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To 10/21/98

Dep and The Environment
Quality Board.

I oppose the two proposed
Water Quality Standard
and Noise Strategy.

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

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

Sincerely

Mrs Marie Fletcher
305 Lyster Road
Orland Pa. 19075

ORIGINAL: 1975
No copies per FEW

October 21, 1998

Environmental Quality Board
PO BOX 8477
Harrisburg, PA 17105

Dear Environmental Quality Board,

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

Sincerely,

Marcia Pine

Marcia Pine

2101 LANTERN LANE
ORELAND, PA 19075

ORIGINAL: 1975
No copies per FEW

October 21, 1998

Environmental Quality Board
PO BOX 8477
Harrisburg, PA 17105

Dear Environmental Quality Board,

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

Sincerely,

Melissa Pine

2101 LANTERN LANE
ORELAND, PA 19075

Environmental Quality Board
PO Box 8477
Harrisburg, PA. 17105

10/21/98

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To whom it may concern,

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

Sincerely,

Luke Wilson
1109 Summit La.
Oreland Pa 19075

625 Stetson Road
Elkins Park, PA 19027

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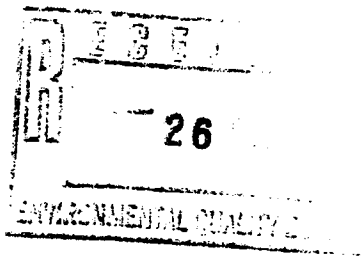

October 22, 1998

Environmental Quality Board
PO Box 8477
Harrisburg, PA 17105

Dear Sirs:

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

STOP THE NEW, WEAKER STANDARDS!

Sincerely,

Bunny van Adelsberg

— 50 return address 10-21-98

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

June Schwaiger

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WHEATLAND Tube Company

1 COUNCIL AVENUE
WHEATLAND, PA 16161
(412) 342-6851

October 21, 1998

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

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

Gentlemen:

The following are our comments on the subject amendments:

Chapter 92. NPDES Permitting, Monitoring and Compliance:

92.1. Definitions

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

92.41. Monitoring

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

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

92.52a. Site Specific Permit Conditions

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

92.57. Effluent Limitations

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

Chapter 93. Water Quality Standards:

93.7. Specific Water Quality Criteria, Table 3

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

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

Sincerely,

Arthur E. Hall, P.E.
Supervisor, Chemical Processing

Dear Environmental Quality Board,

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

Sincerely,

The Brown-Lieberson Family

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To EQB,

I oppose changes to Regulatory Chapters 93, 95 & 96 because they will permit general discharge into High quality, H_2O sheds, allow general discharge of toxic chemicals, ignore the regulation of non-point source pollution & impair water and wetlands regulation of 20 toxic chemicals.

Sincerely,

Ralph Clifton

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INDEPENDENT REGULATORY REVIEW COMMISSION

RECEIVED
OCT 13 1998
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911 Hampton Court
Conshohocken, PA 19947

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

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Dear Sir

I oppose the new proposed water quality standards + toxic strategy. Please strengthen the standards, not weaken them. Please stop the proposed legislation + protect our water.

Sincerely
Ruth Shaffer
9 Deaver Pl
Wyncote PA 19095

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10-27-98

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

Thank You,
From a resident
of Nazareth

Nazareth, PA

10-21-98

Dept. of Environmental Protection :

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

Sincerely,

Robin M Cottone

211 Spruce Rd
Hbutton, PA 19031

/

Randy Gardner
520 54th St
Pgh Pa 15201

Edward Brezina
PA DEP
Box 8555
Harrisburg Pa. 17105

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Dear Sir,

I have just been informed of the PA DEP's new water quality Destruction Program. Its ridiculous to think that the DEP is meant to protect and conserve our natural resources. We are already second in the nation in tonage of toxic waste Discharges are you trying to be #1!!! Your a Fool if you think the people of Pennsylvania will sit still for this. Don't ruin our wonderful State. Do the right thing!! For ONCE.

Randy Gardner

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

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Environmental Quality Board
PO Box 8477
Harrisburg, Pa. 17105

October 21, 1998

To All Concerned

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

Sincerely,

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

10/24/10

Byron Parker
123 E. Walnut St
Nazareth PA 18064

Dear Sirs,

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

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

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

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

Please continue strong regulation, never weaken them. We need clean water. Thank You

Byron Parker

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Lynsey Kral
7615 Steubenville Pike
Oakdale, PA 15065

Oct. 22, 1998

Environmental Quality Board:

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

Thank you,

Lynsey Kral

OCT. 22, 1998

TO ENVIRONMENTAL QUALITY BOARD:
TO WHOM IT MAY CONCERN!

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

PLEASE STOP!

Kenneth R Wismer

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

Return Address

10/29/98

Environmental Quality Board -

I heartily oppose the new proposed water quality standards and topics strategy.

Karen Coleman

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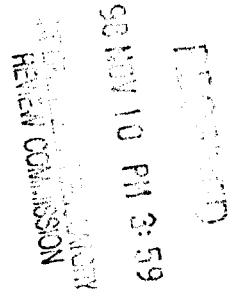
John P.Kristofich, MD
859 Clearview Lane
Bethlehem, PA 18017
October 22, 1998

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



Dear Sir:

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

Respectfully,

John P. Kristofich, MD

IRON FURNACE CHAPTER • TROUT UNLIMITED

P.O. Box 324, Clarion, PA 16214

October 22, 1998

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

Dear Mr. Seif:

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

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

Among significant changes or omissions, we note the following:

Chapter 92, NPDES Permitting and Monitoring.

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

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

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

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

Chapter 93, Water Quality Standards.

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

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

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

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

Yours truly,

James H. Knickerbocker

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

Date: [redacted] Oct 22, 1998

Chairman James M. Seif

Environmental Quality Board

P.O. Box 8477

Harrisburg, PA 17105-8477

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FORM LETTER 2

Dear Mr. Seif:

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

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

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

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

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

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

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

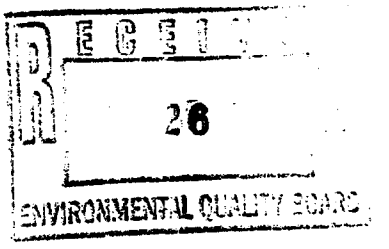
93.6 It is very disappointing to see no language protecting instream flows and instream habitat. Other states have such protection, and the U.S. Supreme Court has ruled that states are permitted to protect instream flows. Governor Ridge's 21st Century Environment Commission recommended protecting aquatic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

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

Yours truly,

John D Kennedy
Southwest Regional
Vice President
Penna. Trout.

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



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

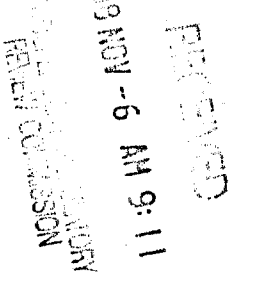
To Whom it May Concern:

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

Sincerely,

Heidi Munn

cc: Mr. Edward Brezina



10/22/98

~~EQB~~:

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

Donna Johnston
53 East High St.
Nazareth, PA 18064

100 E High St.
Nazareth PA 18064
Oct. 22, 1994

ORIGINAL: 1975
No copies per FEW

EQB
PO Box 8477
Harrisburg, PA 17105

Dear Sir/Madam;

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

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

Sincerely,

Dennis Shuey-Bow

He who dwells in the shelter of the Most High will rest in the shadow of the Almighty.
Psalm 91:1 NIV

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Environmental Quality Board Oct 22, 1998

To whom it may concern:

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

Sincerely

Denise M Applegate

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

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

10/22/98

Dear Sir,

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

Sincerely
Carrie Leysath

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Carl E. Dusinberre
1433 Gary Terrace, West Chester, PA 19380
610/692-2930

October 22, 1998

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

Water Quality Regulations
8/29/98 Pennsylvania Bulletin

Dear Chairman Seif:

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

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

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

Yours truly,

Carl E. Dusinberre

Bob Thompson
Carole Rubley
Bob Flick

Summary of Testimony
Water Quality Amendments
October 22, 1998

The petition I handed to you at the hearing with 25 signatures were signed by people who support my feelings on what I said. These people entrusted me to speak for them, just as we in Pennsylvania have entrusted you, the EQB, with the task of creating tough standards and regulations for not only preserving but also improving our water, land, and air. I spoke at the hearing because I do not think you have served Pennsylvania or its people well. These proposed amendments delete and re-define what are toxic, waste, and pollution all under the guise of "streamlining", "beneficial use" and let us not forget that word, "recycle".

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

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

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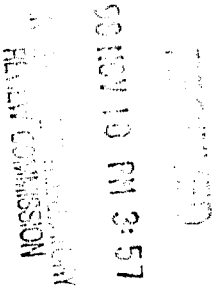

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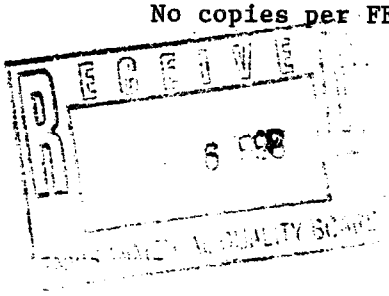


Mary Ellen Estock
325 Brookdale Ave,
Glenside, Pa 19038

October 22, 1998

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

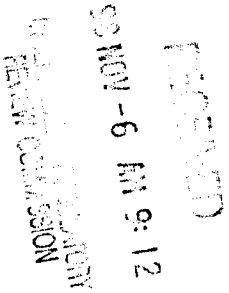
Gentlemen,

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

We need action now!

Sincerely,

Mary Ellen Estock



WEST CHESTER FISH, GAME & WILDLIFE ASSOCIATION, INC.

P.O. BOX 511

WEST CHESTER, PENNSYLVANIA 19381-0511

October 22, 1998

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

Re: Proposed Revision to Water Quality Standards

Dear Mr. Seif,

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

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

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

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

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

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

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

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

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

to prohibit mix g zones.

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

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

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

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

Sincerely,

M. John Johnson

M. John Johnson, President

MJJ:apj

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

VALLEY FORGE CHAPTER OF TROUT UNLIMITED

1433 Gary Terrace, West Chester, PA 19380 610/692-2930

October 22, 1998

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

Water Quality Regulations
8/29/98 Pennsylvania Bulletin

Dear Chairman Seif:

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

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

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

Yours truly,
Karl Heine

CEDusinberre

Karl Heine
President

Bob Thompson
Carole Rubley
Bob Flick

The Action Organization!

10/22/98

ORIGINAL: 1975
No copies per FEW

We do not need any more toxins discharged into our waters. I oppose the new proposed Water Quality standards and Toxics strategy.

Deborah A Vroom
Thomas D Vroom

ORIGINAL: 1975
No copies per FEW

10/22/98

Environmental Quality Board -

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

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

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

Thank you -

Melissa Thompson
Nazareth, Pa.

Dear Environmental Quality Board,

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

Sincerely
Mr. Lee

10/22/98

ORIGINAL: 1975
No copies per FEW

John M Yates
Sally K. Yates
811 E. Wellington Ave.
Wyndmoor Pa. 19038
Oct. 22, 1998

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

To whom it may concern.

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

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

Please pay regard to this letter.

Sincerely
Sally K. Yates
John M. Yates

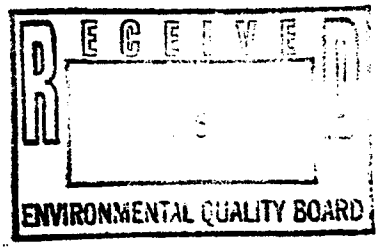
Environmental Quality Board
PO Box 8477,
Harrisburg, PA 17105

Oct. 22, 1998

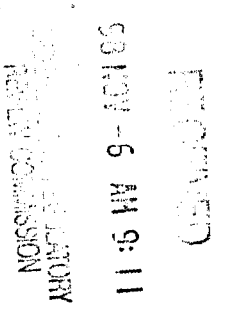
ORIGINAL: 1975
No copies per FEW

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

Thank you,



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



October 22, 1998

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

Dear Commissioners:

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

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

• Section 92.8a: proposes to require changes in treatment facilities and discharge limits without amendment of NPDES Permits (comments begin on page 3).

• Section 92.2: incorporation of future EPA regulatory changes by reference (comments page 5).

• Section 92.41(b): the requirement to eliminate all identified pollutants from all discharges (comments page 7).

• Section 92.4(a)(6)(ii): arbitrary imposition of pollution prevention requirements on indirect industrial dischargers (comments page 9).

• Multiple sections: vague or arbitrary changes in language resulting in uncertainty as to whether the regulations are prescriptive or merely advisory. Replacement of clearly defined requirements, denoted by use of the term "shall" by "may" or the vague term "should." Due process concerns regarding the applicability of vague or ambiguous language. (Comments pages 11 – 14.)

• Section 92.21a (g): Requiring a plan for the elimination of all combined sewer overflows before permit renewal applications will be accepted (comment page 15)

• Section 92.91 *et seq.*, an attempt to create an informal adjudication process under the Clean Streams Law violates the Administrative Agency law and due process guarantees under the Constitution. (Comments page 16 – 19).

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

Sincerely,
Randall G. Hurst, QEP

Randall G Hurst

October 20, 1998

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

ORIGINAL: 1975
MIZNER
COPIES: Wilmarth
Jewett
Sandusky
Legal

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?"

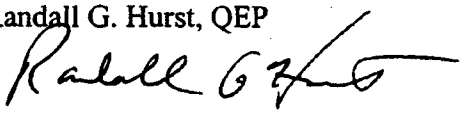
§ 92.94(b) payment of penalties. The cited section states that penalties, including those due following judicial review, shall be paid within thirty days after the order is mailed to the person. Further, the requirement is that "the person to whom the notice or order was issued shall pay the amount . . . ." 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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NILS HANZAR
213 Center Ave
OAKDALE, PA 15071

OCTOBER 22, 1998

ENVIRONMENTAL QUALITY BOARD:

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

Thank you,

Nils Hanzar

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

October 22, 1998

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

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

Dear Mr Seif and Board Members:

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

Yours truly,

Ed Bellis

Edward D. Bellis
President
Pennsylvania Trout, Inc.

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REVIEW COMMISSION

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

October 22, 1998

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

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Dear Environmental Quality Board,

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

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

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

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

Sincerely,

Nathaniel Carney

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

October 23, 1998

The Environmental Quality Board
PO Box 8477
Harrisburg, PA 17105

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To whom it may concern,

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

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

Sincerely,

Edmond S. Vea

Freeman, Sharon

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

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

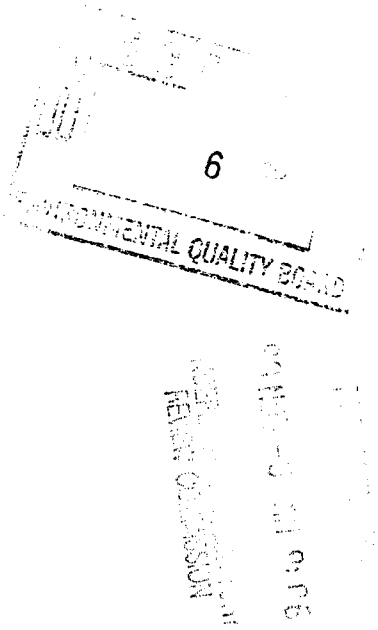
Gil Jacobsen - GilJ@pobox.com Work - GilJ@tangram.com
Pages: Gil - http://www.pobox.com/~gilj
Viking - http://www.LibertyNet.org/~viking
MLUC - http://www.LibertyNet.org/~devonuu

Gil Jacobsen
62 Aldham Rd.
Phoenixville PA 19460-2835

Freeman, Sharon

ORIGINAL: 1975
FORM LETTER

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



October 23, 1998

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

Dear Mr. Seif:

I am commenting on the proposed changes to the water quality regulations as described in the August 29, 1998, Pennsylvania Bulletin. Chapter 92.2d(3). I support retention of the technology-based limit (0.5 mg/l) for total residual chlorine.

92.51(6) The language in the proposed regulation needs to be simplified to say that compliance with all water quality standards is required. This may seem obvious to some, but not to all.

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

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

Chapter 93.4 I support the present protection of all of our waters as "potable water" sources. Reducing this level of protection is an implicit admission that certain waters presently not meeting "drinkable" standards should be "written off" with no hope of their becoming cleaner.

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

93.6 It is very disappointing to see no language protecting instream flows and instream habitat. Other states have such protection, and the U.S. Supreme Court has ruled that states are permitted to protect instream flows. Governor Ridge's 21st Century Environment Commission recommended protecting aquatic habitat and instream flow. Because the water quality standards are the basis for clean water and healthy streams, lakes and rivers, Pennsylvania needs language protecting instream flow and aquatic habitat in our water quality standards! The extremes of too much flow (the pollutant here is kinetic energy) or too little flow can and does impair

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

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

Yours truly,

Edward Ambrogio
509 Spruce Avenue
Upper Darby, PA 19082

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Ed Ambrogio
(home) edward@snip.net
(work) ambrogio.edward@epamail.epa.gov

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October 23, 1998

Environmental Quality Board
PO Box 8477
Harrisburg, PA 17105

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

Sincerely,

Amy Dwyer

Amy Dwyer
2431 Whitby Road
Havertown, PA 19083

DMP

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

8

ORIGINAL: 1975
No copies per FEW

October 23, 1998

Environmental Quality Board
PO Box 8477
Harrisburg, PA 17105

Dear Sirs:,

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

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

Sincerely,

Dana M. Price

EQB Hearing, October 22, 1998

Original: 1975, Mizner: Copies: Wilmarth,Jewett, Sandusky, Legal

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

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

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

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

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

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

ENVIRONMENTAL QUALITY BOARD HEARINGS 1998

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

NAME:	ADDRESS
Kathryn R. Grosso	855 N. Park Rd. Apt. 1203 Wyomissing, PA 19610
Debi Shipley	1477 Lehigh Pkwy So. Allentown 18103
[illegible]	12 Quincy Rd Allentown, NJ 08501
[illegible]	4416 Orchard Ave [illegible], PA 18103
Lorraine Gutman	2634 Brodey St. SW, Allentown, PA 18103
J.K. Murray	3898 Postdr. Bethl Pa 18017
Brent Shick	1045 N West End Blvd. #129 Quakertown, PA 18951
Masha Vigdorchik	107 Buckhill Drive Exton PA 19341
Clarence Williams	3656 Alma Drive, Allentown Pa 18103
Evelyn Daubert	219 So 16th, Allentown PA 18102
JAY S. SHAH	4922 Meadow Lane, Macungie PA 18062
Brian K. Moyer	25 College Ave Trappe PA 19426
Robert A. Baron	2906 State Hill Rd Reading PA 19610
Debby Schuster	30 Mine Rd. Mertztown PA 19539
Barbara Hunsicker	2139 Allen St. Allentown, Pa 18104
Edward Lambert	6971 Salinka Sq Bethlehem PA 18017
Yvonne D Roberts	7939 CROSS CREEK CIRCLE BRENIGSVILLE PA 18031
[illegible]	1025 Bretton Circle, Wyomissing Pa. 19605
[illegible]	460 Parkview Rd READING PA 19606
Dolores E. Angus	314 NOR-BATH BLVD. NORTHAMPTON PA 18067
E. Craig Brynard	40 cedarwood Road Wyomissing Pa 19610
S. Cooney	1112 S. 12TH St. Allentown, Pa. 18103
Nancy Druckenmiller	2705 Helen St Allentown, PA 18031
Robin Fader	box 3612 Allentown PA 18106

ENVIRONMENTAL QUALITY BOARD HEARINGS 1998

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NAME:	ADDRESS
Donna L Ford	4191 Sherry Hill Rd Hellertown PA 18055
Diane L Deange	1909 Woodmont Drive, Bethlehem PA 18017
Marianne Laurence	1116 Bernice Dr Coplay PA 18037
Frederick Adkins	254 Adams Rd Kutztown PA 19530
Nadine Eschner	1855 Hidden Valley Rd Macungie PA 18062
William F. Mill	729 Furnace Rd. Womelsdorf, PA 19567
Woodrow W. Jones	4649 Elm Drive Nazareth PA 18064
Lee Fisher	600 Palomino Dr North Catasauqua Pa 18032
CHUCK HAFER	24 CHINKAPIN DR FLEETWOOD PA 19522
Larry L. Gillespie	P.O. Box 935 Shillington PA 19607
Evvi Ross	40 Conestoga Drive Sinking Spring, PA, 19608
Thom Bernert	45 West Main St Kutztown PA 19522
Mark Ettaro	202 Sunrise Rd. Reading, Pa. 19606
Dana Hann	310 Fairview Dr. Bland Pa. 19510
Thad Calvert	2080 Aster RD Beth. Pa. 18018
Bart Richmond	P.O. Box 133 E. Texas, PA 18046
John A Kelly	2146 Kemmerer St. Bethlehem, PA 18017
David J Brigata	361 Grim Rd. Kutztown PA 19530
Regina L Lefler	7 Misty Lane Reading Pa 19606
[illegible]	1771 Shimer AVE BETHLEHEM, PA 18018
Frank Kaleda	16 Cherrywood Rd Wyomissing Pa 19610
Eric D. McKee	1250 Davies DR. Whitehall PA, 18052
[illegible]	2709 Fox Fire Ct. Coplay PA 18037
Mike Blum	5067 Conversion Rd Wescosville PA 18106

ENVIRONMENTAL QUALITY BOARD HEARINGS 1998

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NAME:	ADDRESS
Connie L. Melofanna	131 W. Penn Ave. Wernersville, Pa. 19565
Camille A Kozbritz	92 Butternut St. Sinking Spring, PA 19608
Laura L. Richty	2804 Knoll Way, Sinking Spring Pa 19608
Jude Woodring Edmond	1108 Harding Circle Whitehall, PA 18052
[illegible]	1574 Brookside Rd. Whitehall, PA 18052
[illegible]	100 Ramapo Trail H-15 Allentown PA 18104
Thomas W. George	3552 Easton Ave. Bethlehem, PA 18020
GAIL A. Peyros	5921 Meadow Drive, Orefield PA 18069
[illegible]	222 E. Federal St Allentown, Pa 18103
[illegible]	APT 76 C S. Elm Kutztown PA 19530
Cynthia Shipwash	85 Pinoak Rd, Lehighton, PA 18235
Carol K. Mankos	2309 Mountain Rd. Slatington, Pa. 18080
THEODORUS F. KOGUT	42 WINGOOD FT. DR. SHILLINGTON PA 19607
Kenneth B Motyeny	600 Elm Ave Reading, PA 19605
[illegible]	307 NEWPORT AVE READING, PA 19611
Joseph A. Harchaick	302 S. 6th st. Emmaus PA 18049
[illegible]	613 Washington St Allentown Pa 18102
Claudia C. Orr	7686 Zeisloff Road, New Tripoli, PA 18066
Johnny Ferrer	2275 Roger St Bethlehem PA 18017
[illegible]	966 Gravel Dalem, PA 18070
Curtis E. [illegible]	5480 Monocacy Dr Bethlehem, PA 18017
Daniel A. Hollinger	129 A South Franklin St. Fleetwood, PA 19522
Sandra Printzman	290 Steely Rd. Sinking Spring PA 19608
Larry Valeri	492 WATER ST, OLEY, PA 19547

ENVIRONMENTAL QUALITY BOARD HEARINGS 1998

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NAME:	ADDRESS
Lori Bertschman	184 Fry Rd., Fleetwood, PA 19522
Sandy Dreyer	3941 Gun Club Rd, Albrightsville, PA 18011
Pat R. Lucas	722 Chapel St. N. Catasauqua, PA 18032
Lenora Smith	132 Beaver Creek Rd Fleetwood, PA 19522
Kindy Rumore	134 Culver St., Northampton, PA 18067
Tom Barner	6150 Fairway Lane, Wescosville, Pa 18

ENVIRONMENTAL QUALITY BOARD HEARINGS 1998

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

NAME:	ADDRESS	
Noreen Muth	422 S. 25th St.	Allentown
Amy Wall	3521 Kutztown Rd	Laureldale
[illegible]	1002 W. Chestnut St.	Macungie
William Clark	1971 Rugh Creek	Allentown
[illegible]	1969 Centerport Rd.	Mohrsville
Jim Wortmann	307 Greenwich st	Kutztown
Tracey L. Barnes	5650 WEDGE LN	WESCOSVILLE
Andrew M. Taus	520 N. SAINT LUCAS	ALLENTOWN
Robert McElhaney	2735 FERNOR ST.	ALLENTOWN
Valerie K. Hallowell	309 S. 9th ST	Coopersburg
[illegible]	382 S. TURNER ST.	HAMBURG
[illegible]	228 GENESIS DR.	BLANDON
DEB. DEP	810 CARMON DR	WYOMISSING

ENVIRONMENTAL QUALITY BOARD HEARINGS 1998

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Harold Welch	230 Davis St. Blossburg PA 16912
[illegible]	7 Walnut St. Wellsboro PA 16901
[illegible]	RD5 Box [illegible] Wellsboro Pa 16901
[illegible]	RD#7 Box 374 Wellsboro PA 16901
Timothy P. Graves	Timothy P. Graves Wellsboro Pa 16901
[illegible]	RD#7 Box 444 Wellsboro, PA. 16901
[illegible]	[illegible] Blossburg PA 16912
Karen R Clark	RD #2 Box D-32 Canton PA. 17724
Bonnie Wright	110 East Ave Wellsboro, PA 16901
Dr. [illegible]	Box 95 Tioga Pa. 16946
[illegible]	RD6 Box 138 Wellsboro, PA 16901
Margaret Myers	2 Kelsey St Wellsboro Pa 16901
Marion [illegible]	2B Kelsey St Wellsboro Pa 16901
J. Ellen Manchester	2 Kelsey St #D, Wellsboro, PA 16901
[illegible]	1794 Spring Run Rd. Williamsport PA 17701

ENVIRONMENTAL QUALITY BOARD HEARINGS 1998

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NAME:	ADDRESS
Kathryn R. Grosso	855 N. Park Rd. Apt B202 Wyomissing PA 19610
Deb Shipley	1477 Lehigh Pkwy So. Allentown 18103
[illegible]	12 Quincy Rd Allentown, NJ 08501
[illegible]	4416 Driftwood Dr [illegible], PA 18103
Lorraine Gutman	2634 Broder St. SW, Allentown, PA 18103
[illegible]	3898 Post Dr. Bath Pa 18017
[illegible]	1045 N West End Blvd. #129 Quakertown, PA 18951
Masha Vigdorchik	10-7 Caddell Drive Exton PA 19341
Clarence Williams	3656 Alma Drive, Allentown Pa 18103
[illegible]	219 So 16th, Allentown PA 18102
JAY S. SHAH	4922 Meadow Lane, Macungie PA 18062
[illegible]	25 College Rd Trappe Pa 19426
Robert A. BARON	2906 State Hill Rd Reading PA 19610
[illegible]	30 Mine Rd. Mertztown PA 19539
[illegible]	2139 Allen St. Allentown, Pa 18104
[illegible]	6971 Salinka Sq Bethlehem Pa 18017
[illegible]	7939 CROSS CREEK CIRCLE BRENIGSVILLE PA 18031
[illegible]	1025 Chestnut Circle, Reading Pa. 19605
[illegible]	460 PARKVIEW Rd READING PA 19606
Dolores E. Sugra	314 NOR-BATH BLVD. NORTHAMPTON PA 18067
E. Craig Bryant	40 cedarwood Road Wyomissing Pa 19610
[illegible]	112 S. 12TH St. Allentown, Pa. 18103
Nancy Druckenmiller	2705 Helen St Allentown, PA 18031
Rodha Judeh	Box 3612 Allentown PA 18106

ENVIRONMENTAL QUALITY BOARD HEARINGS 1998

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NAME:	ADDRESS
[illegible]	4191 Sherry Hill Rd Hellertown PA 18055
[illegible]	1909 Woodmont Drive, Bethlehem PA [illegible]
Marianne Lawrence	1116 Bernice Dr. Coplay PA 18037
Frederick Alkens	254 Adams Rd Kutztown PA 19530
Nadine Eckhaus	1855 Hidden Valley Rd Macungie PA 18062
William T. Mill	229 Furnace Rd. Wernersville, PA 19565
Woodrow W. Jones	4640 Fir Drive Nazareth PA 18064
Lee Fisher	800 Palomino Dr North Catasauqua Pa 18032
CHUCK HAFER	24 CHINKAPIN DR FLEETWOOD PA 19522
Larry L. Gillespie	P.O. Box 935 SHILLINGTON PA 19607
Kivi Ross	40 Conestoga Drive Sinking Spring, PA 19608
Thom Sewalt	45 West Main St, Fleetwood PA 19522
Mark Ettaro	202 Sunrise Rd. Reading, Pa. 19606
Sarah Haring	310 Faith Dr. Blandon Pa. 19510
Thad Calvert	2080 Aster RD Beth. Pa. 18018
Bart Richmond	P.O. BOX 133 E. Texas PA 18046
John [illegible]	2146 Kemmerer St. Bethlehem, PA 18017
[illegible]	361 Grim Rd. Kutztown PA 19530
[illegible]	7 Misty Lane Reading Pa 19606
[illegible]	1771 Shimer Ave Bethlehem, PA 18018
Frank [illegible]	[illegible] Wyomissing Pa 19610
Aziz D. Al-Khal	1250 Davis DR. Whitehall PA 18052
[illegible]	2709 [illegible] Ct. Coplay PA 18037
[illegible]	5067 [illegible] Rd Wescosville PA 18106

ENVIRONMENTAL QUALITY BOARD HEARINGS 1998

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NAME:	ADDRESS
Connie L. Mdofanna	131 W. Penn Ave. Wernersville, Pa. 19565
Camille A Kozbiel	92 Butternut Ct. Sinking Spring, PA 19608
Laura L. Richter	2804 Knoll Way Sinking Spring Pa 19608
Judy Wooding Raymond	1181 Hidden Circle Whitehall, PA 18052
Jeffrey S Sawyak	1574 Creekside Rd. Whitehall, PA 18052
Eric C. Mertz	100 Ramapo Trail H-15 Allentown PA 18104
Thomas M. George	3552 Easton Ave. Bethlehem, PA 18020
GAIL A. Peyros	5921 Meadow Drive, Orefield PA 18069
Mike Lomas	222 E. Federal St Allentown, Pa 18103
Laura M Joseph	APT 76 C S. Echo Kutztown PA 19530
Cynthia Shipwash	85 Pinoak Rd, Lehighton, PA 18235
Carol K. Mankos	2309 Mountain Rd. Slatington, Pa. 18080
THEODORE F. KOCUT	42 WINGED FT. DR. SHILLINGTON PA 19607
Kenneth B Mahony	600 Elm Ave Reading PA 19605
Meg Reichert	307 NEWPORT AVE PENNDEL, PA 19611
Joseph A. Hardcastle	302 S. 6th St. Emmaus PA 18049
David Kerr	613 Washington St Allentown PA 18102
Claudia C. Orr	7686 Zeisloff Road, New Tripoli, PA 18066
Mary Ferrer	2275 Roger St Bethlehem PA 18017
Richard Rogers	966 Grove Rd Salem, PA 18070
Curtis E. Ober	5480 Monocacy Dr Bethlehem, PA 18017
Daniel A Hollinger	129A South Franklin St. Fleetwood, PA 19522 19608
Sandra Pritzman	290 Steely Rd. Sinking Spring PA
Larry Valero	492 WATER ST, OLEY, PA 19547

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NAME:	ADDRESS
Lori Bertschman	184 Fry Rd., Fleetwood, PA 19522
Sandy Dreyer	3941 Gun Club Rd, Albuertis, PA 18011
Pat R. Lucas	122 Chapel St. N. Catasauqua, PA 18032
Lenora Smith	132 Beaver Creek Rd Fleetwood, PA 19522
Kindy Rumore	134 Culver St. Northampton, PA 18067
Tom Barner	6150 Fairways Lane, Nescopeck Pa 18

ENVIRONMENTAL QUALITY BOARD HEARINGS 1998

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NAME:	ADDRESS	
Noreen Muth	422 S. 25th St.	Allentown
Amy Wall	3521 Kutztown Rd	Laureldale
[illegible]	1042 W. Chestnut St.	Macungie
William Clark	1971 Rega Circle	Allentown
[illegible]	1969 Continental Rd.	Mohrsville
Jim Wortmann	307 Greenwich st	Kutztown
Tracey L. Barnes	5650 WEDGE LN	WESCOSVILLE
Andrew M. Taus	520 N. SAINT LUCAS	ALLENTOWN
Robert McElhaney	2735 FERNOR ST.	ALLENTOWN
Valerie K. Hallowell	309 S. 9th ST.	Coopersburg
[illegible]	382 S. TURNER ST.	HAMBURG
[illegible]	228 GENESIS DR.	BLANDON
[illegible]	810 CARMON DR	WYOMISSING

ENVIRONMENTAL QUALITY BOARD HEARINGS 1998

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[illegible]	RD#7 Box 444 Wellsboro, PA. 16901
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[illegible]	1799 Spring Run Rd. Williamsport PA 17701

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Policy

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

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

---

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

Dear Secretary Seif,

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

Thank you.

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

Wm. F. Hill & Assoc., Inc.

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

October 22, 1998

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

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

Dear Commission Members,

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

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

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

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

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

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

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

Very truly yours,

P. Fred Heerbrandt
representing

Wm. F. Hill & Assoc., Inc.

Wm. F. Hill & Assoc., Inc.

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

October 22, 1998

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

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Very truly yours,

Fred Heerbrandt

P. Fred Heerbrandt
representing

Wm. F. Hill & Assoc., Inc.

23 October 1998

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

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Dear Mr. Seif:

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

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

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

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

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

Sincerely,

Marilynn L. Cartwright
Dana Cartwright

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

318 Black Rock Rd.
Nazareth, PA 18064
10-23-98

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Notes We oppose the new proposed water quality standards.

Russell A. Thomas
Linda A. Thomas

October 23, 1998

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

Dear Members:

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

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

Sincerely,

Katherine Weber

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

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October 23, 1998

Environmental Quality Board
PO Box 8477
Harriburg, PA 17105

Dear Reader:

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

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

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

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

Thanks for your time and labors.

Sincerely,

JBCarroll

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

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10/23/98

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

Julie Kostenbader

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

014

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

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October 23, 1998

Environmental Quality Board
PO Box 847
Harrisburg Pa 17105
Gentlemen:

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

I urge you to stop these new standards!!!

Sincerely yours,

Judy A. Miller

Judy A. Miller

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10/23/98

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

Julie Kootenbaa

OFFSET IMPRESSIONS, INC.
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Charlie & Maisie Sandwick

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

Oct. 24, 1998

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

Dear Sirs + Madams:

We respectfully request that you defeat the proposed new Water Quality Standards, because, in our opinion, they would seriously weaken the current quality standards. The health of the citizens of Pennsylvania should be of more concern than economic considerations.

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

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Stephen Ruzansky
2614 Hirst Terrace
Havertown, PA 19083

Friday, October 23, 1998

Environmental Quality Board
PO Box 8477
Harrisburg, PA 17105

Dear Board Members:

My family (four voting adults) and I urge you to oppose the new proposed water quality standards and toxics strategy. This is an astonishingly backward move for a state that has such a highly visible problem in water quality and toxic dumpsites. We are much aware of the problems we have right here in our own county. It is a strong concern.

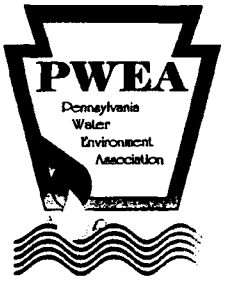
I request a response regarding the direction you do choose to pursue.

Sincerely,

Stephen Ruzansky

ADMINISTRATIVE OFFICE
777 East Park Drive
Harrisburg, PA 17111
Phone: 717/558-7862
Fax: 717/558-7841

Official Publication:
KEYSTONE WATER
QUALITY MANAGER

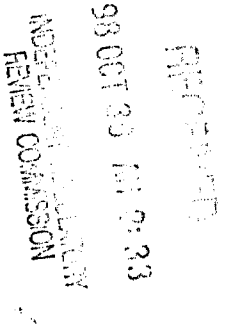


Member:
WATER
ENVIRONMENT
FEDERATION

Sections:
CPWQA
EPWPCOA
WPWPCA

Pennsylvania Water Environment Association

October 23, 1998



Independent Regulatory Review Commission
333 Market St., 14th Fl.
Harrisburg, PA 17101

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

To Whom It May Concern:

The Pennsylvania Water Environment Association (PWEA) is an association with approximately 4000 members and is comprised of experienced wastewater treatment professionals from the fields of operation, administration, engineering, legal and equipment manufacturing. On behalf of the PWEA, the following are comments concerning the above referenced regulations.

CHAPTER 92. NPDES PERMITTING, MONITORING AND COMPLIANCE

- §92.1 Definitions
  Conventional Pollutant - Definition does not include Ammonia Nitrogen.

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

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

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

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

- Curently DEP requires additional monitoring for toxic pollutants by those NPDES permittees that meet certain criteria including, design flow capacity or whether the POTW has an approved pretreatment program. The particular set of toxic compounds (i.e. priority pollutants and local limits) required to be tested for are stipulated in the permit. Under proposed §92.41(b), DEP does not specify which permittees would be subject to additional monitoring, nor does DEP specify which toxic, conventional, non conventional or other pollutants may be required. This section is too broad and could be interpreted differently from region to region throughout the state. More definitive guidelines should be provided. §92.41(B) also requires the permittee to provide a plan of action on how to prevent or eliminate any pollutants detected during this monitoring that are not currently contained in their NPDES permit. What does DEP consider to be a pollutant of concern under this proposed requirement? Would something as common as Iron be required to be eliminated from the wastewater?

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

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

CHAPTER 93. WATER QUALITY STANDARDS

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

CHAPTER 96. WATER QUALITY STANDARDS IMPLEMENTATION

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

Our Association is available to provide the IRRC with additional commentary on proposed rule changes as may be necessary from time to time. If we can be of any assistance providing professional expertise in the evaluation of rules and regulations that have an impact on our associate members, please feel free to contact us.

Very truly yours,

PENNSYLVANIA WATER ENVIRONMENT ASSOCIATION

Carl E. Janson
President

cc: PA Environmental Hearing Board

OCT. 23, 1998

TOM ACCORDINO
67 FIRST ST.
NAZARETH, PA 18064

ORIGINAL: 1975
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To
DEP,

I A writing to protect our WATER! Please stop polluting our water. STOP polluting our RIVERS AND streams with toxic Discharges. Please increase the STANDARDS NOT Roll them BACK! Stop The quick permits by lowering the Standards We need our clean water - Stop polluting our future!

Tom Accordino

Sue Kornbau
1215 Crescent Road • York, ... 17402

10-23-98

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Dear Board,

I read with interest the article in the "Daily Record" - Wed. Oct. 21st concerning the lowering of the water standards. I am also concerned that the proposed regulations will weaken the water quality in the state and that more toxic chemicals will be pouring into the state's waterways, some of which are sources of drinking water. I am a registered nurse, and am very concerned about those things which could be cancer-causing agents. There are so many people with cancer these days, and environment (I feel) plays a big part as possible cause.

[redacted] Modern Landfill, and have been concerned about our family as they grew up on well water here. We were glad to get York city water.

Some of the chemicals listed here are known to be toxic to human and aquatic life. Please reconsider the proposed amendments, and make public the results. I do hope it will be written in clear simple terms. Thank-You for your time.

Sincerely, Mr. & Mrs. Ervin Kornbau

October 23, 1998

Environmental Quality Board
PO Box 8477
Harrisburg, PA 17105

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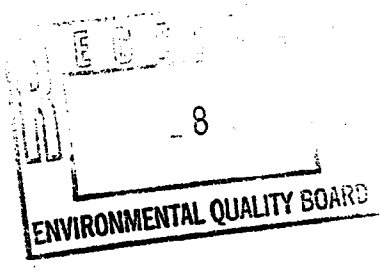
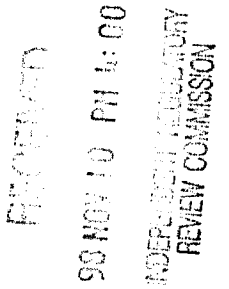


To the Environmental Quality Board:

We are opposed to the new proposed water quality standards and toxics strategy. We urge you to strengthen the standards that protect our water, not to weaken them. The DEP's proposed toxics strategy is too weak and will allow even more toxic discharges into our waters. We want these new standards stopped! Please respond.



Sincerely,

Sharyn and Joseph Gallagher
205 Shawnee Rd.
Ardmore PA 19003

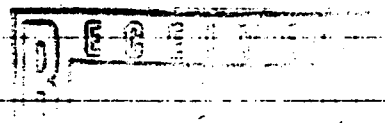
10-23-98

EQB

I oppose the new proposed water and toxic stragety.

ORIGINAL: 1975
No copies per FEW

Marlin Smickley



23 October 1998

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

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Dear Mr. Seif:

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

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

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

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

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

Sincerely,

Marilynn K. Cartwright
Dana Cartwright

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

October 23, 1998

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

Dear Members:

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

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

Sincerely,

Katherine Weber

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

318 Black Rock Rd.
Nazareth, PA 18064
10-23-98

ORIGINAL: 1975
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Notes We oppose the new proposed water quality standards.

Russell M. Thomas
Linda A. Thomas

E120-5000

Elk County Chapter Trout Unlimited

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10-24-98

James P. Girty
1339 Glen Hazel Rd
St. Marys, Pa. 15857

James M. Seif:

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

I support the present Protection of all waters as potable water sources.

Sincerely

James P. Girty

James P. Girty

President of Elk County Trout Unlimited

Richard Benert

75 West Lanark Street
Bethlehem, PA. 18018
(610) 865-2898
e-mail: rbenert@ptd.net

Oct. 24, 1998

ORIGINAL: 1975
No. copies per FEW

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

Dear Sirs:

Since I am of the firm belief that the good of society and of the earth itself should normally take precedence over private property rights, I am amazed that the Pa. Department of Environmental Protection's new Water Quality Standards will actually make it easier for polluters to damage our water supplies. This seems insane in an age when stricter water-quality standards are needed, not weaker ones.

Please exercise your authority in the way it was intended -- to protect the public.

Sincerely,
Richard Benert

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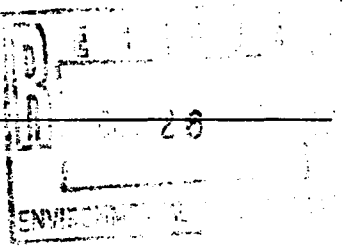
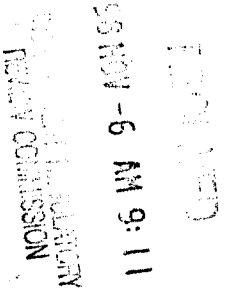


Freeman, Sharon

From: Ahkeech(SMTP:Ahkeech@aol.com)
Sent: Monday, October 26, 1998 12:49 PM
To: REGCOMMENTS
Subject: Public Comments on Proposed Revisions to Water Quality Standards

Please, please protect the instream flow and aquatic habitat in our water quality standards. Water quality standards are the basis for clean water and healthy streams, lakes and rivers. Other states have such protection of instream flow and water habitat and Gov. Ridge's 21st Century Environment commission recommended this protection.

Ann Keech
501 Waterloo Rd.
Devon, PA 19333



Freeman, Sharon

From: Bill Moul(SMTP:wmoul@acm.org)
Reply To: wmoul
Sent: Sunday, October 25, 1998 12:15 PM
To: REGCOMMENTS
Cc: BREZINA EDWARD
Subject: Proposed Water Quality and TMS Regs

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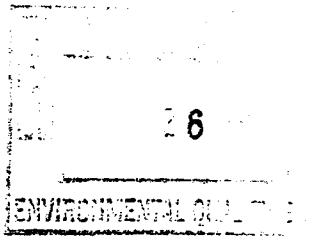

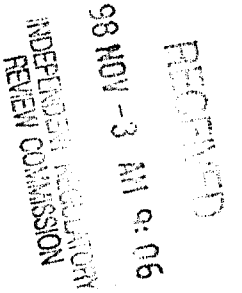

Regarding the proposed Water Quality Standards and Toxic Management Strategy:

I believe that Pennsylvania is on the wrong path in its roll back of water quality and other environmental protections. Pennsylvania's economy will not be helped in the long run by dirtying our streams. As people search for good places to live, the states and areas which have permitted fouling of water and air will suffer relative to states and areas that have maintained or implemented high standards.

That Pennsylvania is is already one of the very largest dumpers of toxics into its streams should be a source of shame. That Pennsylvania proposes to return some streams to an "undrinkable" state is appalling. That Pennsylvania proposes to permit known violators of air and waste permits equal opportunity to violate water permits is stupid.

For Heaven's sake Pennsylvania, wake up! The health, safety, and long term economic health of the state is at risk. Don't weaken the standards that are in place. READ THE GOVERNOR'S OWN 21st CENTURY ENVIRONMENT COMMISSION REPORT.

Sincerely,
William G. Moul, Jr.
PO Box 189
Bradfordwoods, PA 15015

Edward Brezina
Bureau of Water Quality Management
Pennsylvania Dept of
Environmental Protection

October 25, 1998

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Dear Sirs:

I have had a special interest in Special Protection Waters since the 1978 Water Quality Standards Revisions. The purpose of non degradation is not to allow "reasonable" amounts of degradation but to prevent significant degradation. I am strongly opposed to your proposals that would allow more contaminants ie degradation of ante-degradation waters

Second, I am very opposed to the general discharge permits for industrial discharges, and the resulting lack of public input opportunity. The present system has not been unduly burdensome either to DEP or industry.

Sincerely
William Lawrence, III
120 Oakville Drive Apt 1A
Pittsburgh, PA 15220

cc Environmental Quality Board

Freeman, Sharon

From: YFGU56A(SMTP:YFGU56A@prodigy.com)
Sent: Sunday, October 25, 1998 7:00 PM
To: REGCOMMENTS
Subject: Water Quality Standards

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Dear Sirs:

There are three points I would like to make about the proposed General Permit regulations.

1. The US Clean Water Act in the 1970's set pollutant discharge limits based on maintaining or improving stream water quality. In that process the stream is actually used to remove organics through the stream's ability to degrade organic pollutants. Dissolved oxygen levels in the stream help to classify the stream as to fishable and swimable qualities.

We know how to measure these environmental impacts on the stream through the above regulatory process. We also know that toxin's have an environmental impact. They too can be measured on how they impact the environment. I do not believe that the public wants to throw out all that we have learned on how to measure environmental impact on streams. A General Permit that does not require a "good science and engineering" analyses of the pollutants impact on the environment is like closing our eyes and wishing there is now problem.

2. Initially, toxic discharge limits were based mainly on the toxin's effect on organisms in the stream. In recent years more knowledge has been obtained on toxic effects on human health. As instrumentation to measure toxin's has improved, we have found compounds that we did not know were present. Many of these have an impact on human health. The National Primary Drinking Water Regulations now have over 50 toxic chemicals the are regulated. These were not listed some 20 years ago. We need to keep our streams protected as potable water sources. A General Permit that does not recognize the use of streams as potential or actual drinking water supply endangers human health and puts the public at risk.

3. Industrial development is important to the State. Potential or expanding industries do not want to spend a lot of time in obtaining permits. The current process is sometimes lengthy. To reduce the time of obtaining a discharge permit, a highly coordinated effort by the DEP could be put into place. A task force in the DEP for each major permit application could be a corse of action. Quick action while using the existing discharge regulations would save time for industry. In addition, if the cost of a water quality impact study is stumbling block to the industry, a State cost sharing grant with the industry would save the industry money. There are many consultants that could quickly do the study. This would be a proactive approach to industry.

In summary, we do not need to increase pollutant discharges or close

our eyes to there impact in an effort to save time and be responsive to industry. We need to find a better way utilizing what we have.

Sincerely,

Scott J. Tait
McKean, PA

6254 Western Trail
McKean PA 16426

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October 25, 1998

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

To Whom It May Concern,

I am conducting a campaign. "Grow up America."

I am appalled to-say-the-least that the Environmental Quality Board is thinking of suggesting or advocating reductions of water quality standards.

Shame on me. "Grow up America."

I have volunteered for some thirty (30) years as a Director of Conservation, promoting soil conservation, environmental education, and water quality. Now you the Environmental Quality Board are going to reduce the standards. Whoa!

What strange bed-fellows politicians have.

Our nations water quality is at very, very dangerous and critical levels now and someone is advocating lower standards.

"Grow up America." What blatant, gross stupidity.

Shall I advocate to all the senior citizen of E.A.S.I. and the students of my school district, "quit volunteering, you are wasting your valuable time".

"Grow up America." We do not lower standards of quality, we raise them.

Our standards of quality of everything we do should be raised not reduced, (ethics, manufacturing, general business, government, religion, morals, etc.). "Grow up America."

Sincerely yours, for a safe, healthy, drink of water.

Bob

R. G. De Venny, Jr. - Director
Allegheny County Conservation District.
Chairman Water Resources Committee.
Organizer, Brush Creek Watershed Association.

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October 25, 1998

To: Pennsylvania Environmental Quality Board

To Whom It May Concern,

I am writing to express my opposition to the state's proposed new water quality standards.

I believe passage of these standards would be a detriment to water quality in Pennsylvania.

Sincerely,

William J. O'Driscoll

William J. O'Driscoll
107 S. 11th St.
Pittsburgh, PA 15203

(412) 381-3237

- E W B. IN REFERENCE 10-25-98

PLEASE Strengthen The STANDARDS That Protect our water — Don't weaken them We Need Protection Against The Toxic WASTES THAT may Be discharged into OUR WATER. Think of us And The FISH!

A concerned Citizen, Joe Fan

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MARLBOROUGH TOWNSHIP

6040 Upper Ridge Road, Green Lane, PA 18054

Eleanor F. Sadorf
Township Manager
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Office 215-234-9300
Fax 215-234-4294

To: Environmental Quality Board
Rachel Carson State Office Bldg.
400 Market St.
Harrisburg, PA 17105-2301

10/25/98

Re: REGULATORY BASICS INITIATIVE, REVISIONS TO WATER QUALITY STANDARDS

The proposed revisions to Chapter 92 and Chapter 93 require an emphatic NO vote. The revisions are designed to weaken rather than strengthen the laws governing water and watershed protection. With the hundreds of thousands of dollars being spent by the Ridge administration to promote the "21st Century Environmental Commission" and its goals, it is ludicrous to have contrary legislation being proposed, much less passed.

As a Vice-Chairman of Marlborough Township's Board of Supervisors, I request the Environmental Quality Board to hold strong, and demonstrate to the public that they, the current administration and the Department of Environmental Protection really intend to protect the environment to the fullest. Developers should be made to comply with the strictest protection possible.

A summary of my objections to these revisions is attached.

Sincerely,

Joy M. Leach,
Vice-Chairperson,
Board of Supervisors,
Chairperson,
Environmental Committee,
Marlborough Township

cc: Rep. Raymond Bunt

SUMMARY

Joy M. Leach, Marlborough Township Board of Supervisors
10/25/98

REGULATORY BASICS INITIATIVE
REVISIONS TO WATER QUALITY STANDARDS
Chapters 92 and 93

Seven years ago, I appeared before the EQB at step one of petitioning them to upgrade the Unami Watershed to High Quality or Exceptional Value. The same day of my appearance, Rep. Robert Godshall was in attendance to obtain a ruling on the lowering of standards on the East Branch Creek to "Warm Water" stream. That lower ruling was granted. In 1997, after six long years of fighting the bureaucracy, builders, developers, etc., the data we submitted was finally accepted as valid, and the Unami Watershed was granted High Quality Status. Now, just one year later, that protection is being threatened. So what did these two actions result in? The Unami and its aquatic biology continues to be a high quality stream. DEP has supported the restrictions of additional effluent discharges, and efforts are underway to further protect stream buffers. On the other hand, the East Branch has been degraded by the lower standards, and now, seven years later, due to massive degradation, the Perkiomen Watershed is soliciting funds and volunteers to restore many areas of the stream. This presents a perfect view of both sides of the story -- what will we do for the 21st Century -- commit to preservation, or settle for restoration?

Chapter 92, NPDES Permitting, Monitoring and Compliance -

92.81 Allowing general permits to include toxics, affords no way to insure maintenance of high quality standards. It will most surely result in a degradation of these protected waters. Additionally, those impaired waters which are not afforded current protection will only become more severely degraded. PRESERVATION AND IMPROVEMENT - NOT BELATED RESTORATION.

Chapter 93, Water Quality Standards -

93.4 Most definitely retention of protection on all of our waters as potential "potable water" sources should be continued. Residents who live along stream corridors often have private wells which are fed from springs in the waterway. This condition exists in the Unami watershed. The warm water fishes designation should be continued as a basement level of protection.

93.5 The current wording of this section "Criteria necessary to protect other designated uses shall be met at the point of wastewater discharge" should be retained.

93.6 DEP should develop instream flow and habitat criteria and incorporate them into this chapter of regulation

Additionally, regulations should be developed on withdrawals of protected watersheds. An example: golf courses, recreational facilities, etc. that withdraw stream water during periods of drought for irrigation purposes. These withdrawals under adverse rainfall conditions threaten the aquatic biology of the streams.

Chapter 96, Water Quality Standards Implementation

96.4 This section on Total Maximum Daily Loads should include a separate section for modeling done on waters that are not impaired, incorporating nonpoint sources into their modeling in particular for impaired waters and indicate how clean-up activities dealing with nonpoint source pollution will be implemented.

96.4 Comment periods should be allowed before effluent trading is authorized. This procedure should be incorporated into the regulations.

As we move into the 21st Century, public awareness of our environmental problems is increasing, but this awareness must be supported by stringent environmental law.

Sharon Freeman

Watershed

From: IEKMLB [IEKMLB@aol.com]
Sent: Sunday, October 25, 1998 9:46 PM
To: regcommments
Cc: BREZINA EDWARD
Subject: Comments re: "Water Quality Standards"

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Untitled Attachment

Dear Board Members and Mr. Brezina:

The current proposed regualtions, regarding , should not be implemented for the following reasons:

1. General permits for the discharge of toxics into thew waters of the Commonwealth will certainly compromise the existing water quality of the many streams, rivers and creeks. As you are most likely aware the EPA was sued two (2) years ago for not forcing the state to do what we Pennsylvanians expect from the DEP: keep our waters clean.

Now, DEP seeks to issue "general permits" which will have no enforcibility. Why not just tell mine operators, chemical factories and other purveyors of poison that they can dump/discharge without a permit? What is the point of the "general permit"? It is not good for fish nor for drinking water.

2. The proposal to allow companies to get quick "general permits" for discharging pollution into "High Quality" streams, some of the better streams and rivers in our state is a travesty. What are you folks thinking about? Do you want to have the best fishable and scenic waters contaminated? Don't sportsmen and the general citizenary deserve some respect from our civil servants and elected officials? DEP is wrong: roll back this initiative back into the cesspool you slimed it from.

RECEIVED PA DEP
DIV OF W Q ASSESS & STDS
98 OCT 28 AM 9:44

3. DEP is dead wrong in seeking to eliminate the requirement that companies who want a general permit will not have to document that the permit will not cause a violation of water quality standards. This roll back is moronic. Why don't Secretary Seif and Governor Ridge allow father rapers and child molestors to walk around playgrounds? They are not harmful either. It is human nature to get away with everything one can. If you disagree then tell me why our rivers and streams are and have been so polluted.

4. Yo, DEP you know what water is for? It's to drink and bathe in. Why are you seeking to eliminate the requirement that all streams and rivers be protected as
"potable water" sources? You should be ashamed of yourselves. This is simply dead wrong!!!!

5. Why is DEP allow ing "mixing zones" ? This means that there will be no measurement of pollution levels until after the contamination has been diluted by mixing with the other water in a stream. This is utterly preposterous. This too is wrong. Stop it and start looking ou for the interests of the ordianry sportsman and cvitizen, not for a bunch of fly by nighters in corporate greed's clothing.

6. Finally, why is DEP seeking to eliminate enforceable standards for 70 toxic chemicals? How else will we know what is going into our water? You folks in Harrisburg must be breathing too much of that rarified air. Come down off your thrones and leave your money at home, for DEP must surely change. Also, do not under any circumstances eliminate regulation of 20

toxic chemicals, and lower standards for 20 or any toxics. We need to fish and drink our water.

Very truly yours,

E. Kornfeld
16 Roumfort Rd.
Philadelphia, PA 19119

Chairman James M. Seif, Environmental Quality Board
P.o.Box 8477
Harrisburg, Pa. 17105-8477

10/25/98
ORIGINAL: 1975
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Dear Mr. Seif:

I am commenting on the proposed changes to water quality regulations as described in the 8/29/98 Pennsylvania Bulletin: Chapter 92.2d(3). I support retention of the technology-based limit (0.5 mg/l) for total residual chlorine.

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

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

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

Chapter 93.41 I support the present protection of all of our waters as "potable water" sources.

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

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

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

Dale M. Steventon, DO
President
Hockendauqua Chapter, Trout Unlimited

Bethlehem Steel Corporation

BETHLEHEM, PA 18016

WILLIAM J. RILEY
GENERAL MANAGER
SAFETY, HEALTH & ENVIRONMENT

October 26, 1998

By Federal Express

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Environmental Quality Board
Rachel Carson State Office Building
15th Floor
400 Market Street
Harrisburg, PA 17101-2301

Re: Volume 28, *Pennsylvania Bulletin*, page 4431 (August 29, 1998)

Gentlemen:

Bethlehem Steel Corporation hereby presents its comments on the subject regulations which are proposed to modify the water quality regulations at Chapters 92, 93, 95, 96 and 97 of 25 PA Code. Bethlehem has interest in this proposal because it has industrial sites with NPDES permits at five separate locations within the Commonwealth.

Many of the proposed changes are beneficial and we support this effort to streamline and simplify the regulations. For example, various changes that we find positive and that should aid in saving time and effort are:

§92.71(a)	The ability to automatically transfer an NPDES permit between two permittees upon 30-day notice to the Department and if the Department has no objections within that time frame.
§92.6(a)	Clarification that it is the operator's duty to obtain the NPDES permit.
§93.4(d)	Ability to request a variance from the osmotic pressure standard.
§92.55	Clarification that a compliance schedule can be obtained.

All of these changes will aid in providing certainty and enhancing the usefulness of the permit program.

However, there are three sections of the regulation that should be modified to improve their clarity and effective application to the regulated community.

No oil sheen— §92.2d(4)

Subsection (i) of this section specifies that both conditions (A) |At no time cause a film or sheen upon or discoloration of the waters of this Commonwealth or adjoining shoreline| and (B) |At no time contain more than 15 milligrams of oil per liter as a daily average value nor more than 30 milligrams of oil per liter at any time, or whatever lesser amount the Department may specify for a given discharge or type of discharge ...| apply to oil bearing wastewaters (except petroleum marketing terminals). Some oils of light viscosity can exhibit a sheen under favorable atmospheric conditions even if the concentration is as low as 5 mg/l. Also, certain types of vegetation can cause the same optical effect as an oil sheen even if oil is not present. Bethlehem requests that the Department modify this section similar to the intent of the 1987 amendments to the Clean Water Act known as the Section 311 exclusion. In those amendments, any discharge in compliance with its NPDES permit limits for oil and grease is deemed to be in compliance with the "no sheen" requirements. This could be accomplished by modifying §92.2d(4) as follows:

(4) For oil-bearing wastewaters, the following applies:

(i) Oil-bearing wastewater, except those from petroleum marketing terminals, discharged into surface waters shall comply with |all of the following| either:

Additional information required during the permit application process—§92.21(c)

§92.21(c) states "In addition to the information required under subsection (b), the Department may require an applicant to submit other information or data the Department may need to assess the discharges of the facility and any impact on receiving waters...." The following sections describe studies, such as bioassays, whole effluent toxicity testing, and in-stream surveys, which may require lengthy lead times to hire a consultant, obtain the appropriate stream flow or seasonal conditions, and complete the study.

Bethlehem does not object to providing data which are (1) well defined and (2) necessary to allow the Department to complete its permit review process. However, Bethlehem is concerned that the request for additional data not delay the NPDES permit application process or cause the application to be considered incomplete or untimely. This point is important to dischargers because submittal of a complete application in a timely manner (at least 180 days before the expiration date of the NPDES permit) allows the permit to be administratively extended in the event that DEP is unable to reissue a permit before the expiration date.

We recommend that the regulation be clarified so that a properly completed permit application form with accompanying maps and certifications constitutes a complete application. Any biological data or other information which is not routinely required of all applicants should be considered supplemental information and not part of the routine complete application. These changes could be accomplished by revising the definition of "complete application" at §92.1 as follows:

> Complete application - An application which contains |an| a standard application form properly completed, signed and witnessed, a filing fee, proof of municipal notification, proof of local newspaper publication, |standard reports and forms required by the Department| and maps required to process a permit |and other data

required by the Department]. Additional data, such as bioassays, in-stream modeling, whole effluent toxicity testing, and other studies or reports which may be required by the Department to complete its permit processing shall be considered supplemental information.

Implied prohibition on non-permitted pollutants—§92.41(b)

The requirement at §92.41(b) states that each discharger (with minor exceptions) must monitor and report "all toxic, conventional, nonconventional and other pollutants in its discharge at least once a year." Under the strictest interpretation of this requirement, the permittee could be required to have its discharge(s) tested for the literally thousands of chemicals in commercial use. This requirement places a discharger in jeopardy by its vagueness. The section then further requires that "[i]f the monitoring results indicate the existence of pollutants which are not limited in the permit, the permittee shall separately identify the pollutants, and their concentration, on the monitoring report, with an explanation of how the permittee will prevent the generation of the pollutants, or otherwise eliminate the pollutants from the discharge within the permit term. If the pollutant cannot be eliminated from the discharge, the permittee shall seek a permit amendment." Again, read literally, this requirement could have the result of having the Department review and revise every NPDES permit for naturally occurring background parameters in water, such as sodium, potassium, or magnesium. Bethlehem understands that this draconian result was not the Department's intention but rather §92.41(b) was intended to give the Department authority to request monitoring results of some parameters at a frequency more often than the once every five years of the NPDES permit reapplication cycle. This section should be revised to indicate that (1) the Department will give a discharger a written list of the specific parameters for which additional monitoring is requested and (2) an appropriate action upon receipt of the monitoring data may be no change in permit terms and no further action required on the part of the permittee.

Bethlehem believes that the modifications of the proposed regulations as discussed above would be in keeping with the intent of the Regulatory Basics Initiative and would result in no harm to the environment. Bethlehem respectfully requests that the Department seriously consider these requests. If you have any questions regarding these comments, please contact Barbara E. Bachman of my staff at 610-694-2897.

Sincerely yours,

William J. Riley

ORIGINAL: 1975

Kim Gaster

From:	wbthomas@gpu.com
Sent:	Monday, October 26, 1998 2:20 PM
To:	IRRC
Cc:	dbiden@paea.org
Subject:	Chapter 92, 93 & 96 Comments

E-MAILED: Wilmarth
Jewett
Sandusky
Legal

Attached are comments on the proposed rulemaking for Chapters 92, 93 & 96 from the Electric Generation Association (formally generating companies in the Pennsylvania Electric Association). These comments were sent today to the EQB by overnight mail. The document is in Word 7.0 format.

Bill Thomas
Chairperson
EGA Water Quality Subcommittee

(See attached file: EGAh20comm.doc)

EGAh20comm.doc

OVERNIGHT MAIL

Electric Generation Association
301 APC Building
800 North Third Street
Harrisburg, PA 17102
October 26, 1998

ORIGINAL: 1975
MIZNER
E-MAILED: Wilmarth
Jewett
Sandusky
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Environmental Quality Board
15th Floor, Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17101-2301

RE: ***Comments on Proposed Amendments***
Chapters 92, 93, & 96 Water Quality Regulations
Regulatory Basics Initiative

Dear Environmental Quality Board:

The Electric Generation Association (EGA) appreciates the opportunity to provide comments in response to the Environmental Quality Board's proposal to amend the Water Quality regulations, as published on August 29, 1998 in 28 *Pennsylvania Bulletin* 4431 (***attached is a one page summary of our comments***).

EGA is the trade association of seven electric generating companies that provide electric power to the mid-Atlantic region. Our member companies are:

Allegheny Power
Duquesne Light Company
FirstEnergy Corp
GPU Generation, Inc.
PECO Energy Company
PP&L, Inc.
UGI Utilities, Inc.

Together, these companies generate approximately ninety-four percent of Pennsylvania's electric power needs.

In general, EGA supports the efforts of the Department to update and streamline the Commonwealth's Water Quality regulations. Our comments will focus on those issues of specific interest to our organization. The comments are segregated by chapter and are as follows:

Chapter 92:

- The EGA would like to comment on the definition of "Natural Quality", contained in 92.1. The intent is clear that this relates to conditions that have not been influenced by human activity. However, many Pennsylvania streams have had historical Acid Mine Drainage problems going back in some cases over 100 years. There also has been limited corrective action to mitigate a large percentage of those problems. In situations where the prospects of any improvements on an AMD impacted stream are negligible over a permit discharge period, consideration should be given in recognizing that this is a background condition that is analogous to a natural occurring condition.

- The EGA is concerned with the required BAT limit of .5 mg/l for total residual chlorine contained in 92.2(d)(3). This limit is more restrictive than the default BAT limit of 1.2 mg/l, recently established by the Department for small sewage treatment plants with flows below 10,000 gpd. The EGA hopes that the Departments intention is to continue to consider the special case of small sewage treatment plants in their 'facility specific' evaluations that use the 1.2 mg/l limit for Best Professional Judgement.

- The EGA supports 92.13(a) and its restriction on only opening permit issues directly related to the scope of the requested permit modification.

- The EGA would like to comment on 92.21(b)(3), suggesting that the PaDEP limit newspaper publication requirements to major modifications only. Permit renewals for facilities that have not substantively changed their operations/discharges should not be required to publish special notices in the local papers

Chapter 93:

- Chapter 93.3 Table -1, continues to include the statewide potable water use, and in addition, adds fish consumption as a statewide use. The EGA is concerned with the compound effect of too many safety factors, and their relationship to the overall risk. The December 1997 changes to Chapter 93 related to the Great Lakes Initiative added the ability to have site-specific human health criteria. This enables a discharger to account for the lack of a potable water withdrawal on their stream segment. This was a change that the EGA strongly supports, since it enables the use of risk assessment in the application of human health discharge limits. However the addition of fish consumption as a statewide use creates an additional factor in obtaining a site-specific standard for human health criteria. A factor that needlessly complicates an already complicated process.

These two statewide designated uses add additional levels of conservatism to a process that already contains a number of conservative safety factors, such as criteria calculation methodology, and the low flow conditions used to calculate permit limits. In addition the Department must recognize the future impact of lower human health criteria resulting from the EPA proposed increase in the fish consumption value and use of bioaccumulation factors, which adds further conservatism and environmental protection to the process. These changes are contained in EPA's "Draft Water Quality Criteria Methodology Revisions," found in the August 14, 1998 Federal Register.

Chapter 96:

- The EGA is concerned that Section 96.4(h) as proposed will result in extremely conservative and unrealistic TMDLs that are likely to impose severe economic hardship in certain watersheds where they are developed and implemented. This section specifies that "steady state modeling at the design flow conditions listed in Table 1 shall be used to develop TMDLs, WLAs and LAs when it is determined that continuous point sources are the primary cause of a violation of the water quality protection levels specified in section 96.3, unless an alternate method is approved by the Department under subsection (g)" (pollution trading). Steady state modeling is unrealistic because it applies one design flow condition that occurs less than one percent of the time to model a dynamic system whose flows are continually changing. The mass of a constituent is calculated by multiplying the volume of water to the concentration of chemical of concern. By contrast a dynamic or probabilistic model assumes that both volume and concentration change over time. Clearly, no river system maintains a steady state flow condition, therefore a dynamic model which incorporates changing flow conditions and calculates the probability of the worst case conditions occurring simultaneously is more predictive of actual conditions.

  EGA understands that a steady state model is much easier and less expensive to apply than a dynamic model. However, we do not believe accuracy should be compromised merely for the sake of minimizing complexity and administrative costs. The Department is obligated to develop the most realistic and accurate TMDLs possible in light of the potential economic burden the TMDL program will have on the Commonwealths' regulated community. We therefore strongly urge the Department not to restrict TMDL development to steady state modeling but to use a dynamic approach in accordance with EPA's Technical Support Document for Water Quality-Based Toxics Control (TSD).

The EGA appreciates this opportunity to provide comments on these important regulatory changes, and respectfully request your consideration of them.

Sincerely,

William B. Thomas
Chairperson
EGA Water Quality Subcommittee

cc: I.R.R.C.

ELECTRIC GENERATION ASSOCIATION
CHAPTER 92, 93 & 96
COMMENT SUMMARY

Chapter 92:

1. The EGA believes that background water quality conditions resulting from long term Acid Mine Drainage (AMD), should be analogous to "Natural Background" conditions when there is no near term prospects of correcting the AMD.

2. The EGA believes the .5 mg/l Total Residual Chlorine limit should not apply to small sewage treatment plants below 10,000 gpd. The current 1.2 mg/l limit or Best Professional Judgement limits should continue to apply.

3. The EGA supports the limitation on what issues can be addressed during a permit modification.

4. The EGA believes that a newspaper notice should only be required for major permit modifications.

Chapter 93:

1. The EGA believes the addition of a statewide designated use for "Fish Consumption," adds unnecessary conservatism to an already conservative criteria process, that will be even more conservative when EPA modifies the human health criteria methodology. This will also complicate the ability to receive the new site-specific human health standard, which was added in the December 1997 final rulemaking.

Chapter 96:

1. The EGA believes that basing TMDL's on unrealistic steady-state models at low flow conditions is inappropriate. Although a dynamic model is complex and costly to administer, it provides the most accurate representation of a watershed's condition, and should therefore be the basis for TMDL calculations.

THE
BERKS
COUNTY
CONSERVANCY

960 Old Mill Road • Wyomissing, PA 19610 • (610) 372-4992 • FAX 372-2917
E-mail: berkscon@ptd.net • Web: www.berksweb.com/conserve

October 26, 1998

Mr. James M. Seif, Chairman
Environmental Quality Board
Rachel Carson Office Building
400 Market St
P.O. Box 8477
Harrisburg, PA 17105-8477

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

Dear Mr. Seif and Members of the Environmental Quality Board:

The Berks County Conservancy is an organization which has been involved for many years with a wide variety of stream projects. We wish to comment on the proposed changes in the water quality regulations proposed by the DEP. We offer the following general comments and, if you wish, we would be happy to meet with you to further discuss these comments and our experiences with the streams of Berks County which lead us to make these comments.

With respect to Chapter 92:

** We support keeping the cap for total residual chlorine, since chlorine, although needed for disinfection purposes, can be extremely toxic to aquatic life if discharged in high concentrations.

** We recommend that DEP add that compliance with all water quality standards be required.

** In our opinion, additional public comment should be solicited particularly when an application is filed. It is important to know about specific public water quality concerns before all the calculations have been done and a draft permit published.

** The expansion of the section on general permits significantly weakens protection: The Conservancy recommends against the inclusion of toxics in general permits and the use of general permits in high quality waters.

** We also urge the DEP to retain the documentation provision that the general permit will not violate water quality standards to ensure that water quality standards will not be violated by the use of general permits. DEP proposes to delete this provision and reduce protection of PA waters.

** General permits should not be allowed in impaired waters.

With respect to Chapter 93:

** We support the continuation of the DEP practice which protects all streams as potential "potable water" sources.

** We are opposed to the deletion of warm water fishes as a statewide water use. Without this classification, there will be no basement level of protection for many streams.

With respect to Chapter 96:

** We recommend that the DEP include nonpoint source pollutants in this section which deals with how clean up will occur on waters determined to be impaired. problems.

** At this time, we recommend that the procedures for approval of effluent trading need refinement and strengthening before approvals be granted.

Thank you for this opportunity. We fully appreciate the difficulty of the decisions which you make and the complexity of the problems with which you deal. If you wish to discuss these matters, Joe Hoffman, our director of environmental affairs, would be very pleased to do so.

Sincerely yours

Chip Karasin

Chip Karasin, Vice President, Environmental Affairs

1311 HEREFORD St.
Pgh. PA. 15206
October 26, 1996

THE ENVIRONMENTAL QUALITY BOARD
P.O. BOX 8477
HARRISBURG, PA 17105

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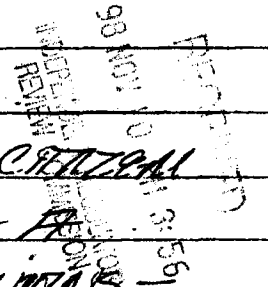

TO WHOM IT CONCERNS:

I WRITE TO YOUR BOARD AS A CITIZEN WITHIN THE STATE OF PENNSYLVANIA WITH A SIGNIFICANT CONCERN FOR ALL PENNSYLVANIANS — THE QUALITY OF OUR WATER. I STRONGLY OPPOSE THE PROPOSED WATER QUALITY STANDARDS AND TOXIC MANAGEMENT STRATEGY. I JOIN WITH MANY, MANY OTHER CITIZENS WHO BELIEVE WE CAN NOT AFFORD TO WEAKEN OUR STANDARDS FOR OUR CARCINOGENIC TOXIC CHEMICALS. THE TOXIC MANAGEMENT STRATEGY WOULD ELIMINATE ENFORCEABLE STANDARDS FOR 70 TOXIC CHEMICALS + ELIMINATE REGULATIONS OF 20 TOXIC CHEMICALS AS WELL AS LOWER STANDARDS FOR 20 MORE TOXIC CHEMICALS. IT SOUNDS AS THOUGH IT IS DESIGNED TO LOWER STATE REGULATIONS TO THE BARE MINIMUM REQUIRED BY THE FEDERAL GOVERNMENT. IT ROLLS BACK STANDARDS THAT PROTECT OUR WATER AND OUR HEALTH — IT IS ABSURD!!

DO MAKE YOUR CHOICES ON BEHALF OF THE PENNSYLVANIAN PEOPLE RATHER THAN PROFIT MAKING COMPANIES THAT POLLUTE!!

SINCERELY

Catherine Fowler

P. H. GLATFELTER COMPANY

CORPORATE HEADQUARTERS / SPRING GROVE, PA 17362 / (717) 225-4711

October 26, 1998

VIA FEDERAL EXPRESS

Environmental Quality Board
Rachel Carson State Office Building
15th Floor
400 Market Street
Harrisburg, PA 17101-2301

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Re: Comments on Proposed Revisions to 25 Pa. Code Chs. 92, 93, and 95-97

To Whom It May Concern:

The P.H. Glatfelter Company ("Glatfelter") is providing its comments on the proposed revisions to 25 Pa. Code Chs. 92, 93, and 95-97, as provided for in the August 29, 1998 Proposed Rulemaking in the Pennsylvania Bulletin, 28 Pa. Bull. 4431. We appreciate this opportunity to provide our comments, and would like to suggest steps to modify the proposed revisions, so as to increase the benefits that will be realized as a result of this Regulatory Basics Initiative as described in the preamble to this proposal.

1. The 50 pcu In-Stream Color Limit on the Codorus Creek Should Be Deleted:

As currently promulgated, Section 93.9 of Title 25 of the Pennsylvania Code sets forth those waters of the Commonwealth that have been assigned specific water quality criteria. Only a handful of the hundreds of waters assigned specific water quality criteria have been assigned such criteria for color. Of these, only the Codorus Creek must maintain an in-stream value of 50 PT-CO units ("pcu"). See 25 Pa. Code § 93.9o (adding Col_1 exception to specific criteria for the main stem of the Codorus Creek, from Oil Creek to the mouth of the Susquehanna River) and § 93.7 (defining the Col_1 criterion as a maximum of 50 pcu with no other colors perceptible to the human eye). All of the other waters with a water quality criterion for color have been assigned a maximum 75 pcu in-stream standard. See, e.g., 25 Pa. Code §§ 93.9e, 93.9*l*, 93.9 n, 93.9z (adding Col_2 criterion to various streams). To date, there has been no published rationale offered for this distinction.

The proposed changes to the existing regulations retain the 50 pcu in-stream limit for the Codorus Creek. 28 Pa. Bull. 4431, 4481. The 75 pcu criterion is represented as continuing to be applied to other waters "as required." 28 Pa. Bull. 4431, 4442. Accordingly, the proposed regulatory changes perpetuate existing inequities in the regulatory scheme, and arbitrarily single out the Codorus Creek for especially stringent regulation. There is no justification given for this deviation from the norm, nor is any such justification discernible from review of the prior rulemakings establishing these differing criteria. Glatfelter respectfully maintains that the in-stream color standard for the Codorus Creek at least be brought in line to be consistent in the final regulatory revisions with the 75 pcu criterion otherwise applicable throughout the Commonwealth.

2. The Regulations Should Retain a Provision for Extensions of Time to Meet Water Quality Based Effluent Limitations Based Upon Technological Infeasibility:

The current 25 Pa. Code § 95.4 provides for an extension of time to meet water quality based effluent limitations, based on the use of best demonstrated technology (and a showing that improvements to meet the published criteria are not technologically feasible). The proposed regulations would eliminate this extension provision. Although Pennsylvania's Regulatory Basics Initiative is supposed to ensure consideration of whether or not the proposed regulatory changes are more stringent than Federal regulations without good reason and/or impose economic costs disproportionate to the environmental benefit, 28 Pa. Bull. 4431, this burden has not been met in the proposed elimination of 25 Pa. Code § 95.4. Indeed, no rationale whatsoever has been provided for this proposal.

It is clear that EPA must maintain its ability to consider economic impacts in setting its own water quality related effluent limitations, which may be modified if "there is no reasonable relationship between the economic and social costs and benefits to be obtained . . . from achieving such limitation." 33 U.S.C. § 1312(b)(2)(A). See also 40 C.F.R. § 122.21(m)(5). The proposed elimination of 25 Pa. Code § 95.4 may very well prevent economic costs associated with Pennsylvania's water quality based effluent limitations from being considered to the same degree as provided for in the federal statute, in violation of Pennsylvania's Regulatory Basics Initiative. Accordingly, 25 Pa. Code § 95.4 should be retained in its current form, or a close analogue.

3. Past Errors in Calculating Temperature Criteria Should be Corrected:

The proposed regulatory changes provide for a re-tabulation of the temperature criteria at 25 Pa. Code § 93.7, but do not reflect any review of the validity of the monthly temperature limits contained therein. Thus, the proposed regulations continue to set limits associated with the $Temp_2$ criterion for warm water fisheries that cannot be attained by most stream segments in the

Commonwealth designated WWF. The present limits are derived from a 1987 triennial review document which employed questionable assumptions. Glatfelter maintains that this Proposed Rulemaking provides an appropriate opportunity to reconsider the validity of the assumptions employed in setting the $Temp_2$ limits.

The triennial review document set out monthly temperature data collected over ten years from thirty warm water streams statewide. See triennial review document, table 1, page 8. These monthly readings provided a statewide average monthly in-stream temperature for warm water streams, from which average in-stream temperature differences between successive months (delta Ts') were calculated. See triennial review document, table 6, page 19. Starting with an 87°F maximum for July and August, maximum temperature limits were calculated for each month using average delta Ts' . Some months were split into two periods to ease the transitions in temperature. Limits were set for a total of eighteen time periods. Then, for eleven of these eighteen time periods, DEP replaced the calculated limits with significantly lower limits based on reported biological requirements of representative species. See triennial review document. table 9, page 24.

The resultant $Temp_2$ temperature limits are overly restrictive for two reasons. First, DEP inappropriately used average monthly delta Ts' to set maximum temperature limits. The upper 95% confidence limit of the delta Ts' should have been used. Second, DEP used reported biological requirements to set the temperature limits lower than observed ambient conditions without providing any evidence that existing ambient conditions pose a problem. In the case of walleye for example, DEP states that "Since the mid-1970's, the growth and survival of walleye have been protected in Pennsylvania by the present criterion's 87°F maximum and 5°F rise above ambient caveat. Although definitive studies are lacking, there have been no reported occurrences of adverse impacts on walleye populations in the Commonwealth due to thermal discharges." See triennial review document, page 21.

Attached Table I shows a comparison between the $Temp_2$ limits and the temperature limits calculated using the upper confidence limits of the delta Ts' taken from table 7 of the triennial review document. The table clearly shows that the $Temp_2$ limits are significantly lower than the limits calculated from observed ambient temperatures. For example, the $Temp_2$ limit for April is 19°F lower than the limit calculated from ambient data; the $Temp_2$ limit for May is 18°F lower; for February and March it is 16°F lower, and for January and December it is 14°F lower. The result of setting the temperature limits at such low levels is that any new or existing thermal discharge to a stream designated $Temp_2$ results automatically in a violation. Although the regulations currently provide for variances, a more sensible course would be set temperature limits that more closely reflect ambient conditions, such as those shown in Table I, especially when historical data indicates that these conditions have been protective of aquatic life.

4. The Requirement that the Permittee Prevent the Generation of Non-Permitted Pollutants or Otherwise Eliminate Non-Permitted Pollutants from the Discharge is Contrary to the Regulatory Scheme of the Clean Water Act:

The proposed requirement at 25 Pa. Code § 92.41(b) that a permittee be required, as part of an annual monitoring report, to identify all non-permitted pollutants and explain how the discharge of these pollutants will be eliminated, must be rewritten to delete the last two sentences of the proposed provision. This requirement is contrary to the regulatory scheme established by the federal Clean Water Act, to the Pennsylvania Regulatory Basics Initiative, and is in any case overbroad.

The proposed requirement at issue would go far beyond a mere tightening of discharge limits. "EPA did not intend to require water quality-based permit limitations on all pollutants contained in a discharge. . . . [W]ater quality-based limits are established where the permitting authority reasonably anticipates the discharge of pollutants by the permittee at levels that have the reasonable potential to cause or contribute to an excursion above any state water quality criterion. . . ." Memorandum from Director, Office of Wastewater Enforcement and Compliance to Water Management Division Directors, Regions I-X, at 2-3 (Aug. 14, 1992), quoted in Atlantic States Legal Found. v. Eastman Kodak Co., 12 F.3d 353 (2d Cir. 1993); cert. denied, 513 U.S. 811 (1994). The suggestion in the proposed regulation that any non-permitted pollutant must be eliminated or subject to an application for an amended permit removes this element of reason on the part of the permitting authority, and further removes the degree of certainty which a five-year permit is intended to provide to a discharger. The NPDES permit is "intended to identify and limit the most harmful pollutants while leaving the control of the vast number of other pollutants to disclosure requirements." Atlantic States Legal Found., 12 F.3d at 357.

Indeed, "EPA does not demand even information regarding each of the many thousand chemical substances potentially present in a manufacturer's wastewater because 'it is impossible to identify and rationally limit every chemical or compound present in a discharge of pollutants . . . . Compliance with such a permit would be impossible . . . .'" Id., citing Memorandum from EPA Deputy Assistant Administrator for Water Enforcement Jeffrey G. Miller to Regional Enforcement Director, Region V, at 2 (Apr. 28, 1976). Such an overbroad requirement is not justified under the Pennsylvania Regulatory Basics Initiative given its stringency several orders of magnitude beyond federal requirements.

5. Miscellaneous Comments and Concerns:

Page 4452, § 92.2(c). This provision does not seem workable given the inherent ambiguity in the term "variance," and therefore should be deleted. This standard is arguably is not compatible with DEP's charge to evaluate whether a provision is more stringent than federal requirements under the Regulatory Basics Initiative.

Page 4453, § 92.2a(c). This section should end with the phrase, "to ensure appropriate protection of these species and critical habitat" to preserve the Department's ability to balance these considerations with others that may be pertinent in establishing treatment requirements.

Page 4453, § 92.2b(b). Provisions such as these throughout the regulations, if retained, should consistently be phrased in terms of what permittees "are encouraged" to do, rather than what permittees "should" do. "Should" is susceptible to interpretation as a requirement or presumption. While pollution prevention activities may be laudable in many contexts, they are not required by federal regulations, and any such requirements would be inconsistent with the philosophy, embodied in the Regulatory Basics Initiative, of environmental regulations establishing performance-based requirements and leaving the permittee free to decide how to meet those requirements.

Page 4456, § 92.13(b)(1). Federal regulations allow a permitting authority to consider compliance with an existing permit as relevant to eligibility for reissuance, but not as determinative of ineligibility if any noncompliance is unresolved (e.g., if allegations of noncompliance are de minimis or are legitimately being contested). Denying reissuance of a permit on these grounds should be discretionary.

Page 4460, § 92.51(6). Given the breadth of this proposed discharge limitation, it is more reasonable -- rather than prohibiting any discharge creating any danger of being "inimical" – to qualify the prohibitions to any discharge "creating a reasonable probability of danger of being inimical to the water uses to be protected. . . ."

Page 4460, § 92.52a. DEP's authority to include any permit condition necessary to assure protection of surface waters should be qualified to include a presumption that the condition would be in the form of a performance-based limitation, if feasible, and would be included only if the permit did not otherwise have terms achieving the desired protection. The same qualifications should apply to the language that is proposed to be added in § 92.57 as well. Such an adjustment is necessary to comport with the express goals of the Regulatory Basics Initiative.

Page 4460, § 92.55. A compliance schedule also should be allowed to exceed three years if authorized by a federal regulation or statute, as is arguably the case with the optional compliance schedule offered pulp and paper mills for certain pollutants under the Voluntary Advanced Technology Program as part of the Cluster Rule.

Page 4462, § 92.72a. The proposal provides no justification for this requirement, and constitutes improper interference with legitimate business actions. At a minimum, notification of cessation of operations should only be required for planned, permanent cessations. There is no indication of how compliance would be feasible for unplanned shutdowns, such as those caused by natural disasters. The provisions should be eliminated, or at a minimum, the advance notice should shortened to 30 days, with an affirmative defense available for the permittee to show that shutdown was not decided upon that far in advance.

Page 4462, § 92.73(6). DEP may not deny a permit merely because EPA or the Army Corps of Engineers raises an objection. This is an unauthorized delegation of DEP's responsibility to administer the Commonwealth's Clean Streams Law. If DEP is not accountable for exercising its own judgment, permit applicants may have no way of challenging and overturning permit denials based on arbitrary and capricious objections by federal agencies which may not qualify as final agency actions. Recent Environmental Hearing Board decisions confirm that the Department may not blindly defer to the determinations of other agencies. See, e.g., Eagle Environmental, L.P. v. DEP, 1997 EHB 733. Rather, it must reserve for itself the ultimate decision of whether or not to issue or suspend a permit. T.R.A.S.H. Ltd. v. DER, 1989 EHB 487 (the Department does not abuse its discretion by referring traffic study to the Department of Transportation, but it must reserve ultimate authority to issue a permit). Thus, if the proposed regulation is to be retained, it must reflect the precept that "the Department must evaluate the determination of another agency and exercise its legislatively mandated discretion to reject that determination if it so chooses." Eagle Environmental, L.P. v. DEP, 1998 EHB ___, (96-215-MG, Sep. 3, 1998).

Page 4464, § 92.93 et seq. The benefit of establishing the intermediate hearing step in § 92.93(b) is unclear at best. There is no assurance of a neutral official conducting the hearing or of other procedural safeguards. In any event, any ruling in such a hearing must be subject to de novo review by the EHB, where the Department would still bear the burden of reproving its enforcement case. Accordingly, the intermediate hearing step should be eliminated.

Page 4466, §93.1. This definition of water quality criteria is unjustifiably more stringent than federal regulations by apparently not allowing water quality criteria to be expressed in narrative form, as authorized by 40 C.F.R. § 131.3(b).

Page 4496, § 96.3(c)-(f). These provisions require that various water quality criteria be met "at least 99% of the time." These are potentially more stringent requirements than those imposed by the current 25 Pa. Code § 93.5(b)(1), which states that water quality criteria shall be "achieved at stream flows equal to or exceeding $Q_{7\text{-}10}$." More explanation is needed for Glatfelter and other permittees to evaluate the purpose of these proposed changes, and the extent to which they may alter the modeling calculations that result in discharge limits in NPDES permits. To the extent that these changes have the potential to result in more stringent discharge limits, Glatfelter objects to their adoption as not sufficiently justified.

Page 4496, § 96.4(e). This provision improperly fails to provide interested parties notice and an opportunity to comment on (1) TMDL, WLA and LA calculation methodologies, and (2) actual TMDL, WLA and LA calculations for particular stream segments. This failure could lead to much confusion and revisiting of these issues as dischargers comment on individual permits after DEP already may have relied on these calculations in issuing earlier permits for other dischargers to the same stream segment.

Page 4496, § 96.4(g). The proposed effluent trading procedures should be codified as regulations, subject to the same public participation, accountability requirements, and other procedural safeguards as other regulatory programs affecting the rights and obligations of persons in Pennsylvania, rather than as the less formal guidance suggested in the proposed rulemaking.

Page 4497, § 96.4(l). The EQB is not authorized in these regulations to assign the burden of proof to a challenger of a TMDL, WLA or LA, particularly when potential challengers have had no opportunity to comment on TMDL, WLA or LA calculations or methodologies. The assignment of burden of proof is properly governed by the rules which otherwise govern the proceeding in which such a challenge would arise.

We appreciate this opportunity to provide our input. If there is any further information that we can provide, please do not hesitate to contact me.

Sincerely,

P. H. GLATFELTER COMPANY

Robert E. Callahan
Environmental Manager

TABLE I
Comparison of $Temp_2$ Limits
and
Limits Calculated from Observed Ambient Temperatures

Month	Upper 95% Confidence Limit of Delta T °F*	Calculated Max. Temp. °F	$Temp_2$ Max. Temp. °F	
JAN	-2.3	54	40	
FEB	2.1	56	40	
MAR	5.8	62	46	
APR	8.9	71	52	Apr 1-15
		71	58	Apr 16-30
MAY	11	82	64	May 1-15
		82	72	May 16-31
JUN	9	87	80	Jun 1-15
		87	84	Jun 16-30
JUL	5.6	87	87	
AUG	1.3	87	87	
SEP	-5.8	81	84	Sep 1-15
		81	78	Sep 16-30
OCT	-10.6	70	72	Oct 1-15
		70	66	Oct 16-31
NOV	-7.3	63	58	Nov 1-15
		63	50	Nov 16-30
DEC	-6.7	56	42	

* from triennial review document, table 7, page 20

PENNSYLVANIA OIL & GAS ASSOCIATION
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October 26, 1998

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

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Jewett
Sandusky
Legal

Comments on Proposed Rulemaking:

WATER QUALITY AMENDMENTS
25 Pennsylvania Code Chapters 92, 93, 95, 96 AND 97 (No. 7-338)
Regulatory Basics Initiative

The proposed regulation was developed by the department in response to its Regulatory Basics Initiative and the Governor's Executive Order 1996-1. The proposal updates the state's National Pollutant Discharge Elimination System (NPDES) regulations for consistency with the federal program, consolidates regulatory provisions where appropriate, and streamlines and clarifies regulatory requirements.

Our comments focus primarily on the following matters:

- the adoption by reference of a substantial portion of the US Environmental Protection Agency's (EPA) NPDES regulations;
- problems related to the *Chapter 102* erosion and sediment control program;
- The new pollution prevention provisions; and
- The general permit provisions.

Limits on the adoption of federal NPDES rules by reference

Section 92.2 establishes a broad standard adopting by reference any "future amendments" EPA may make to the federal NPDES requirements listed in subsection (b) unless contrary to Pennsylvania law or other federal requirements. Subsection (c) further conditions the standard for incorporating federal NPDES rules by reference by proscribing the adoption of "any new or amended federal regulation ... which creates a variance to existing substantive or procedural NPDES permitting requirements."

We know of no material change that EPA could make in the future to its NPDES permitting rules that would not be either substantive or procedural. We submit that the limits imposed by subsection (c) effectively undermine one of the fundamental reasons for adopting federal rules by reference in the first place, i.e., to expedite the maintenance of primacy over the federal program.

The inflexible standard imposed by proposed subsection (c) will needlessly force the department to undertake a lengthy rulemaking procedure every time the EPA adopts any meaningful or useful rule change. In cases where the new federal rule would be more stringent than the regulatory provisions DEP adopts by reference in the proposed rule, DEP would be forced to undertake a new rulemaking effort simply to maintain primacy. In cases where a new federal rule relaxes a permitting standard, streamlines its permit requirements, or simplifies the standards for compliance, the department's program would automatically become more stringent that the federal program, and the regulated community would be unable to take advantage of the new flexibility unless the department would decide to undertake a lengthy rulemaking effort to adopt the new standards.

In either case, subsection (c) creates unnecessary inefficiencies and is contrary to the express purpose of the RBI and Executive Order 1996-1. We suggest that subsection (c) should be deleted to ensure continuing regulatory continuity with the federal program. The deletion of the subsection from the final rule would not

undermine the department's ability to propose future amendments to its NPDES regulations in cases where it does not agree with a substantive or procedural change to the federal rules that eases the regulatory burden on permittees. Deletion of the subsection would also ensure that future EPA rules that are more stringent that the current permitting standards are automatically adopted by reference.

NPDES storm water permits for oil and gas activities

We applaud the EQB and the department for the proposal to incorporate much of the EPA regulations governing the NPDES program by reference, particularly for including federal rules at *40 Code of Federal Regulations (CFR) Part 122* governing the unique regulatory treatment of storm water runoff associated with oil and gas exploration and production activities.

NPDES permit exemption for uncontaminated storm water runoff. Congress included explicit provisions in the *Clean Water Act* at §1342(l)(2)[1] that categorically prohibit the EPA from requiring a permit for uncontaminated storm water discharges from all facets of oil and gas exploration, production, processing, or treatment operations or transmission facilities.

When EPA promulgated its NPDES regulations governing storm water permitting, it incorporated the *Clean Water Act* permitting limitation almost verbatim. The EPA NPDES rules state:

> The Director may not require a permit for discharges of storm water runoff from ... oil and gas exploration, production, processing or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.[2]

EPA reiterates the NPDES permit requirement for contaminated storm water runoff from oil and gas activities by listing such facilities as a separate category of regulated industrial activity. The provision requires NPDES permits for

> "oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations".[3]

To implement the restricted permit requirement, EPA spelled out the conditions for determining when storm water runoff is contaminated in the section of its rules that stipulates the application requirements for storm water discharges associated with industrial activity. EPA rules state that:

> The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with paragraph (c)(1)(i) of this section, unless the facility:

---

[1] Section 1342(l)(2) of the federal *Clean Water Act* states:

(2) Storm water runoff from oil, gas, and mining operations. The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require a permit, for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations.

[2] 40 CFR §122.26(a)(2)

[3] 40 CFR §122.26(b)(14)(iii)

(A) Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at anytime since November 16, 1987; or

(B) Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or

(C) Contributes to a violation of a water quality standard.[4]

EPA then developed a general permit to implement the foregoing standard. On September 29, 1995, EPA published notice of a final NPDES general permit governing storm water runoff from a number of categories of industrial facilities.[5] EPA's 1995 "multi-sector" general storm water permit states that the only oil and gas operations covered by the permit requirements are those that discharge contaminated storm water.

Incorporation by reference. The department's NPDES RBI rulemaking incorporates all of the foregoing federal regulations by reference at proposed §§92.2(b)(9) and 92.21a(d). While we support the inclusion of the federal regulatory framework establishing a permit requirement for contaminated storm water runoff from oil and gas activities, we believe that the regulation should be clarified.

Suggested modifications. In its present form, a reader of the proposed regulation cannot readily identify the unique regulatory treatment afforded to storm water runoff from oil and gas E&P operations because the permit exclusion for uncontaminated runoff is buried in the elements of the federal rule that are adopted by reference. Unless the reader is willing to spend considerable time reading and analyzing the EPA rules that the proposed regulation merely references, he may be unaware of the NPDES permit exclusion available to uncontaminated storm water runoff from oil and gas activities.

To overcome this difficulty, we suggest an amendment to the proposed rule that would highlight the limited NPDES permit exclusion. We suggest that §92.4 (exclusions from permit requirements) should be modified to incorporate a specific reference to the permit exemption for uncontaminated storm water runoff from oil and gas E&P activities. The revision should read:

§92.4. Exclusions from permit requirements.

(a) The following are excluded from the requirement of obtaining an NPDES permit under this chapter:

* * * * *

(8) STORM WATER RUNOFF FROM OIL AND GAS EXPLORATION, PRODUCTION, PROCESSING OR TREATMENT OPERATIONS OR TRANSMISSION FACILITIES, COMPOSED ENTIRELY OF FLOWS WHICH ARE FROM CONVEYANCES OR SYSTEMS OF CONVEYANCES (INCLUDING BUT NOT LIMITED TO PIPES, CONDUITS, DITCHES, AND CHANNELS) USED FOR COLLECTING AND CONVEYING PRECIPITATION RUNOFF AND WHICH ARE NOT CONTAMINATED BY CONTACT WITH OR THAT HAS NOT COME INTO CONTACT WITH, ANY OVERBURDEN, RAW MATERIAL, INTERMEDIATE PRODUCTS, FINISHED PRODUCT, BYPRODUCT OR WASTE PRODUCTS LOCATED ON THE SITE OF SUCH OPERATIONS

The proposed language is quoted from the federal rules at 40 CFR §122.26(a)(2), which the department proposes to incorporate by reference.

[4] 40 CFR §122.26(c)(1)(iii)

[5] 60 FR 50804

Only contaminated storm water discharges from construction activities conducted as part of oil and gas exploration and development operations should require a permit

A particularly vexing issue that we exhort the department to address in this rulemaking relates to a position that the EPA takes regarding the relationship between its regulations governing storm water discharges from "industrial activities" and those governing storm water discharges from "construction activities." EPA asserts that construction activities that disturb more than five acres of land are a categorically distinct industrial activity that should be regulated separately.

EPA's distinction between construction activities and oil and gas exploration and development operations imposes an additional layer of regulatory control on oil and gas operations that we believe is neither necessary nor legal.

EPA position. In a memorandum internal to the US Environmental Protection Agency dated December 10, 1992[6], an EPA Region VIII staff person asserted that "all construction activities involving oil and gas facilities ... that disturb five or more acres of land are required to apply for a NPDES permit for the storm water discharges from that site, pursuant to 40 CFR Part 122.26(b)(14)(x), regardless of its affiliation with an oil and gas operation." In the memorandum, EPA rationalized that "[t]he exemption afforded to oil and gas operations pursuant to 40 CFR Part 122.26(c)(1)(iii) applies only to the oil and gas operation itself, not associated activities that may fall under different parts of the definition of storm water discharge associated with industrial activity."

DEP position. The department has relied on the December 10 memorandum as if it is a formal EPA policy or regulation that dictates how its storm water management program should be structured under its primacy arrangement with EPA for the NPDES program. DEP has consistently required oil and gas operations that cause five or more acres of earth disturbance to apply for a storm water discharge permit for construction activities.

Litigation. The Pennsylvania Oil and Gas Association and other producer organizations viewed the December 10, 1992 memorandum as an effort by the federal agency to circumvent the scope of the statutory permit exemption otherwise available to oil and gas operations for uncontaminated storm water discharges. In response, the organizations, collectively known as the Appalachian Energy Group (AEG), filed an action in the US Court of Appeals, Fourth Circuit, requesting that the memorandum be declared unlawful and that the court set it aside because (1) it is inconsistent with the *Clean Water Act* and (2) it amounts to a new rule, adopted without proper notice under the *Administrative Procedure Act*. The AEG's only stated interest in filing the action was to determine whether its members must obtain permits for uncontaminated storm water runoff from construction activities undertaken in connection with oil and gas operations.

The Court of Appeals dismissed the AEG appeal, stating that it lacked the subject matter to review an Environmental Protection Agency internal memorandum where "actions by EPA had not yet constituted final agency action." The court characterized the December 10, 1992 memorandum as merely the opinion of one EPA official that was written with no express purpose and for no apparent reason. It also stated that the memorandum only constitutes a position that the federal agency may eventually adopt and that it should not be construed as a final agency action establishing a binding federal policy or requirement.

In a footnote discussing elements of EPA's brief on the case, the court also commented on the EPA's contention that the memorandum is "an interpretive rule that reasonably and correctly interprets the *Clean Water Act*." The court observed that "EPA relies on 26 CFR §122.26(b)(14)(x) to justify its requiring a permit for all construction activities involving five acres or more of land, including those undertaken as part

[6] See Attachment A

of oil and gas operations which would otherwise be exempted," and it observed that there are "problems that EPA may encounter in maintaining this position."[7]

In the wake of the Fourth Circuit Court's ruling, EPA continues to this day to maintain that separate categories of NPDES permits are required for construction activities associated with oil and gas operations that disturb less than five acres of land and for identical activities that disturb more than five acres.

Clean Water Act limitations. EPA's assertion that identical construction activities are different, depending on the amount of acreage disturbed, is a red herring that redirects attention away from the core *Clean Water Act* provision restricting the agency's ability to regulate oil and gas operations. By drawing its arbitrary acreage distinction, EPA subverts the statutory mandate that only allows the agency to regulate contaminated storm water discharges from construction activities associated with oil and gas operations. If EPA intended to implement its construction-related storm water discharge program in a manner that would be true to the intent of Congress, it would acknowledge that the permit exemption for uncontaminated storm water discharges from oil and gas operations applies to *all* construction-related discharges, not just those that involve earth disturbances smaller than five acres.

Recommendation. In light of the court's finding that the December 1992 internal EPA memorandum does not constitute a final agency action, and because EPA has never taken formal action on the matter since the court ruling, the department is not bound to follow the opinion of the writer of the memorandum as if it is an expression of a formal EPA requirement that Pennsylvania must impose on oil and gas operations.

As discussed in the previous section of our comments, the department should include the express *Clean Water Act* provisions granting oil and gas operations an exemption from the NPDES permitting requirements for discharges of uncontaminated storm water pursuant to the directives of the Governor's Executive Order and the Regulatory Basics Initiative. The department should adopt such provisions both in this rulemaking and in its proposed *Chapter 102* amendments. The provisions should acknowledge that oil and gas operations, including any construction activities, only require a permit when they cause a storm water discharge that is contaminated pursuant to the standards established in 40 CFR §122.26(c)(1)(iii). Such provisions, we believe, would be true to the intent of Congress when it enacted the NPDES permit exemption for uncontaminated storm water discharges from oil and gas operations and would satisfy the mandate of Executive Order 1996-1.

NPDES permit requirements for potential storm water discharges

The proposed regulation includes a definition in §92.1 for "storm water discharges associated with construction activity" that imposes a permit requirement on the potential discharge of storm water from construction-related activities. Specifically, the proposed rule stipulates that all construction activities require a permit "whether or not they discharge to waters of the Commonwealth."

Such a requirement is contrary to the scope of the federal NPDES program[8] and ignores the mandate of the RBI and the Governor's Executive Order 1996-1, which require that the department must adopt regulations that are no more stringent than federal counterpart rules unless such a regulation is required by state law or the department can justify the more stringent standard by articulating a compelling Pennsylvania interest that makes such regulation necessary.

No state law expressly requires a permit for potential pollution or for the potential discharge of storm water to surface waters. While provisions of *The Clean Stream Law* grant the department broad discretion to

[7] See Attachment B for the full text of the Court's decision on the matter

[8] EPA rules at §122.1(b) (Scope of the NPDES permit requirement) state: "The NPDES program requires permits for the discharge of 'pollutants' from any 'point source' into 'waters of the United States.'"

require permits to regulate potential pollution,[9] the Governor's Executive Order explicitly obliges the department to evaluate its decisions to impose a regulatory burden that is more stringent than federal requirements on the basis of a compelling Pennsylvania interest that would be served. We know of no interest in the Commonwealth that is so unique to the nation that would compel the department to require a stream discharge permit for activities that do not discharge to a stream.

We suggest that the final regulation should be modified to remove the requirement unless the department identifies a specific provision of state law that mandates the imposition of the permit requirement on potential storm water discharges from construction activities or clearly articulates a compelling reason for imposing such a requirement on Pennsylvanians.

The final rule should define "common plan of development or sale" to clarify the permit requirements for storm water discharges associated with construction activity

The proposed definition of "storm water discharges associated with construction activity" also tracks EPA's regulations by limiting the requirement for a permit to operations that cause a disturbance larger than five acres unless the disturbance is part of "a larger common plan of development or sale."[10]

EPA discussion. The phrase "common plan of development or sale" is fraught with uncertainty because of its generality. EPA noted in its recently revised general permit for construction-related storm water discharges in Region 3 that "the volume and nature of the comments [on the provision] showed that the regulated community and the public needed additional guidance on the issue."[11]

In the many pages of discussion of the phrase in the notice, EPA made it plain that it intends a broad interpretation of the concept. EPA's discussion, however, focused on the types of residential and commercial land development activities that can be readily identified as a "common plan of development or sale" and on activities that commonly result in five contiguous acres of earth disturbance at one time.

EPA also noted that in many cases, a common plan of development or sale consists of many small construction projects that collectively add up to five or more acres of total disturbed land, and again it used the typical residential subdivision as an example, pointing to the layout the streets, house lots, and areas for parks, schools and commercial development that the developer plans to build or sell to others for development.

The more complicated case that needs clarification, EPA observed, is when the common plan consists of several smaller construction projects that cumulatively will disturb five or more acres, but may or may not be under construction at the same time.

Such a scenario is typical in oil and gas well development projects in two instances:

---

[9] Section 402(a) of *The Clean Streams Law* states in part:
(a) Whenever the department finds that any activity, not otherwise requiring a permit under this act, including but not limited to the impounding, handling, storage, transportation, processing or disposing of materials or substances, creates a danger of pollution of the waters of the Commonwealth or that regulation of the activity is necessary to avoid such pollution, the department may, by rule or regulation, require that such activity be conducted only pursuant to a permit issued by the department or may otherwise establish the conditions under which such activity shall be conducted, or the department may issue an order to a person or municipality regulating a particular activity.

[10] 40 CFR §122.26(b)(14)(x) requires NPDES permits for "Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale".

[11] 63 FR 7874

- when a well operator intends to develop a lease where the geology of the oil and gas is well understood.

  In this instance, the well operator may obtain multiple well permits each year for an "in-fill" drilling program that consists of the sequential drilling and completion of a number of wells over the course of five to ten years.

- when the operator seeks to develop a lease where the subsurface geology has not been fully explored and the extent of oil or gas bearing formations is unknown.

  In this instance, the well operator will permit and drill individual or multiple wells over the course of a number of years as he identifies the extent of the hydrocarbon deposits underlying his leasehold acreage.

Typically, earthmoving activities associated with the development, drilling and completion of each well will disturb only a small fraction of the total area in the vicinity of each well. In such cases, the area in the vicinity of each well for each well may be contiguous, but the areas of earth disturbance will not be related, and in some cases may even be located in different watersheds.

To determine whether a permit is needed for storm water discharges associated with construction activity on sites disturbing less than five acres, EPA poses two questions:

1. Is there a "common plan of development or sale" tying individual sites together? (e.g., Are the lots part of a subdivision plat filed with the local land use planning authority?) and
2. Will the total area disturbed by all of the individual sites add up to five or more acres? (e.g., If you added up all of the acreage that will need to be disturbed to completely build out the subdivision as planned, would there be five or more acres disturbed?)[12]

Generally, if the answer to both questions is no, a storm water discharge permit is not needed. EPA goes on to note, however, that

> "The Larger Common Plan concept does have to be applied with some common sense and should not be taken to extremes. ... A common plan of development must at least be theoretically capable of *having five or more acres of land disturbed at one time* in order to trigger the need for a permit." [13] [Emphasis added.]

Recommendation. Because of the problems associated with the interpretation of what would constitute a "common plan of development or sale," we urge the department to modify the final regulation to include a specific definition of the phrase. The new definition should list specific, concrete standards and criteria that the regulated community can rely on to determine whether the department will determine that a proposed project will be subject to the NPDES permit requirements for a storm water discharge associated with construction activity. The definition of the phrase should follow EPA's "common sense" guidance that expects multiple small projects to consist of five or more acres of disturbance at one time.

General permit use on Special Protection waters

Proposed amendments governing general NPDES permits in §§92.81(a)(8) and 92.83(b)(8) allow the use of general NDPES permits on surface waters classified as "High Quality" (HQ) under the department's antidegradation program. The proposal continues to prohibit the use of such permits for discharges to "Exceptional Value" (EV) streams. The proposed changes reflect modifications originally approved as part of another proposed rulemaking endorsed by the EQB in January 1997 and published in the *Pennsylvania Bulletin* the following March.

[12] 63 FR 7874

[13] 63 FR 7874 – 7875

While we appreciate and applaud the department's willingness to extend the opportunity for permittees to operate under a general permit for discharges to HQ waters, the proposed modifications, which retain the prohibition against using general permits on EV waters, is still more stringent than federal NPDES rules. Federal regulations at 40 CFR §§122.28 and 123.25, which the department does not propose to adopt by reference, impose no restrictions on the development, issuance or use of general NPDES permits that relate to the antidegradation classification of a stream. Also, we know of no state law, including *The Clean Streams Law*, which prohibits the use of general permits on streams because of their antidegradation classification.

We suggest that the department should expand the proposed modification of the provisions in §§92.81(a)(8) and 92.83(b)(8) to allow the use of general permits on all state waters, regardless of the antidegradation classification afforded to the stream. If the department chooses to retain the restriction on the use of general permits on EV streams in the final regulation, it should either identify the specific statutory requirements imposing the restriction or articulate a compelling Pennsylvania interest that justifies the restriction.

Voluntary pollution prevention

The proposed regulation at §92.2b (Pollution prevention) is written to "encourage" permittees to maximize pollution prevention efforts to minimize the impact of their permitted activities on the waters of the Commonwealth. Subsection (a) states:

> (a) Permittees are encouraged to maximize the use of pollution prevention approaches including: resource reduction through materials substitution, process changes, wastewater conservation, wastewater reuse, and wastewater recycling.

The structure of subsection (b), however, is confusing with regard to whether the pollution prevention provisions in the section are simply meant to encourage pollution prevention on a voluntary basis or to require permittees to perform specific activities. The confusion arises from the department's use of the verb "should" throughout the subsection. The word "should" is an auxiliary verb that is commonly used to express an obligation or duty. ("You should call you mother.") It is also the past tense of the verb "shall". Use of the passive voice in the section muddles the issue even more.

The subsection tells permittees that they should reduce pollution load to the maximum extent practicable using specific pollution prevention techniques. It also states that they should implement a pollution prevention plan.

We are confused as to whether these offerings are meant to impose a duty on a permittee to carry out the requirements or simply to suggest to the permittee that he may carry out such activities if he wants to.

If the section is meant to convey suggestions for voluntary pollution prevention practices that a permittee may choose to implement, the department should rewrite the section in the active voice without any verb forms that suggest an obligation or duty. The department could "recommend" or "suggest" certain pollution prevention activities, for example.

For the Pennsylvania Oil and Gas Association

Stephen W. Rhoads
President

Attachment A

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

344-9

MEMORANDUM

TO: Vern Berry
Region VIII Storm Water Coordinator (8WM-C)

FROM: Ephraim King, Chief
NPDES Program Branch (EN-336)

SUBJECT: Applicability of NPDES Storm Water Regulations to Discharges from Construction Activities Involving Oil and Gas Facilities

The purpose of this memorandum is to respond to your memorandum that asked whether a permit is required for storm water discharges from construction activities involving oil and gas facilities (e.g., access roads, drilling pads, pipelines, etc.). All construction operations, including clearing, grading and excavating activities, that disturb five or more acres of land are required to apply for a NPDES permit for the storm wate discharges from that site, pursuant to 40 CFR Part 122.26 (b) (14) (x), regardless of its affiliation with an oil and gas operation. The exemption afforded to oil and gas operations pursuant to 40 CFR Part 122.26 (c) (1) (iii) applies only to the oil and gas operation itself, not associated activities that may fall under different parts of the definition of storm water discharge associated with industrial activity. I hope this memorandum addresses your concerns. Please call me if you have further questions.

Attachment B

reinsurance." *FMC Corp. v. Holliday*, 498 U.S. 52, 61, 111 S.Ct. 403, 409, 112 L.Ed.2d 356 (1990) (en banc added). Nationwide obviously is not an "employee benefit plan," and the deemer clause has no application to Tri-State's claims against it. *Fravel v. Chesapeake & Potomac Telephone Co. of Virginia*, 780 F.2d 416, 423 (4th Cir.1985), *cert. denied*, 475 U.S. 1170, 106 S.Ct. 2892, 90 L.Ed.2d 980 (1986) ("Since Connecticut General [Life Insurance Company] is not an 'employee benefit plan,' the deemer clause is inapplicable to it."); *see FMC Corp.*, 498 U.S. at 61, 111 S.Ct. at 409 ("An insurance company that insures a plan remains an insurer for purposes of state laws 'purporting to regulate insurance' after application of the deemer clause."). Thus the district court's holding that the deemer clause preempts Tri-State's claims is, I believe, incorrect. Accordingly, I dissent from so much of the majority's affirmance of that holding as well.

APPALACHIAN ENERGY GROUP; Independent Oil and Gas Association of New York; Independent Oil and Gas Association of Pennsylvania; Independent Oil and Gas Association of West Virginia; Kentucky Oil and Gas Association; Ohio Oil and Gas Association; New York State Oil Producers Association; Pennsylvania Oil and Gas Association; Tennessee Oil and Gas Association; Virginia Oil and Gas Association; West Virginia Oil and Natural Gas Association, Petitioners,

v.

ENVIRONMENTAL PROTECTION AGENCY, Respondent

No. 93-2146.

United States Court of Appeals, Fourth Circuit.

Argued April [illegible], 1994.

Decided August [illegible], 1994.

Oil and gas trade associations applied for judicial review of Environmental Protection Agency (EPA) internal memorandum advising that National Pollutant Discharge Elimination System (NPDES) permit was required for storm water discharges from construction activities involving oil and gas facilities. The Court of Appeals, Niemeyer, Circuit Judge, held that it lacked subject matter jurisdiction to review memorandum.

Application dismissed.

1. Health and Environment ⇐25.15(3.1)

Court of Appeals lacked subject matter jurisdiction to review Environmental Protection Agency (EPA) internal memorandum advising that National Pollutant Discharge Elimination System (NPDES) permit was required for storm water discharges from construction activities involving oil and gas facilities, where Court was not presented with any agency action involving issuance or denial of permit, and actions by EPA had not yet constituted final agency action. Federal Water Pollution Control Act Amendments of 1972, §§ 402(*l*)(2), 509(b)(1)(F), 33 U.S.C.A. §§ 1342(*l*)(2), 1369(b)(1)(F).

2. Health and Environment ⇐25.15(3.2)

Court of Appeals' jurisdiction to review Environmental Protection Agency (EPA) action under Clean Water Act is limited to categories of agency action identified by statute and even then, Court reviews any such action only if it constitutes final agency action. Federal Water Pollution Control Act Amendments of 1972, § 509(b)(1)(F), 33 U.S.C.A. § 1369(b)(1)(F).

ARGUED: David Michael Flannery, Robinson & McElwee, Charleston, WV, for petitioners. Karen Lee Egbert, Environment and Natural Resources Division, U.S. Dept. of Justice, Washington, DC, for respondent. ON BRIEF: Kathy G. Beckett, Robinson & McElwee, Charleston, WV, for petitioners.

Lois J. Schiffer, Acting Asst. Atty. Gen., Environment and Natural Resources Div., U.S. Dept. of Justice, Washington, DC; Susan Lepow, Associate Gen. Counsel, Stephen J. Sweeney, Office of Gen. Counsel, U.S. E.P.A., Washington, DC, for respondent.

Before ERVIN, Chief Judge, NIEMEYER, Circuit Judge, and RESTANI, Judge, United States Court of International Trade, sitting by designation.

Application dismissed by published opinion. Judge NIEMEYER wrote the opinion, in which Chief Judge ERVIN and Judge RESTANI joined.

OPINION

NIEMEYER, Circuit Judge:

By a memorandum internal to the United States Environmental Protection Agency (EPA) dated December 10, 1982, the NPDES (National Pollutant Discharge Elimination System) Program Branch Chief, responding to an inquiry from an EPA regional storm water coordinator, advised the coordinator that an NPDES permit is required for "storm water discharges from construction activities involving oil and gas facilities (e.g., access roads, drilling pads, pipelines, etc.)." Discovery of this memorandum several months later alarmed companies in the oil and gas industry because the Clean Water Act exempts from any permit requirement uncontaminated "discharges of storm water run-off from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities." 33 U.S.C. § 1342(*l*)(2). Oil and gas companies feared that the EPA was attempting, under the guise of an internal legal interpretation, to impose an unauthorized regulation on oil and gas operations by requiring a permit for every exploratory activity, because almost every such activity inherently involves some construction.

Appalachian Energy Group, an ad hoc affiliation of nine trade associations in the oil and gas industry, initiated this action in this court, challenging the EPA's memorandum. The group, which consists of oil and gas operators in seven Appalachian region states (Kentucky, New York, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia), represents ownership of approximately 200,000 wells. The group requests that the December 10 memorandum be declared unlawful and that this court set it aside because (1) it is inconsistant with the Clean Water Act,[2]

1. The complete memorandum, which lies at the center of this litigation, provides:

> To: Vern Berry
> Region VIII Storm Water Coordinator (8WM-C)
> From: Ephraim King, Chief
> NPDES Program Branch (EN-336)
> Subject: Applicability of NPDES Storm Water Regulations to Discharges from Construction Activities Involving Oil and Gas Facilities
>
> The purpose of this memorandum is to respond to your memorandum that asked whether a permit is required for storm water discharges from construction activities involving oil and gas facilities (e.g., access roads, drilling pads, pipelines, etc.). All construction operations, including clearing, grading and excavating activities, that disturb five or more acres of land are required to apply for a NPDES permit for the storm water discharges from that site, pursuant to 40 C.F.R. Part 122.26(b)(14)(x), regardless of its affiliation with an oil and gas operation. The exemption afforded to oil and gas operations pursuant to 40 C.F.R. Part 122.26(c)(1)(iii) applies only to the oil and gas operation itself, not associated activities that may fall under different parts of the definition of storm water discharge associated with industrial activity. I hope this memorandum addresses your concerns. Please call me if you have further questions.

2. The Appalachian Energy Group also contends that the December 10 memorandum is inconsistent with prior positions taken by the EPA. The group observes that, in adopting regulations implementing the 1987 amendments to the Clean Water Act, the EPA mandated permits for oil and gas operations only when contaminants are discharged and not for uncontaminated storm water runoff. *See* 40 C.F.R. § 122.26(c)(1)(iii). It also observes that, in adopting Standard Industrial Classification 13 as its definition of oil and gas activities, the EPA commented formally:

> EPA agrees that oil and gas exploration, production, processing, or treatment operations or transmission facilities must only obtain a storm water permit *when a discharge to waters of the U.S. ... is contaminated.*

55 Fed.Reg. 48,031 (Nov. 16, 1990) (emphasis added). Finally, the group pointed out that, in comments to 40 C.F.R. § 122.26(b)(14)(i-ii), which require storm water permits for certain construction activities, the EPA identifies the requirements as applying only to the construction *industry*, and not to construction activities in other industries, such as the oil or gas industry. *See* 55 Fed.Reg. 48,033 (Nov. 16, 1990).

and [illegible] adopted which [illegible] the Administrative Procedure [illegible] that a permit [illegible] required, as indicated [illegible] of its [illegible] compete in the [illegible] that [illegible] per year [illegible] three years [illegible] of the Appalachian [illegible] and [illegible] $1000 per year [illegible] [illegible] the [illegible] and gas operations [illegible] [illegible] program.

[illegible] The Appalachian Energy Group [illegible] section [illegible] of the Clean Water Act [illegible] [illegible] EPA Administrator [illegible] denying any permit" under 33 U.S.C. § 1342, and cites the decision in *Natural Resources Defense Council v. EPA*, 966 F.2d 1292 (9th Cir. 1992) (finding appellate court jurisdiction to review EPA "rules that regulate the underlying permit procedures"). Contending that this court is without jurisdiction, the EPA points out that the December 10 memorandum did not issue or deny a permit and notwithstanding the opinion given in the memorandum, to date it has not demanded a permit for uncontaminated storm water runoff from oil and gas construction activities. Accordingly the EPA argues that this court may not at this stage review the substance of the December 10 memorandum or the circumstances of its issuance.[3] While the Appalachian Energy Group recognizes that the December 10 memorandum does not itself involve the issuance or denial of a permit, it nevertheless argues that the memorandum constitutes a "rule underlying a potential permit application" and therefore its review falls within the jurisdiction of this court. *See Natural Resources Defense Council*, 966 F.2d at 1297. For the reasons that follow, we agree that this court lacks jurisdiction to review the memorandum.

In deciding whether we have jurisdiction, we must first resolve the nature of the December 10 memorandum, identifying and determining the official EPA action, if any, that it [illegible]. The December 10 memorandum is a brief one-paragraph statement that was [illegible] within the EPA from one official to another in response to an inquiry. The inquiry apparently sought an answer to the question of "whether a permit is required for storm water discharges from construction activities involving oil and gas facilities." The EPA Branch Chief provides a [illegible]-sentence response and then concludes, "I hope this memorandum addresses your concerns. Please call me if you have further questions." On its face, the memorandum does not approve the issuance or denial of a permit; it does not facially involve or relate to a pending decision to issue or deny a permit; and, accepting the EPA's representation, it has not been used to issue or deny a permit. Moreover, on its face the memorandum does not purport to issue a new rule. It only provides the writer's interpretation of two regulations apparently in tension (40 C.F.R. § 122.26(b)(14)(x) and 40 C.F.R. § 122.[illegible](iii)), concluding that permits are required for storm water discharges from construction activities even when they involve oil and gas operations.

Going beyond the face of the memorandum, we are unable to find anything in the record or briefs that indicates why the opinion was solicited by the EPA coordinator and the purposes for which it was used. Appa-

3. The EPA also contends on the merits that the memorandum is an interpretive rule that reasonably and correctly interprets the Clean Water Act, and accordingly [illegible] [illegible] of the EPA [illegible] U.S.C. § [illegible]. The EPA relies on 40 C.F.R. § 122.26 [illegible] [illegible] is required [illegible] permit [illegible] construction activities [illegible] [illegible] [illegible] including those undertaken as part of oil and gas operations which would otherwise be exempted. Although we recognize the problems that the EPA may encounter in maintaining this position, we do not resolve the dispute at this time in light of our ruling that subject matter jurisdiction is lacking.

chian Energy Group does note that pursuant to a question posed by its counsel to the EPA's Region III coordinator, the coordinator transmitted to counsel a copy of the December 10 memorandum. But we find nothing in the record to indicate what question was directed to the Region III coordinator. Thus, the "action" of the EPA Administrator which Appalachian Energy Group seeks to have reviewed can only be the *generation* of an internal memorandum expressing an opinion and the *transmission* of that memorandum to the public.

[2] Section 509(b) of the Clean Water Act confers jurisdiction on the courts of appeals to review, upon application filed by an interested person, only specified actions of the EPA Administrator. Section 509(b)(1)(F), the particular provision on which Appalachian Energy Group relies, gives the courts of appeals the power to review the EPA Administrator's *action* "in issuing or denying any permit under section 1342 of this title." 33 U.S.C. § 1369(b)(1)(F). Thus, the text of the Clean Water Act permits us to review only those categories of agency action identified. *See Westvaco Corp. v. EPA*, 899 F.2d 1383, 1387 (4th Cir.1990). And even then, we review any such action only if it constitutes a *final* agency action. *See Champion International Corp. v. EPA*, 850 F.2d 182, 187–90 (4th Cir.1988) (holding that an EPA objection to the state's issuance of a permit is not reviewable; only the issuance of the permit would be reviewable); *American Paper Institute, Inc. v. EPA*, 882 F.2d 287, 289 (7th Cir.1989) (holding that EPA's regional "policy statement" on dioxin tolerances is not reviewable; only the denial or modification of a permit would be reviewable).

While the memorandum in this case may signal the position that the EPA might eventually take, the EPA has not taken any action *at this point* triggering our power to review its position. Certainly, in its December 10 memorandum, the EPA did not issue or deny any permits to petitioner or threaten such action. Thus, up to this point in time, its action does not fall within the limited class of actions for which review is authorized by 33 U.S.C. § 1369(b)(1)(F). Moreover, to the extent that the EPA's action in this case is a only predictor of future action, it is not yet a "final action" subject to judicial review.

Appalachian Energy Group's reliance on *Natural Resources Defense Council v. EPA*, 966 F.2d 1292 (9th Cir.1992), does not advance its argument. The court there recognized that it might have jurisdiction under 33 U.S.C. § 1369(b)(1)(F), since activities relating to the issuance or denial of permits were involved. But the scope of agency activity there was also alleged to be broader than simply issuing and denying permits. The petitioners in *Natural Resources Defense Council* sought to declare unlawful the EPA's failure to issue certain storm water permitting regulations and the EPA's extension of certain statutory deadlines; they sought to enjoin the EPA from granting future extensions; and they sought to compel the EPA to include deadlines for permit approval or denial and for permit compliance consistent with the statute. Since the parties there did not specify the particular section on which they relied for subject matter jurisdiction, the court went on to make the general statement about its jurisdiction, for which it provided no authority, that it "also had the power to review rules that regulate the underlying permit procedures." 966 F.2d at 1297. We can only speculate about the source of the court's authorization, recognizing that subsections (A), (C), and (E) of § 1369(b)(1) provide for review of the EPA administrator's action in promulgating certain standards under specified sections of the Clean Water Act, and subsection (D) provides for review of determinations "as to a state permit program submitted under section 1342(b)."

In contrast, Appalachian Energy Group's only stated interest here is knowing whether its members must obtain permits for uncontaminated storm water runoff from construction activities undertaken in connection with oil and gas operations. Since we are not presented with any agency action involving the issuance or denial of a permit and the actions by the EPA thus far do not constitute final agency action, we lack subject matter jurisdiction to review the December 10 mem-

[illegible]

Bernice RITTER, Plaintiff-Appellant,

v.

CECIL COUNTY OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT, Defendant-Appellee.

No. 93-2440.

[illegible]

[illegible] brought action for injunction to preserve her assistance and for declaratory judgment that her assistance was improperly terminated. The United States District Court for the District of Maryland, Frederic N. Smalkin, J., granted summary judgment for local agency, and recipient appealed. The Court of Appeals, Niemeyer, Circuit Judge, held that: (1) recipient's violation of local housing agency's two-week visitation rule provided lawful basis for termination of her Section 8 assistance, and (2) recipient had sufficient notice that violation of two-week rule could result in termination of Section 8 assistance to satisfy due process clause.

Affirmed.

1. Federal Courts ⇐776

Court of Appeals reviews district court's summary judgment ruling de novo. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.

2. Federal Civil Procedure ⇐2543

In determining whether genuine issue of material fact exists, court must draw permissible inferences from underlying facts in light most favorable to party opposing motion. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.

3. Civil Rights ⇐1053

Rights created by regulation alone, if rights can be so created, probably cannot form basis for § 1983 action. 42 U.S.C.A. § 1983.

4. Administrative Law and Procedure ⇐651

Administrative Procedure Act does not provide standard of review for consideration of state agency's actions. 5 U.S.C.A. § 701(b)(1).

5. Administrative Law and Procedure ⇐413

Even though state agency may not benefit from standard of review established by Administrative Procedure Act, it is appropriate for Court of Appeals to show some deference to state agency interpreting regulations under authority of federally [illegible] program. 5 U.S.C.A. § 701(b)(1).

6. Administrative Law and Procedure ⇐413

Once it is determined that agency rule is not inconsistent with statute or regulation, deference is accorded, and court may not substitute its own interpretation for agency's if agency's interpretation is reasonable.

7. United States ⇐82(3.4)

Violation by recipient of federal housing assistance benefits of local housing authority's two week visitation rule, imposed to delineate between proper visitation and improper residency, justified local agency's action in terminating her benefits; agency's rule was not unreasonable interpretation of Department of Housing and Urban Development's regulation prohibiting residency by nonfamily members. United States Housing Act of 1937, § 8, as amended 42 U.S.C.A. § 1437f.

8. United States ⇐82(3.4)

Recipient of Section 8 housing assistance benefits had sufficient notice that violation of local agency's two-week visitation rule could result in termination of her Section 8 assistance to satisfy due process clause, where

Oct. 26, 1998

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Sandusky
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Environmental Quality Board
PO Box 8477
Harrisburg, PA 17105

To Whom It May Concern:

An item entitled "Water Standards cause worry" in the York Daily Record this past week is very much of interest to me. My top priorities in terms of quality of life are AIR and WATER issues!

Since I moved to York from Marin County, California I am certainly aware of these factors. Whether I stay in York or move depends on these issues. Since buying a homre in the Newton Square area of York, I have been horrified to find that the air on many days smells very bad; I understand this is due to the Gladfelter Paper Plant, and I am told the problem is with the filters which the company does not replace on a timely basis. They wait for the fines imposed by the governing authority, and then pay the fines and forget about the ongoing problem as it affects the community.

I had been under the impression that water quality in York was excellent, although I still filter as best I can. HOWEVER the article mentioned above amounts to a Red Alert. I am shocked to read that news of the public hearing when it first occurred was purposely not given out to the York area papers. Then when the article did appear (on October 21) insufficient notice was allowed for the public to respond. What kind of way is this to do business? Certainly it is not in the interests of the people in the community. Where is the democratic spirit and process in this area of Pennsylvania?

Don't you realize that the governing bodies need to exercise utmost caution in controlling the corporations that willfully dump and will continue to do so minus strict regulation? The people have only the governing bodies to rely upon.

Extend the deadline for responding to this issue and show at least the willingness to listen to the people. For otherwise, you are woefully in neglect of your duties and deserve to be replaced with cause.

Sincerely,

Nancy J. Larsen

326 W. Newton Ave.
York, PA 17404

87 Valley View Road
Lewisburg, PA 17837
October 26, 1998

Environmental Quality Board
Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17105-2301

Re: Comments to Proposed Rulemaking, Pennsylvania Bulletin, Aug. 29, 1998, Part III, containing the EQB's Water Quality

Dear Members of the Environmental Quality Board:

Before commenting on specific sections of Chapters 92, 93, and 96, I would like to place the general issue of environmental quality standards in a broader context. I'll begin with this question:

What are we doing to our children?

They are most vulnerable in the womb. Here they are exposed to persistent synthetic chemicals which may impair their immune, nervous, and/or endocrine systems. Further concerns are raised by a paper in the New England Journal of Medicine (9/96) which ". . . documented lasting intellectual impairment in children exposed to PCB's in the womb."[1]

As they breastfeed, newborns are ingesting the persistent synthetic chemicals that accumulate in breast milk. Six months of breastfeeding gives an American baby the maximum recommended lifetime dose of dioxin, one of these chemicals.[2]

Children today are inheriting an environment with over 75,000 synthetic chemicals. More than 80% of these chemicals have not been adequately tested for their impact on human health and the environment. The vast majority are discharged into the environment without any state or federal limits. The question of the synergistic health effects of these chemicals has not been answered; it has only recently been asked. Neither do we know the multigenerational effects of these chemicals, nor the effects of even very low doses of the hormone-disrupting chemicals.

Further, hundreds of new chemicals are added each year. "In the United States, 90% of new industrial and commercial chemicals are approved for production or commercial use without any mandatory health-testing data."[3]

Since we all have to breathe, eat, and drink, these chemicals are part of us. "Everyone on the planet is carrying at least 250 measurable chemicals in his or her body that were not part of human chemistry before the 1920's."[4]

Since we have already put our children at high risk, we cannot afford to take actions which make their risks even greater. Specifically, we cannot weaken water quality standards as proposed in certain sections of Chapters 92, 93, and 96.

Chapter 92. NPDES Permitting, Monitoring and Compliance

92.2d(3) I support keeping the cap of 0.5 mg/l for total residual chlorine.

92.51(6) Strengthen this section by requiring compliance with all water quality standards.

92.61 Solicit additional public comment when an application is filed. Water quality has far-reaching consequences. Public input is needed before the calculations have been done and a draft permit published.

92.81 Do not allow toxics in general permits since there is no easy way to track who uses these permits.
Do not allow the use of general permits in high quality waters. It is too difficult to follow the use of these permits.
Retain the documentation provision to insure that the use of general permits will not violate water quality standards.
Prohibit the use of general permits in impaired waters.

Chapter 93. Water Quality Standards

93.4 I strongly support retaining the provision which protects all of our waters as potential potable water sources.

93.4 Retain warm water fishes as a statewide water use to protect any stream that happens to be omitted from the stream list.

93.5(e) Retain this current wording of this section: "Criteria necessary to protect other designated uses shall be met at the point of wastewater discharge."

93.6 DEP should develop instream flow and habitat criteria and incorporate them here.

Chapter 96. Water Quality Standards Implementation

96.4 Include a separate section for modeling done on waters that are not impaired; incorporate nonpoint sources into the modeling especially for impaired waters; include how clean up activities dealing with nonpoint source pollution will be implemented.

96.4(g) DEP should not have the authority to approve effluent trading unless a procedure for this has survived public comment.

Thank you.

Sincerely,

Marjorie T. Duck

Marjorie T. Duck

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1 Our Stolen Future, Colburn, Dumanoski, and Myers, p. 251.
2 Ibid., p. 107.
3 Amicus Journal, Spring 1998, "Risky Business," John Murphy, p. 25.
4 Ibid., p. 23.

one page summary

87 Valley View Road
Lewisburg, PA 17837
October 26, 1998

Environmental Quality Board
Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17105-2301

Re: Comments to Proposed Rulemaking, Pennsylvania Bulletin, Aug. 29, 1998, Part III, containing the EQB's Water Quality

Dear Members of the Environmental Quality Board:

Before commenting on Chapters 92, 93, and 96, I would like to place the general issue of environmental quality standards in a broader context. I'll begin with this question: What are we doing to our children?

They are most vulnerable in the womb. Here they are exposed to persistent synthetic chemicals which may impair their immune, nervous, and/or endocrine systems. A paper in the New England Journal of Medicine (9/96) ". . . documented lasting intellectual impairment in children exposed to PCB's in the womb."[1]

As they breastfeed, newborns are ingesting the persistent synthetic chemicals that accumulate in breast milk. Six months of breastfeeding gives an American baby the maximum recommended lifetime dose of dioxin, one of these chemicals.[2]

Children today are inheriting an environment with over 75,000 synthetic chemicals. More than 80% of these chemicals have not been adequately tested for their impact on human health and the environment. The vast majority are discharged into the environment without any state or federal limits. The question of the synergistic health effects of these chemicals has not been answered; it has only recently been asked. Neither do we know the multigenerational effects of these chemicals, nor the effects of even very low doses of the hormone-disrupting chemicals. Further, hundreds of new chemicals are added each year without mandatory health-testing data.

Since we all have to breathe, eat, and drink, these chemicals are part of us. "Everyone on the planet is carrying at least 250 measurable chemicals in his or her body that were not part of human chemistry before the 1920's."[3]

Since we have already put our children at high risk, we cannot afford to take actions which make their risks even greater. Specifically, we cannot weaken water quality standards as proposed in certain sections of Chapters 92, 93, and 96.

Do not allow increased discharges of toxic chemicals to waterways; do not reduce regulation of toxic chemicals; do not allow toxics in general permits; do not allow the use of general permits in high quality waters. DEP should not have authority to approve effluent trading unless a procedure for this has survived public comment.

Thank you.

Sincerely,

Marjorie T. Duck

Marjorie T. Duck

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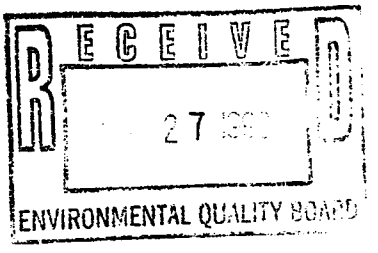
1 Our Stolen Future, Colburn, Dumanoski, and Myers, p. 251.
2 Ibid., p. 107.
3 Amicus Journal, Spring 1998, "Risky Business," John Murphy, p. 23.

Freeman, Sharon

From: Dick Exley(SMTP:jrexley@enter.net)
Reply To: Dick Exley
Sent: Monday, October 26, 1998 10:58 PM
To: REGCOMMENTS
Subject: Comments on Water Quality Regulations



October 26, 1998

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

Dear Mr. Seif:

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

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

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

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

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

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

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

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

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

Yours truly,

J. Richard Exley
2512 Meadow Lane Drive
Easton, PA 18040-7518