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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

March 2, 2001

Mr. David Smith, Director  
Pennsylvania Emergency Management Agency  
2605 Interstate Drive  
P. O. Box 3321  
Harrisburg, PA 17105

Re: Regulation #30-55 (IRRC #2156)  
Pennsylvania Emergency Management Agency  
Reductions of Major Water Use

Dear Mr. Smith:

Enclosed are our Comments. They will soon be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us).

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact my office at 783-5417.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Nyce".

Robert E. Nyce  
Executive Director  
wbg  
Enclosure

cc: Honorable Paul W. Semmel, Majority Chairman, House Veterans Affairs & Emergency Preparedness Committee  
Honorable Thomas A. Michlovic, Democratic Chairman, House Veterans Affairs & Emergency Preparedness Committee  
Honorable Charles D. Lemmond, Jr., Chairman, Senate State Government Committee  
Honorable Anthony H. Williams, Minority Chairman, Senate State Government Committee  
Mark Goodwin, Esq., Chief Counsel, Pennsylvania Emergency Management Agency  
Stuart Gansell, Pennsylvania Emergency Management Agency

# **Comments of the Independent Regulatory Review Commission**

**on**

## **Pennsylvania Emergency Management Agency Regulation No. 30-55**

### **Reductions of Major Water Use**

**March 2, 2001**

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. The Pennsylvania Emergency Management Agency (PEMA) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by December 4, 2002, the regulation will be deemed withdrawn.

#### **1. Section 118.1. Definitions. - Clarity.**

##### *Public water supply agency*

Section 118.1 defines "public water supply agency" by referencing a statutory standard of "...at least 15 service connections...." However, Sections 118.2 and 118.4(a)(1) relax this standard to "50 or more customer connections." There are two issues. First, what is the basis for the standard of "50 or more customer connections"?

Second, the regulation should include the standard of "50 or more customer connections" in the definition of "public water supply agency," and then use this defined term without qualification in Sections 118.2 and 118.4(a)(1).

#### **2. Section 118.4. Contingency plans - public water supply agencies. - Reasonableness, Clarity.**

##### *Subsection (b)(6)*

This subsection requires the public water supply agency to provide a plan of action including, "public notice" when responding to drought and water shortage conditions. What constitutes "public notice" in this instance? The final-form regulation should include examples of "public notice."

##### *Subsection (b)(7)*

In this subsection there is a reference to 4 Pa. Code 120.9(d). Should the reference be, 4 Pa. Code 120.9(e)?

##### *Subsection (b)(7)(i)*

In Subsection (b)(7)(i), as well as Subsection 118.6(a)(1), the language, "relative impact of water use reductions" is used. How is the "relative impact of water use reductions" going to be measured?

*Subsection (b)(7)(i)(C)*

This subsection and Section 118.6(a)(2)(iii) use the phrase “essential public utility services.” It is unclear what services fall into this category. For example, the definition of “public utility” in Public Utility Code (66 Pa. C.S. § 102) includes transportation carriers, such as railroads, and telecommunications providers. However, the definition excludes electric generation supplier companies as a result of the Electric Generation Choice and Competition Act of 1996 (66 Pa. C.S.A. §§ 2801 – 2812). For clarity, “essential public utility services” should be defined, and the definition should include the specific utility services which are considered essential.

**3. Section 118.5. Contingency plans - self supplied commercial and industrial users. - Clarity.**

In Subsection (a)(3), the phrase, “a reasonable time” is used in the last sentence. What is considered “a reasonable time”? The final-form regulation should specify a time frame, or the criteria upon which a “reasonable time” will be determined.

**4. Section 118.8. Procedure for exemptions or variance from water use reductions by self-supplied industrial or commercial water users. - Clarity.**

*Subsection (c)(3)*

Paragraph (3) authorizes the Commonwealth Drought Coordinator (CDC) to “request the applicant to provide *within a reasonable time* additional information as necessary to review the application.” (Emphasis added.) The final-form regulation should specify a minimum time frame, or the phrase “within a reasonable time” should be deleted.

Additionally, this paragraph contains a vague reference to “other appropriate Commonwealth agencies.” The agencies should be specified in the final-form regulation.

*Subsection (c)(4)*

Under Paragraph (4), “[w]hen possible” the CDC will issue a written decision on an application for an exemption or variance within seven working days, or one working day if perishable products are involved. The regulation does not specify what circumstances would prevent the CDC from issuing a decision within these time frames. Since an application for an exemption or variance is filed when a business believes it is facing “extraordinary hardship,” the time frame for review may be critical to the industrial or commercial water user. What circumstances would prevent the CDC from meeting the seven or one working day time frames?

*Subsection (c)(7)*

Paragraph (7) provides that when a decision of the CDC is appealed, “PEMA will provide the applicant with an opportunity for a hearing. The regulation also states that “PEMA may appoint a hearing examiner who may be an administrative law judge of the Pennsylvania Public Utility Commission.” There are two questions.

First, within what time frame will a hearing be provided? Second, under what circumstances will PEMA appoint a Public Utility Commission administrative law judge to serve as the hearing examiner?

### *Subsection (c)(9)*

Under Paragraph (9), PEMA will notify the applicant in writing of its final decision on the appeal. The regulation provides no time frame for PEMA to issue the final decision. Consequently, it is unclear if the appeal process will be completed quickly enough to provide relief to a business. Time frames for each stage of the appeal process should be added to the final-form regulation.

## **5. Section 118.9. County drought management task force. - Clarity.**

### *Format*

The existing language under this section is intended to be deleted. However, as published in the *Pennsylvania Bulletin*, the right bracket at the end of the second sentence is missing. When published in final-form, there should be a right bracket after "*Pennsylvania Bulletin*."

### *Subsection (a)(2)*

This subsection states that "county task forces shall be comprised of county emergency management officials, ...elected officials, health officials, fire officials, law enforcement officials..." As written, this provision could be interpreted to require *all* officials in each county to serve on their county task forces. Is the intent to allow these officials, or their representatives, to serve on the county task force? The final-form regulation should clarify the intent of this provision.

### *Subsection (a)(3)*

The subsection requires the county commissioners to report to the CDC on county task force activities. However, the regulation is silent on when and how often these reports are due. The final-form regulation should clarify this reporting requirement.

## **6. Miscellaneous clarity issues.**

- In Section 118.1, the definition of "consumptive water" appears to contain a typographical error. The conjunction "or" after the word, "used" and before the word, "is" should be deleted.
- The last sentence of Section 118.2 uses the phrase "directs by directing." It appears that "by directing" should be deleted.
- Section 118.4(b)(7) references 4 Pa. Code § 120.9(d). Should the reference be, 4 Pa. Code § 120.9(e)?
- Section 118.7 is placed between Sections 118.6 relating to *Implementation of reductions by self-supplied industrial and commercial water users* and 118.8 relating to *Procedure for exemptions or variance from water use reductions by self-supplied industrial or commercial water users*. The penalties and enforcement provision should be moved to the end of the chapter.

# INDEPENDENT REGULATORY REVIEW COMMISSION

To: Donna Zack  
Agency: Pennsylvania Emergency Management Agency  
Phone: 651-2007  
Fax: 651-2040

From: Kristine M. Shomper  
Administrative Officer  
Company: Independent Regulatory Review  
Commission  
Phone: (717) 783-5419 or (717) 783-5417  
Fax: (717) 783-2664

Date: March 2, 2001  
# of Pages: 5

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Pennsylvania Emergency Management Agency's regulation #30-55 (IRRC #2156). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days.  
Thank you.

Accepted by:

Donna J. Zack

Date:

3-2-01