October 16, 1998

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To Whom it may Concern:

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

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

Sincerely,

Heather Tesky
7607 Front St.
Cheltenham Pa
19012

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10-16-98

Enviormental Quality Board

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

We want these new standards stopped.

Please respond

Emma Muller
7500 new Second St.
Elkins Park Pa 19027

7309 Oak Ave.
Melrose Park, PA
19027

Oct. 16, 1998

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Dear Friends,

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

Sincerely yours,
Debbie and
Dave Posmontier

FTMSA

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

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

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

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

Dear Board Members,

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

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

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

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

RBI CONCERN: MORE STRINGENT THAN FEDERAL REGULATIONS WITHOUT GOOD REASON

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RBI CONCERN: IMPOSE ECONOMIC COSTS DISPROPORTIONATE TO ENVIRONMENTAL BENEFIT

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

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

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

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

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

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

RBI CONCERN: ARE PRESCRIPTIVE RATHER THAN PERFORMANCE BASED

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

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

RBI CONCERN: ARE OBSOLETE OR REDUNDANT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RBI CONCERN: WRITTEN IN A WAY THAT CAUSES SIGNIFICANT NONCOMPLIANCE

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

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

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

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

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

NON-RBI CONCERNS

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

CONCERN: PROPOSED INFORMAL HEARING PROCESS FOR ASSESSMENT OF CIVIL PENALTY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCERN: UNREGULATED DEPARTMENT DISCRETION ADVERSELY AFFECTING DISCHARGERS

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

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

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

Very truly yours,

James C. Brucker
Manager

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

Dear Sir(s)/Madame(s),

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

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

M. Miller
402 West
Oreland

A. Weston
126 Azalea Way
Flourtown, PA 19031

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

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Oct. 19, 1998

Dear Sirs,

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

Looking forward to your response.

Sincerely,

Alki Weston

10/19/98

Environmental Quality Board
PO Box 8477
Harrisburg PA 17105

ORIGINAL: 1975
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To Whom It May Concern:

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

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

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

Alexa Zimmerman

Alexa Zimmerman
306 S. Fair mount St. #1
Pittsburgh PA 15232

10.18.98

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DEAR E.Q.B.,

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

SINCERELY,
Willard S Byrd

423 Cliff Mine Rd.
Carnegie, Pa 15106
Oct 17, 1998

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Hagen

Environmental Quality Board;

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

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

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

Thank you,
Debi Chojnicki

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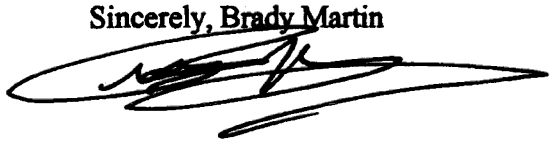
Edward Brezina
PA DEP
PO Box 8555
Harrisburg, Pa 17105

Oct.18, 1998

Mr. Brezina,

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

Sincerely, Brady Martin



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

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Sandusky
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10-19-98

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

Dear EQB,

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

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

JB

ORIGINAL: 1975
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October 19, 1998

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

To Whom It May Concern:

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

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

Very truly yours,

Joanne Gilligan

Joanne Gilligan
129 Azalea Way
Flourtown, PA 19031

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

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October 19, 1998

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

To whom it may concern:

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

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

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

Sincerely,

James J. Quigley

Teresa Méndez-Quigley

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

CHESTER ENGINEERS

October 19, 1998

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

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To Whom It May Concern:

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

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

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

Sincerely,

James B. Whitaker

James B. Whitaker
Manager, Water Quality

JBW:ml-3322

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

CHESAPEAKE BAY FOUNDATION

Resource Protection
Environmental Education

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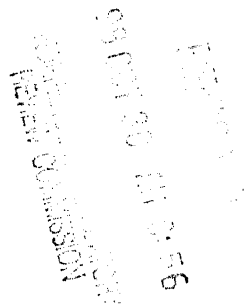
Testimony of the Pennsylvania Office of the Chesapeake Bay Foundation to the Environmental Quality Board On the Proposed Changes to Water Quality 25 PA Code Chapters 92, 93, 95 – 97 October 20, 1998



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

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

The proposed regulations would roll back current water quality protection.

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

Pennsylvania Office: Old Waterworks Building, 614 N. Front Street, Harrisburg, Pennsylvania 17101, 717.234-5550, fax 717.234-9632
Headquarters Office: 162 Prince George Street, Annapolis, Maryland 21401, 410.268.8816, fax 410.268.6687
Maryland Office: 111 Annapolis Street, Annapolis, Maryland 21401, 410.268.8833, fax 410.280.3513
Virginia Office: 1001 E. Main Street, Suite 710, Richmond, Virginia 23219, 804.780.1392, fax 804.648.4011
www.savethebay.cbf.org

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

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

3. By not addressing the issue of mixing zones.

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

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

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

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

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

Inadequate regulation of impaired waters

1. By completely omitting nonpoint sources from regulation.

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

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

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

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

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

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

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

Effluent trading given blanket approval by only listing minimal requirements.

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

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

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

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Doc Fritchey Chapter

2319 Valley Road
Harrisburg, PA 17104
P: 717-236-1530 F: 717-236-3075
E-mail: penbob@worldnet.att.net

October 20, 1998

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

Dear Chairman Seif:

In behalf of the 318 members of Doc Fritchey TU, the following are our comments regarding proposed changes to water quality regulations as described in the *Pennsylvania Bulletin* dated August 29, 1998.

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

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

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

Chapter 92.81 We strongly oppose the issuance of "general" permits in High Quality streams as well as those identified as "impaired". 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.

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

Chapter 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 very least, regulations are needed to govern their permitting.

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

Chairman James M. Seif (continued)

We sincerely hope that the EQB will reconsider these proposed changes in the "Regulatory Basics Initiative". With the progress which has been made in our Commonwealth in recent years, we need to continue to improve our water quality, and not relax the protection of same.

Sincerely,

Bob Pennell

Bob Pennell
Chapter President

October 20, 1998

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

ORIGINAL: 1975
FORM LETTER

Dear Chairman Seif:

The following are my comments regarding proposed changes to water quality regulations as described in the *Pennsylvania Bulletin* dated August 29, 1998.

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

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I firmly believe that the EQB should make these and other changes to improve our water quality standards, and not relax the protection of same.

Sincerely, Eugene D. Graham

Eugene D. Graham
2297 Quarry Road
Lebanon, Pa. 17046

October 19, 1998

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Dear Environmental Quality Board,

We are aware of the new proposed water quality standards and toxic strategy and are greatly opposed to them. Please reconsider the need to loosen the already weak standards and strategies that will further deteriorate our precious natural resources. If you cannot make the decision to further protect and enhance our waterways for yourselves, we ask that you do it for the next generation — my children and yours or your grandchildren — whom, without your help, may miss the sight of the clear, flowing natural water which God created!

Jean D Harris

SCHMID & COMPANY INC., CONSULTING ECOLOGISTS
1201 CEDAR GROVE ROAD, MEDIA, PENNSYLVANIA 19063-1044
Telephone: (610) 356-1416 FAX: (610) 356-3629

Environmental Inventories
Wetlands Mapping & Restoration
Expert Testimony

19 October 1998

Permit Coordination
Environmental Assessments
Impact Statements

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

In re: Comments on Proposed Amendments to 25 Pa Code Chapters 92, 93, and 95-97: Water Quality

Dear Sir/Madam:

I wish to offer the following comments on proposed amendments to 25 Pa Code Chapters 92, 93, and 95-97: Water Quality, as published on 29 August 1998 in the *Pennsylvania Bulletin*.

General Comments

1) In general I agree with some of the objectives of the Regulatory Basics Initiative (RBI), such as eliminating obsolete or redundant requirements or revising those that are lacking in clarity. However, I strongly disagree with one primary focus of the RBI: that is, to make PADEP regulations no more stringent than federal regulations across the board. Federal water quality protection requirements never were intended to be emulated as a standard. Rather, they were intended to establish a minimum level of protection which the states could adapt to meet local needs and conditions more effectively, primarily by making the state standards more protective than the baseline federal minimum where warranted. I do not believe that wholesale efforts to reduce protections of water quality so that they are "no more stringent than" federal minimum guidelines is what the citizens of this Commonwealth expect from the DEP in carrying out the public trust and securing the clean environment guaranteed by Article 1, Section 27 of the Pennsylvania Constitution.

2) In my experience, the *language* of PADEP regulations often appears to reflect a policy of vigorous environmental protection, but in actual practice, the *application* of those regulations is quite lax. Too often the regulations are worded in such a way as to allow loopholes or broad Departmental discretion that result in weaker actual protections than may be inferred from a cursory reading. For this reason, I believe it is of utmost importance that the public be afforded as much notification as possible about proposed construction projects and specific

applications that are subject to DEP regulations. Unfortunately, the trend in regulatory amendment proposals in recent years appears to be to reduce, rather than to enhance, the opportunities for public review and comment on applications. This is most discouraging, and should be avoided whenever possible, including in the current proposal.

Specific Comments

Chapter 92

92.1 The proposed definition for "best management practices" is too general. The Department should compile and publish specific BMPs for specific situations. It is not meaningful if an applicant blithely agrees to "comply with" or "utilize" BMPs unless there are specific practices referenced that can be applied, subject to DEP enforcement where necessary.

The proposed change in the definition of "discharges" is a good one. It is appropriate that all "surface waters", and not merely "navigable waters", be included.

92.2a(c) I applaud the Department for this attempt to limit discharges in critical habitat of endangered or threatened species.

92.63(b) I do not understand why there needs to be a specific reference to coal here. It appears inappropriate to provide the benefit of specifically highlighting one special interest group. I suggest that the coal reference be deleted.

92.81 I oppose the weakening of protections in this section on general permits that results from the expansion of eligible activities. Allowing more activities to be permitted with essentially no DEP review, and little or no opportunity for public scrutiny, is going to have an unavoidable cumulative negative impact on the quality of the waters of this Commonwealth.

92.81(a)5 I oppose the addition of limits for toxic or hazardous substances. Inasmuch as no clear way has been established to track who uses the general permits, DEP should not allow the discharge of toxic or hazardous substances through general permits.

92.81(a)8 Currently, all *special protection* waters (EV and HQ) are protected from general permit discharges. I oppose the proposed allowance of general permits in "high quality" waters. There is no

indication of how water quality in HQ waters will be maintained. Because it is difficult to track the use of general permits, they should not be allowed in HQ waters.

92.81(d) The broad discretion allowed by this subsection, whereby discharges may be allowed without even a NOI, is inappropriate. Allowing this would weaken the entire permit/review process. I thus oppose it and suggest that this proposed subsection be deleted.

92.81(e) I do not understand why the Department would spend any time or resources notifying a discharger "that it is covered by a general permit, even if the discharger has not submitted a notice of intent to be covered". I suggest that this proposed subsection be deleted.

92.83(a)1 I oppose the elimination of the requirement that applicants document that there will be no violation of water quality standards. The change in language from "demonstrate" to "certify" is an unacceptable weakening of water quality protections, because it would allow a simple statement instead of actual data. The documentation provision should be retained so that interested members of the public, if not DEP itself, will have some way to determine whether water quality standards may be violated.

92.83(a)3 The procedure for notification via a notice in the *Pennsylvania Bulletin* should remain as it currently is. The proposed change reduces the opportunity for public review, potentially to zero. I oppose this proposed weakening of the public notification and review process, which violates the expressed intent of the RBI (to not decrease public participation).

92.83(b)8 Currently, <u>all</u> *special protection* waters (EV <u>and</u> HQ) are protected from general permit discharges. I oppose the proposed allowance of general permits in "high quality" waters. There is no indication of how water quality in HQ waters will be maintained. Because it is difficult to track the use of general permits, they should not be allowed to degrade water quality in HQ waters.

92. There is no prohibition on the use of general permits in impaired waters. Because these waters, by definition, have water quality problems, the unrestricted use of general permits in these waters will only serve to impair them further, and thus defer even longer any possibility of their improvement.

Chapter 93

93.4 I oppose the proposed elimination of "warm water fishes" as a statewide water use. Warm water fishes are a valuable resource in many parts of the Commonwealth. If WWF is eliminated as a use, there would be no minimum level of protection for any stream that, for one reason or another, does not get on a drainage list. Thus, WWF should be retained as a statewide water use.

93.4 Currently, all waters are protected as potential potable water sources. Because of the extra measure of protection this provision provides to our streams, it should be retained. The proposed change to apply this provision only at existing or planned potable water supply intakes will have the effect of decreasing water quality in general and so should not be adopted.

93.4(b) What is a "reasonable" best management practice, and how does it differ from other BMPs? Are certain BMPs considered by the Department to be unreasonable? Which ones? I suggest that this qualifier is unnecessary and that it be deleted.

93.5(e) The current wording of the following statement should not be deleted: "Criteria necessary to protect other designated uses shall be met at the point of wastewater discharge." This statement ensures that the criteria are to be met *before* any influence of a mixing zone occurs. In moving this subsection to Chapter 96, this statement was deleted. If DEP intends to formally institute a mixing zone policy that differs from the existing regulatory intent, it should do so in a fully-articulated policy statement that is proposed for public review and comment.

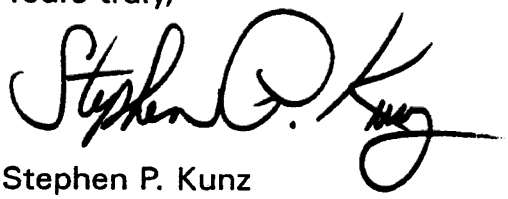
Chapter 96

96.4 This section on TMDLs does not address nonpoint source pollution problems, but it should. The design conditions for calculating discharge limits are listed for low-flow conditions, but there is no mention of how modeling will accommodate rain-induced pollution. Also, it is unclear whether the design flows apply only to impaired waters. DEP should include a section in this Chapter for modeling waters that are not impaired. DEP also should incorporate nonpoint sources into their modeling for impaired waters. DEP should address how cleanup activities dealing with nonpoint sources will be implemented.

96.4 This subsection gives DEP authority to approve effluent trading, but provides only minimal details or requirements. Blanket authority for an effluent trading procedure, which itself has not been finalized, is inappropriate at this time. Any effluent trading procedure should be incorporated in these regulations only after full public review and comment of specific details.

I appreciate this opportunity to comment on the proposed regulations.

Yours truly,



Stephen P. Kunz
Certified *Senior Ecologist* (ESA)

2075 Hiken Ave
Pittsburgh P.A. 15221
10-19-98

ORIGINAL: 1975
MIZNER
COPIES: Wilmarth
Jewett
Sandusky
Legal

I Am one of eight voice to suport the clean Water Action. and the reason Why I said eight because I have 8 children. and they do need safe water and not toxics wates everyone need safe environment We have the right to have clean air and Pure Water. and We the people Should'n have to Pay for it to be clean up. because With the Water Bills being as high as they are, We are all ready paying to much now. So Why should We be rip off and help Pay for it, I don't think so.

Make the one Who are burning tires and hawardous Waste and Pesticide user Pay for the damage they cause, and Clean it up.

Julia Johnson

Raymond Proffitt Founuation

P.O. Box - 723
Langhorne, Pa. 19047-0723

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

ORIGINAL: 1975
MIZNER
COPIES: Wilmarth
Jewett
Sandusky
Legal

October 19, 1998

Re: Water Quality Regulations--Proposed Rulemaking, August 28, 1998, Pennsylvania Bulletin

Dear Mr. Seif and Board Members:

The proposed changes are very extensive. In order for a volunteer organization such as ours to give the proposed changes an adequate review and communicate the issue to members, the 60 day comment period is simply too short. We note that the comment period for the Chapter 16--Statement of Policy on toxics coincides with the regulation comment period. This adds to our task.

We respectfully request that the comment period be extended for another 60 days. Thank you.

Yours truly,

Joseph W. Turner
Secretary-Treasurer

cc: Sen. R. Madigan
Sen. R. Musto
Rep. R. Reber
Rep. C. George
Mr. P. Colangelo
Mr. D. Madl
CAC members of the EQB
W. Michael McCabe--EPA

gateway@rayproffitt.org

http://www.rayproffitt.org

ORIGINAL: 1975
No copies per FEW

DEP and
Environmental Quality Board

10/19/98

I am opposed to then new water standards. I think that it is crazy that we have the amount of chemicals in our water. I think that we should reduce this number rather then increase the toxins. If you think about it it would be better to pay the little extra now rather then later when everyone is sick and dieing. I want the EQB and the DEP to stop the new standards. Water should be pure and safe to drink. Companies should not be allowed to pollute!

Matt Morell

Matt Morell

ORIGINAL: 1975
MIZNER
COPIES: Wilmarth
Jewett
Sandusky
Legal

S. C.Smith

TESTIMONY FOR THE OCTOBER 20,1998 EQB HEARING

Please except the 135 names on the petitions I am about to hand you. The petitions read as follows: We, the people listed below, have asked Sandy C. Smith 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**. These petitions are not a silent small voice from only a few people.These names are from an ex-farmer on oxygen who was planning on speaking,but contracted a bad cold,a contractor cementing today,teachers,truck drivers,office workers,grandparents,and young parents. The names on these petitions are people from all walks of life and ages that are unable to be here in person,but want to be heard LOUD and CLEAR. If time were allowed, there would hardly be a house from Harrisburg to any place in this state that wouldn't want to sign and now I have the awesome responsibility of speaking not only for myself but these fine people that I now hand over to you, the Environmental Quality Board.

As these people have just entrusted me to speak for them, we in Pennsylvania have entrusted you, the EQB, with the task of creating tough standards and regulations for not only

preserving but improving our water,land and air. I am here today because I do not think you have served Pennsylvania or its people well. These proposed amendments delete and re-define what is toxic,waste and pollution all under the guise of "streamlining","beneficial use" and let us not forget that wonderful word, "recycle". While Washington is re-defining the meaning of sex, Harrisburg is re-defining the meaning of toxic waste and both for the good of the people under the heading of "beneficial use"!

The total deleting of Chapter 97(on page 4445)--Industrial Wastes--has me quite concerned as provisions seem vague and for whose benefit--industry to discharge? Why hasn't the Department received "delegation from the EPA to administer an industrial waste pretreatment program"? Why isn't the Department intending to seek delegation to administer this program? EPA sets minimum standards on everything. I would hope Pennsylvania would always be on the maximum standard. This brings me to the troubling statements (on page 4431) giving the background and purpose of this amendment. It reads as thus: "A new chapter on water quality standards implementation is needed to consolidate Total Daily Loads into the regulatory calculus." The word "consolidate" in this case means take out important regulations. "The Regulatory Basics Initiative is a multi step process to evaluate regulations considering several factors including whether requirements: are more stringent than Fed. Regulations without good reason ;impose economic costs disproportionate to the environmental benefit,etc." When it comes to these industrial waste requirements, it is always better to err on the side of "stringent".How often to we here not to "impose economic costs to the industry disproportionate

to the environmental benefit"? In other words, don't step on the toes of industry. Industry is providing jobs. Industry is providing mountains of toxic waste that the EQB,DEP and EPA are trying to "streamline" into every corner of our life under the guise of "beneficial use". Industry is providing great sums of money to all our politicians. That is what is DISPROPORTIONATE! The environment needs every stringent regulation that E.Q.B. can give industry because even the CEO's and their families breath the Pennsylvania air that has become more and more polluted, drink the Pennsylvania water that the EQB want to pour more toxic chemicals into and eat the Pennsylvania food grown on municipal/industrial sewage waste sludge.

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

Are we streamlining to allow more trash to be brought into Pennsylvania? In 1997 Pennsylvania received 8.7 million tons of waste from Puerto Rico, Canada,the District of Columbia and 25 other states. Privatizing PA landfills means landfills have to make a profit

so let's streamline that trash so our landfills fill up quicker and we can expand. The landfills PA can't expand become golf courses and soccer fields covered with the EQB's proposed regulations of "clean fill" which is little dirt and a lot of toxic waste. These golf courses are fertilized with sewage sludge and watered with heaven only knows what kind of discharges.

The proposed amendments to increase discharges of known toxic chemicals into the waterways and to eliminate regulation of 20 toxic chemicals is also very disturbing. DEP is proposing a major roll back regarding criteria for toxins which includes deleting aquatic life criteria for about 70 chemicals with the reasoning that there isn't enough data. What happened to the idea of erring on the side of caution? These are people's lives and health we are talking about. Of the 80,000 chemicals, the US EPA has criteria for only 99. Pennsylvania has standards for only 140 chemicals thus there are no standards or discharge limits for over 99% of all chemicals in use today. According to the Federal Government's General Accounting Office, 77% of toxic pollutants being discharged into water are not listed on permits, so their release is uncontrolled and unknown. The permitting process doesn't address the accumulation of persistent toxic chemicals in sediments or aquatic life. DEP doesn't evaluate the effects of multiple discharges to the same stream. How can you ignore the regulation of non-point source pollution in impaired waters?

As I look around York County, I see and hear very disturbing happenings. The small township of Helham has spent $50,000. to fight the neighboring township, Springettsbury, with stricter regulations for dumping their sewage waste sludge in their fields. Helham wants the sludge tested for more chemicals and radiation. Citizens in Lower Chanceford, Chanceford,

Dover and East Hopewell Townships are up in arms over more sludge being brought into their fields and next to their homes. Last year a rather large group of citizens presented the York County Commissioners with well over 1,000 names on petitions. The petition read as follows: We, the undersigned landowners, object to our raised assessed land values. We feel our land values have gone down due to increased Municipal Sewage Sludging on farmland in York County. We feel our tax dollars are being used to devaluate our land. PA Farmland Preservation Program is actually "preserving" these farming dumps along with the added support of $600,000. from you, our commissioners. All this sludge money,preservation money & county money IS OUR TAX DOLLARS--WE DO NOT APPROVE! My examples can go on for another hour or so but the bottom line is that York County is not pleased with the way the EQB or the DEP are handling the fragile enviorment of Pennsylvania.

The proposed EQB regulation amendments need much more thought and expanding not streamlining for beneficial use. The amendments should be thrown out, started over again with input from us,written in simple terms without cross referencing and hiding ; then put on display (libraries,schools,colleges & other such public places) for the public to read and comment on.An 800 number would be helpful.The EQB should at least hold 6 state wide public hearings and the 60 more days to further comment. The EQB is a very import part of our environmental protection process . The EQB is the people's only form for speaking--please give us a chance. This has been a very sneaky way of trying to trash Pennsylvania. No wonder you didn't want to put anything in the York papers. 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 fir? Pennsylvania's quality of life is being "streamlined "and" recycled" into oblivion!

Thank you.

Mrs. Sandy C. Smith
Fox Brush Farm,
R.D.#1.Box 734
Brogue,PA 17309

Phone: 717-927-6412

[illegible] 121-6412

ENVIRONMENTAL QUALITY BOARD HEARINGS
1998

We, the people listed below, have asked Sandy C. Smith 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
Scott Naumann	540 Steinleitner Rd Lew PA 17351
Kaye Sharwarko	175 Forest Hill Rd. York PA 17402
Deb Wise	760 Ridgely Dr Dallastown PA 17313
Cheryl M. Abel	280 Forge Hill Rd. Knightsville, PA 17368
Cathy Shaffer	2688 St. Andrews Ct. York PA 17402
Adrienne McDonald	2720 Carnegie Rd York, Pa. 17402
Karen Cavalier	170 overview circle w Red Lion Pa 17356
Goldie Wise	350 Hillview Dr, Mt. Wolf PA 17347
Lynn Snyder	4328 Old Orchard Rd. York, Pa 17403
Victor J. Snyder	4338 Old Orchard Rd. York Pa.
Lori A. Snyder	4338 Old Orchard Rd. York, Pa 17402
Paula Jones	4025 Scenic Lane York PA 17406
Carole Fisher	3767 Stony Brook York PA 17402
William E. Heller	1735 Clover Lane York, PA 17403

NAME:	ADDRESS
Brenda Hahn	564 Hillcrest Rd York 17403
Kerri Lisa	6121 Birch Rd Stewartstown
Debra O'Connor	351 Ridge Rd York PA 17402

ENVIRONMENTAL QUALITY BOARD HEARINGS
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NAME:	ADDRESS
Scott D. McCloskey	418 Frederick Drive Dallastown, PA 17313
Tim W. Ebert	1395 Bon Air Rd., York, PA 17403
Sue Jacobs	229 Troy Rd. Dallastown PA 17313
Barbara A. Bellman	3 Southview Dr. York Pa. 17402
[illegible]	147 Fry. Hgts Dr. Dallastown Pa.
Ruby Mitchell	45 Domenick Dr. York, PA 17402
Doug Vi Mitchell	45 Domenick Dr York PA 17402
Scott Shultz	21 Quail Run Road York PA 17402
Tyrus O. Grim	337 Indian Rock Dam Rd. York, PA 17403
Robert W. Hayes	18 Maple Rd. York, PA 17403
Phillip Black	871 Modena, Pa York, Pa 17404
Ann Manch	383 Allegheny Dr. York PA 17402-5002
Sara Taylor	RD2 Box 3572 Felton, PA 17322
Laura McCarley	23 Belmar Dr Dallastown PA 17313
Anne Doyle	312 S. Walnut St Dallastown PA 17313
John Morris	2610 Pleasant Valley Rd York Pa. 17402
Kim Fait	135 E JADE Ct. FELTON PA 17322
Millie Belgore	R.D#1 Box 67 Brogue, Pa 17309
Patricia Smith	565 Hillcrest Rd. York, Pa 17403

>Environmental Quality Board
>P.O.B. 8477
>Harrisburg,PA 17105
>
>EQB:
>
> I am totally against the new proposals to amend the PA regulations on
>municipal waste and water quality. These regulations need to be made tougher
>not "streamlined" to trash Pennsylvania sooner.
>
> What on earth are you people in Harrisburg thinking? PA is one on the
>nation's biggest dumping grounds already. In 1997 PA received 8.7 million
>tons of waste from Puerto Rico,Canada,D.C. and 25 other states. Now the EQB
>wants to make this process easier and welcome more trash with less
>regulations? Is this the business PA wants to attract,because we certainly
>are. Is there that much money in trash and trashing PA that Harrisburg can't
>pull themselves out onto higher ground?
>
> According to a study led by Dr. David Pimental, professor of ecology and
>agriculture sciences at Cornell University, 40% of world deaths are attributed
>to organic and chemical pollutants .Data for this September 1998 study came
>from sources such as the World Health Organization and the U.S. Centers for
>Disease Control and Prevention. This grim study further states that of the
>80,000 pesticides and chemicals in use today,10% are recognized as
>carcinogens. Lead at high levels are in the blood of 1.7 millionU.S. children.
>The conclusion: "Without local,state,federal and international cooperative
>efforts, disease prevalence will continue its rapid rise throughout the world
>diminishing the quality of life for all humans."
>
> I rest my complaint. Thank you.

>
>Very sincerely a fellow Pennsylvanian,
>
>

Anne de la Bouillerie Goeke
Green Party of PA
PO BOX 7413
Lancaster PA 17604

(717) 394-9110 tel/fax
email: ajgoeke@igc.apc.org

- Headers -

Subj: Fw: EQB Petition
Date: 98-10-19 08:56:48 EDT
From: doloreskrick@juno.com (Dolores E. Krick)
To: SandyHCSmi@aol.com

ENVIRONMENTAL QUALITY BOARD HEARINGS
1998

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Steve & Dolores Krick
699 Frosty Hill Rd
Airville, Pa. 17302

Steve & Julie Lamb
1122 Alum Rock Rd.
New Park Pa 17352

Patti & Jeff Spencer
225 Hunt Club Rd.
Fawn Grove Pa 17321

Stephen Krick, II
11721 Muddy Creek Rd
Airville, Pa 17302

Paul & Eleanor Krick
6092 Thompson Rd
Stewartstown, Pa 17363

John & Sherri Krick
RD#1 Box 106-1
New Park Pa 17352

Please return to: 927-6412

ENVIRONMENTAL QUALITY BOARD HEARINGS
1998

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	NAME:	ADDRESS
1 x	Lisa Clutter	RD#2 Box 4261 Felton, PA 17322
2 x	Robert L. Clutter Jr.	"
3 x	Sandy Jenkins	RD#2 Box 3760 Felton, PA 17322
4 x	Daniel Jenkins	"
5 x	BARB CLUTTER	RD #1 Box 444, Wrightsville, PA 17368
6 x	Robert Clutter Sr.	" " " " "
7 x	CHRIS LUTZ	R.D#1 BOX 444A WRIGHTSVILLE PA 17368
8 x	Scott L. Clutter	" " " " " "
9 x	Wendy Snyder	RR1 Box 714 Bldg A Apt 309
10 x	Hugh A. Sligh	3493 New Park Rd New Park PA 17352
11 x	Elwin C. Lloyd	" " " "
x		
x		
x		
x		
x		
x		
x		

ENVIRONMENTAL QUALITY BOARD HEARINGS
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	NAME:	ADDRESS
1	Rose Prado	RD#2 Box3290 felton PA 17322
2	Zelda Cunningham	RD#2 Box3280 felton PA 17322
3	Mary Graham	RD#2 Box3290 felton PA 17322
4	Glenn Cunningham	RD#2 Box 3280 felton PA 17322
5	Sacee Atkins	23 Pinebrove Rd. Airville PA 1730
6	Dave & Laura Jenney	13 Wisq Rd Delta PA
7	Garrad Kennedy	Airville PA [redacted]
8	Gerald Kennedy	380 Kennedy Rd Airville PA
9	Randy Hogan	RD1 Box 248 Brogue PA 17309
10	Dan Stoltzfus	Rot 425 felton PA 17322
11	Jessica Hogan	RR1 Box 248 Brogue PA 173
12	Anna Hogan	RR1 Box 248 Brogue PA 1730
13	Lacy Stoltzfus	Rout 425 Felton PA 17322
14	Richard + Debbie Shipley	134 Ridge Road Pylesville Md 21132
15	James Prado	RD#2 Box3290 Felton PA 1732
16	Lena Hogan	RR1 Box 248 Brogue PA 17309
17	Russell Hogan	RR1 Box 248 Brogue PA 17309

Please return to: 9-7-6412

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	NAME:	ADDRESS
1	Clarence C Snyder	1308 Delta Road
2	Martha Snyder	1308 Delta Rd Red Lion Pa
3	Beth A. Elkins	1510 Harrisburg Ave. Manchester PA 17345
4	Jeanette Gemmill	RD1 Box 338 Red Lion Pa
5	Susan Kashner	RD#1 Box 330A Red Lion, PA 17356
6	Gloria Blymire	1463c Winterstown Rd Stewartstown PA
7	Eugene Blymire	14630 Winterstown Rd Stewartstown Pa
8	Sandra J Schadt	P.O. Box 4266 Felton PA 17322-17363
9	Kenneth R. Payles	485 Highland Rd. Red Lion, PA 17356
10	Michelle Call	3824 Concord Rd York PA 17402
11	Kathy Brenneman	1105 Burkholder Rd Red Lion Pa. 17356
12	Jack Schlum	Box 4120 RD#2, Felton, PA 17322
13	Carrie Schlum	Box 4120, RD 2, Felton, Pa 17322
14	Edson Cinos	RD#1 Box 734 Brogue Pa 17309
15	Gibson Smith IV	RD#1 Brogue PA 17309
16	Lisa Lightsmith	RD#1 Brogue PA 17309

Please return to: 717-6412

ENVIRONMENTAL QUALITY BOARD HEARINGS
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	NAME:	ADDRESS
1	Lowell J. Lewis	Rd#2 Box 3874 Felton, Pa 17322
2	Christina Lewis	Felton, Pa 17322 Rd#2 Box 3874, Felton, Pa 17322
3	Suzanne Sauer	RD#2 Box 3575 Felton PA 17322
4	[illegible] Sauer	RD#2 Box 3575 Felton PA 17322
5	[illegible] Peters	Maple St Red Lion PA 17356
6	Todd Herrmann	maple st. Red Lion PA 17356
7	Don Heffner	Box 730, RD#1, Brogue, PA 17309
8	Joyce Heffner	Box 730, RD#1, Brogue, PA 17309
9	Allan J. Smith	Franklin St., New Freedom, PA 17349

<< ENVIRONMENTAL QUALITY BOARD HEARINGS 1998

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NAME:
Gretel Smith

ADDRESS
Fox Brush Farm
RD #1 Box 734
Brogue PA 17309

ENVIRONMENTAL QUALITY BOARD HEARINGS
1998

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NAME:connie keeney
ADDRESS 20181 dutton rd. stewartstown, pa

Subj: Fwd: petition
Date: 98-10-19 07:21:54 EDT
From: Dstemmersr
To: SandyHCSmi

I do not believe the goverment should be making laws to weaken our water quailty standards,if anything they should be strengthened and enforced.

David L Stemmer Sr.

Forwarded Message:

Subj: Re: EQB Petition
Date: 98-10-16 22:53:10 EDT
From: t1gger@blazenet.net (Schmotzer)
Reply-to: t1gger@blazenet.net
To: SandyHCSmi@aol.com

SandyHCSmi@aol.com wrote:
>
> ENVIRONMENTAL QUALITY BOARD HEARINGS
> 1998
>
>
> We, the people listed below, have asked Sandy Smith 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
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> "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: Michael S. Schmotzer
> ADDRESS 2428 Schoolhouse Lane
York, PA 17402

Subj: reply
Date: 98-10-17 09:17:15 EDT
From: jgshaffer@juno.com (J Shaffer)
To: SANDYHCSMI@aol.com

please add my name to petition: Janet Shaffer, 106 Rainsburg Mt. Rd., Bedford, PA 15522-5840 Thanks.

Reply-To: t1gger@blazenet.net
X-Mailer: Mozilla 3.01C-KIT (Win95; U)
MIME-Version: 1.0
To: SandyHCSmi@aol.com
Subject: Re: EQB Petition
References: <120bb49a.362774c8@aol.com>
Content-Type: text/plain; charset=us-ascii
Content-Transfer-Encoding: 7bit

Subj: Re: EQB Petition
Date: 98-10-19 09:24:37 EDT
From: steveb@greenlinepaper.com (Stephen E. Baker)
To: SandyHCSmi@aol.com

At 12:31 PM 10/16/98 EDT, you wrote:
> ENVIRONMENTAL QUALITY BOARD HEARINGS
>1998

>
>

>We, the people listed below, have asked Sandy C. Smith to
>speak for us on this very important matter regarding the proposed rulemaking
>by the Environmental Quality Board (EQB). We believe strongly that these
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>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: Stephen E. Baker
>ADDRESS 2252 Dixie Drive
York PA 17402
>

Subj: Re: EQB Petition
Date: 98-10-19 13:51:50 EDT
From: ebwise@christcom.net (Edward Wise)
To: SandyHCSmi@aol.com

At 12:31 PM 10/16/98 EDT, you wrote:
> ENVIRONMENTAL QUALITY BOARD HEARINGS
>1998
>
>
>We, the people listed below, have asked Sandy Smith to speak for us on this
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>a safe and healthy quality of life for every person in PA.
>
NAME:Ed Wise
>ADDRESS 132 First Ave., Red lion, PA 17356
>
>
Ed Wise

ENVIRONMENTAL QUALITY BOARD HEARINGS

1998

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(13)

NAME:	ADDRESS
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[illegible]	112 Country Ridge Dr. Red Lion, Pa. 17356
[illegible]	[illegible]
[illegible]	533 MASTELLER RD. NEW PARK, PA.
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Leon A Keeney	215 Green Valley Rd York, PA.
[illegible]	760 Capt Horn Rd, York, Pa. 17402
Terry L Bowman	R.D. #1 Box 24A-1 SEVEN VALLEYS, PA. 17360
Tim L. Knisely	707 W. Maple St Dallastown, Pa. 17313
Jerry L. Knisely	620 S. Franklin St Red Lion Pa 17356
[illegible]	18 N. Main St. Dallastown, Pa. 17313
[illegible]	5160 Mastic Ave. York, PA 17404

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ALBERT Gemmill	RD#7 Box 7169 MYERS, Rd. SPRING GROVE, PA 17362
Robert L. Hartman	RD#2 Box 459 Brogue, Pa-17309
Warren Bucher Jr	RD#2 Box 868 THOMASVILLE Pa 17364
R. R. Shelly	P.O Box 430 THOMASVILLE PA 17364
Gary Boyer	26 S. Charles St. Red Lion Pa. 17356
James E [illegible]	532 - Indian Steps Rd. Airville Pa 17302
Sharon A Steman	165 Valley Rd Windsor Pa 17366
[illegible]	RD #1 Box [illegible] Red Lion, Pa. 17356
Carole Shrhart	PO Box 160 Windsor, PA 17366
Alberta G. Williams	RD1 Box 368 Red Lion, PA 17356

October 20, 1998

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

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FORM LETTER 2

Dear Chairman Seif:

The following are my comments regarding proposed changes to water quality regulations as described in the *Pennsylvania Bulletin* dated August 29, 1998.

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

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

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

Chapter 92.81 I strongly oppose the issuance of "general" permits in High Quality streams as well as those identified as "impaired". 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.

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

Chapter 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 very least, regulations are needed to govern their permitting.

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

I firmly believe that the EQB should make these and other changes to improve our water quality standards, and not relax the protection of same.

Sincerely,

Gary L Kragovich

no return address

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October 20, 1998

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Sincerely,

Donald L. Thomas Sr.

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TESTIMONY FOR THE OCTOBER 20,1998 EQB HEARING

I am speaking for myself and the 15 people who have signed these petitions requesting that I represent them as well. I would have had more names if we had been notified of these Hearings in York County.

After this beautiful state of Pennsylvania has been dumped on by the surrounding states with their Toxic Waste, you propose to cut back on regulations! This is unbelievable and certainly not fair to the people of Pennsylvania!

So just remember when you vote to cut back on regulations, cancer is no respecter of persons and is running rampant in Pennsylvania. **Now, all we are asking is that you think about protecting the people of this great state and not sell us down the already polluted river!**

Thank you.

Mrs. Stanley (Evelyn) Robinson

R.D. #1 Box 560

Brogue, PA 17309

Phone: 717-927-641?

Please return to: 927-6412

ENVIRONMENTAL QUALITY BOARD HEARINGS
1998

Evelyn Robinson

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

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2	Eleanora Dellinger	R.D#1 Box 1225 Brogue Pa 17309
3	Annie Kauffman	R D#1 Box 125 Airville, 17302
4	Helen L. Sipe	P.O. Box 44 Brogue Pa. 17309
5	Lou Wilson	Rd#1, Box 873 Brogue Pa 17309
6	Lucille Fake	20E. High St Windsor, Pa. 17366

	NAME:	ADDRESS
1	[illegible] Lewis	RR#1 Box 566 Brogue PA 17309
2	[illegible]	RR1 Box [illegible] Pa 17309
3	Lyster Pangels	RR1 Box 566 Brogue Pa 17309
4	Miles L. Gipe, JR	210 W. Howard St. Red Lion Pa. 17356

	NAME:	ADDRESS	
1	Karen Bailey	6 Tomlinson Rd.	Airville
2	Kenneth Roberts	6386 SHORT RD.	STEWARTSTOWN, PA

Please return to: 927-6412

ENVIRONMENTAL QUALITY BOARD HEARINGS
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Please return to: 721-4412

ENVIRONMENTAL QUALITY BOARD HEARINGS
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No Recipient, EQB hearing on water quality a

To:

Printed for Karl <novakpen@crosslink.net> 1

Subject: EQB hearing on water quality amendments
Cc:
Bcc:

Testimony of Karl J. Novak on water quality amendments before the Environmental Quality Board, October 20, 1998.

My name is Karl Novak. I am a resident of Bedford County and am here today to speak in behalf of the approximately 30,000 members of the Pennsylvania Environmental Network.

QUALITY, QUALITY, QUALITY -- Environmental QUALITY Board. I am most disturbed about the quality in regulations that will be the outcome of these hearings, considering the reality of three major regulation changes hitting the public all in late summer -- in the areas of residual waste, municipal waste and water quality. The complete absence of public information meetings on the water and waste regulations makes me angry. If DEP is truly proud of the changes to the regulations, I would think that they would blow their horn and fill the air with: "Look what we are going to do for the public and make Pennsylvania a healthy place to live." Omitting this grand opportunity of letting the public listen to what great positive changes DEP is recommending makes the average individual apprehensive about the motives behind their actions.

There is still time to inform the general public in all the six DEP Regions about these proposed regulations. Take the time and do the right thing -- the highly ethical act of holding meetings that will give the public an opportunity to ask questions and find out where and how these proposed regulations will affect their future. DO IT!

During the last four years I have heard the insidious words *streamlining, no more stringent than federal regulation, beneficial use* and *general permit*. I cringe every time I see or hear these words, as they conjure up very negative thoughts of bottom-of-the-barrel regulations that provide the odious opportunity of producing more water that is unfit for consumption by any living organism. These buzz words have become the unconscionable objectives of the last four years and are geared towards the reduction of public information and participation at the local level. This is not an acceptable objective for a long-term sustainable democratic society.

Keeping the public informed and giving them the opportunity to participate in decision-making on all matters that are going to impact their health, well-being and quality of life is imperative and in the best interests of all of us.

I say NO to streamling.
I say NO to beneficial use.
I say NO to general permits.

I say YES to regulations that are more stringent than federal and that protect the people of our Commonwealth.

Karl J. Novak
RD #2, Box 132
Clearville, PA 15535

SIERRA CLUB
PENNSYLVANIA
ENVIRONMENTAL LOBBY

JEFF SCHMIDT
Governmental Liaison

ORIGINAL: 1975
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Jewett
Sandusky
Legal

Suite 404
600 North Second Street
P.O. Box 663
Harrisburg, PA 17108
(717) 232-0101

COMMENTS ON PROPOSED CHANGES TO WATER QUALITY REGULATIONS

October 20, 1998

STATEMENT OF JEFF SCHMIDT FOR SIERRA CLUB PENNSYLVANIA CHAPTER

Pennsylvania has a proud legal tradition establishing the goal of safeguarding its water quality for its citizens and life dependent on clean lakes, rivers and streams, as embodied in our state Constitution and the Pennsylvania Clean Streams Law. These laws pre-date the federal Clean Water Act, and Pennsylvania has set an example for other states with these statutes and some of the regulations adopted to implement them.

Unfortunately, our experience hasn't lived up to that potential -- acid mine drainage is a gross illustration of water pollution still ravaging our rivers and streams; past toxic pollution means a legacy of toxic sediments in some of our rivers; and loss of half our wetlands. Our progress with curbing toxic and conventional pollution discharges has been counteracted by our failure to address nonpoint sources, especially agriculture, which means that many waters remain unsafe or at least unhealthy for people, birds, fish and wildlife.

The Department of Environmental Protection's (DEP) proposal addresses water quality management regulations in order to "streamline" and "clarify" them, and to modify them where they are "more stringent than Federal regulations without good reason". This Regulatory Basics Initiative (RBI), and specifically this set of proposed regulatory changes, abandons the notion of affording higher levels of protection to Pennsylvania's waters. Here's another example of the Ridge Administration seeking a minimalist approach, sacrificing environmental protection for the sake of short-term financial benefits for a few. The proposed weakening of water quality regulations demonstrates the Ridge Administration's "race to the bottom", to see which state can adopt the weakest protections, in order to attract the dirtiest forms of "economic development".

The Clean Water Act (CWA) requires each state to develop Water Quality Standards (WQS) -- identify uses for all waters, and what criteria are necessary to support those uses. In Pennsylvania, the Water Quality Standards define, for purposes of implementing both the Clean

Standards. Altogether, these regulations are fundamental to whether our waters are safe for fishing and swimming and clean enough to support the life dependent on them.

Although we find a few bright spots in this regulatory package, generally the proposed revisions to PA's water management regulations and statement of policy on toxics management represents a major setback in the effort to make Pennsylvania's waters healthy. Fundamentally, the proposed revisions appear to be answering the wrong questions. DEP explicitly is addressing the issue of whether state regulations unnecessarily exceed federal levels of protection. Implicitly, DEP seems to be answering the question: how can we satisfy the demands of industry for relaxation of pollution control requirements? WE think the question DEP should be answering is: what changes are necessary to enable Pennsylvania's regulations to foster the protection and restoration of the water quality in our lakes, rivers and streams that is needed to make them safe and clean enough to support the diversity of life dependent on them. If DEP were answering this question, they would not be proposing changes that would undermine the present water quality management program.

Our comments will detail the few improvements we see in the proposed revisions -- such as retaining the total residual chlorine (TRC)standard, which we support -- as well as a list of our specific concerns. For now, we'd like to highlight three of the most serious problems we see in this set of revisions and the toxics policy statement: the redefinition of toxics criteria as guidance; the allowance for general permitting of toxic discharges; and the granting of authority to DEP to approve effluent trading. Each of these proposed changes would weaken water quality protection in Pennsylvania.

1. Toxic Criteria: In the proposed new Chapter 16 Toxics Management Strategy, DEP is proposing to relegate to the status of "guidance" the limits on roughly 70 toxic chemicals that PA earlier adopted in order to protect aquatic life. These are chemicals for which there are no federal limits to use in permits for pollution discharges to Pennsylvania's waters. DEP claims that more recent federal guidance on the development of toxics criteria makes the current criteria obsolete. However, even if that is the case, DEP's approach is unjustified. If the toxic criteria need to be revised, then DEP should retain the existing criteria until revisions are complete. What justification is there for creating a void? Alternatively, given that there are thousands of toxic chemicals being discharged into Pennsylvania's waters for which there are NEITHER state nor federal numeric criteria in place, wouldn't it be a better use of limited resources to develop criteria for the most worrisome toxic chemicals on that list?

Another reason not to eliminate toxic criteria currently in place to protect aquatic life is dramatic new evidence from the Pennsylvania Fish and Boat Commission. Just last week, a news story publicized new information from the Commission that has caused them to recommend adding 13 species of fish to the list of threatened species in Pennsylvania, due to poor water quality. Currently, of 159 native species, 45 are on the state's threatened list.

If the Commission approves the staff recommendation, it would mean that over one third of the state's fish species are threatened. Certainly, DEP should, at a minimum, suspend consideration of any weakening of water quality regulations in light of the Commission's new information on water quality impacts on fish species.

2. General Permits for Toxic Pollution: The proposed change to Chapter 92, allowing for some discharges into high quality waters and discharges of toxics to be eligible for general permits is nothing if not a transparent concession to industry pressure for relaxing of protective regulations. If Pennsylvania has made progress in reducing the flow of toxic and conventional pollutants into our rivers and streams, it is in no small way due to the monitoring, oversight and public participation associated with the individual permitting process. DEP is proposing to eliminate that scrutiny for eligible discharges of toxic chemicals and discharges to high value waters, with the requirement that general permits contain effluent limits as the only real safeguard. This is not very far from the notion that we could eliminate the requirement for drivers' licenses because we have speed limits!

The Sierra Club is fundamentally opposed to such a rollback of safeguards and the reduction in public involvement regarding pollution of our waters.

3. Effluent Trading: The proposed effluent trading provision in Chapter 96 is truly astounding in its simplicity. DEP is proposing to have virtual carte blanche to allow trading of effluent limits among pollution dischargers. Again, the public is being asked to grant new authority to DEP essentially on faith. DEP would have the ability to make the rules in terms of the scope of the trading program, the types of pollutants involved, the evaluation of potential cumulative impacts on waterbodies, and a host of other important considerations. DEP offers that they would invite public comment on a published description of the procedure. The Sierra Club's response to this proposal is: NO WAY. The groundswell of interest among polluting industries and other dischargers in effluent trading is due in large measure to the fact that it could offer many of them a way around current pollution limits. ANY effluent trading program would have to be carefully crafted to ensure that it actually produced results more positive than those offered on a permit-by-permit basis. The Sierra Club has identified a number of considerations, including the above ones regarding pollutant types and geographic scope, that would need to be addressed, such as: the treatment of unused pollution allowances; the monitoring necessary to ensure pollution reductions actually occur; the issue of recourse if reductions do NOT occur; and the treatment of non-compliance. None of these issues should be left to DEP's discretion alone. And in no way should Pennsylvanians be asked to agree to effluent trading on a wing and a prayer, as the Chapter 96 revision essentially does.

In summary, the Pennsylvania Chapter of the Sierra Club strongly opposes the undermining of water quality protections contained in this regulatory package. What is Clean Enough for the Ridge Administration is NOT clean enough for present and future generations of Pennsylvanians nor the other life dependent on the Commonwealth's waters.

State's fish struggling to survive, data show

Troubled waters push panel to add to list of threatened species

BY GARRY LENTON
OF THE PATRIOT-NEWS

Pennsylvania's water quality, despite vast improvements, is not good enough to support nearly 40 percent of the state's fish population, a new database created by the Fish and Boat Commission shows.

The information shows that 58 of the state's 159 species of fish are struggling to survive. Forty-five species are on the state's threatened list. Because of the report, the commission staff is recommending that 13 more be added.

INSIDE
☐ The Fish and Boat Commission's lists ..... Page Two

It also is recommending that four be removed from the list — three because they can no longer be found in the state.

The Fish and Boat Commission is expected to vote on the recommendation at its quarterly meeting this weekend.

If approved, the change could affect development along the state's streams and rivers. But because state law is weaker than federal standards, it is not likely to stop development, sources familiar with the list said.

"In most cases . . . we may change a project, but we rarely stop a project," said Andy Shiels, nongame and endangered species unit leader for the Fish Commission.

The state could ask for changes in construction techniques or timetables to accommodate breeding periods or to prevent erosion, Shiels said.

The findings are not an indication that the state's water quality is getting worse, Shiels said, but rather an indication of bet-

See FISH / Back Page

FISH

Denizens of the deep can't drink the water

From Page A1

ter information gathering.

The Fish Commission worked with Penn State Fish Museum, University of Michigan's Museum of Zoology, Cornell University, the Academy of Natural Sciences and other organizations to count fish species and map the watersheds in which they were found.

The result is a database that shows how many species exist in the state, where they were found and how many there were, Shiels said.

The biggest change between the old data and the new is the number of fish raised to the "endangered" category, the most serious on the endangered list, he said. The other categories are "threatened" or "candidate," the least serious.

Only six of the 45 species now are classified as endangered. If the commission staff's recommendation is approved, the number would increase to 28.

The recommendations are consistent with national statistics showing that about 30 percent of fish species are in trouble, said Jim Thorne, Pennsylvania director of conservation programs for The Nature Conservancy.

The conservancy issued a report this summer showing that aquatic ecosystems are more endangered than land systems, he said.

"If you think about it, it makes sense," Thorne said. "Impacts are collected within watersheds. They are accumulated by the . . . network of streams that feed from various land uses."

Runoff from abandoned coal mines, roads, farms and parking lots account for about 90 percent of the damage to fish habitat, said Richard Whiteford, chairman of the Pennsylvania Sierra Club's endangered species committee.

Many of the state's endangered species are bottom dwellers, such as the Channel darter and the sculpins, which are affected by sediment. Invasion of non-native species of plants and animals and dams accounts for the other 10 percent, he said.

Though most state residents have never heard of many of the fish on the list, their importance should not be underestimated, Shiels said.

"If you drink water, . . . what happens to the quality of the water is what affects the fishes. And if the water is poor, that affects the humans as well," he said. "If it's bad, and the fishes disappear, what does that indicate about what you are putting into your body and your environment?"

State waits for vote on threatened fish species

More public input needed for plan to add to endangered list

By Garry Lenton
Of The Patriot-News

A plan to add 13 new species of fish to the state's threatened list has been delayed to give business and landowners groups more time to comment on the proposal.

The vote, which was to take place this past Sunday, will not likely occur until late in November, said Dan Tredinnick, spokesman for the Fish and Boat Commission.

The commission voted to delay its decision in order to accommodate several last-minute requests for a public hearing, he said.

"Our goal was to have it adopted by Jan. 1. We still think we can accomplish that," Tredinnick said.

Fish Commission staff have recommended expanding the threatened list based on an extensive study of fish populations. The staff also recommended that four species be taken off the list, three because they can no longer be found in the state.

A data base built with help from Penn State, Cornell University and several other organizations, showed that fish populations were lower than previously expected.

Forty-five species are on the list. If the recommendations are approved in November, the number would rise to 54. The increase is significant because it means that more than 34 percent of the species of fish in Pennsylvania are in trouble.

None of the species are game fish, Tredinnick said.

New species of fish have not been added to the list since the mid-1980s, and the number has never been this large, Tredinnick said.

See LIST / Page B6

LIST/Fish species vote delayed

From Page B1

Increasing the list would help dictate how land along affected streams could be developed and what could be discharged into those streams.

Among those raising concerns about the proposal are the Pennsylvania Chamber of Commerce and Industry, the Pennsylvania Coal Association, the Pennsylvania Builders' Association, and the Independent Oil and Gas Association.

"The impact isn't so much on the hook and bullet guy. It's builders and townships people," Tredinnick said. "I think they are interested in it, and rightly so, since that is the constituency that this would impact."

The Coal Association, in a letter to the commission, said the proposal could have a significant impact on the public and deserved a thorough hearing.

Part of the discussion should focus on the data being cited by the commission to justify the changes, wrote Michael G. Young, director of regulatory affairs for the Coal Association.

"The ranking system is so central to the rulemaking that it should be published or made publicly available, and the comment period should be extended," Young wrote.

"Why is there such a rush to judgment?" asked Keith Klinger, president of the Pennsylvania Landowners Association, in another letter to the commission.

The public has not had enough time to offer meaningful comment on the proposal, he said.

The Builders Association raised similar concerns.

In a letter to Fish Commission Executive Director Peter Colangelo, the builders asked for more information on the criteria used to nominate a species to the list, and for more substantiating scientific data.

Most of the associations noted that many of the species recommended by the commission for protection do not appear on the federal endangered species list, or on similar lists maintained by neighboring states.

The Fish Commission worked with Penn State Fish Museum, University of Michigan's Museum of Zoology, Cornell University, the Academy of Natural Sciences and other organizations to count fish species and map the watersheds in which they were found.

The database built with the information shows how many species exist in the state, where they were found and how many there were.

The commission's study is consistent with national statistics showing that about 30 percent of fish species are in trouble, according to Jim Thorne, Pennsylvania director of conservation programs for The Nature Conservancy.

Threatened fish

The Fish and Boat Commission considers the following fish to be threatened:

- Northern brook lamprey
- Shortnose sturgeon
- Lake sturgeon
- Atlantic sturgeon
- Spotted gar
- Hickory shad
- Silver chub
- Gravel chub
- Ghost shiner
- Bridle shiner
- Blackchin shiner
- Redfin shiner
- Longnose sucker
- Black bullhead
- Mountain madtom
- Northern madtom
- Tadpole madtom
- Burbot
- Banded sunfish
- Warmouth
- Longear sunfish
- Eastern sand darter
- Iowa darter
- Mountain brook lamprey
- Skipjack herring
- Mooneye
- Goldeye
- Smallmouth buffalo
- Spotted sucker
- Brindled madtom
- Bluebreast darter
- Spotted darter
- Tippecanoe darter
- Gilt darter
- Longhead darter
- Channel darter
- Ohio lamprey
- Longnose gar
- Bowfin
- Hornyhead chub
- Silver lamprey
- Potomac sculpin
- River redhorse
- Spoonhead sculpin
- Deepwater sculpin

The commission is recommending the following be added to the list:

- Cisco
- River shiner
- Ironcolor shiner
- Bigmouth buffalo
- Threespine stickleback
- Southern redbelly dace
- Bigmouth shiner
- Least brook lamprey
- American brook lamprey
- Central mudminnow
- Eastern mudminnow
- Brook silverside
- Brook stickleback

To be removed from list:

- Silver lamprey
- Potomac sculpin
- Spoonhead sculpin
- Deepwater sculpin

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ENVIRONMENTAL QUALITY BOARD

GENTLEMEN,

I AM WRITING ABOUT THE NEW PROPOSED "WATER QUALITY STANDARDS AND TOXICS STRATEGY." I AM OPPOSED TO THESE NEW STANDARDS. WITH NEW TOXINS BEING ADDED TO OUR UNDERGROUND WATER SUPPLIES ALL THE TIME. NOW IS THE TIME TO PAST LAWS + RULES TO PROTECT WATER CONSUMERS IN PENNSYLVANIA AND INDEED THE U.S. LETS NOT TAKE A STEP BACKWARD AT THIS CRITICAL TIME. PLEASE REPLY.

SINCERELY
NORMAN D. MORPHET

Molly Dondero
651 Mulford Rd.
Wyncote, PA 19095
October 20, 1998

Environmental Quality Board
PO Box 8477
Harrisburg, PA 17105

ORIGINAL: 1975
MIZNER
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Sandusky
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Attention Environmental Quality Board:

I am writing to voice my opposition to the Department of Environmental Protection's proposed Water Quality Standards. Water serves as our most essential natural resource. We can not afford to contaminate it with toxic substances. The standards protecting our water should be strengthened, not weakened. The DEP's proposed plan would relax the existing regulations, making it all too easy for companies to discharge toxic waste into our water system.

I am sixteen years old. I would like to be able to appreciate pure water in the future. New generations also have the right to experience this beautiful natural resource. Actions taken now, such as the new Water Quality Standards, will impact heavily on the future of our water; they will deny clean water to younger generations.

I want to work with you to solve this problem. I would appreciate a response to my letter. I am interested in further reviewing the proposed regulations and their possible alternatives.

Thank you for your attention to this matter.

Sincerely,

Molly Dondero

Molly Dondero

Environmental Quality Board
POB 8477
Harrisburg, PA 17105

October 20, 1998

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Legal

To whom it may concern,

I recently became aware that the PA DEP is proposing to make regulatory changes to "water laws."

I want to adamantly stress that PA needs to tighten its regulation on water quality. It's time to get serious. IN this ever-toxifying world where cancer rates are $creasing. (See endosed article - reveals the growing threat of cancer) Why do we need to devote millions to such campaigns and research? Why cant we be be proactive and prevent this deadly disease?

Why do we (Pennsylvanians) continue to give industry the upper-hand? Why cant we prioritize human and 'environmental health?

I would love answers to any of these questions if you have the time

PLEASE STREGTHEN OUR WATER QUALITY LAWS!

Thank you.

Sincerely a concerned Pennsylvanian

Kate Francis
PO Box 307
Dillsburg, PA
17019

SPECIAL ADVERTISING SUPPLEMENT TO THE NEW YORK TIMES MAGAZINE

From Cause to Cure

EXPLORING OUR OPTIONS

→ WHY is it an ever-growing threa
WE NEED STRONG
WATER-QUALITY LA

JOSEPH KRAMM/THE STOCK MARKET

JOHN P. KELLY/IMAGE BANK

MICHAEL KRASOWITZ/FPG

Cancer. No other disease has such a relentless grip on the American consciousness. Health-savvy men and women spend thousands of hours on the running track and in the gym to help ward off the age-old killer. They eat their vegetables instead of picking at them, and take vitamins that they believe may offer protection. Despite these efforts, half of men and one third of women in this country develop some form of cancer in their lifetimes. About 1.5 million Americans will be diagnosed with cancer in 1998, and millions of others will give their support to relatives or close friends who are battling the disease.

The good news is that we are winning those battles at an increasing rate. The number of cancer survivors in America totals over eight million people, five million of whom were diagnosed with the disease five or more years ago.

What is cancer?

Most people know enough about cancer to fear it without actually understanding what it is or why it causes harm. In simple terms, cancer is the uncontrolled growth of abnormal cells. Think of the normal cells in your body as loyal soldiers who work as a team to keep you in good health. Taking their orders from genes, these cells carry out their various responsibilities to the letter. Part of their duty is to grow, divide, and die in an orderly process. That is exactly what they do, laying down their lives to be replaced by new cells with the same genetic instructions and the same jobs.

Cancerous cells are cells gone haywire. Their genetic coding scrambled, they run amok, continuing to grow and divide. They do not die like normal cells but form tumors instead. Like a band of renegades, these cancerous cells can invade and damage healthy tissue. Sometimes they break away from a tumor and spread via the bloodstream or lymphatic system to other parts of the body, where they form colonies of destructive cells. Doctors call this process *metastasis*.

This issue of *From Cause To Cure* provides an overview of some of the most common cancers—such as those of the breast and colon—and explores what individuals can do to reduce their risk or detect these cancers early. Emphasis is placed on the importance of regular screenings as well as open, frank discussions with medical professionals.

Readers will learn about new treatments that can cure cancer or allow people with the disease to survive longer and enjoy a higher quality of life. Experts explain how to cope with the physical pain associated with cancer, and how immunotherapy may someday provide vaccines against this dreaded disease. Articles and interviews also will detail what organizations like the American Cancer Society are doing to help.

Throughout 1999, *From Cause to Cure* will continue to bring you important information on a variety of health issues. In the meantime, please visit our Web site at: www.fromcausetocure.com.

— Sharon Johnson

Cover photograph: Bard Martin

Cancer in Children

While it accounts for less than .05 percent of all cancers, childhood cancer can be especially heartbreaking. While other kids their age are worrying about the first day of school or making the local little league team, children with cancer often have to cope with the side effects of chemotherapy or face the prospect of undergoing major surgery. And while cancer remains the second leading cause of death in children under age 14, today the outlook is brighter than ever.

Childhood leukemia, the most common cancer in youngsters, is a good example of the progress that has been made. Leukemia is cancer of the white blood cells. These cells play an important role in defending the body against disease-causing micro-organisms. A child struck by the most common form of the disease, acute (rapidly growing) lymphoblastic leukemia, has an 80 percent chance of being alive and well five or more years after diagnosis.

Today's Outlook is Brighter Than Ever

This is tantamount to a cure in nearly all cases, according to Dr. Jonathan L. Finlay, director of the Stephen D. Hassenfeld Children's Center for Cancer and Blood Disorders. This cooperative program between New York University Medical Center and Bellevue Hospital Center in New York was created in 1991 as a national model for integrated cancer care.

Doctors also are making strides in the treatment of other childhood cancers such as malignant brain tumors, bone cancers, neuroblastoma (a highly malignant adrenal gland tumor) and lymphomas (cancer of the lymph system).

"Brain tumors are the second major cause of cancer in children in North America and Europe and the leading cause of cancer-related death in children and adolescents," said Dr. Finlay, who has been researching new ways to treat brain cancer in children for the past 18 years. "Because of the extremely delicate nature of the brain, any tumor or treatments can have severe, lifelong consequences for intellectual functioning." Most kids who develop brain tumors are under age 10, and those who have inherited diseases like neurofibromatosis are at greater risk.

A new approach

Frustrated by the limitations and side effects of traditional brain tumor treatments—surgery, radiation therapy, and chemotherapy — Dr. Finlay pioneered a new approach which combines the use of chemotherapy and the new technique of blood cell transplantation.

He wanted to bypass the potentially harmful side effects of surgery and radiation therapy. Previous studies had shown that the most common type of malignant brain tumor in children, medulloblastoma, responds to chemotherapy. And unlike radiation therapy, chemotherapy does not affect memory and learning.

But while high doses provide the best results, patients of all ages often have difficulty tolerating them. They not only kill cancerous cells but also can damage stem cells produced in bone marrow. Stem cells, which eventually become red and white blood cells, are vital to health. Red blood cells carry oxygen from the lungs to other tissues in the body. White blood cells help to combat infection.

So, how could high-dosage chemotherapy be used while sparing the stem cells? Dr. Finlay found the answer in a new procedure developed in the 1990s called an autologous stem-cell transplant. Stem cells can be removed from the patient's own bone marrow or bloodstream, frozen for storage and then thawed and returned to the body through a blood transfusion.

Spectacular results

Dr. Finlay's new treatment works like this. Over a five-month period, a child with medulloblastoma or another malignant brain tumor receives five rounds of standard but intensive chemotherapy. After the first round, the stem cells are removed from the blood and frozen. This prevents them from being damaged by subsequent rounds of chemotherapy. After the fifth round of chemotherapy, which involves extremely high doses, the healthy stem cells are put back into the patient so they can continue the vital function of making red and white blood cells.

"The results have been spectacular," said Dr. Finlay. "Not only have these children survived brain tumors but they don't have to worry about the tumors growing back, thanks to the high doses of chemotherapy. We started with kids who were three years old. Now they are eight- and nine-year-olds with bright futures." ●

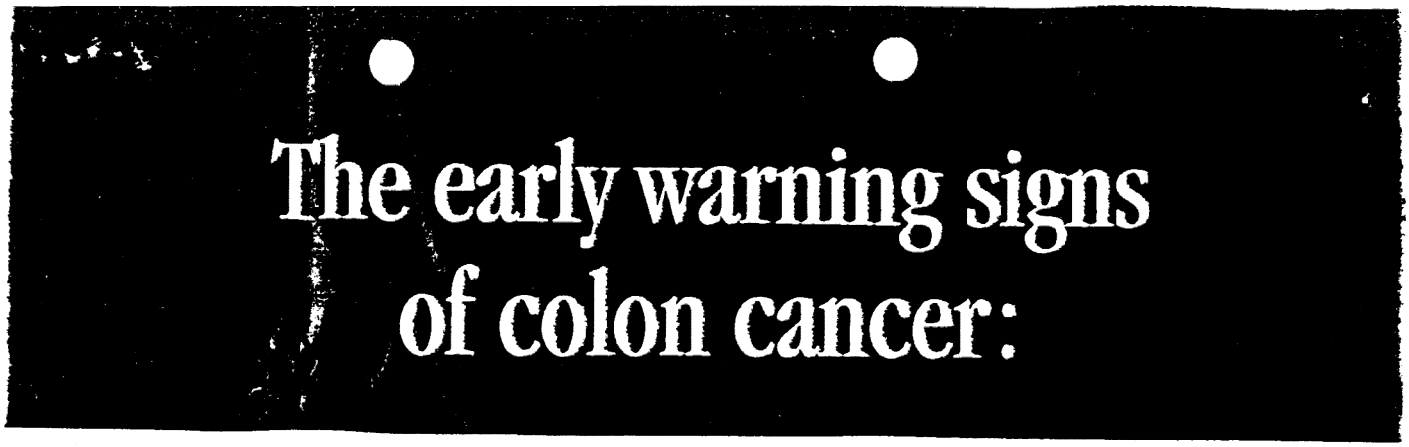
PLANNING AHEAD FOR A HOSPITAL STAY

Hospitalization is never easy for children. Here are some tips from the Hassenfield Center on how to make them less traumatic:

1 **If possible, have the child meet with the doctors, nurses, and other members of the treatment team before admission to the hospital. Many hospitals offer tours, films, and puppet shows to acquaint children with what to expect during a hospital stay—from anesthesia to physical therapy.**

2 **When explaining hospital routines, tests, and surgery to your child, use language that he or she will understand, and try to dispel any irrational fears. For example, preschoolers often assume that they are going to the hospital because they were "bad." Elementary school children often fear that they will not wake up after surgery. Teens worry about how treatments may affect physical appearance.**

3 **Encourage your child to express feelings through creative arts. The Hassenfield Center has a child-life specialist who uses play therapy to help children express emotions and gain a sense of control.**



You feel great.

You have a healthy appetite.

You're only 50.

You look healthy. You feel fine. Nothing seems to be the matter. Unfortunately, those are the same symptoms thousands of Americans had last year before they were diagnosed with colon cancer.

Colon cancer is the second leading cancer killer among men and women. Yet, as deadly as it can be when diagnosed late, when diagnosed early it's one of the most curable cancers. 90% curable.

That's why we're urging everyone over fifty to be tested. It's simple. Fast. Accurate.

Of course, studies have shown you can also reduce your risk of colon cancer by following a low-fat diet high in fruits, vegetables and fiber, by limiting your intake of alcohol, and by exercising regularly.

Remember, the best way to beat colon cancer is early detection. So please, even if you feel fine, call your doctor or the Memorial Sloan-Kettering Cancer Prevention and Wellness Program at 1-888-MSK-WELL.

— Take the test. Not the chance. —

Memorial Sloan-Kettering Cancer Center

The Best Cancer Care. Anywhere.

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Chemotherapy Gets a Makeover

STEPHANIE RAUSSER/FPG

Many doctors today think that chemotherapy deserves a makeover in the minds of the American public. It is one of the most effective weapons in the war against cancer, saving 50,000 American lives every year. Still many people associate chemotherapy with severe nausea and hair loss. They are unaware that today's anticancer drugs are more effective than ever and that many of the side effects can be controlled or eliminated.

"There are over 100 anticancer drugs today that can be used in hundreds of combinations to treat everything from childhood leukemias to breast cancer to lymphoma," said Dr. Karen H. Antham, director of the Herbert Irving Comprehensive Cancer Center of the Columbia Presbyterian Medical Center in New York.

With so many treatment options available, doctors can tailor a regimen to the specific needs of the patient and keep cancer in remission for months or even years. Chemotherapy medications work in several ways: by killing cancer cells outright, preventing them from multiplying, or by halting the spread of a tumor. Often used along with other treatments, chemotherapy can be used before surgery to shrink a large tumor and after surgery to destroy remaining cancer cells. It

MEDICATIONS IN THE CHEMOTHERAPY ARSENAL

Selecting suitable medications is easier today because doctors have many types of agents from which to choose. When talking with your physician to determine which treatment is best for you, ask about the benefits and possible side effects of each.

Akylating agents— The full-court press of chemotherapy agents. Akylating agents attack cancer cells during all phases of the reproduction cycle without giving them a chance to regroup. This means that cancer cells are being destroyed when they are dividing as well as resting, making cancer less able to overwhelm an affected organ.

Antimetabolic agents— These kill cancer cells by fooling them into creating the wrong elements or by blocking the synthesis of the elements they need to survive, effectively starving them.

Hormone therapies— Often used to treat cancers of the breast or prostate, hormone therapies have the ability to stimulate or suppress activity at the site of specific cells or organs.

ADAM SMITH / PHD

CRAIG HAMMELL / THE STOCK MARKET

is combined with radiation therapy as well.

Combinations of chemotherapy medications have greatly reduced the number of deaths due to acute myeloid leukemia, the most common form of leukemia in adults. More than 65 percent of patients have complete remissions, according to the National Institutes of Health. Chemotherapy is used more effectively in the 1990s partly because doctors have learned from the past. Drug trials carried out in the 70s and 80s showed how different anticancer medications—each of which acts on the cancer cell in a different way and at a different point in the cell's reproductive cycle—can be combined to eradicate cancerous cells while minimizing side effects.

Preserving healthy tissue

Doctors have found new ways of using chemotherapy medications to zero in on a cancerous tumor without affecting the healthy tissue that surrounds it. By hitching anticancer medications to substances called monoclonal antibodies (agents that are able to find their ways to specific cells), doctors can send chemotherapy "smart bombs" to do their damage directly at the site of a malignancy while sparing surrounding tissue.

"Chemotherapy treatment is also easier and more convenient for patients today," said Dr. Antham. "New forms enable patients to receive chemotherapy in outpatient settings so that they don't have to miss work and spend time away from their families like they did when they had to be hospitalized."

Anticancer medications now come in capsules, liquids, and pills. They can be administered by application to the skin, given by injection into a muscle, or through veins by an internal or external pump. Side effects are more likely to be controlled because doctors can predict which patients are likely to suffer nausea, vomiting, or hair loss with a particular medication or combination. Also, new medications help control these side effects. The result is that chemotherapy patients in the 1990s look and feel better.

Adjuvant treatment, which is sometimes used in addition to the primary treatment to insure the destruction of any cancer cells that may have spread, also makes use of chemotherapy medications. Women with breast cancer often receive a hormonal blocking agent four to twelve weeks after surgery to prevent cancer cells from getting the hormones they need to grow.

"We used to believe that breast cancer patients had to receive these drugs for up to two years, but now we know that they only have to be given for a period of months, which is advantageous because side effects are less," said Dr. Antham.

New devices also have been developed to deliver cancer medications more effectively. Patients with liver cancer can now benefit from the implantation of a device that dispenses 5-fluorouracil directly to the organ, thereby increasing the medication's efficacy. The device features a catheter that keeps anticancer agents from circulating beyond the liver, and its filtering unit detoxifies the blood so that it can be returned to the patient.

COPING WITH NAUSEA AND FATIGUE

Nausea and fatigue are common complaints of patients undergoing cancer treatment. Here are some strategies to help you cope:

Speak up. Ask your doctor about medications, such as antiemetic agents, that can help combat nausea and vomiting.

Stick to a schedule. Establish a pattern of eating meals and snacks at definite times. Adhere to your schedule even when you are not hungry.

Make the table festive. Use your best china and silverware to make meals more appetizing.

Treat yourself. Make a list of your favorite foods and eat them when you have a poor appetite.

More is less. Instead of three large meals a day, eat six to eight small meals. If necessary, drink your meals; substitute high-calorie, high-protein drinks when you cannot tolerate solid food.

Pain: No longer a barrier to an active life

Despite the fact that 70 percent of cancer patients report feeling pain at some point during the course of the disease and its treatment, in years past many people adopted a grin-and-bear-it attitude. Now pain management is an integral part of cancer treatment.

Dr. Richard Payne, chief of pain and palliative service of Memorial Sloan-Kettering Cancer Center.

"Pain is considered the fifth vital sign today," said Dr. Richard Payne, chief of the pain and palliative service at Memorial Sloan-Kettering Cancer Center in New York. "Pain levels are regularly measured just like blood pressure, heart rate, breathing and temperature."

Pain is more than just a physical problem. Studies show that when insufficiently treated, pain can cause depression, fatigue, hopelessness, and feelings of isolation. Treatment programs now include pain management from day one to help patients cope with surgery and chemotherapy.

Research has shown that it takes less medication to prevent and keep pain away than to break an acute established pain cycle. Because sensitivity to pain varies widely from per-

continues on page 52

Breast Cancer: Are You at Risk?

ADAM FISHER/FPG

It could happen while you are taking a shower, getting dressed in the morning for work, or performing a self-exam. Finding a lump in one of your breasts ranks high on any woman's list of major fears. But is a breast lump a good indication that you actually have cancer?

Usually not. Most breast lumps are benign (noncancerous) growths caused by what doctors call fibrocystic changes. Typically, cancer of the breast shows up as an abnormality on a mammogram before you or your doctor can actually feel the tumor during an exam. That's why regular mammograms are crucial.

Mammography 's Easier Today

Catching breast cancer early is key to survival. About 94 percent of American women diagnosed with breast cancer in its early stages (before it has spread to other organs) survive the disease. That's the good news. Unfortunately over 40,000 women will die from this disease in 1998.

"Knowledge is your best defense," said Dr. Alison Estabrook, chief of breast surgery at St. Luke's-Roosevelt Hospital of the Beth Israel Health Care System in New York. "We know more about risk factors, so women can take steps to decrease the likelihood that they will develop breast cancer, and if they do, to have it diagnosed in its earliest stages when it is most curable."

WAYNE CALABRESE/PHOTONICA

Know the risks

So what are the risk factors for breast cancer? They fall into two main categories: those you can and cannot change. The most important risk factor for breast cancer is simply being a woman. Also, risk increases with age. While it does strike younger women, 80 percent of all breast cancers occur in women who are over age 50.

MILLER PHOTOGRAPHY

Dr. Alison Estabrook, associate director of the Continuum Cancer Center of the Beth Israel Health Care System.

Women who have relatives with the disease are also at greater risk. "If your relative's cancer developed before menopause or affected both breasts, you would be wise to be tested more frequently and followed more closely than other women," said Dr. Estabrook, who is also the associate director of the Continuum Cancer Center of Beth Israel.

Many women are unaware that events in their reproductive lives also can influence their risk. Higher levels of estrogen, an important female hormone, have been linked to an increased risk of breast cancer. If you started menstruating before age 12, experienced menopause after age 55, are childless or had children late in life, you are in a higher risk group.

Because birth control pills contain estrogen, there has been controversy in the medical community over the role they play in the development of breast cancer. "In the 1970's, women feared that birth control pills might increase their risk of breast cancer because the pills then had high dosages of estrogen. But today's birth control pills have low dosages of estrogen, so there is less concern," Dr. Estabrook said.

Lifestyle choices

Genes are not your total destiny. No matter what your age or medical history, there are plenty of changes you can make today to reduce your risk for this disease. For starters, cut back on the amount of alcohol you drink. Studies show that women who drink more than one glass of wine each day have a higher rate of breast cancer.

Eating a low-fat diet is another way to reduce your risk. American women consume three times as much fat as do women in Japan and have three times the risk of breast cancer. When Japanese women move to the United States and begin eating the high-fat American diet, their risk of breast cancer climbs.

The next time you have a craving for ice cream, try reaching for a celery stick instead. Studies indicate that eating more vegetables may help prevent breast cancer. The Harvard University Nurses' Health Study (which included 89,000 women) suggests that women who eat two or more servings of vegetables a day may be able to reduce their risk of breast cancer by 17 percent.

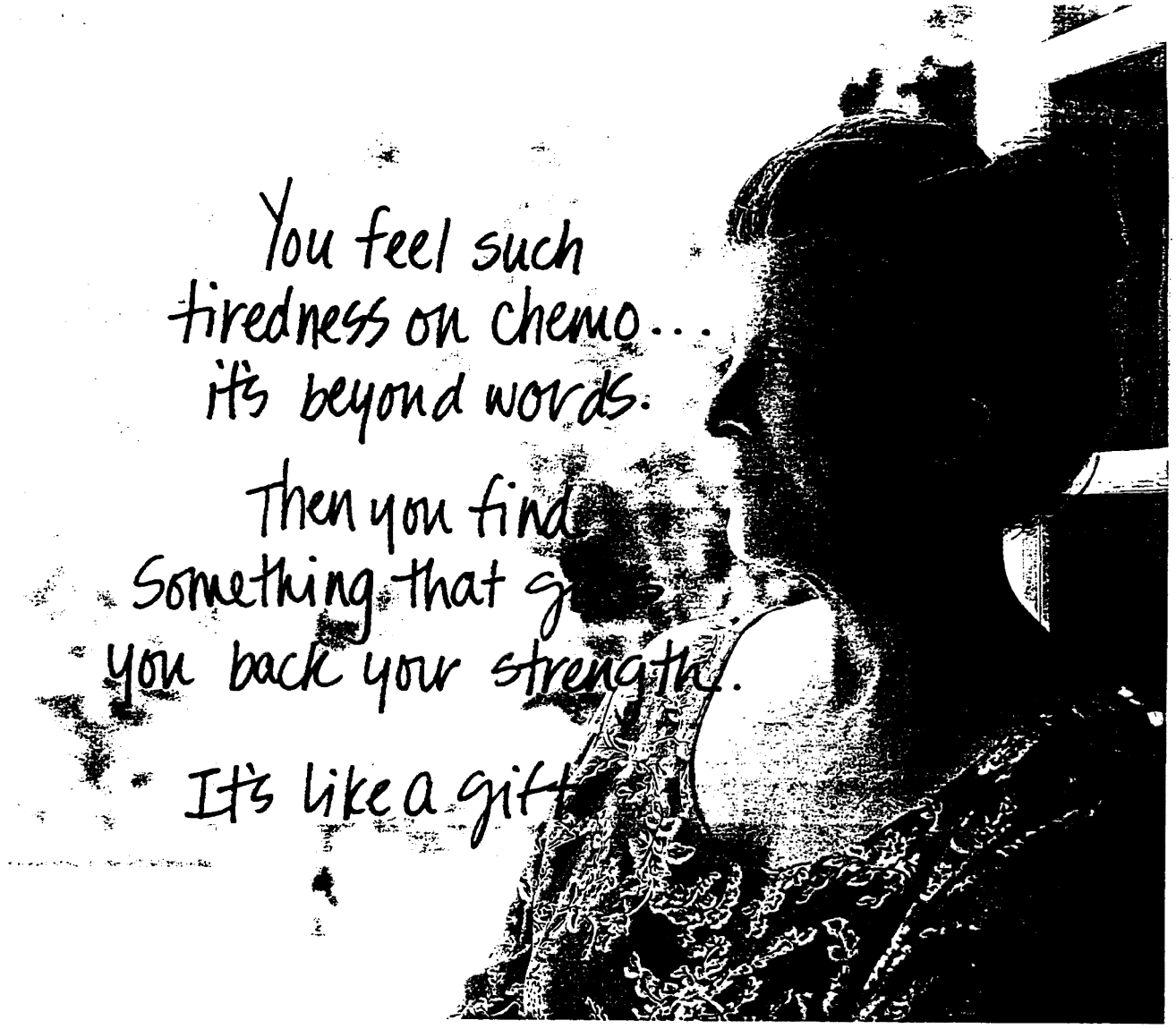
Eating soy foods, a mainstay of the Japanese diet, may also help to ward off breast cancer. Some doctors think that there are substances in soy that block estrogen's potentially harmful

continues on page 52

BREAST SELF-EXAMINATION

Stand in front of a mirror and carefully observe your breasts for changes in contour or size, dimpling or puckering of skin, nipple discharge, or any other abnormality. Then raise your hands above your head and again observe your breasts for any changes. With one arm behind your back, carefully examine the breast on that side of your body for lumps, thickening, or other changes. Repeat on the other side.

Lying down with one arm tucked behind your head, carefully examine the breast on that side for lumps, thickening, or other changes. Repeat on the other side. Finally, gently squeeze each nipple for any discharge. The best time to perform a self-exam is about a week or so after your menstrual period. Women who have completed menopause should examine their breasts on the same day each month.



Are you a chemotherapy patient? Do you feel tired all the time?

If so, please tell your doctor. You may be anemic without knowing it. Anemia is a common side effect of chemotherapy and means your body is not producing enough red blood cells. The hemoglobin in red blood cells carries oxygen and a decrease can cause symptoms like extreme tiredness, dizziness and shortness of breath. There is treatment, however. Talk with your doctor about your symptoms and what options might be available to restore your strength. To learn more about chemotherapy-related anemia, its symptoms and treatment, call 1 800 235-7157. Call today. The sooner you call, the sooner you could get back the strength you need—your strength for living.

Help your doctor help you. Call 1 800 235-7157.

ORTHO BIOTECH

Options for Treating Prostate Cancer

JOHN TERHUNE TURNER / PhD

Prostate cancer is the second most common cancer among men and it's one of the diseases men fear most as they get older. Thirteen percent of American men will develop this disease in their lifetimes. It develops in the prostate gland, which is about the size of a walnut and is sandwiched between the rectum and the base of the penis. The prostate gland covers part of the urethra, the tube that carries urine out of the body.

Testing Should Begin Before You Turn 50

When it comes to this type of cancer, many men fear the side effects of treatment—which include impotence—almost as much as the disease itself. But this is starting to change with the appearance of new treatments that reduce the risk of impotence, and with improved screening techniques that allow doctors to detect prostate cancer earlier.

The risk for prostate cancer is higher in African Americans than in whites, and doubles in men who have had a relative with the disease. As with other types of malignancies, risk for prostate cancer increases with age; the incidence is significantly higher in those over 40 than in young men. However, by identifying who is at higher risk, doctors can recommend screening procedures to detect the disease at the earliest possible stage, when it can be treated most effectively.

JUAN SILVA / IMAGE BANK

If found early, prostate cancer can often be treated with radioactive pellets, also called seeds, of iodine or palladium implanted directly into the cancer. These pellets emit cancer-killing radiation for weeks or months, until they run out steam.

Nerve-sparing treatment

One of the most common treatments is radical prostatectomy. In this procedure, the entire prostate is removed along with some surrounding tissue. In the past, it was common to remove also bundles of nerves located on either side of the prostate. These nerves play an important role in erections and bladder control, and their removal often leads to some degree of impotence and/or incontinence. Today, doctors can perform a nerve-sparing version of this procedure, in which nerve bundles that are unaffected by the cancer are left intact. This approach reduces the risk of impotence and other problems. "Although prostate cancer is devastating, the good news is that if caught early—before it has spread—it is curable with surgery or radiotherapy," said Dr. Janice Gabrilove, chief of the division of neoplastic disease of Mount Sinai/NYU Medical Center in New York. "New research in molecular biology also is laying the groundwork for understanding the role that genes play in the development of the disease so that even advanced disease might be successfully treated."

Other research is being done in the early detection of aggressive-type prostate cancers, which are likely to spread to the lymph nodes or bones. Although rarely curable, such cancers are being controlled through hormone therapy, allowing men to continue to live relatively normal lives for extended periods.

Researchers like Dr. Anna Ferrari of the Mount Sinai School of Medicine are looking for new tests that might predict which cancers are likely to sweep through the prostate, lymph nodes or bones. She and her colleagues recently removed tissue from the pelvic lymph nodes of 33 patients with prostate cancer before treatment and subjected the nodes to a test that can detect one prostate cancer cell among 10 million other cells—kind of like finding a needle in a haystack. The results suggest that this new test may prove more effective in predicting relapse than the standard method, which involves a microscopic examination of lymphatic tissue, she recently told participants at a conference sponsored by the American Cancer Society. By identifying who is more at risk for relapse, doctors can start hormonal and other treatments earlier, which may save lives.

Doctors are zeroing in on the genetic basis for prostate cancer. Studies are under way to determine whether mutations in a gene called HPC-1 increase a person's risk for the disease. This research may lead to the development of new medications that reduce that risk, said Dr. Gabrilove. ●

PASSING THE TESTS

Just because a man experiences a problem with his prostate does not mean he has cancer — most men have at least one bout of inflammation of the prostate in their lifetimes. But to detect prostate cancer when it is the most curable, the American Cancer Society recommends that men age 50 and over have an annual digital (by finger) rectal exam and prostate-specific antigen (PSA) blood test. (Prostate-specific antigen is a protein made by prostate cells. A high level of prostate-specific antigen suggests the possibility of prostate cancer.)

If you have risk factors for prostate cancer — for example, if you have a history of prostate cancer in your family or are of African descent — testing should begin before you reach age 50. Other tests also are used to diagnose prostate cancer and to design an effective treatment plan.

NYU Medical Center's Hassenfeld Children's Center for Cancer and Blood Disorders offers the latest advances in therapy, as well as a unique program of psychological and social support.

A new approach to childhood cancer gives kids new hope.

Here at the Hassenfeld Children's Center there is great cause for hope.

One of the reasons is our innovative "Head Start" program. It has dramatically increased the cure rate for young children with brain cancer. Rather than traditional radiation therapy that causes mental retardation in young children, our procedure relies on high-dose chemotherapy and stem-cell transplant. Years after participating in Head Start, many youngsters are still cancer-free with no physical or psychological side effects.

The Center not only helps children with all types of cancer during their illness, but afterward as well. It helps our young patients adjust to their changing physical condition when their illness is in remission.

An important part of this approach is helping children to understand their feelings. Each child is assigned a child-life specialist who uses a variety of psychological support services to help the child cope emotionally and physically.

Get in touch with us today. And let our new approach to childhood cancer help your child.

NYU Medical Center

Putting patients first for over 155 years.

Treatment Update

Thanks in part to the efforts of the American Cancer Society, an increasing number of people are benefiting from advances in the diagnosis and treatment of cancer. To find out what's new in cancer research, *From Cause to Cure* recently interviewed Dr. Harmon Eyre, executive vice president of research and medical affairs at the ACS.

Dr. Harmon Eyre, executive vice president of research and medical affairs, American Cancer Society.

Q. What are some of the most promising advances in cancer research?

A. There are many promising advances. Some are cancer treatments, while others may help doctors detect tumors or predict whether or not a cancer will recur.

The use of monoclonal antibodies is an exciting development. It allows us to target cancerous cells with medications, without damaging the healthy surrounding tissue. Monoclonal antibodies also have the potential to find tumors that are undetectable with current technology and to pinpoint the spread of cancers. Vaccines also are showing promise—specifically in the treatment of melanoma and cervical, breast and prostate cancers.

Chemoprevention is another interesting approach. It is based on the belief that there are various medications or other substances that may stop or reverse cancer development or prevent it from getting started. A good example of this is a medication called tamoxifen (Nolvadex). The Food and Drug Administration is about to approve tamoxifen for use in preventing breast cancer. While it already is widely used to treat existing breast cancer, it is the first medication in history that appears to stop breast cancer from developing before it starts. Other studies are under way to determine if certain vitamins can help to prevent cancer.

Gene therapy shows promise because cancer is a genetic disease. Taking a healthy gene and inserting it into the cells of a patient to compensate for a missing or defective one could result in numerous designer medications that may be effective in treating specific types of cancer. We also are looking at new techniques such as angiogenesis. By exploring the level of oxygen in tumors, angiogenesis may be able to help identify patients whose cancers are more likely to recur.

Q. Has the ACS set goals for the year 2000 to help Americans reduce their risk of cancer by adopting changes in lifestyle?

A. Yes. We had hoped that by the year 2000 only 15 percent of Americans would be smoking cigarettes. This would reduce the number of who die due to lung cancer. Unfortunately that does not seem to be happening, because so many young women are starting the habit.

By the year 2000 we hope that 70 percent of American women who should have an annual mammogram will do so. Only 50 percent do so today, and we are determined to raise that figure because it will save lives. We also hope to increase access of the economically disadvantaged to screening tests and therapies. Now, they tend to receive treatment later when the cancer has spread and is more difficult to treat.

Q. What is being done to encourage young scientists to pursue cancer research?

A. Support for research by young scientists is a significant problem, so much so that the ACS changed its funding policies three years ago to focus on beginning investigators.

We did a survey at the major cancer research centers across the nation. The result? About 20 percent of young investigators were leaving. This was a tremendous loss. We sought to reverse that trend and are now putting a bigger chunk of the $100 million a year we have for research into supporting the grant proposals from investigators who have completed their PhDs, or in some cases their MD/PhDs, in the last eight years. We are now funding 18 percent of their applications and hope that we can get that up to 25 percent so that they will stay in the field. ●

CLINICAL TRIALS

Doctors are constantly testing new cancer treatments through clinical trials, which are carefully monitored research studies designed to evaluate the safety and effectiveness of new therapies. To find out if there is a trial available for someone with your type and stage of cancer, ask your physician or oncologist. Another helpful resource is the Cancer Information Service, part of the National Cancer Institute, which will send you a free copy of the Physicians Data Query, a detailed document that describes numerous clinical trials. Call 1-800-4-cancer.

CANCER CARE IN THE 21ST CENTURY

Memorial Sloan-Kettering Cancer Center in New York City is a major research center that's done pioneering studies in surgical oncology, radiation therapy, medical oncology and prevention. We recently talked to Dr. David W. Golde, physician and chief.

Q. What advances will we see in diagnosis?

A. There are many new imaging techniques being applied to cancer, like PET scans, MRIs and CAT scans that will help diagnose cancer earlier. In the next century we may see a diagnostic box that resembles a phone booth. The patient will enter, stick his finger in and get a whole body scan and complete chemical analysis of the blood. These tests will rejuvenate surgery because cancers will be able to be removed when they are smaller.

Q. Although radiation therapy has been a staple of cancer treatment for 30 years, it is now being transformed because of computers. What are some of these advances?

A. Thanks to computers, we now have 3-D conformal radiation therapy, a sophisticated technique that enables us to precisely focus radiation on the tumor while at the same time limiting the exposure of the surrounding healthy tissues to the radiation. This approach was pioneered at Memorial Sloan-Kettering and has been very helpful in treating prostate cancer patients. Brachytherapy, which employs a catheter and special applicators to position radioactive "seeds" (which deliver a high dose of radiation to the gland while sparing surrounding tissues) in the prostate, will also become more accurate in the years ahead because of more effective computer technology. Our researchers also have come up with novel therapies using monoclonal antibodies (proteins produced by the body to help fight foreign invaders including cancer cells), which will be helpful in treating prostate cancer because they can block growth-factor receptors on the surface of cancer cells. This prevents the activation and growth of the cancer.

Q. What about advances in gene therapy?

A. There is lots of new technology to help us take a healthy gene and insert it into the cells of a patient to compensate for a missing or defective gene. These developments are very exciting: Instead of giving a patient a drug to treat or control the cancer, we can take a "gene gun" and correct the basic problem by altering the genetic makeup of some of the cells.

I also think there is a lot we can expect in terms of vaccines for melanoma, breast and prostate cancers. Prevention is going to be important too. We have to do something about smoking because it is responsible for about 30 percent of cancers. Genetic research that shows us who is predisposed to cancer will help because it will lead to earlier screening and treatment.

America's pharmaceutical companies are developing 316 new medicines to fight cancer—the second leading cause of death in the United States. Gene therapies, "magic bullet" antibodies, and light-activated medicines are all new weapons in the high-tech, high-stakes war against cancer. Pharmaceutical company researchers have already discovered medicines that are allowing more and more cancer survivors to say, "I won the battle." We hope one day we can all say, "We won the war."

America's Pharmaceutical Companies

Leading the way in the search for cures

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Demystifying Colon Cancer

TIM OTALEK

If you are a health-conscious American, you probably already know that increasing the amount of fiber in your diet can help reduce your risk of colon cancer. But are you aware that your morning regimen of high-fiber cereal and bran muffins may not be enough? Research suggests that fiber is only part of the story. Preventing colon cancer—which kills 57,000 Americans every year and is the second most common cancer in the United States—also means trimming the fat from your diet.

"Colorectal cancer appears to have genetic and environmental components," said Dr. Robert J. Mayer, director of the gastroenterology center of the Dana-Farber Cancer Institute in Boston. "The high-fat diet of the West seems to play a role, as well as one's family history." Other risk factors include age (90 percent of people with colon cancer are over age 50) and lack of exercise.

The first clue to the connection between fiber and colon cancer was provided by a British medical missionary stationed in Africa, who found that the natives he treated there rarely developed colon cancer. He speculated that their high-fiber diet, which consisted largely of fruits and vegetables, offered them protection from this disease by reducing the concentration of cancer-causing agents in the bowel. Fiber also tends to increase the frequency of bowel movements, which limits the time a potential carcinogen spends in the body.

"This theory was too simple because it didn't explain why people in the West who had diverticulitis, a digestive disease that requires the avoidance of fiber, didn't have high rates of colon cancer," said Dr. Mayer, a Harvard Medical School professor. "The crucial factor seems to be the amount of fat in the diet. Countries in Africa that have low-fat diets have low rates of colon cancer while countries like the United States and Great Britain that have high-fat diets have high rates of colon cancer."

WARNING SIGNS FOR COLON CANCER

If you experience a change in bowel habits—such as diarrhea, constipation, or narrow stools—contact your doctor. Some symptoms depend on the location and size of the tumor. Tumors in the right side of the colon often are quite large before they cause vague, dull pain because the contents of the ascending colon are fluid and therefore easier to pass through the constricted intestinal area. Tumors on the left side are more likely to cause gas pains, cramps, and bleeding because the contents of the intestine are more solid at that point.

A low-fat diet

How does a low-fat diet help to prevent colon cancer? The answer involves substances called free radicals. Free radicals are molecular fragments that are generated during the body's normal processing of fat. It is thought that free radicals damage genes that control how cells grow. The more fat you eat, the greater the number of free radicals produced. Over a period of years, the damage caused by these free radicals can lead to out-of-control cellular growth—in other words, cancer.

But when it comes to fat, Americans find it hard to say no. The average American gets 40 percent of his or her daily calories from fat. That is about twice as high as in countries such as Japan, where colon cancer is rare. In a study of more than 88,000 American women conducted by researchers at the Harvard Medical School, women who ate high-fat meats daily had twice the risk of developing colon cancer as those who did not.

Among cancer researchers, the hunt is on for medications or vitamins that may be able to neutralize cancer-causing substances that are activated by free radicals. "There have been some interesting studies that suggest that people who take a low-dose aspirin every day for more than 20 years have less colon cancer," said Dr. Mayer. "On the other hand, a recent randomized trial showed that vitamin E had no protective effect."

The key to surviving colon cancer is early diagnosis. About 91 percent of those diagnosed survive if the cancer is detected and treated in an early stage. With such positive statistics, it is vital not to let fear or modesty get in the way of having regular screenings, asking for information, or telling your physician about any symptoms or changes in bowel habits you may be experiencing. ●

KALISH/DAVIDOFF/THE STOCK MARKET

STEVE GLEFFY, STUDIO LEX PRODUCTIONS

Dr. Robert Mayer, Chief, Gastrointestinal Cancer Center, Vice Chair for Education, Department of Adult Oncology, Dana Farber Cancer Institute, with patient Albert L. Berg.

TESTS USED TO DETECT COLON CANCER

According to the American Cancer Society, everyone age 50 or over should have a fecal occult blood test on an annual basis to help detect colon cancer.

Has anyone in your family had colon cancer, rectal cancer, or polyps? (Cancer of the colon always begins with polyps.) Have you had colon or rectal cancer in the past, or chronic inflammatory bowel disease? If the answer to either of these questions is yes, you should be tested earlier and more often.

The ACS recommends that you have an annual fecal occult blood test and one of the following:

- Sigmoidoscopy and digital rectal exam every 5 years
- Colonoscopy and digital rectal exam every 10 years
- Barium enema and digital rectal exam every 5 to 10 years

What exactly are these tests?

Here is a plain-English explanation:

Fecal occult blood test. This test involves giving the doctor a stool sample to be checked for blood not visible to the naked eye.

Digital rectal exam. In this painless test, your doctor inserts a gloved finger into the rectum to detect any abnormalities.

Sigmoidoscopy. In this test the doctor examines the rectum and part of the colon through a thin, flexible, lighted tube placed in the rectum.

Colonoscopy. In this test, a longer tube is placed into the colon via the rectum. Using a TV monitor, the doctor can see inside the colon and search for cancer or polyps. Polyps can actually be removed using this procedure, or pieces of them can be extracted and examined for cancerous cells.

Barium enema. A chalky liquid is taken rectally in order to partially fill and open the colon. The colon is then expanded by adding air, after which X-rays of the area are taken.

LAURA VILLALPANDO (with son Andrew and daughter Taryn),

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In 1989, Laura Villalpando was diagnosed with a malignant brain tumor. Since that time, Laura has been blessed with the loss of her cancer and the addition of Andrew and Taryn. Because no one has seen more cancer than we have, M. D. Anderson can offer you or someone you know the best hope for survival, no matter what form the cancer takes. It's also why *U.S. News & World Report* once again ranked M. D. Anderson one of the top two cancer centers in the United States.

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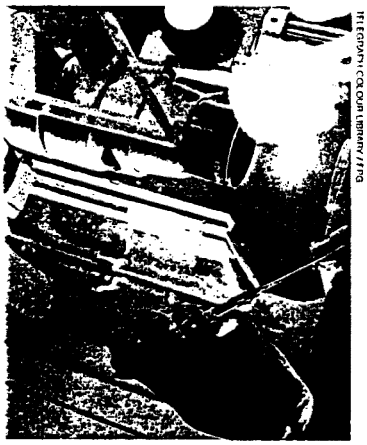
Immunotherapy: The hope of the future?

ADAM SCELLEY / THE STOCK MARKET

What if you could get an anti-cancer vaccination, just the way you do for measles, pneumonia and other diseases? Some of the most exciting advances in cancer research are taking place in the field of immunology. Scientists are now using biological substances to trigger the body's own defenses to fight cancer. Some of these substances occur naturally in the body, while others are developed in the laboratory. Many of these agents hold great promise for the possibility of future vaccines.

Founded in 1953, the Cancer Research Institute in New York City has been on the forefront of research in cancer immunology. Its scientific advisory council is composed of many of the world's leading immunologists and cancer immunologists, including five Nobel Prize winners and 17 members of the National Academy of Scientists. The institute supports laboratory science and patient-oriented clinical investigations at institutions that are recognized internationally as centers of excellence.



TELEGRAPH COLOUR LIBRARY / FPG

To find out what immunotherapy is going to mean to cancer patients in the 21st century, *From Cause to Cure* recently sat down with Jill O'Donnell-Tormey, executive director of the institute. A cell biologist and immunologist, Dr. O'Donnell-Tormey has played a key role in the establishment of the institute's cancer-specific initiatives program, the creation of a clinical research program and the doubling of the number of research grants awarded by the institute annually. She co-authored the institute's *Cancer Research Institute HelpBook: What To Do if Cancer Strikes*, a booklet that gives cancer patients guidelines on how to get the best possible care, and *Cancer and the Immune System: The Vital Connection*. She received her Ph.D. in cell biology from the State University of New York's Downstate Medical Center, was an instructor in the department of medicine in the division of hematology/oncology at Cornell University Medical College, and was a research associate in the department of cellular physiology and immunology at Rockefeller University.

Q. Scientists are devoting more attention to immunotherapy today. What is the advantage of this approach for cancer patients?

A. The advantage of immunotherapy is that you are using the innate defense mechanism of the body, with a known ability to mount effective targeted and specific responses to foreign intruders. The immune system's specificity makes treatments based on it more targeted and thus more likely to spare normal tissues and result in fewer toxic side effects than standard cancer therapies.

Q. What are some of the most promising studies under way?

A. Immunotherapies fall into four broad categories. The first, nonspecific immunotherapy, aims to regulate and potentiate the immune system's response to tumor cells with microbial products, synthetic agents or cytokines. This form of cancer treatment dates back to the 1890s, when Dr. William H. Coley, the father of our institute's founder, Helen Coley Nauts, used a mixed bacterial vaccine, Coley toxins, to bring about tumor regressions in inoperable tumor patients. Nonspecific immunotherapy is currently represented by the success seen in the use of BCG (Bacillus Calmetto-Guerin) to treat early-stage bladder cancer, and the power of the cytokines that mediate immunity and inflammation to manipulate the immune response to tumor cells.

Adoptive immunotherapy, the second category of immunotherapy, generates immunity by the transfer of specific T-cells. The demonstration that cytomegalovirus (CMV)-specific T-cells provide protection against CMV in transplant patients and the extraordinary anti-tumor activity of Epstein Barr Virus-specific T-cells in post-transplant lymphoma patients provide encouraging proof of the specificity and effectiveness for this approach to cancer therapy.

Passive immunotherapy, the third category, utilizes antibodies to mediate tumor cell lysis and other biological effector function. This form of immunotherapy has received a resurgence of optimism, as genetically engineered antibodies that are "humanized" (and therefore not recognized by a recipient patient's immune system as foreign) are proving to be capable of bringing about significant tumor regression. Most notable is the FDA approval within the last year of a humanized antibody—™Rituxan—that recognizes a marker on B-cell lymphomas called CD20 as a therapy for B-cell non-Hodgkin's lymphoma.

Additionally, there are promising results of a phase-III trial of Herceptin, a humanized antibody that recognizes the marker Her2 (which is overexpressed in about 30 percent of breast cancers) to slow the progression of a virulent form of metastatic breast cancer.

Cancer vaccines, the longtime goal of tumor immunologists, have in recent years met with renewed enthusiasm among the scientific and medical communities. The structural characterization of T-cell–recognized targets on cancer cells and the promise that these techniques used for identification of these antigens can be applied to all cancer types opens the way to the rational construction and testing of human cancer vaccines. The importance of these discoveries cannot be overestimated, and this inaugurates a new era in cancer immunotherapy.

Q. In the 1970s, some scientists became hopeful that cytokines (molecules the body produces in response to viral and bacterial infections that help to orchestrate the immunological defense response) would be of great value in treating cancer. How are they regarded today?

A. Extensive clinical testing of this nonspecific approach has dampened enthusiasm, since relatively few patients appear to benefit from cytokine therapy alone. Scientists now believe that the role for cytokines in cancer therapy will be as an adjunct to more specific immunotherapies, helping to stimulate the immune system's response to specific tumor targets.

continues on page 50

CANCER RESEARCH INSTITUTE

CELEBRATING 45 YEARS OF CANCER RESEARCH LEADERSHIP AND EXCELLENCE

"The Cancer Research Institute and Memorial Sloan-Kettering Cancer Center share both a heritage and a belief that research plays an essential role in alleviating the suffering caused by human cancers. Congratulations to CRI on this important milestone."

Paul A. Marks, M.D.
President and Chief Executive Officer
Memorial Sloan-Kettering Cancer Center
New York, New York

HARVARD UNIVERSITY

"On behalf of Harvard University, I want to warmly congratulate the Cancer Research Institute on 45 years of extraordinary vision, leadership, and excellence in the fight against cancer. We are deeply grateful that generations of Harvard scientists have received crucial support from the Institute for their lifesaving research. We look forward to the coming decades as a time of increased discovery and progress in the effort to combat cancer, and we know that the Institute will remain at the forefront of the important work remaining to be done."

Neil L. Rudenstine
President
Harvard University
Cambridge, Massachusetts

STANFORD UNIVERSITY

"Stanford University and the Cancer Research Institute are dedicated to conducting research that contributes to the quality of our lives, with the intent of translating scientific discoveries into lifesaving treatments for cancer patients. As a recipient of the Institute's funding for generations of Stanford scientists, we applaud the Cancer Research Institute on its 45th anniversary for its continued leadership and generous support of endeavors that establish new frontiers in immunological research."

Gerhard Casper
President
Stanford University
Stanford, California

JOHNS HOPKINS
UNIVERSITY

"On behalf of Johns Hopkins University, I congratulate the Cancer Research Institute on the occasion of its 45th anniversary and gratefully acknowledge the generous funding provided to investigators at Johns Hopkins and other distinguished research institutions for more than four decades. A leader in the support of basic and clinical immunological research, the Cancer Research Institute has made possible significant contributions to the advancement of the biomedical sciences."

William R. Brody
President
Johns Hopkins University
Baltimore, Maryland

Since 1953 CRI has built a reputation as one of the finest research organizations in the world. The Institute continues to be recognized for its constant support of excellence and for the vital role it has played in pioneering the field of cancer immunology. We are gratified by the realization that new immunotherapies dominate cancer clinical trials underway in this country and abroad. Indeed, the field of cancer immunology is poised for great advances in the immediate future.

To learn more, please write to the Executive Directors, Cancer Research Institute, 681 Fifth Avenue, New York, New York, 10022-4209.

CANCER RESEARCH INSTITUTE

Q. The use of antibodies for cancer treatment shows promise. What's happening in this area?

A. The search for more specific immunotherapies is dependent on the identification of specific markers, called antigens, which distinguish cancer cells from normal cells. These antigens could serve as targets for an immune attack—just as bacterial and viral antigens alert the body to disease-causing invaders. The discovery of antibodies at the end of the 19th century provided the means to search for these antigens.

Antibodies are critical components of the immune system that circulate in the blood and bind to foreign antigens. In so doing, they mark the cells displaying the antigen for destruction by scavenger cells called *macrophages*, by other cells, and by a specialized group of blood components called *complement*. Early on, investigators injected laboratory animals with tumor cells and analyzed the antibodies the animals produced in response. If the antibodies produced recognized the tumor cell but not the corresponding normal cell, it would indicate the presence of cancer antigens that could form the basis of specific immunotherapies.

Many scientists claimed to have identified cancer-specific antigens by this technique but none proved to be so. In 1975, Cesar Milstein and Georges Kohler developed a technique that allowed for the production of unlimited supplies of identical antibodies or monoclonal antibodies. The impact on cancer immunology was profound. It provided a new technique for searching for cancer antigens and allowed production of defined antibodies in quantities that could be used to treat patients.

PHOTO / THE STOCK MARKET

Monoclonal antibodies were hailed as "magic bullets" for cancer, acting as smart bombs, seeking out and destroying unwanted cancer cells while sparing normal cells. Unfortunately, initial monoclonal antibodies did not live up to expectations. This was due primarily to the fact that the right antigenic targets had not been identified and, secondly, that the monoclonal antibodies were being made using mouse cells. The mouse antibody, when injected into a patient, was viewed by the patient's immune system as foreign, thus making multiple treatments with the antibody futile. Recently, however, there has been a resurgence in the optimism surrounding the use of monoclonal antibodies in cancer therapy. The concept behind the use of antibodies for the treatment of cancer remains sound.

The development of new techniques to identify tumor antigens (E.G. SEREX, developed by Michael Pfreundschuh, University of Saarland, Homburg, Germany) is a technique by which the antigens expressed by a given tumor are isolated in a special reservoir, or "library," and the patient's blood which carries circulating antibodies is tested against the antigens in the library. If a protein from the library encounters its corresponding antibody in the patient's blood, a positive reaction occurs. By screening all the antigens from the library, specific tumor antigens that have generated an immunological response can be identified (both on the tumor and on other cells and molecules necessary for tumor growth).

The use of antibodies for cancer treatment can exploit the antibody's ability to destroy cancer cells on their own, or can be used as carriers of toxic substances. Some of those substances include chemotherapeutic agents, radioactive compounds, bacterial toxins, enzymes that can convert inactive prodrugs to active drugs, inflammatory molecules such as tumor necrosis factor (TNF) and immune cells.

Q. What is happening in vaccine research?

A. The modern vaccine story begins in the 1940s and 50s with a fundamental discovery in cancer immunology: T-lymphocytes taken from animals immunized with tumor cells could transfer immunity against tumors to healthy animals of the same strain. Additionally, the T-cells from immunized animals could kill tumor cells grown in test tubes. Dr. Lloyd Old and his colleagues at Memorial Sloan-Kettering Cancer Center took these observations a step further by analyzing the immune response in patients with melanoma. They found that a certain percentage of patients did mount an immune response to their tumors, and those patients had a more favorable clinical course.

PHOTO / THE STOCK MARKET

The next step was to identify the antigens produced by the melanoma cells that generated the immunological response. In another landmark discovery in tumor immunology, Dr. Thierry Boon of the Ludwig Institute for Cancer Research in Brussels developed a method to isolate tumor antigens recognized by T-cells, and found two main classes of antigens. The first included MAGE, BAGE and GAGE, which were produced by tumors cells but not by any normal cells. The other category, which includes Melan A, comprises differentiation antigens that are made by both melanoma cells and melanocytes, the normal cells from which the tumor cells arise. Using Boon's techniques, there is a rapidly growing list of tumor antigens which are prime candidates for use in vaccines.

The SEREX technology is identifying many new and exciting targets for vaccine development. The majority of antigens being identified by this technique are turning out to be intracellular antigens.

Another source of potential tumor antigens comes from the many new discoveries concerning genetic changes in cancer cells. Any alteration in a cancer cell that can be recognized by the immune system, is, as Lloyd Old states, "grist for the cancer immunologist's mill."

There are many types of cancer vaccines presently under study. Whole-cell cancer vaccines will probably be replaced by vaccines that contain defined antigens. Pure peptide antigens are presently a very active area of study, but it may be necessary to deliver multiple antigens in a vaccine in order to generate an effective immunological response to cancer.

Q. What are some of the cancer vaccines that show promise?

A. Whole-cancer cell: inactivated cancer cells, cancer cells genetically engineered to secrete cytokine such as Il-2 or GM-CSF, or costimulatory molecules, like B7, that enhance the ability of T-cells to recognize tumor cells.

Peptides: fragments of tumor proteins that generate an immune response, given alone or with immune boosters such as cytokine or growth factors.

Proteins: whole-tumor proteins that must be taken

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*Academic Affiliate

Immunotherapy: The hope of the future?

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up and processed by antigen-presenting cells such as dendritic cells and macrophages and presented to T-cells to trigger the immune cascade.

Dendritic cells: these cells, discovered by Ralph Steinman of Rockefeller University, are isolated and exposed to tumor peptides or engineered genetically to provide tumor proteins. Many clinical trials utilizing dendritic cells are under way.

Gangliosides: sugar molecules found on the surface of tumor cells. GM2 is a ganglioside being tested as a vaccine for melanoma.

Heat-shock proteins: these cellular proteins, which act as a chaperone of a cell's complete antigenic repertoire, can be used to deliver multiple antigens in a single vaccine. Pramod Srivastava of the University of Connecticut School of Medicine pioneered this area of study.

Viral and bacterial vectors: gene coding for cancer antigens can be incorporated into viral and bacterial genomes. When injected, these infectious agents generate an immunological response against themselves and the tumor antigens.

Nucleic acids: DNA and RNA encoding for tumor antigens prompts normal cells to produce antigens.

JOHN MERLEY / THE STOCK MARKET

Q. What advances will we see in the next ten years?

A. The major aspiration of cancer immunologists is to develop vaccines against cancer. Dramatic leaps have been made in the last 10 years toward this goal. Most important: We can now say that cancer is recognized by the immune system. The next few years will see scientists and clinicians attempting to translate that recognition into immune protection. Using the wealth of information now available to us, scientifically sound and viable clinical therapeutic strategies for cancer are being developed and tested. We anxiously await the results of these studies. ●

ANGEL SHELLEY / THE STOCK MARKET

Breast Cancer: Are You at Risk?

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effects on the breast. Good sources of soy include soy milk, tofu, roasted soy nuts, tempeh and soy flour.

Mammograms more accurate

Mammography is now one of the most important screening and diagnostic tools in the field. These tests are useful in determining the likelihood of cancer in a suspicious lump—even in growths that have been developing for only three or four years and are too small to feel.

"As a result of the 1992 Mammography Quality Standard Act passed by Congress, mammography is more accurate today because all medical facilities that perform and interpret tests must be certified by the Food and Drug Administration," Dr. Estabrook said. "The procedure is more comfortable for patients and uses lower doses of radiation."

Unfortunately, only half of women over age 50 who should have a mammogram each year actually do so. The problem? After having an initial mammogram and learning that it is normal, many women avoid having another one for five or ten years. This is potentially dangerous because a woman's risk of breast cancer keeps on rising with age: It is 1 in 52 by age 50, 1 in 18 by age 65, and 1 in 12 by age 75.

Only a biopsy can determine if a lump is actually cancerous. A core needle biopsy is relatively painless and can be done in a doctor's office. Using a long, thin needle, the doctor draws out any fluid that may be present in the lump. If the lump is a cyst, which is usually benign, it will collapse after the fluid is removed. If the lump is solid, your doctor may remove some cells and send them to a laboratory for further testing to determine whether they are cancerous.

Contrary to what many people believe, a breast cancer diagnosis does not lead inevitably to the removal of a breast. Women today have more surgical options that ever before. For example, they may have a lumpectomy or breast-conserving surgery, in which the lump is removed along with a small amount of normal breast tissue to get clear margins. The operation is usually followed by radiation.

In other cases, however, removal of the breast or surrounding tissue is necessary. Chemotherapy and hormone therapy may also be used as part of the treatment plan. ●

Chemotherapy Gets a Makeover

continued from page 37

son to person, each patient receives individualized pain management. Patients with other health problems and those who have bone metastases usually have more pain.

"A wide variety of pain medications are used alone or in combinations to treat patients at various stages of the diseases," said Dr. Payne. "There are nonprescription drugs like aspirin, acetaminophen and ibuprofen. There also are opiates like morphine, fentanyl and methadone."

With the new emphasis on managing pain, many cancer centers like Memorial Sloan-Kettering have established pain management departments. These departments are responsible for providing medications, nerve blocks and other methods of pain relief. Relaxation training, hypnosis, and psychological support are also available. These approaches have proven so successful that community hospitals in suburban and rural areas have adopted them. ●

WHERE TO GET HELP

Cancer can affect just about every aspect of a person's life—disrupting career, lifestyle and personal finances, as well as altering relationships with family members and friends. But with the proper support, many of those who undergo the treatment process develop more than just a sense of accomplishment and a greater appreciation of life. They often are emotionally stronger and more confident than they were before their diagnosis.

"Facing cancer turns people's lives upside down," said Diane Blum, executive director of Cancer Care, the largest nonprofit voluntary agency in the United States dedicated to helping patients and their loved ones cope with the disease. Founded in 1944, Cancer Care has helped more than a million people with all types and stages of cancer. Social workers with experience in oncology provide counseling and emotional support to patients, family members and caregivers. For more information, contact:

Cancer Care, Inc.
National Office
1180 Avenue of the Americas
New York, N.Y. 10036
Web site: http://www.cancercareinc.
Counseling line: 1-800-813-HOPE (4673)

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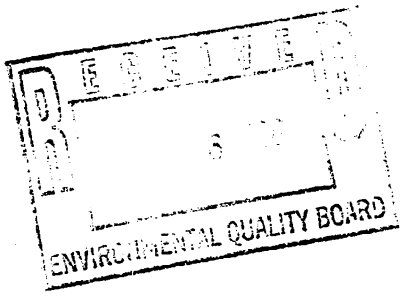

October 20, 1998

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

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Dear Chairman Seif:

The following are my comments regarding proposed changes to water quality regulations as described in the *Pennsylvania Bulletin* dated August 29, 1998.

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

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

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

Chapter 92.81 I strongly oppose the issuance of "general" permits in High Quality streams as well as those identified as "impaired". 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.

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

Chapter 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 very least, regulations are needed to govern their permitting.

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

I firmly believe that the EQB should make these and other changes to improve our water quality standards, and not relax the protection of same.

Sincerely,

Judi L. Reese

October 20, 1998

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

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Dear Chairman Seif:

The following are my comments regarding proposed changes to water quality regulations as described in the *Pennsylvania Bulletin* dated August 29, 1998.

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

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

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

Chapter 92.81 I strongly oppose the issuance of "general" permits in High Quality streams as well as those identified as "impaired". 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.

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

Chapter 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 very least, regulations are needed to govern their permitting.

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I firmly believe that the EQB should make these and other changes to improve our water quality standards, and not relax the protection of same.

Sincerely,

Jane E. Ball

F

Environmentalists oppose water pollution

Critics say Ridge plan would allow more toxic chemicals

BY GARRY LENTON
OF THE PATRIOT-NEWS

A Ridge administration plan to revise water pollution protection rules is drawing fire from environmentalists who say it will result in more toxic chemicals entering Pennsylvania waterways.

Members of Clean Water Action, The Sierra Club and the Chesapeake Bay Foundation took turns yesterday telling members of the Environmental Quality Board that the proposed revisions should be rejected.

The state Department of Environmental Protection has proposed a series of changes to the state's water pollution controls. The regulations affect business and industry, which are required to obtain permits identifying chemicals they release.

The EQB is an appointed body that reviews regulations proposed by DEP.

Among the changes proposed by the administration:

- Elimination of 20 toxic chemicals from the list of those that must be reported.
- Allowing businesses to obtain a single permit for all of its toxic releases, instead of individual permits.
- Allowing a practice known as effluent trading, a process that allows companies to exceed toxic limits if they obtain an agreement from another company to reduce their pollution by an equal amount.

The changes are being proposed under Ridge's Regulatory Basics Initiative, a program designed to eliminate red tape by ensuring that the state's laws do not exceed federal requirements.

Administration officials said the changes would not weaken water quality rules.

"They are meant to streamline, not weaken," said April Linton, a spokeswoman for DEP. "Some people might say that's weakening, but we are being as stringent as the feds are."

Yesterday's hearing comes on the heels of a report by the Fish and Boat Commission that nearly a third of the state's species of fish are in trouble. The commission is being asked to add 13 species to the state's threatened list.

The recommendation was based on an exhaustive study of fish populations in the state.

"DEP should, at minimum, suspend consideration of any weakening of water quality regulations in light of the Commission's new information on water quality impacts on fish species," said Jeff Schmidt, lobbyist for the Pennsylvania Chapter of The Sierra Club.

Robert Wendelgass, state director for Clean Water Action, criticized the proposal to allow companies to obtain a single
charges.
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Barbara Koo
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Stuart Gansell
Conservation.
The 20 chem
criteria needed
to aquatic life,

Barbara Duffy
Bryan Mosko
8 Hewett Road
Wyncote, Pa. 19095

Environmental Quality Board
PO Box 8477
Harrisburg, Pa. 17105

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To Whom It May Concern,

It has come to our attention that the DEP is considering changing the standards that would protect our streams and rivers from toxins released by companies. Pennsylvania's water quality is already not the greatest. We need tougher standards not standards that would continue to jeopardize our future water supplies, water ecosystem and recreational water ways. One would think that an organization such as the Department of Environmental Protection which is funded by our tax dollars would not need to be reminded that they exist to "protect the environment" not to succumb to business lobbyist whose only interest is higher profits.

To conclude , we adamantly oppose the newly proposed water quality standards and toxics strategy. We are also anxious to get a response to this letter.

Sincerely,

Barbara Duffy
Bryan Mosko

Barbara Duffy
Bryan Mosko

c. Edward Brezina, PA. DEP

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INDEPENDENT REGULATORY
REVIEW COMMISSION

October 20, 1998

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

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-nitrogen[1], 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

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[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 burdensme 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 comment[2]. 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.

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[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.

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[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

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[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(l) 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

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[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 partay 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?"

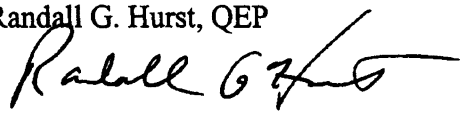
§ 92.94(b) payment of penalties. The cited section states that penalties, including those due following judicial review, shall be paid within thirty days after the order is mailed to the person. Further, the requirement is that "the person to whom the notice or order was issued shall pay the amount . . . ." 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 judgement" 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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TERRY TORRES
647 Mulford Rd.
WYNCOTE, PA 19095
OCT. 20, 1998

Dear SIRS,

I am writing to urge you to strengthen the standards that protect our water, Not weaken them. The DEP's proposed toxics strategy is too weak. I would like these NEW standards stopped.

Sincerely your
Teresa Torres

October 20, 1998

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

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Dear Chairman Seif:

The following are my comments regarding proposed changes to water quality regulations as described in the *Pennsylvania Bulletin* dated August 29, 1998.

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

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

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

Chapter 92.81 I strongly oppose the issuance of "general" permits in High Quality streams as well as those identified as "impaired". 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.

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

Chapter 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 very least, regulations are needed to govern their permitting.

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

I firmly believe that the EQB should make these and other changes to improve our water quality standards, and not relax the protection of same.

Sincerely,

Dave Nancarrow

Steven K. Long
5 Chiara Drive
Harrisburg, PA
17112

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

Dear Chairman Seif,

I would like to express to you my opposition to any changes in the Pennsylvania water quality regulations which will cause the already poor condition of many of our streams and rivers to be further degraded.

I believe this is the case with the changes proposed by the Board. No one should be permitted to discharge into Pennsylvania waters any substance which is effectively 'dirtier' than the present condition of a waterway, and such discharges should truly be effectively 'cleaner'.

The goal of the Board and the Department of Environmental Protection should be to raise the quality of our water to above those required by the federal regulations, not to lower them to meet the minimums.

Please revise the proposed standards to make Pennsylvania's waters the envy of the country, not the standard for industrial and commercial degradation that we are moving toward.

Sincerely,

Steven K. Long

October 20, 1998

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Sincerely,

5 Chiara Drive
Harrisburg, PA

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October 20, 1998

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Sincerely,

Robert J. Kreider

ROBERT J. KREIDER
1430 ESTHER DR.
LEBANON PA 17042

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512 California Ave.
Oakmont PA 15139
October 21, 1998

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

Dear Sir:

As a Pediatrician concerned about my own children's and my patients' health, I am against the proposed Water Quality Standards.

We need legislation to strengthen, not weaken, our water quality laws.

Sincerely,

Carol E. Brand M.D.

Oct. 12 1998

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Environmental Quality Board
P.O Box ~~3475~~ 8477
Harrisburg Pa. 17105

Gentlemen:

I strongly oppose the new Proposed Water quality standards and Toxic Strategy. The DEP's Proposed Toxic Strategy is too weak and will allow more toxic Waste into our Waters.

I would like them stopped!

Very Truly Yours
Beatrice K. Golden
416 Beecher Ave
Cheltenham, Pa 19012

Joseph Griffin
92 Covered Bridge Road
Oley, Pennsylvania 19547

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October 21, 1998

Division of Assessment and Standards
P.O. Box 8555
Harrisburg, PA 17105-8555

Re: Water Quality Toxics Management Strategy--Proposed Changes,
August 28, 1998, Pennsylvania Bulletin

Dear Mr. Brezina:

It is my understanding that the regulatory changes you have proposed are so extensive that many individuals and groups anxious to comment on them are simply unable to meet the sixty day deadline. In light of the importance of these regulations, it would seem appropriate to allow those who have something to say the chance to say it.

Please consider extending the comment period another sixty days to allow all voices to be heard. Little will be gained if time saved now is wasted in controversy later.

Sincerely,

Joseph Griffin