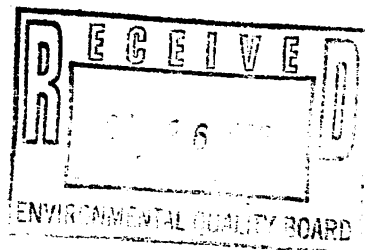
Nazareth, PA 18064

Oct. 22, 1994

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EQB

PO Box 8477

Harrisburg, PA 17105

Dear Sir / Madam;

I oppose the new proposed water quality standards and toxics strategy. I believe the standards should be strengthened not weakened. PA's water can not stand more discharges into it's water. It must stop.

Please let me know how you intend to protect our waters.

Sincerely,

Debbie Swamy-Bur

He who dwells in the shelter of the Most High will rest in the shadow of the Almighty.

Psalms 91:1 NIV

ORIGINAL: 1975
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Environmental Quality Board
To whom it may concern:

Oct 22, 1998

I believe that the DEP's proposed toxics strategy is too weak & will allow even more toxic discharges into our waters. Stop these new standards!

Sincerely

Denise M. Applegate

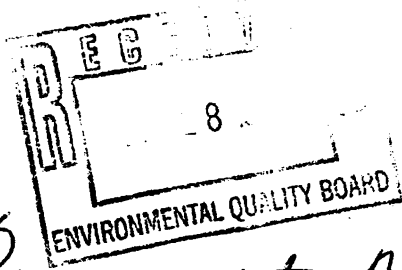
DENISE M APPLEGATE
165 S. Whitfield St
Nazareth, PA 18064

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PA ENVIRONMENTAL PROTECTION COMMISSION
NOV 16 AM 9:11

Please inform me of the new standards status. It would be a mistake to allow these new (lower) standards to take effect.

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26
ENVIRONMENTAL

10/22/98



Dear Sir,

I oppose the New-proposed water quality Standards and Topics Strategy. Please strengthen the standards that protect our water.

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Sincerely
Carrie Leysets

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98 NOV 10 PM 1:00
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REVIEW COMMISSION

October 22, 1998

James M. Seif, Chairman
ENVIRONMENTAL QUALITY BOARD
POB 8477
Harrisburg, PA 17105-8477

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Water Quality Regulations
8/29/98 Pennsylvania Bulletin

Dear Chairman Seif:

I ask to make the following wishes known to you after reviewing matter based on the subject:

1. Chapter 92.2d(3) - Retain the existing tech-based limit (0.5 mg/l) for total residual chlorine.
2. 92.51(6) - Simplify language. Just require compliance with all water quality standards.
3. 92.61 - The Water Resources Advisory Committee advocates an additional public comment period as pertains to NPDES applications. I agree.
4. 92.81 - General Permits have no place in High Quality, Exceptional Value or impaired streams: discharge of toxins should not be allowed through a GP; "regular" and "normal" permitting should be required. There is nothing sacrosanct about PAdot, Amtrak, etc, etc.
5. 93.6 - Instream flows and habitat should be protected. Other states do it and we should also. After all the words, letters and sleepless nights, this is where the rubber hits the road.
6. 96 - A new sentence prohibiting mixing zones as now contained in 93.5(e) needs to be added.

A Pennsylvania without protection for our resources, ie. high quality water, is not a pleasant thought. This is not the time to relax.

Yours truly,



Carl E. Dusinger

Bob Thompson
Carole Rubley
Bob Flick

**Summary of Testimony
Water Quality Amendments
October 22, 1998**

The petition I handed to you at the hearing with 25 signatures were signed by people who support my feelings on what I said. These people 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 spoke at the hearing 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".

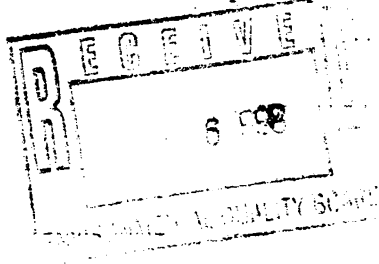
With open arms, Pennsylvania is welcoming trash and cleaning up toxic waste for "beneficial use" and now the EQB is loosing up on all regulations under the guise of "streamlining" red tape. Is this the business PA is looking for? Pennsylvania's quality of life is being "streamlined" and "recycled" into oblivion!

**Matthew Polis
Environmental Action Committee
Box 200
Lenhartsville, PA 19534
(610) 756-6855**

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HEALTH COMMISSION
NOV 10 PM 3:57

ORIGINAL: 1975
No copies per FEW



Mary Ellen Estock
325 Brookdale Ave,
Pleasantville, Pa 19038

October 22, 1998

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

Gentlemen,

Please listen to us when we urge
you to strengthen the standards and
regulations that protect our streams
and rivers from toxic pollutants.

We need action now!

Sincerely,

Mary Ellen Estock

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NOV -6 PM 9:12
ENVIRONMENTAL QUALITY BOARD
HARRISBURG, PA



**WEST CHESTER FISH, GAME & WILDLIFE
ASSOCIATION, INC.**

P.O. BOX 511

WEST CHESTER, PENNSYLVANIA 19381-0511

October 22, 1998

Chairman James M. Seif, E.Q.B.
P. O. Box 8477
Harrisburg, PA 17105-8477

Re: Proposed Revision to Water
Quality Standards

Dear Mr. Seif,

On behalf of our 310 members, I am commenting on the proposed changes to water quality regulation as described in the August 29, 1998 Pennsylvania Bulletin.

As the National winner of "Take Pride in America" in 1990 and three "Pride in Pennsylvania" awards in 1990, 1991 and 1992, as well as, 1991 - 1992 State winner of the National Wildlife Federation Award for our conservation efforts, we are most concerned about the proposed modifications to the wastewater discharge regulations.

Most of the significant changes are in Chapter 92 and 93. The D.E.P. changes seemingly were written ignoring the '21st Century Environmental Commission' report:

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

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

92.61 - We strongly support an additional public comment period when anyone intends to submit an N.P.D.E.S. application.

92.81 - We strongly oppose allowing "general" permits in H.Q. streams or impaired waters. General permits should not allow the discharge of toxic materials. Individual permits with documentation should be required.

93.4 - We support the present protection of all our waters as "potable water" sources. Warm-water fishes should be retained as a statewide water use.

93.5(e) - The proposal did not include a sentence that presently limits mixing zones. Pennsylvania regulations need

to prohibit mixing zones.

93.6 - It is an inexcusable omission or a deliberate oversight to see no language protecting instream flow and instream habitat, in spite of the U. S. Supreme Court ruling that states are permitted to protect instream flows and the recommendations of the 21st Century Environment Commission. Water quality standards are the basis for clean water and healthy streams, lakes and rivers and we must have instream flow and aquatic habitat protection in our water quality standards.

All of Pennsylvania is dependent on groundwater for the base flow of our streams, rivers and lakes. It is our most important natural resource, the basis of all life in our state. The waters of the Commonwealth contribute hundred's of millions of dollars to the states economy from recreational use now. How much more economic value could be added if all of Pennsylvania's waters met the goals of the Federal Clean Water Act?

It is our opinion that D.E.P. can better fulfill its water quality mission by concentrating on stormwater management practices that infiltrate water to recharge our groundwater. Also, wastewater recycling via land application of treated effluent will use the resource (fertilizer) in the water to grow crops and effectively recharge our aquifers.

It is our hope that the E.Q.B. will make these changes to improve our water quality and not relax its protection.

Sincerely,



M. John Johnson, President

MJJ:apj

cc: Bob Thompson, State Senator
Chris Ross, State Representative
Chester County Commissioners



VALLEY FORGE CHAPTER OF TROUT UNLIMITED

1433 Gary Terrace, West Chester, PA 19380

610/692-2930

October 22, 1998

James M. Seif, Chairman
ENVIRONMENTAL QUALITY BOARD
POB 8477
Harrisburg, PA 17105-8477

Water Quality Regulations
8/29/98 Pennsylvania Bulletin

INDEPENDENT REGULATION
REVIEW COMMISSION
98 OCT 30 AM 9:00
PROCESSED

Dear Chairman Seif:

I ask to make the following wishes known to you after reviewing matter based on the subject:

1. Chapter 92.2d(3) - Retain the existing tech-based limit (0.5 mg/l) for total residual chlorine.
2. 92.51(6) -Simplify language. Just require compliance with all water quality standards.
3. 92.61 - The Water Resources Advisory Committee advocates an additional public comment period as pertains to NPDES applications. I agree.
4. 92.81- General Permits have no place in High Quality, Exceptional Value or impaired streams: discharge of toxins should not be allowed through a GP; "regular" and "normal" permitting should be required. There is nothing sacrosanct about PAdot, Amtrak, etc, etc.
5. 93.6 - Instream flows and habitat should be protected. Other states do it and we should also. After all the words, letters and sleepless nights, this is where the rubber hits the road.
6. 96 - A new sentence prohibiting mixing zones as now contained in 93.5(e) needs to be added.

A Pennsylvania without protection for our resources, ie. high quality water, is not a pleasant thought. This is not the time to relax.

Yours truly,
Karl Heine

Karl Heine
President

CEDusinberre

Bob Thompson
Carole Rubley
Bob Flick

The Action Organization!

10/22/98

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98 NOV -6 AM 9:12

INDEPENDENT REGULATORY
REVIEW COMMISSION

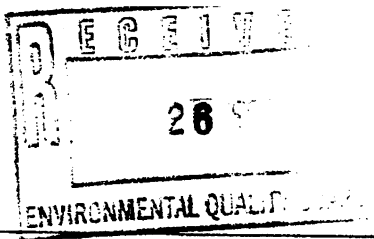
ORIGINAL: 1975
No copies per FEW

We do not need
any more toxins
discharged into our
waters. I oppose the
new proposed water
quality standards and
toxics strategy.

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26
ENVIRONMENTAL QUALITY

Debra A. Brown
James D. Brown

ORIGINAL: 1975
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10/22/98

Environmental Quality Board -

I am writing asking - no imploring you - to help strengthen our laws protecting our beautiful state's environment and water supply.

I have a new grandchild, and want to see her swim in clean lakes - splash in forest creeks, and drink water she won't be contaminated by before she's old enough to enjoy life.

You have a position that makes the difference for thousands of current and future lives - please you must use it wisely on behalf of us all.

Thank you -

Thelma Thompson
Annette, Pa.

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GENERAL COMMISSION
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98 NOV -6 AM 9:12

INDEPENDENT REGULATORY
REVIEW COMMISSION

ORIGINAL: 1975
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Dear Environmental Quality
Board,

I strongly oppose the new
Proposed water quality
Standards and toxic strategy.
Please Strengthen the
Standards that protect our
water, not weaken them.
Dep's proposed toxic
Strategy is too weak
and will allow even more
toxic discharges in our water.

10/22/98

Sincerely
Mrs. All

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INDEPENDENT REGULATORY
REVIEW COMMISSION

ORIGINAL: 1975
No copies per FEW

John M. Yates
Sally K. Yates
811 E. Albright Ave.
Weyershoe Pa. 19038
Oct. 22, 1998

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

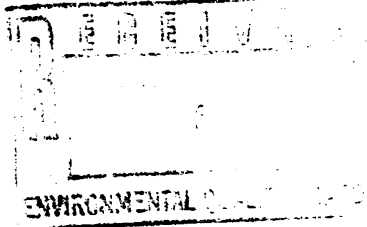
To whom it may concern,

Please do not weaken our water standards by allowing general and quick permits to non complying companies. We must maintain high standards for our water.

Do not allow toxic discharges to ruin our water supply. Our water is a vital part of life of our living things and we must not sacrifice our quality and our standards. Our country already suffers too much cancer and other disease - which may come from toxic water.

Please pay regard to this letter.

Sincerely
Sally K. Yates
John M. Yates



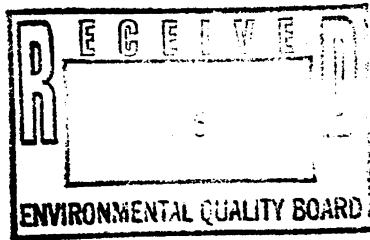
Environmental Quality Board
PO Box 8477,
Harrisburg, PA 17105

Oct. 22, 1998

ORIGINAL: 1975
No copies per FEW

Please strengthen the water standards that are now in force. Do NOT weaken them in any way. We have come a long way in cleaning up the Pennsylvania waterways, don't allow any relaxation of the standards now in effect. Keep toxic waste discharge from our waters, we owe it to our children and grandchildren.

Thank you,



Richard C. Fillman
Richard C. Fillman
118 Ulmer Ave.,
Oreland, PA 19075

RECEIVED
OCT 23 9 11 AM '98
PA DEPARTMENT OF ENVIRONMENTAL PROTECTION

October 22, 1998

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

RECEIVED
98 OCT 26 AM 9:09
INDEPENDENT REGULATORY
REVIEW COMMISSION

Dear Commissioners:

Re: DEP Proposed Rulemaking
25 Pa Code, Chapters 92, 93, and 95 – 97

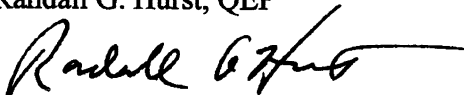
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Legal

Enclosed are comments that I have prepared regarding the referenced rules. Of particular concern to the Commission are several provisions of the proposed rules that I believe conflict with state law and the U.S. Constitution. These include the following:

- Section 92.8a: proposes to require changes in treatment facilities and discharge limits without amendment of NPDES Permits (comments begin on page 3).
- Section 92.2: incorporation of future EPA regulatory changes by reference (comments page 5).
- Section 92.41(b): the requirement to eliminate all identified pollutants from all discharges (comments page 7).
- Section 92.4(a)(6)(ii): arbitrary imposition of pollution prevention requirements on indirect industrial dischargers (comments page 9).
- Multiple sections: vague or arbitrary changes in language resulting in uncertainty as to whether the regulations are prescriptive or merely advisory. Replacement of clearly defined requirements, denoted by use of the term "shall" by "may" or the vague term "should." Due process concerns regarding the applicability of vague or ambiguous language. (Comments pages 11 – 14.)
- Section 92.21a (g): Requiring a plan for the elimination of all combined sewer overflows before permit renewal applications will be accepted (comment page 15)
- Section 92.91 *et seq.*, an attempt to create an informal adjudication process under the Clean Streams Law violates the Administrative Agency law and due process guarantees under the Constitution. (Comments page 16 – 19).

If you would like clarification or further explanation of any of these comments, please contact me at 717. 763.7212, extension 2417, or rhurst@gfnet.com.

Sincerely,
Randall G. Hurst, QEP



October 20, 1998

98 OCT 26 AM 9:09

INDEPENDENT REGULATORY
REVIEW COMMISSION

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

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Dear Board Members,

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

I have carefully reviewed the proposed regulations published in the *Pennsylvania Bulletin* on August 29, 1998. The Department has obviously spent considerable time and effort in attempting to comply with the Secretary's Regulatory Basics Initiative. Many of the revisions are long-awaited. Some are changes that the Pennsylvania Water Environment Association requested during the public comment period during the RBI's initial stages. However, in any endeavor of such magnitude, there are bound to be omissions, errors, and decisions that conflict with the needs and wishes of the regulated community. My comments necessarily focus on the negative aspects of the regulations, rather than congratulating DEP for the many positive aspects of this first phase of a very large task. I feel it necessary to say so because the volume of my comments might make it appear that I find nothing acceptable in the proposed rules. That impression would be incorrect; there are many provisions that I applaud. However, it is where changes are necessary that I must place my focus; therefore, unfortunately, there are few positive comments in this letter.

I hope that the volume and nature of these comments does not generate an attitude of indifference because it seems that I can find nothing right, or an attitude of defensiveness because I have only criticisms to offer. These comments are so extensive, and so detailed, because I believe that the Regulatory Basics Initiative is one of the most important activities undertaken by DEP in the last decade. It is unlikely to happen again. Therefore, I believe that this is a unique opportunity to make the regulations as complete, correct, and clear as possible. It is a positive goal, not a negative attitude, that prompts these comments. I sincerely hope that they will provide a basis for developing the best water environment regulations possible.

The stated purpose of the proposed regulatory changes is to implement the Department's Regulatory Basics Initiative (RBI). As an organizing principle for my comments 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; inhibit green technology and pollution prevention strategies; 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. 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.

In addition to the RBI topics, I am providing detailed comments on the proposed procedure to assess civil penalties without action before the Environmental Hearing Board. This regulation does not “fit” easily under the RBI topics, but raises serious issues requiring a thoughtful review.

I am also providing a copy of this letter to the Independent Regulatory Review Commission for its consideration. Not all of these comments are legal in nature and so may not require IRRC response. However, I would specifically direct the Commission’s attention to the discussion of the proposed pre-assessment hearing process on page 15 and following, as this discussion raises important legal questions.

If you have questions regarding any of the comments and wish clarification or further explanation, I can be reached during working hours at 717.763.7212, extension 2417, by facsimile at 717.763.8150, and by e-mail at rhurst@gfnet.com.

RBI CONCERN: MORE STRINGENT THAN FEDERAL REGULATIONS WITHOUT GOOD REASON

§ 92.1 — *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 POTWs. 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)(1)(B) and 304(d) (33 U.S.C.A. §§ 1311 (b)(1)(B) and 1314 (d)). This scheme, established over 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 organic 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-nitrogen¹, 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 nationally recognized terminology to call certain nonconventional pollutants “conventional” pollutants. No reason is stated in the Department’s discussion, 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.

The “old” definition of toxic pollutant, which is retained in the new rule, is poorly constructed and must be very carefully read to avoid error. On first glance, the term appears to encompass every substance in the known universe because everything, including air, water, sugar, and sand, can cause a toxic effect to some organism when “inhaled, ingested or assimilated.” A toxic pollutant, however, is first a pollutant. A pollutant, in turn, is defined as a substance that causes or has the potential to cause pollution. Finally, the Clean Streams Law defines pollution as contamination that causes a detrimental change in water quality. With this string of definitions in mind, the definition of toxic pollutant is not completely unacceptable because the apparent universal applicability can be at least somewhat restrained to substances that actually cause detrimental effects. However, this complicated string of interlocking definitions, which few people have parsed, need not continue to confound DEP and permittees. If the RBI is intended to clarify the rules and make them compatible with national regulations, this difficult and obtuse definition can be abandoned at the same time that Pennsylvania takes the steps to come into line with the rest of the nation by simply adopting the federal definition of toxic pollutant. I can see no reason not to do so.

In the preamble DEP states that it believes that it does not have the authority to establish water quality criteria and discharge limits for substances that are not defined as toxic pollutants. This newly discovered restriction on DEP’s powers is not based on the Clean Streams Law, which provides a broad grant of authority. In fact, if true, then most permits DEP has issued over the last thirty years were invalid. EPA and the states have no trouble establishing NPDES limits for nonconventional pollutants. DEP is not less competent than these other agencies, and is perfectly capable of operating under the same rules, without retaining the contorted language in this definition.

§ 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

¹ Generating more confusion, the terminology applied to the two forms of oxidized nitrogen is not consistent. Either nitrites and nitrates, or nitrite-nitrogen and nitrate-nitrogen should have been used. If results are reported as stated, they will be difficult to reconcile in a nitrogen balance without further mathematical manipulation.

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 (apparently in secret) and the permittee’s only duty is to determine how to comply. My experience with the NPDES process is that DEP, when left to its own devices, frequently makes erroneous decisions based on inadequate data. Pre-decision review by the permittee is vital to proper final discharge limitations. The NPDES permitting process provides the Constitutionally necessary safeguards. It should not be ignored.

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 in operating requirements. Permits will no longer have meaning because their requirements can be changed at any time. Thus, the purpose of the national NPDES program is further undermined by this provision because it allows DEP to regulate discharges directly without involving the permitting process.

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 necessarily the one submitted by the permittee); (4) the permittee is required by this regulation to obey the schedule. No hearing is held or public notice made. 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 formal 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? It appears that the procedure developed in this rule, in addition to being in conflict with federal regulations, is also *ultra vires*.

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, irrational, and illegal 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 §122.21(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). DEP’s Chapter 94 rules were 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 CFR Part 403) in Pennsylvania and will not independently develop any enforcement policy for regulations related to the pretreatment program. The EPA interpretation of the federal rules described above can be confirmed by contacting Mr. John Lovell at EPA Region III, telephone (215) 814-5790.

§ 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 for several reasons, all of which are related to the additional provision that future EPA regulations are conditionally incorporated as well. Some of these reasons properly fit under other categories of comments (such as vagueness and generating noncompliance), but the issue seems most properly addressed here. There are three objections to this section, each of which is addressed separately below.

• *Unconstitutional under the tenth and fourteenth amendments to the United States Constitution.* Adoption as state law of existing federal regulations is clearly within the power of the state and is not objectionable. However, when the state gives EPA the power to unilaterally change state regulations at a future time, without the contemporaneous consent of the state, issues of federalism under the tenth amendment arise. A detailed discussion is not appropriate in this forum, but suffice it to say that a federal agency may not enact state law. By incorporating future EPA rules automatically, DEP proposes to allow just this. It is doubtful whether the General Assembly has the power to delegate state rulemaking authority to a federal agency, it is certain that DEP has no such power.

The fourteenth amendment is implicated in the denial of due process. This issue is discussed in more detail under the specific state statutes which the regulation also violates.

• *Violation of the Commonwealth Documents Law and the Regulatory Review Act.* The proposed rule provides for no pre-enactment review by DEP, the EQB, or anybody else. There is no notice and comment provision regulating the incorporation of the new EPA rules into the Pennsylvania Code by publication in the *Pennsylvania Bulletin*. There is no provision for presenting the new rules in either a proposed or final form to the Independent Regulatory Review Commission, the standing committees of the General Assembly or the Department of Justice or, following enactment, to the Legislative Reference Bureau. By proposing that EPA will establish rules without following any of Pennsylvania's procedures, DEP proposes that final-form, binding rulemaking will proceed without any of the due process protections that the state legislature has mandated. DEP does not have the power to waive the procedures of the Commonwealth Documents Law, or the Regulatory Review Act. The fact that EPA follows some similar procedures under the national Administrative Procedures Act does not address these state law concerns.

• *Void for vagueness.* The rule is confusing and self-contradictory. Certain future federal regulatory changes will be incorporated by reference on their promulgation. Others will not. Even those that are listed in paragraph (b) may not be incorporated if they are "contrary to Pennsylvania law." In addition, federal regulation that "creates a variance to existing substantive or procedural NPDES permitting requirements is not incorporated by reference." Since all of Chapter 92 consists of procedural or substantive NPDES Permitting requirements, does the exception in paragraph (c) effectively void the whole rule? If not, which Chapter 92 rules are neither substantive nor procedural? How does one tell whether the federal regulation "creates a variance?" What kind of change in regulation would not constitute a "variance"? If the new EPA rule doesn't "create a variance," might it still be "contrary to Pennsylvania law?" What is the difference?

In addition to these issues of interpretation, there are practical issues of implementation. How will the regulated community know which new federal rules will be applicable and which will not? Will DEP establish an "office of regulatory variance?" Will there be a regularly published list of new federal rules that are incorporated and those that are not?

RBI CONCERN: IMPOSE ECONOMIC COSTS DISPROPORTIONATE TO ENVIRONMENTAL BENEFIT

§ 92.41(b) *Monitoring*. This single paragraph contains two disparate requirements that require separate discussion.

• **Requesting additional 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 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 order the expenditure of tens of thousands of dollars without the opportunity to review DEP’s reasons or the practicality of the “request” 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 before a permittee is subject to the requirement. This is best done by requiring some basic due process protections, namely an opportunity to analyze and discuss DEP’s decision before implementation. No enforceable power should reside in a “request.”

Although I have included this comment under the topic “ Disproportionate Economic Costs,” I do not think that targeted effluent monitoring is an unjustifiable economic cost as long as it is reasonably related to environmental protection. This comment requests only that DEP be legally held responsible and accountable for its actions, especially when those actions can be disruptive and expensive to the regulated entity. It has been my experience that DEP officials are generally reasonable in their requests. The Department should have no objection to a requirement that it continue to do what it already does—assert its broad and potentially burdensome powers in a responsible way, with provision for meaningful involvement of stakeholders.

• **Requirement to eliminate all pollutants from the discharge.** It is difficult to understand the intent or expected effect of this portion of the paragraph. The preamble discussion provides no hint, it merely recites the proposed regulation without further comment². 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). While a “pollutant” is defined as deleterious, so that not all substances would be affected, the rule greatly overreaches. All domestic sewage contains trace quantities of sugar, calcium, lactic acid, copper, iron, zinc, sodium, sulfate, and other common substances, some of which partially pass through the treatment process and are discharged. In sufficient quantities, all of these common substances are “pollutants” under the Clean Streams Law definition. It is rare, however, for the effluent concentrations of these substances to exceed a tiny fraction of the concentration that would threaten water quality standards. Thus, these common “pollutants” are never regulated by NPDES Permit limits because there is no threat to the environment.

² At the risk of seeming overly finicky, I must note that the majority of the preamble discussion in the *Pennsylvania Bulletin* consists of simple paraphrasing of the proposed regulations. Very little information regarding DEP’s reasons for the changes is provided.

The proposed regulation makes no distinction between pollutants discharged in acceptable quantities and those that actually 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** [report on how] the permittee will **prevent the generation** of the pollutant, or otherwise **eliminate the pollutant** from the discharge.” [Emphasis added.] The total prohibition is not limited to “toxic” pollutants (although under the current definitions this would not matter, since all pollutants are toxic pollutants), or even to pollutants in toxic or deleterious quantities. All substances in the effluent that could be classified as pollutants (which includes almost everything) must be totally eliminated. Since prevention at the source is impossible (this is, after all, sewage), the only option is treatment at the wastewater treatment plant. Even worse, the “elimination” must take place within the term of the permit. This provision, if actually enforced, would result in multiple, ongoing violations for every POTW and industrial discharger in the State. It is simply ludicrous to require the total elimination of practically all substances from all discharges. The only option offered is to require every NPDES Permit to contain effluent limitations for every “pollutant” that can be measured in the effluent; literally hundreds of compounds. The burden on DEP to generate such limits, given that water quality standards have not been established for most of them, is extreme. The cost of monitoring to confirm compliance will be staggering.

Although it is obvious that no environmental benefit at all would accrue from incurring the astronomical costs associated with compliance,³ 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 first half of the paragraph—requesting effluent monitoring—is acceptable within reason, the last portion of this section must be deleted. 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 reports” must be stricken. If DEP decides, based on monitoring data, that additional NDPES Permit limits are required, a process for amending Permits already exists and should be used.

³ In fact, discharging only distilled water, as the regulation contemplates, would be an environmental disaster because of osmotic pressure imbalances.

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. Unfortunately, in many cases pollution prevention techniques are not possible while maintaining product or process quality. Pollution prevention is a tool to be used intelligently along with treatment technology and environmentally safe disposal to control and eliminate pollution. When it becomes a mandatory goal in itself problems inevitably arise. Of particular concern in this regard is proposed section 92.2b(b)⁴. The problems with ambiguity regarding this section are discussed elsewhere in these comments. However the language of this paragraph should also be reviewed carefully under this topic heading, especially in light of the section discussed next.

In proposed § 92.4(a)(6)(ii), one sees that DEP intends to issue discharge permits to indirect dischargers (i.e., those industrial dischargers that discharge to POTWs, not to the environment) that have “failed to take adequate measures to prevent, reduce or otherwise eliminate the discharge through pollution prevention techniques” The term “adequate,” of course, is left to the discretion of DEP. It appears that DEP intends to dictate pollution prevention requirements by threatening industrial indirect dischargers with burdensome permits. This is exactly what is meant by “prescriptive rather than performance-based” regulation, and is to be avoided. The performance-based parts of the proposed rule are acceptable, allowing such permitting by the State when the indirect discharge “result[s] in interference with proper operations of the POTW, upsets at the POTW[,], or pass-throughs [*sic*] of pollutants.” However, requiring an industrial user to obtain a permit merely because it has not implemented what some DEP official considers to be “adequate” pollution prevention measures is not in accord with the goals of the Regulatory Basics Initiative. Nor does it make any sense.

DEP’s mission is to prevent pollution, not to arbitrarily require specific 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. DEP’s desire to promote pollution prevention is admirable and forward-looking. Its proposed heavy-handed approach, however, is an historic relic and needs to be re-thought. This concern also colors the next topic— inhibition of pollution prevention activities by stakeholders.

RBI CONCERN: INHIBIT GREEN TECHNOLOGY AND POLLUTION PREVENTION STRATEGIES

§ 92.4(a)(6)(ii) *Mandated Pollution Prevention for Indirect Dischargers.* This section is discussed above, but bears mention under this topic heading. Pollution prevention and innovative (“green”) technologies do not arise from bureaucratic mandate, as these regulations imply. The techniques are unique to the generating processes and local situation (including the financial capabilities of the particular discharger), and progress in this area has historically come not from

⁴ The proposed new numbering scheme is unnecessary and confusing. There are plenty of numbers available for use. Adding letters to the section numbers makes the rules harder to cite properly and makes the numbering system inconsistent with other DEP regulations..

stringently prescribed methods imposed by government technocrats, but by innovative and financially-driven techniques developed by entrepreneurs, applied in imaginative ways. I encourage DEP to follow the lead of EPA in this area, in such stakeholder-driven programs as Project XL. If DEP wishes to encourage pollution prevention it must get out of the way and let the leaders in this field lead. Traditional “command and control” methods, such as those evident in these regulations, do not work in the field of pollution prevention. DEP’s role in pollution prevention is to facilitate and monitor effectiveness, not dictate methods and obstruct innovation.

§ 96.4(g) *Effluent Trading*. Here again, DEP proposes a new rule that promises flexibility and rationality in protecting the water environment, but then places unreasonable restrictions on implementation, so that pollution prevention activities are effectively discouraged. Essentially, paragraph (g)(3) requires that effluent trading only can be accomplished after DEP has published a description of the procedure. Why must there be only one procedure, and why must DEP develop it? Why cannot dischargers, working with regional DEP officials 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 (to use currently-popular terminology) stakeholders (which includes DEP). Furthermore, the Department can stifle the entire process simply by doing nothing. The purposes of the regulation—encouraging pollution prevention—would be enhanced if the limitations on effluent trading were only those in subparagraphs (1) and (2). Perhaps a requirement that the trading agreement be enforceable through NPDES Permit conditions or a consent order would help to allay DEP’s apparent fears that dischargers might do something environmentally beneficial without DEP contributing its ever-helpful orders and paperwork.

RBI CONCERN: ARE OBSOLETE OR REDUNDANT

The definition of toxic pollutant (§ 92.1) is obsolete and confusing, requiring multiple cross references to understand properly. This issue is discussed in detail under the topic “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 topic “More Stringent Than Federal Regulations” above. This obsolete and objectionable rule should be rescinded, not renumbered.

Request for comment on applicability of potable water designated use. I must note for the record that DEP continues to misapply the definition of potable water supply when developing water quality criteria. This issue was brought to the Department’s attention many times in the past. This problem stems not from a deficiency in the Chapter 93 regulations, but from the continued failure to apply basic principles of risk assessment in the determination of water quality criteria. In response to the request for comment on a proposal to restrict the potable water supply criteria to water bodies that may actually be used for this purpose, (preamble discussion at 28 *Pa. Bull.* 4440), I note that this is exactly what many water environment professionals have been advocating for years. It is a basic premise of risk assessment that one does not regulate to protect against non-existent risks. Review the attached Pennsylvania Water Environment Association’s comments on proposed Chapter 16 revisions, July 1, 1992 (published in XXV, *Water Pollution Control Association of Pennsylvania Magazine*, 5:20, at 21–22 (September–October 1992)).

RBI CONCERN: LACK CLARITY

Of all of the goals of the Regulatory Basics Initiative, this one is the most violated by the proposed regulations. To allow a more definitive discussion of the various problems arising under this heading, I have subdivided the issue of “clarity” into issues involving vagueness, ambiguity, and improper punctuation, all of which lead to imprecision or confusion by the regulated community and by the regulators themselves.

• Vagueness

Regulation is law. To create a regulation is to prescribe or proscribe conduct, with legal consequences for failure to comply. An important corollary to this concept is that, if the regulated person is not able to understand what it is that the regulation requires, the regulation cannot be enforced. Like statutes, regulations can be void for vagueness under the due process provisions of the fifth and fourteenth amendments to the United States Constitution. Regulations are not exercises in creative writing; they must be explicit and clear if they are to be enforced.

The problem of vagueness has a second aspect, too. If the intent of a regulation is not to establish a requirement, but merely to express the sentiments of the author, it becomes difficult to determine if one must obey these opinions under threat of enforcement, or if one may choose to disregard the passage as merely hortatory. If DEP wishes to make speeches on various topics, other forums are available for this activity. Placing general statements of belief in regulations is inappropriate. The following comments relate to proposed provisions that make compliance problematic because the regulatory requirement is vague, either in that one cannot tell what one is supposed to do, or because the reader is not told whether the regulation is mandatory or not.

Of primary concern is the frequent use of two undefined words that were rarely used in the past and which have neither a commonly accepted nor a legal definition: “should” and “will.” The dictionary is of little help: “Should . . . 1. To express obligation . . . 2. To express a tentative suggestion. . . .”; “Will . . . 1. Expressing a future statement, command, etc. . . . 2. expressing intention . . . 3. wish or desire. . . .” (*The Oxford Desk Dictionary*, American Edition, 1995). Thus, both should and will can be either mandatory or permissive. In the proposed regulation, some clearly mandatory requirements in the existing regulation have been amended to make them vague by replacing “shall” with “should.” Unfortunately, no clarification of this critically important issue is provided in the preamble discussion. In most cases the discussion merely recites the new rule but provides no explanation of why the change was made; some of the changes receive no mention at all.

There are two ways in which this important problem can be cured. First, use the existing regulatory language—shall and may—properly. If certain actions are to be encouraged rather than mandated, then this should be plainly stated, not hinted at through the use of ambiguous terms. An alternative cure would be for DEP to define its terms. If should and will are always to be considered permissive, then define the terms in that way in the regulation.

The issue of including discussion, rather than direction, in the regulations is more difficult. It is sometimes helpful to provide guidance as to what is intended by a regulatory requirement by including an example. Including mere entreaties, however, causes problems. When a discussion can be interpreted as a mandatory duty, even though it may have been intended as an exhortation, the problem of vagueness arises. This is particularly of concern when hundreds of enforcement officers spread throughout seven DEP offices are interpreting the rules and applying them.

Violations should not arise because one person interprets a rule differently than another. If this can happen then a primary goal of the RBI— clarity—has not been met. Regulations are a method of imposing requirements, not an opportunity to make speeches, express opinions, or demonstrate one’s creative writing skills by crafting interesting sentence structures.

The following is not an exhaustive list of the concerns under this topic, but a list of some of the more perplexing instances of vagueness.

§ 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. (Not to be confused with 92.2(b).) Extensive use of “should” makes the intent appear to be a general discussion and without effect. However, when read in conjunction with § 92.4(a)(6)(ii), this section appears to become mandatory. See the discussion under “Prescriptive rather than performance-based” above.

§ 92.3 Permit Requirement, § 92.31(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.

§ 92.81(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 now reads, “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 (i.e., “if the point sources meet **one or more** of the following conditions.”). 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. Included in those comments are the relevant issues regarding vagueness, which are not repeated here.

§ 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 DEP is expected to do? What rights and duties, if any, are created? 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?

§ 96.4(j) *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?

For lack of a more relevant place to put it, the following comment regarding a mathematical error is included in this discussion of vagueness:

§ 96.1 *Definitions — Dilution ratio*. The correct 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. A 1 mgd stream accepting a 1 mgd discharge results in a dilution of the effluent by half. The dilution ratio is 2, not 1 as the definition would require.

• **Ambiguity**

Ambiguity arises when two equally-probable interpretations are possible. Similarly to vagueness, the most frequent cause of ambiguity is poor grammar and the use of ill-defined instruction words such as “should” and “will.” Many of the objections made in the previous section could be repeated here. When a regulation states that DEP “will” perform a certain series of actions, reasonable people can disagree as to whether DEP must perform the actions, or whether it may perform them at its option. Since the words “shall” and “may” are well-understood, regulatory language should generally be restricted to these two instructions, unless good reason exists for abandoning them.

Of particular concern is the phrase “may not.” In common speech this phrase is regarded as mandatory when used in an instructional way (“you may not do that”), and permissive when used to express intent (“I may not bother to do that”). Because of this dual meaning, it is confusingly ambiguous when used in a regulatory setting. The clear and unambiguous phrase “shall not” is greatly preferred. One example of the problem:

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

“May not” (or the equally ambiguous terms “does not” and “will not”) is also used in the following sections: 92.3, 92.4(2), and 92.73.

Another cause of ambiguity is when the regulations are not internally consistent. There are two definitions in the proposed rules that cause a concern for this reason.

§ 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 and that the Chapter 96 definition should be revised.

• **Punctuation**

The most salient feature of the proposed regulations in regard to punctuation problems is the systematic removal of commas from existing text where series of items are listed. According to the universally recognized American authority on writing for clarity, *The Elements of Style* (William Strunk, Jr. and E.B. White): “In a series of three or more terms with a single conjunction, use a comma after each term except the last. Thus write: red, white, and blue . . .” (*The Elements of Style*, page 1.) See also the *Chicago Manual of Style*, section 5.57. Also Diana Hacker, *A Writer’s Reference*, 3e, at 195: “Although some writers view the comma between the last two items as optional, most experts advise using it because **its omission can result in ambiguity or misreading.**” (Emphasis added.)

While commenting on punctuation errors in these proposed regulations may appear trivial, the issue, as professor Hacker points out, is clarity. The purpose of proper punctuation is to allow the construction of sentences that have an unambiguous meaning. Converting regularly arranged lists of mandatory duties into jumbled heaps of combined adjectives does nothing to improve the regulations.

For instance, § 92.57 currently reads, in part, “Permits may . . . impose limitations on frequency of discharge, concentrations, or percentage removal.” Thus three things are clearly listed as limitable: frequency, concentration, and percentage removal. The proposed rule, however, says, “Permits may . . . impose limitations on frequency of discharge, concentration or percentage removal, and may include [other limitations].” Does this mean that permits may impose limits on both percentage removal (e.g., “permittee must remove 85% of the influent BOD”) and concentration removal (e.g., “permittee must remove at least 20 mg/L of BOD”)? Can limits on concentration be imposed, or only limits on concentration removal? How has the clarity of the rule been improved by removing the comma?

Some other instances of this problem are found at: §§ 92.4(1), 92.7, 92.13(b) and (b)(1), 92.21a(e) (missing between “controlling discharges” and “or where”), and 92.51(1). This list is not exhaustive.

A related error is the substitution of numerals for spelled-out numbers, e.g., § 92.41(e)(2): substituting “3” for “three” in the original rule. The general rule in English usage is to spell out numbers of one or two words (i.e., one hundred and lower). (See any English grammar book, e.g., *Chicago Manual of Style* section 8.3.) This is particularly important in regulations, where a typographical error can be critical. A misspelled “three” probably won’t be mistaken for “two” or “four,” but an error in entering a numeral during final word processing of the regulation could easily be overlooked, resulting in significant numerical errors becoming law. The practice regarding numbers used in the original text is in correct English and should not be changed.

RBI CONCERN: WRITTEN IN A WAY THAT CAUSES SIGNIFICANT NONCOMPLIANCE

Sections that violate this goal often do so for vagueness or ambiguity. These concerns are discussed above and not repeated here. The comments in this section are restricted to instances where the regulation imposes an impossible or highly burdensome requirement, such that noncompliance is likely to result through no fault of the permittee.

§ 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. There is no need for a definition to attempt to summarize all of the regulatory requirements, it need only state that a complete application is one that has all of the required information.

§ 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? The original text should be retained.

§ 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 and has not already completed a long term CSO control plan.

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.

Section 92.2b(b), requiring the complete elimination of all “pollutants” present in all discharges, imposes an impossible condition that will generate 100% noncompliance with no discernable environmental benefit. This section is discussed in detail under the topic Disproportionate Economic Costs above.

NON-RBI CONCERNS

The following topic is not directly addressed by Regulatory Basics Initiative goals, but is nevertheless an important problem identified in the proposed 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 as written generally violates Constitutional guarantees of due process, and particularly the Clean Streams Law and Administrative Agency Law provisions for a hearing prior to administrative assessment of a civil penalty. Second, several procedural provisions are vague and require clarification.

• Denial of Due Process and Violation of the Requirements of the Clean Streams Law and Administrative Agency Law

§ 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 may be informal, as the proposed rule states. A primary concern in this regard is the limitations on the availability of the hearing. There are several procedural problems in the proposed rule.

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), and are therefore *ultra vires* and void.

It appears that the deficiencies in the rule stem from a fundamental misunderstanding of the administrative procedures involved. If DEP intends to provide an informal alternative to hearings by the Environmental Hearing Board, then it is bound by the basic rules of the Administrative Agency Law, 2 Pa. C.S. § 501 *et seq.* “No adjudication of a Commonwealth agency shall be valid as to any party unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard.” 2 Pa. C.S. §504. The hearing is not an optional service provided to a person after the determination that a penalty will be imposed.⁵ A hearing is held **for the purpose of determining if DEP has sufficient evidence to warrant the imposition of a penalty, and, then, to determine the amount to be assessed.** The proposed regulation, in stark contrast, provides that DEP will decide on a penalty, will notify the person of its decision, and will await a demand for a

⁵ It is possible to reduce the protections afforded a party by specifying that the imposition of the penalty is not an adjudication, but only a preliminary determination and that the party assessed is afforded the opportunity for a hearing *de novo* before the EHB before the assessment becomes final. The text of the proposed rule, however, indicates that the penalty is to be assessed as a final determination, therefore, all due process protections applicable to adjudications apply to the initial hearing.

hearing. A hearing will be held only if the person requests one, and appears to be more in the nature of an appeal after assessment than the initial hearing required by the CSL and AAL.

There are at least three 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 and the Administrative Agency Law. These are: failure to notify the affected party, failure to provide an adequate kind of notice, and the failure to provide the required hearing (this is also intertwined with the presumption of waiver). 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. 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 validly 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 that a pre-assessment hearing will be held. 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 alleged wrongdoing to be penalized; (2) the penalty to be sought; (3) that a hearing will be held; (4) the time and place of the hearing; and (5) the nature of the hearing (i.e., the general procedure to be followed). 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 both the CSL and the Administrative Agency Law, 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. 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 is a voluntary, knowledgeable, act (see, e.g., 92 C.J.S. Waiver, “intentional [voluntary] relinquishment of a known right, benefit, privilege or advantage.”) A waiver cannot be “presumed” because an uninformed person has failed to act. 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 deny the right to a hearing based on the failure of a party to request one.

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 of 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 should 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.

Furthermore, DEP does not have the power to limit one's rights to a hearing by creating a presumptive waiver (assuming that such a creature is even possible). The Clean Streams Law grants DEP the power to establish procedures to implement the provisions of the Act (§ 691.5(b)(1)). The provision to be implemented here is that civil penalties may be administratively assessed only "after a hearing." The Act does not grant DEP the power to deny citizens due process, or to unilaterally provide for the denial of any right or privilege granted by the General Assembly (or, for that matter, the Constitution). Indeed, DEP's duty is to "implement," not to thwart the provisions of the law. The presumption of waiver (when the person notified does not *sua sponte* request a hearing using the specified procedures) is an attempt by DEP to deny a right granted by statute and convert it into a privilege, granted as an indulgence of the Department (you only get a hearing if you ask nicely). Such an attempt is *ultra vires*.

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 (and the enforcement officer making the allegations) 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 (e.g., what proof is necessary to rebut the presumption?), 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 and the Administrative Agency Law. Nor for that matter, is there such a compelling state interest that denial of Constitutional rights to due process should even be considered.

• **Vagueness in procedural provisions**

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 constitute a final adjudication and that an appeal to the Environmental Hearing Board 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 several advantages of keeping the procedures both informal and flexible, the regulation must provide clarification of the procedures. The proposed rule states that the hearing “will not be governed by requirements for formal adjudicatory hearings.” Does this evidence an intent not to follow the procedures in the Administrative Agency Law (2 Pa. C.S §§ 502 and 504 – 507)? If so, what procedures will be followed? Specifically: (1) Does the party to be assessed have the opportunity to request information regarding the Department’s proposed penalty for review before the hearing? (2) May the party to be assessed be represented by counsel, or have the right to have counsel present and participate in the hearing? (3) May a party cross-examine testimony presented by the other party, or otherwise be allowed to question the other and compel answers? (4) May the proceeding be adjourned and continued for collection of additional information, or must it be performed in a single “sitting”? (5) Must the final decision be made “at the hearing” as the rule states, or may the decision be delayed until additional information is collected? And (6) will the final determination be “on the record?”

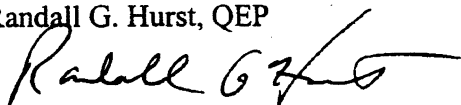
§ 92.94(b) *payment of penalties.* The cited section states that penalties, including those due following judicial review, shall be paid within thirty days after the order is mailed to the person. Further, the requirement is that “the person to whom the notice or order was issued shall pay the amount” 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.

§92.93(d) *Appeals — Standard of Review* If a hearing is not held, no record exists for review by the Environmental Hearing Board. Is an appeal to be a hearing *de novo* on the merits of the original complaint, or is the EHB limited to the issues it may hear and decide?

Thank you for your time in considering all of the above. I trust that, upon 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 environmental direction and control well into the next century.

Very truly yours,

Randall G. Hurst, QEP



COMMENTS ON PROPOSED REVISIONS TO CHAPTER 16 DEPARTMENT OF ENVIRONMENTAL RESOURCES STATEMENT OF POLICY

"Chapter 16" is DER's official guidance policy for the development of water quality criteria for toxic pollutants. In June of this year DER announced that it was amending Chapter 16 to make minor changes to the text and to make a variety of changes to the criteria, primarily criteria for protection of human health. On July 1, 1992 a hearing was held in Harrisburg on the proposed revisions. The Subcommittee on Toxics Issues of the WPCAP's Government Affairs Committee presented the following testimony at that hearing. Because testimony was limited to ten minutes, the scope of our comments was very limited. Some additional material in support of the comments was also presented to the Department. The comments are presented here to let members know what your committee is doing on your behalf.

—Randy Hurst, Chair

The WPCAP is an Association of operators, administrators, consultants, educators, equipment suppliers and regulators, all of whom are professionally dedicated to clean water. The goals of our Association are the same as the goals of the Department: to allow the waters of the Commonwealth to attain and to maintain water quality standards based on designated uses. It is the purpose of the regulations we are discussing today to provide guidance to the Department both in establishing water quality criteria for toxic substances and in implementing those criteria through establishing discharge limitations. Two kinds of decision-making methods can be used in establishing policies. Policies can be established based primarily on *administrative* decision processes or they can be established based primarily on technical, or *scientific*, decision processes. Most policies contain both elements. Chapter 16 as it exists, and as it is proposed, is substantially administrative in concept and content; we believe that, where appropriate, scientific methods should be incorporated as a policy requirement, because scientific

methods are calculable, verifiable, and defensible, whereas administrative decisions are prone to human error and misjudgment, and are always subject to debate.

The policy of developing water quality standards based on designated uses is an example of an administrative process. This policy is a social, value-oriented decision enacted by legislation. Another society might have selected a goal of "absolute purity for all waters", or it might elect to allow pollution detrimental to wildlife, as long as the water could be treated to an acceptable quality for industrial use. There is no scientific method of determining the "best" method of selecting water quality standards; thus an administrative decision-making process was appropriate. Having selected the goals, however, the policy of implementing these goals can be, and should be, *scientifically* derived. We are proposing today that Chapter 16 be amended in two areas to include the concepts of scientific decision making. These areas are (1) the use of Method Detection Limits (MDLs), and (2) the development of water quality criteria.

First, the issue of Method Detection Limits. Section 16.102(a), paragraph (4), discusses the concept of Method Detection Limits (MDLs), and defines the term as the concentration value that can be reported with 99% confidence that a substance is present. The discussion is incomplete, however, because it fails to make clear the fact that a Method Detection Limit is not a reliable quantitation limit. That is, a reported value at or near the MDL can *not* be relied on to determine the true concentration of a substance. Instrument precision at the extreme lower limits of detection is low, and results in this range are therefore *only* useable in deciding whether or not a substance is *present*; they should not be used to ascertain concentration.

The lack of scientific rigor in this section is reflected in the Department's insertion of the alternate term "minimum" throughout the text, implying that a Method Detection Limit is the same as a Minimum Quantitation Limit, which is not correct.

The error is compounded in subparagraph (ii), where an *administrative* decision has been made to use MDLs to "decide whether the water quality-based effluent limitation is listed as a numerical value . . . in the permit". Since MDLs are *not* quantitation limits, they should not be used to make decisions regarding permit limitations in the manner chosen by the Department. We propose that this paragraph (paragraph (a)(4)) be rewritten for a *scientific* standpoint. It should (1) correctly define Method Detection Limits, (2) remove erroneous references to "minimum" detection limits, and (3) provide that effluent limitation decisions be based on a *quantifiable* value, such as the Minimum Quantitation Limit or other scientifically defensible value.

A larger and more important issue is the development of water quality criteria. We believe that the development of numerical criteria is clearly a scientific issue and should be based on scientific methods. Specifically, the policy should *require* that the principles of risk assessment be used whenever sufficient data are available to do so.

The regulation as it exists and as proposed does not mention risk assessment in its Guidelines for Development of Aquatic Life Criteria. As a result, water quality criteria for the protection of aquatic life have been developed in a number of instances without a sound scientific basis. As an example: the criteria for copper are identical to the EPA Gold Book criteria, and are based in part on toxicity to the northern squawfish. This species, however, indeed the entire genus,

is not indigenous to Pennsylvania and is found only in the Pacific Northwest. One important component of risk assessment is *exposure assessment*. If an exposure assessment had been performed in developing the copper criteria, species that are not exposed would have been removed from the data base, and the criteria would have been recalculated using only species expected to occur in Pennsylvania. All the data required to perform this recalculation are present in the EPA development document.

Another example of the value of exposure assessment is the "acute" water quality criterion for cyanide. Again, the Department has simply adopted the EPA-derived value; in this case 22 parts per billion (ppb). However, this value is based *solely* on toxicity to rainbow trout. When a cold water fishery or trout stocking stream is under consideration, this criterion is appropriate. However, simple logic tells us that a criterion designed for the protection of rainbow trout is inappropriate to the Monongahela or Susquehanna rivers. The EPA data indicate that the 3 species most sensitive to cyanide are rainbow trout, atlantic salmon, and brook trout. Because these species do not occur in warm water streams and lakes, cyanide criteria for warm water streams should not account for them. A recalculation of the acute cyanide criterion after removal of these three species from the database results in a value of 46 ppb; this value is reliably conservative because it includes protection of bluegill and large mouth bass; species not present in every warm water stream. A requirement that risk assessment be used in developing aquatic life criteria would result in the development of different criteria for different designated uses for a number of pollutants. This is not only acceptable, it is the way many non-conventional pollutants are now regulated in Chapter 93, and is a more scientifically valid way of providing water quality criteria based on protection of designated uses.

The Guidelines for Development of Human Health criteria do discuss risk assessment. However,

discussion of the issue is not enough; the principles of risk assessment must actually be *applied*. In the discussion of cancer risk assessment in Section 16.33, the Guidelines discuss the *administrative* decision which was made regarding the Department's selection of an "acceptable risk" of 1 in 1 million. We do not disagree with that decision. The *quantification* of the risk, however, should be subject to the *scientific* procedures of risk assessment. For instance, in the Department's current method of determining the risk level of carcinogens, a population is assumed to exist which uses water directly from the water body, *without treatment*, as its lifetime primary drinking water source. An exposure assessment procedure would label this risk pathway as a "theoretical upper bounding estimate". In other

words, this risk level exceeds the risk for *all* members of the population. Such estimates are not used to estimate risk; their primary value is in screening procedures. An exposure assessment for human health risk would first consider the fact that the designated use of the water is as a potable water *supply* which the Department defines as water which is consumed *after suitable treatment*. The exposure assessment procedure would then determine a "high-end" risk, a "most-exposed individual", or a "reasonable exposure" at a 95th or 98th percentile. These measures of exposure experienced by individuals, or population segments, would be used to calculate water quality criteria for potable water supplies for the protection of human health. Although the documentation accompanying the proposed changes indi-

cates that the Department is evaluating and incorporating *toxicity assessment* data, it is clear that it has yet to implement the second, equally important component of risk assessment, which is exposure assessment. Until it does so, the criteria development process will remain scientifically invalid.

To summarize, the Association urges the Department to adopt scientific principles wherever appropriate in its guidelines for developing and implementing water quality criteria, and to apply those principles in its activities. Two suggestions for incorporating scientific methods are (1) adoption of risk assessment methodologies in developing the criteria, and (2) the scientifically correct use of Method Detection Limits and Minimum Quantitation Limits when establishing effluent limitations. There are a variety of other such procedures time does not permit us to discuss today. The adoption of such scientific methods, in place of the administrative, or "best judgment" methods now in use, should serve both to provide a more sound and reliable water quality management policy and to reduce the amount of dissension in the regulated community.

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REVIEW COMMISSION

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NIS HANZAR
213 Center Ave
OAKDALE, PA 15065

OCTOBER 22, 1998

ENVIRONMENTAL QUALITY BOARD:

I AM OPPOSED TO THE NEW WATER QUALITY
STANDARDS + TOXICS STRATEGY PROPOSAL. IT WILL
WEAKEN PROTECTION ON OUR WATER + INCREASE
PUBLIC HEALTH PROBLEMS. WE NEED STRONGER
STANDARDS HERE IN PA. PLEASE MAKE SURE
THIS PROPOSAL IS NOT PASSED.

Thank you,

Mrs Hanzar

RECEIVED



A COUNCIL OF TROUT UNLIMITED

PENNSYLVANIA TROUT
RD # 1, box 131B
SPRING MILLS, PA 16875

October 22, 1998

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Mr. James M. Seif, Chairman
Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

Re: 25 Pa. Code, Chapters 92, 93, 95, 96 and 97, Water
Quality Regulations--Proposed Rulemaking, August 28,
1998, Pennsylvania Bulletin

Dear Mr Seif and Board Members:

Pennsylvania Trout, the state council of Trout Unlimited, respectfully requests that the comment period be extended for another 60 days. An organization such as ours needs a certain amount of time to coordinate comments within our group and then communicate with rank and file members. Because of the demands placed upon the volunteers of our organization and the breadth of the proposed changes, the initial comment period is inadequate. In addition, the comment period for Pa. 25 Code, Chapter 16, Statement of Policy--Water Quality Management Toxics Strategy, is identical to the comment period for the regulatory proposals. Thank you for your consideration.

Yours truly,

Ed Bellis

Edward D. Bellis
President
Pennsylvania Trout, Inc.

cc. Senator Roger Madigan
Senator Ray Musto
Senator Robert Reber
Rep. Camille George
Mr. Peter Colangelo
Mr. Donald Madl
Mr. Brian Hill, Chair, Citizens Advisory Council
Mr. W. Michael McCabe, Regional Administrator, EPA

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98 NOV -6 AM 9:14
REVIEW COMMISSION

October 22, 1998

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

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98 NOV - 6 AM 9:14
HEALTH COMMISSION

Dear Environmental Quality Board,

Hello, my name is Nathaniel Carney. I write to comment upon the proposed changes in water quality regulations for the state of Pennsylvania.

I am appalled at the fact that you are considering making our state's water quality regulations less stringent. In a time when industry, agriculture and government should be finding new ways to improve our natural environment, someone is obviously lagging behind, seeking exception to changing their own faulty pollutive system. Instead, money or perhaps political bargaining is leading in the direction of lessening water quality regulations? You let me know what the reason is, because right now I am at a loss for what might be a noble and reasonable cause for such philandering.

You have to be kidding. I, a resident of York County cross the putrid Codorus Creek each day going to work. Whether or not it is an actually a casualty of our presently weak environmental regulations, it is an eyesore asthetically. Pennsylvania, lovely "Penns Woods", deserves better. In fact, it deserves better than the perhaps looser national water quality standards. It must be clear that we can only be better off with current or stronger water quality standards, and only be worse with anything less. Let anybody that woos you to a different tune know that Pennsylvania cannot sell out on this issue.

Finally, I encourage you to extend the period for which you are accepting public comment. I almost feel like my own state government was trying to put a quick one past Pennsylvanias by not sufficiently publishing their consideration of changes in current water quality standards. I realize that publicity costs money, but I heard more about Governor Ridge's bike ride through southwest Pennsylvania than I did about this. I appreciate the strides of this state's administration. I believe, however, that something that will wreak havoc upon our bodies over our lifetime if not pure, something we are supposed to drink eight glasses of per day, and something we depend upon helplessly so we can grow food, deserves the attention of the people. And the people deserve to know.

Sincerely,



Nathaniel Carney

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98 NOV 10 PM 3:55
INDEPENDENT REGULATORY
REVIEW COMMISSION

Edmond S. Vea
417 S. Quince Str.
Philadelphia, PA. 19147

October 23, 1998

The Environmental Quality Board
PO Box 8477
Harrisburg, PA 17105

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To whom it may concern,

I am writing on behalf of my family to inform the board that we are in opposition to the proposed Water Quality Standards and Toxics Management Strategy. I have noticed a marked improvement in water quality since the 1960's and believe that water standards must never be weakened. The fact that public water ways are used for the disposal of effluents is unfortunate. But if it must be done then it certainly must be regulated and managed strictly. The truth is that the state will suffer the burden of bad water ways and not the companies and agencies that have polluted them. And we all know that the long term liability of damage will eventually fall on the State and its citizens particularly if the standards are reduced- the loosing of standards will not help the State defend itself against the Federal Government in future suits that are almost bound to be filed by the EPA or other groups if an accident or other environmental disaster occurs.

Many modern and developed countries are able to maintain high water standards and still be economically competitive. In short saving some bucks now is going to cost the State in the long run while enriching only a few individuals who will eventually move their businesses in any case after they have polluted our water ways.

Sincerely,



Edmond S. Vea

Freeman, Sharon

From: Gil Jacobsen(SMTP:gilj@pobox.com)
Reply To: gilj
Sent: Friday, October 23, 1998 11:46 AM
To: REGCOMMENTS
Cc: lapainter
Subject: Public Comments on Proposed Revisions to Water Quality Standards

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98 NOV -3 AM 9:05

INDEPENDENT REGULATORY
REVIEW COMMISSION

Pennsylvania needs language protecting instream flow and aquatic habitat in our water quality standards!

--

Regards

Gil

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Sandusky
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Gil Jacobsen - GilJ@pobox.com Work - GilJ@tangram.com
Pages: Gil - <http://www.pobox.com/~gilj>
Viking - <http://www.LibertyNet.org/~viking>
MLUC - <http://www.LibertyNet.org/~devonuu>

Gil Jacobsen
62 Aldham Rd.
Phoenixville PA 19460-2835

Freeman, Sharon

ORIGINAL: 1975
FORM LETTER

From: Ed Ambrogio(SMTP:edward@snip.net)
Sent: Friday, October 23, 1998 6:35 PM
To: REGCOMMENTS
Subject: Public Comments on Proposed Revisions to Water Quality Standards

October 23, 1998

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. This may seem obvious to some, but not to all.

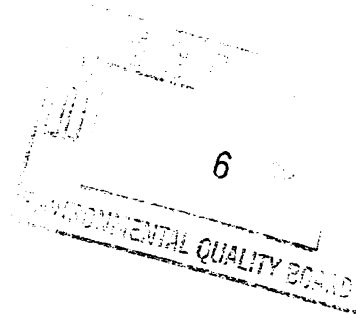
92.61 I strongly support an additional public comment period when someone intends to submit an NPDES application, as recommended by the Water Resources Advisory Committee.

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. Reducing this level of protection is an implicit admission that certain waters presently not meeting "drinkable" standards should be "written off" with no hope of their becoming cleaner.

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, which allow for technically legal violations of scientifically based water quality standards. 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! The extremes of too much flow (the pollutant here is kinetic energy) or too little flow can and does impair



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dissolved oxygen, turbidity, stream bank stability, aquatic living resources and their habitats. The narrative standards implies that these issues are covered within state law, but without specific language, the DEP is generally unable or unwilling to attempt enforcement.

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

Yours truly,

Edward Ambrogio
509 Spruce Avenue
Upper Darby, PA 19082

Ed Ambrogio \ /
 (\@^@/
(home) edward@snip.net (^)
(work) ambrogio.edward@epamail.epa.gov (o)
 ^

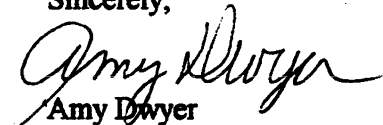
October 23, 1998

Environmental Quality Board
PO Box 8477
Harrisburg, PA 17105

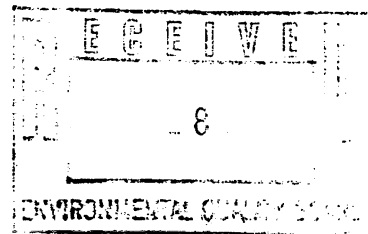
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I do not understand any reason to undo the safeguards we have on our water. We need more not less. PROTECT OUR WATER - STOP the ROLLBACK. It makes no sense to go backwards. It is important to me, my children and someday our grandchildren. WE have learned this lesson the hard way before. Please do not undo the standards. I would like to know how you deal with this issue.

Sincerely,

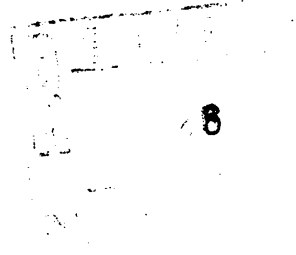

Amy Dwyer
2431 Whitby Road
Havertown, PA 19083

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OCT 23 1998 11:38:57
DEPARTMENT OF ENVIRONMENTAL PROTECTION
HARRISBURG, PA



DMP

Dana M. Price
215 N. Church Street ~ Nazareth, Pa 18064
Email dprice215@aol.com



ORIGINAL: 1975
No copies per FEW

October 23, 1998

Environmental Quality Board
PO Box 8477
Harrisburg, PA 17105

Dear Sirs:,

I am opposed to the new proposed water quality standards and toxics strategy. Please 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.

For the good of all, the new standards must be stopped.

Sincerely,

A handwritten signature in cursive script that reads "Dana M. Price".

Dana M. Price

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NOV - 6 AM 9:11
DEPARTMENT OF ENVIRONMENTAL PROTECTION
HARRISBURG, PA

EQB Hearing, October 22, 1998

Original: 1975, Mizner: Copies: Wilmarth, Jewett, Sandusky, Legal
Please accept names on the petitions I will be handing you. The petition reads as follows: We, the people listed below, have asked Judith Fasching 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. Furthermore, 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.

Obtaining these signatures was for the most part very easy. I explained I was coming here today to express my opinion on the proposal of water regulations being streamlined, and that I felt they need to be strengthened. Most people readily agreed, some people asked questions, but all stated they had not been aware of any regulation changes. Each and every one wished me good luck, a lot said thank you for doing this, and thank you for being involved, we need more people like you. If I had not received a letter in the mail dated July 7, 1997, I would never be involved, I would never have been here today. I trusted our Federal and State Government to protect us. That letter informed me that sewage sludge is going to be applied to a farm adjacent to my house. Never in my life had I heard of such an atrocious thing. My husband and I both said "oh no they won't." Never in my life did I imagine that I would have to fight for my right to live in a healthy environment. That letter opened my eyes to the extent of which our beautiful state is being polluted legally with the help of agencies our tax dollars pay to protect us.

Most of the signatures on this petition are from college-educated people with degrees ranging from four-year, Engineering, or Ph. D's. Their reactions after reading the petition were interesting. They varied from mostly, "I had no idea", "this is not good" and many more. The reaction that sticks in my head the most was, "the public notification is like reading the fine print at the bottom of a contract."

In general, people do not know what DEP, the EQB, or the EPA are proposing in regulation changes. Even if the notices that are printed in newspapers are read, people do not understand what it is all about, or what the end result will be. This is because they are written so people will not understand them, and they do not know the regulations in the first place. I urge you to have public workshops to inform people before these regulations are put into place. Be honest with us.

I am incensed with the steps your department seems so ready to take to reduce the water quality of Pennsylvania. We already have more pollution and poisoned water than we should have. The idea that relaxing the standards and regulations can in any way be good for the people of this state is ridiculous. We have had more than our share of fish kills and incidents of poisoned well water. We certainly do not need more. I would hate to think that the decisions you are contemplating are business and money driven. We are being assaulted from all sides with garbage from out of state and the practice of spreading sewage sludge. We cannot afford to have the government we depend on make it easier for business and industry to indiscriminately dump their waste chemicals and pollution wherever they wish as long as it adds to their bottom line. Please, in the name of decency and honesty, do not make any changes that will most certainly reduce our water quality. The health and welfare of the people is far more important than more wealth for business. Do the right thing.

Judith A. Fasching
440 Creek Lane
Lenhartsville, PA 19534
(610) 562-0172
fasching@fast.net

ENVIRONMENTAL QUALITY BOARD HEARINGS 1998

We, the people listed below, have asked Judith Fasching 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

Kathryn R. Jasso 855 N. Park Rd. Apt. 203 Wyomissing, PA 19610
 Deb Spillif 1471 Lehigh Pkwy So. Allentown 18103
 Joe Elsh 12 Quind Rd Allentown, PA 18501
 W. A. Y. 4416 Orford Ln " " PA 18103
 Suzanne Gutnam 2634 Broder St. SW, Allentown, PA 18103
 J. K. Nurny 3898 Post Dr. Bethl PA 18017
 Brent Shick 1045N West End Blvd. #129 Quakertown, PA 18951
 Masha Vidorchik 107 Bouldell Drive Exton PA 19341
 Clarence Williams 3656 Alma Drive, Allentown Pa 18103
 Evelyn & Daubert 219 5016th, Allentown PA 18102
 JAY S. SHAH 4922 Meadow Lane, Macungie PA 18062
 Brian K. Moyer 25 College Ave Tropic PA 19426
 Robert A. BARON 2906 State Hill Rd Reading PA 19610
 Selby Schuster 30 Mine Rd. Mercersburg PA 19539
 Barthann Heman 2139 Allen St. Allentown, Pa 18104
 Edward Sankel 6971 Saluka Sq Bethlehem PA 18017
 Kim Roberts 7939 CROSS CREEK CIRCLE BRIDGESSVILLE PA 18031
 Ted K. Bluh 1025 Westman Circle, Menden PA. 19605
 Chuck McDeBolt 460 Parkview Rd Reading PA 19606
 Dolores E. Sugar 314 NOR-BATH BLVD. NORTHAMPTON PA 18067
 E. Craig Boyard 40 Cedarwood Road Wyomissing, Pa 19610
 S. Corbett 112 S. 12th St. Allentown, Pa. 18103
 Nancy Duckenmiller 2705 Helen St. Allentown, PA 18031
 Rodin Fadel box 3612 Allentown PA 18106

ENVIRONMENTAL QUALITY BOARD HEARINGS 1998

We, the people listed below, have asked Judith Fasching 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

John K Lent 4191 Sherry Hill Pl Hellertown PA 18055
Frank Wenge 1909 WOODMONT DRIVE, BETHLEHEM PA 18014
Margaret Lawrence 1116 Bernice Dr Coplay PA 18037
Frederick Alkous 254 Adams Rd Kutztown PA 19530
Nadine Eshew 1855 Hidden Valley Rd Maunzig PA 18062
William F. Mill 229 Furnace Rd. Wernersville, PA 19565
Woodrow W. Jones 4646 Elm Drive Nazareth PA 18064
Lee Fisher 800 Palomino Dr North Catasauqua Pa 18032
CHUCK HAFER 24 CHIMAPIL DR FLEETWOOD PA 19522
Larry L. Gillespie P.O. Box 935 SHILLINGTON PA 19607
Kvvi Ross 40 Chestoga Drive Sinking Spring, PA, 19608
Thom Sewart 45 West Main St, Fleetwood PA 19522
Mark Ettaro 202 Sunrise Rd. Reading, Pa. 19606
Sarah Fain 310 Fairbairn Bldg. Bland, Pa. 19510
Thad Calver 2080 Aster RD Beth. Pa 18018
Bart Richmond P.O. Box 133 E. Texas, PA 18046
John Kellum 2146 Kemmerer St. Bethlehem, PA 18017
Sam Y. Binetti 561 Grim Rd. Kutztown PA 19530
Bryan S. Schum 7 Misty Lane Reading Pa 19606
John Canfield 1771 Shimer Ave BETHLEHEM, PA 18018
Frank Kuebler 15 Clarendon Rd Weyersburg Pa 19610
Aziz D. Alkhal 1250 Davis DR, Whitehall Pa, 18052
John W. Hill 2709 FIVE CT. COPLAY PA 18037
Mark Moran 5067 Cannerton Pl Wescosville PA 18106

ENVIRONMENTAL QUALITY BOARD HEARINGS 1998

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NAME:

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Connie C. McLaughlin	131 W. Penn Ave. Wernersville, Pa. 19565
Conelle S. Kogritz	92 Brittenut Ct. Leaking Spring, PA 19608
Laura S. Lichty	2804 Knoll Way, Leaking Spring, PA 19608
Jude Woodring Raymond	1681 Harding Circle Whitehall, PA 18052
John S. Szymak	1574 Ardside Rd. Whitehall, PA 18052
Eric C. Muntz	100 Ramapo Trail H-15 Allentown PA 18104
Thomas W. George	3552 Easton Ave. Bethlehem, PA 18020
GAIL A. Peyros	5921 Meadow Drive, Orefield PA 18069
April C. Dorn	222 E. Federal St Allentown, Pa 18103
Laurie J. Jay	Apt 76 C S. Elm Kutztown PA 19570
Cynthia Shipwack	85 Pin oak Rd, Lehighton, PA 18235
Carol K. Mankos	2309 Mountain Rd. Slatington, Pa. 18080
THOMAS F. KOOUT	42 WINGOOD FT. DR. SHILLINGTON PA 19607
Kenneth B. Matyjas	600 Elm Ave Reading, PA 19605
Willy R. Dickson	307 N. K. PORT AVE PLAZA, PA 19611
Joseph H. Harschinski	302 S. 6 th St. Easton, PA 18049
Charles R. Kew	613 Washington St Whitehall PA 18052
Claudia C. Orr	7686 Zeisloff Road, New Tripoli, PA 18066
Phany Ferrer	2275 Roger St Bethlehem PA 18017
Deborah L. George	966 Grandview Delm, PA 18070
Cathy E. Gilder	5480 Monocacy Dr Bethlehem, PA 18017
Daniel A. Hollinger	129 A South Franklin St Freeport, PA 19522
Sandra Prutzman	290 Stealy Rd., Leaking Spring PA 19608
Larry Valero	492 WATER ST, OLEY, PA 19545

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Sue Wall	3521 Kutztown Rd	LAURELDALE
Bill	102 W. Chestnut St.	Macungie
William Clark	1971 Ridge Creek	allentown
D. J. J.	1969 Centerville Rd.	MAHESVILLE
Jim Wortmann	307 Greenwich st	Kutztown
Tuesday L. Barnes	5650 WEDGE LN	WESCOVILLE
Andrew M. Taus	520 N. SAINT LUCAS	ALLENTOWN
Robert Mellhamy	2735 FERNOR ST.	ALLENTOWN
Valerik Hallouck	309 S. 9th ST.	COOPERBURG
Jeff Wang	382 S. TURNER ST.	HAMBURG
Paul J. J.	228 GENESIS DR.	BLANDON
D. B. J.	810 CARMON DR	WYOMISSING

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NAME:

ADDRESS

<u>Robert T. Brin</u>	<u>24 West Ave Wellboro</u>
<u>Charles H. Jacobson</u>	<u>28 Hilsy St Wellboro Pa 16901</u>
<u>LEON TISH</u>	<u>12 CLACKSON ST. WELLSBORO PA 16901</u>
<u>Harold W. Wada</u>	<u>230 Davis St. Blossburg PA 16912</u>
<u>ANITA OTT</u>	<u>7 WALNUT ST. WELLSBORO PA 16901</u>
<u>James Douglas & Keener</u>	<u>RES Box 102 Wellboro Pa 16901</u>
<u>Kimberly L. McMichael</u>	<u>RDE7 Box 374 Wellboro Pa 16901</u>
<u>Timothy J. Graves</u>	<u>1000 Hwy F Wellboro Pa 16901</u>
<u>Brian J. J. J. J.</u>	<u>PO Box 144 Wellboro, PA 16901</u>
<u>Andrew Boggs</u>	<u>2199 Box #12 Strasburg Pa 17157</u>
<u>Karen R. Clark</u>	<u>RD #2 Box D-32 Canton PA 17724</u>
<u>Bonnie Wright</u>	<u>110 EAST AVE. Wellboro, PA 16901</u>
<u>Dr. William R. Bell</u>	<u>Box 95 Tipton Pa 16940</u>
<u>William Neenan</u>	<u>Box 138 Wellboro, Pa 16901</u>
<u>Margaret M. Mest</u>	<u>2 Kelsey St Wellboro Pa 16901</u>
<u>Madison P. P. P.</u>	<u>28 Hilsy St Wellboro Pa 16901</u>
<u>J. Ellen Manchester</u>	<u>2 Kelsey St #D, Wellboro, PA 16901</u>
<u>David Wells</u>	<u>1794 Spring Run Rd. Williamsport PA 17701</u>

ENVIRONMENTAL QUALITY BOARD HEARINGS 1998

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NAME:

ADDRESS

Kathryn R. Gross 855 N. Park Rd. Apt. 202 Wyomissing PA 19610
~~Del. Shubert~~ 1477 Lehigh Pkwy So. Allentown 18103
~~Prof. Elbert~~ 12 Quind Rd Allentown, PA 18501
W. A. Y. 4416 Oxford Ln " " PA 18103
Barbara Gutram 2634 Broder St. SW, Allentown, PA 18103
J. K. Mummy 3898 Foster Dr. Bethl Pa 18017
Brent Shick 1045 N West End Blvd. #129 Quakertown, PA 18951
Masha Vioderchik 107 Buddell Drive Exton Pa 19341
Clarence Williams 3656 Alma Drive, Allentown Pa 18103
Evelyn Duckert 219 So 16th, Allentown PA 18102
JAY S. SHAH 4922 Meadow Lane, Macungie PA 18062
Brian M. Meyer 25 College Ave Trappe Pa 19426
Robert A. BARON 2806 State Hill Rd Reading PA 19610
~~Debbie Schuster~~ 30 Mine Rd. Mertz town PA 19539
Burthann Herrin 2139 Allen St, Allentown, Pa 18104
Edward Sankci 6971 Saluka Sq Bethlehem PA 18017
Kim Roberts 7939 CROSS CREEK CIRCLE BRONIGSVILLE PA 18031
Ed K. Blitt 1025 Chestnut Circle, Reading Pa 19605
Charles DeBolt 460 Parkview Rd Reading PA 19606
Dolores E. Angus 314 NOR-BATH BLVD. NORTHAMPTON PA 18067
E. Craig Bayard 40 Cedarwood Road Wyomissing, Pa 19610
S. Colbeck 1112 S. 12th St. Allentown, Pa. 18103
Nancy Duckenmiller 2705 Helen St Allentown, PA 18031
Rodha Zudek box 3612 Allentown PA 18106

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NAME:	ADDRESS
John J. Lent	4191 Sherry Hill Rd Hillertown PA 18155
George Deuch	1909 WOODMONT DRIVE, BETHLEHEM PA 18018
Mariannette Lawrence	1116 Bernice Dr Coplay PA 18037
Frederick Alkans	254 Adams Rd Kutztown PA 19530
Nadine Eshen	1855 Hidden Valley Rd Maunzig PA 18062
William T. Mill	229 Furness Rd. Wernersville, PA 19565
Wendell W. Jones	4640 Elm Drive Nazareth PA 18064
Lee Fisher	800 Palomino Dr North Catasauqua Pa 18032
CHUCK HAFFER	24 CHIMWAPIL DR FLEETWOOD PA 19522
Larry L. Gillespie	P.O. Box 935 SHILLINGTON PA 19609
Ervi Ross	40 Chestnut Drive Sinking Spring, PA, 19608
Thom Swartz	45 West Main St, Fleetwood PA 19522
Mark Ettaro	202 Sunrise Rd. Reading, Pa. 19606
Sarah Hain	310 Fairbairn Bl. Bland PA. 19510
Thad Calver	2080 Aster Rd Beth. Pa. 18018
Bart Richmond	P.O. Box 133 E. Texas, PA 18046
John J. Kellum	2146 Kemmerer St. Bethlehem, PA 18017
Samuel Bignolo	361 Grim Rd. Kitztown PA 19530
Ryan Schupp	7 Misty Lane Reading Pa 19606
JL Canfield	1771 SHIMON AVE BETHLEHEM, PA 18018
Frank Kauler	16 Orange St Wernersville Pa 19610
Aria D. Alford	1250 Davies DR, whitfield pa, 18052
John Hill	2709 FIFE RD CT. COPLAY PA 18037
Mark McEz	5067 Conover Rd Wernersville PA 18066

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<u>Louis J. Jasek</u>	<u>APT 76 C S. E. C. KUTZTOWN PA 19170</u>
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<u>Wm. R. Kuzma</u>	<u>307 NEWPORT AVE PLAZA, PA 19611</u>
<u>Joseph A. Hanchais</u>	<u>302 S. 6th St. Emmaus, PA 18049</u>
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<u>Rebecca K. Kozuma</u>	<u>766 G. David Dalem, PA 18070</u>
<u>Cathy G. Biss</u>	<u>5480 Monocacy Dr Bethlehem, PA 18017</u>
<u>Daniel A. Helling</u>	<u>129A South Franklin St. Freeport, PA 19522</u>
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<u>William Chub</u>	<u>1971 Rego Creek</u>	<u>Allentown</u>
<u>D. J. J.</u>	<u>1969 Centrapoot Rd.</u>	<u>MAHRSVILLE</u>
<u>Jim Wortmann</u>	<u>307 Greenwich st</u>	<u>Kutztown</u>
<u>Lucy H. Barnes</u>	<u>5650 WEDGE LN</u>	<u>WESCOSVILLE</u>
<u>Andrew M. Tans</u>	<u>520 N. SAINT LUCAS</u>	<u>ALLEN TOWN</u>
<u>Robert Mellhamy</u>	<u>2735 FERNDR ST.</u>	<u>ALLEN TOWN</u>
<u>Valerik Halloud</u>	<u>309 S. 9th ST.</u>	<u>Coopersburg</u>
<u>Paul Wanz</u>	<u>382 S. TURNER ST.</u>	<u>HAMBURG</u>
<u>Paul H.</u>	<u>228 GENESIS DR.</u>	<u>BLANDON</u>
<u>Di B. D.</u>	<u>810 CARMON DR</u>	<u>WYOMISSING</u>

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Foley

Hartman, Shirley
From: Lauderbach, Cindy
Sent: Friday, October 23, 1998 8:15 AM
To: Hartman, Shirley
Subject: FW: Comment Period - Water Quality Regulations

Shirley -- please forward this whomever needs to grant this extension! Thanks!
Cindy

From: Gregory(SMTP:meg5@psu.edu)
Sent: Friday, October 23, 1998 3:04 AM
To: SEIF JAMES
Subject: Comment Period - Water Quality Regulations

Dear Secretary Seif,

As the Friends of the Nescopeck have just now become aware of your agency's Triennial Review of Water Quality Regulations, we ask that we be given additional time to prepare and submit our written comments.

Thank you.

Alan C. Gregory
Vice President
Friends of the Nescopeck
PO Box 571
Conyngham PA 18219-0571

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Wm. F. Hill & Assoc., Inc.

207 Baltimore Street • Gettysburg, Pennsylvania 17325 • Office (717) 334-9137

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October 22, 1998

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

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

Dear Commission Members,

I would first like to commend the Department of Environmental Protection on its Regulatory Basics Initiative. It is both a massive and worthy effort to streamline and clarify the many regulations administered by the department.

One often heard complaint concerning regulations is the often difficult to read language used. It appears in many places in the proposed regulations that wording has been changed in an effort to make them more readable. Although this is a worthy effort, great care must be taken when changing the wording in legal documents to avoid ambiguities. The English language is filled with words that have several meanings in common use and words that have implied meanings. This is why certain words are used in the preparation of legal documents. "Shall" is one of these words. It implies a requirement to act, a command. In the proposed changes to the above referenced regulations, there are many instances where "shall" has been replaced with "will". Although in common use these two words seem to have the same meaning, "will" does not have the implied sense of a command, or requirement to act. It is our thought that to change the use of "shall" to "may" only serves to increase the ambiguity of the regulations which is contrary to the purpose of the Regulatory Basics Initiative and will not contribute significantly to the readability of the regulations. Unless it is the intent to change a regulatory requirement to an option, the word "shall" should not be replaced.

Apparently in an attempt to make a regulation more readable the words "not less than" were removed from § 92.21 requiring a NPDES application for renewal to be submitted exactly 180 days prior to the expiration of the current permit. Great care must be taken to assure that a change in wording to clarify does not in fact change the meaning from that which was intended.

It is stated that the purpose of the Regulatory Basics Initiative is also to make regulations consistent with Federal regulations. If this is indeed the case, then those terms defined in both State and Federal regulations should be consistent. This is not the case in several instances in the proposed changes. Definitions for *BAT*, *Conventional Pollutant*, and *Toxic Pollutant* are inconsistent with Federal definitions. These are generally accepted terms. To propagate a State definition different from the federal would not act to clarify these regulations but to complicate them.

In § 92.93, the proposed changes appear to attempt to make a hearing optional before DEP assesses a civil penalty. The assessment of civil penalties must be preceded by a hearing as required by the Clean Stream Act. An attempt to circumvent this process would be a violation of due process and would confer powers to DEP that are not conferred by law.

In § 92.2, DEP proposes to incorporate future EPA regulations by reference. This circumvents the provisions of state rule making. It does not allow public comment, public notice, and other due process protections. Although the intent of this section is honorable, this approach basically gives the Federal government power to enact state regulations without local input. This is not only contrary to state and federal law, but also highly undesirable.

These are the objectionable changes noted in the proposed regulatory revisions to Chapters 92, 93, 94, 95, 96, and 97. It is our request that these proposed changes and the existing regulations be more closely examined to assure that the intent of the Regulatory Basics Initiative is accomplished in all modifications. It is our hope that these comments, as well as those of others, will aid in identifying areas needing further evaluation.

Very truly yours,



P. Fred Heerbrandt
representing

Wm. F. Hill & Assoc., Inc.

Wm. F. Hill & Assoc., Inc.

207 Baltimore Street • Gettysburg, Pennsylvania 17325 • Office (717) 334-9137

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

October 22, 1998

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Very truly yours,



P. Fred Heerbrandt
representing

Wm. F. Hill & Assoc., Inc.

23 October 1998

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

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Dear Mr. Seif:

We are concerned about the proposed changes to the water quality regulations described in the August 29, 1998, Pennsylvania Bulletin. Some of these changes are needed, but others miss the mark.

We support retention of the technology-based limit (0.5 mg/l) for total residual chlorine; the additional public comment period when someone intends to submit an NPDES application, as recommended by the Water Resources Advisory Committee; and, the present protection of all of our waters as "potable water" sources.

However, we urge reconsideration of the provision that allows "general" permits in High Quality streams or impaired waters. Nor should general permits allow the discharge of toxic materials. Individual permits should be required in these cases and documentation for these permits should not be reduced.

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. Since 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!

We hope that the EQB will extend the study of these regulations and consider changes such as we are suggesting to improve our water quality. No resource is more crucial to the welfare of our people than water. We MUST NOT relax protection of it.

Sincerely,

Marilynn K. Cartwright
Dana Cartwright

Marilynn and Dana Cartwright
263 Hillcrest Road
Wayne, PA 19087-2423

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PROCESSED

318 Black Rock Rd.
Nazareth, PA 18061
10-23-92



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REVIEW COMMISSION

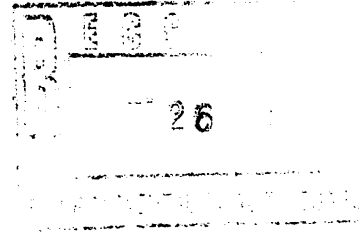
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We oppose the new
Notes proposed water quality
standards.

Russell W. Thomas
Linda A. Thomas

E120-5000

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October 23, 1998

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

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Dear Members:

I am seriously concerned about the proposed changes in regulations regarding chemicals poured into our water supplies. My husband is a Chemist and we both enjoy the outdoors. We know the simply because research has not been completed on the health effects of a certain chemical, does not mean that the chemical is harmless. Simply, it means that we do not have that knowledge, as yet. I would hope that common sense would prevail over legalese in matters that affect the health of human beings. In the years before regulation, we dumped chemicals into the water that we believed would have no affect on the waterways or in turn, our health. We were wrong and in the Great Lakes area it is still hazardous to eat fish caught in those waters and it will continue to be for hundreds of years. We have made great progress to clean up our waterways in the past 20 years. Please do not let political or financial pressure from local industry overshadow your moral judgement about your responsibility to the people of this state.

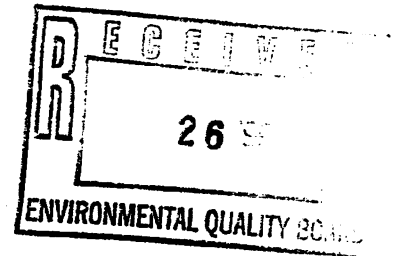
I would like more information about the proposed changes and how they compare with other states with stringent guidelines for monitoring chemical dumping. I would also urge you to more widely publicize the proposed changes. The citizens have a right to know even if they live in small towns.

Sincerely,

Katherine Weber M.Ed. L.P.C.

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DEP REGULATORY
REVIEW COMMISSION

October 23, 1998

Environmental Quality Board
PO Box 8477
Harriburg, PA 17105

Dear Reader:

It has recently come to my attention that you are seeking public comment on proposed changes to the Water Quality Standards and Toxics Management Strategy.

As I understand it, all of this is under the impetus of the DEP's Regulatory Basics Initiative.

While I am a big believer in simplification and streamlining, I do not think that doing less in a simpler manner is an improvement. The point of simplification is to find ways to do what we do in better ways - eliminating items (and paperwork and rules) that do not participate in getting the job done. But getting the job done is not one of the things to eliminate.

Just review what the acronym DEP means - particularly the 'P' - and rethink the big picture.

Thanks for your time and labors.

Sincerely,

A handwritten signature in cursive script that reads "J. Carroll".

James Carroll
1700 Beech Avenue
Lamott, PA 19027
(215) 887-6810

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INDEPENDENT REGULATORY
REVIEW COMMISSION

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I strongly oppose the
new proposed water
quality standards and
toxics strategy. You
need to strengthen the
standards that protect
our water, not weaken
them!!

Julie Kosterbade



OFFSET IMPRESSIONS, INC.

Mountain View Road • P.O. Box 8 • Reading, PA 19607
Telephone: 215-378-1851 • FAX: 215-378-9107

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INDEPENDENT REGULATORY
REVIEW COMMISSION

Judy A. Miller
704 Arndt Rd.
Easton, Pa 18040

October 23, 1998

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Environmental Quality Board
PO Box 847
Harrisburg Pa 17105
Gentlemen:

I am writing to you to tell you that I strongly oppose the new proposed water quality standards and toxics strategy. I feel that to allow more toxic discharges into our water would be a giant step backward for the state of Pennsylvania.

I urge you to stop these new standards!!!

Sincerely yours,

Judy A. Miller

Judy A. Miller

10-23-98
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INDEPENDENT REGULATORY
REVIEW COMMISSION

Charlie & Maisie Sandwick



CHARLES M. SANDWICK
1332 LEHIGH ST. - APT. 1
EASTON, PA 18042-4047

Oct. 24, 1998

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

Dear Sirs + Madams:

We respectfully request that
you defeat the proposed new
Water Quality Standards, because,
in our opinion, they would seriously
weaken the current quality standards.

The health of the citizens of Penn-
sylvania should be of more concern
than economic considerations.

Respectfully yours
Charles M. Sandwick, Jr. } retirees
Anna M. Sandwick }