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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 #30-56 (IRRC #2157)
Pennsylvania Emergency Management Agency
Prohibition of Nonessential Water Uses in a Commonwealth Drought Emergency Area

Dear Mr. Smith:

Enclosed are our Comments. They will soon be available on our website at 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,

Robert E. Nyce
Executive Director

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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. 30-56

Prohibition of Nonessential Water Uses in a Commonwealth Drought Emergency Area

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 If the final-form regulation is not delivered by December 4, 2002, the regulation will be deemed withdrawn.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 119.1. Definitions. - Clarity.

Athletic field

What does the term "racing" refer to in this definition?

2. Section 119.4. Prohibition of nonessential water uses. - Clarity.

Vague language

The last sentence of the opening paragraph states "Nothing in paragraphs (1) – (4) allows a prohibited use of water as either a direct or indirect effect of the exceptions contained therein." This sentence neither narrows the restrictions, nor clarifies the exceptions. Therefore, it should be deleted.

Paragraph (2)(iv)(F)

Under this paragraph, noncompliance with an approved plan will cause the plan to be void and will result in a prohibition on further water use. The preceding Paragraphs (2)(iv)(A) through (2)(iv)(E) relate to approval of a plan. Since the provision in Paragraph (2)(iv)(F) is not related to plan approval, it should be included as a separate Paragraph (2)(v), and the succeeding paragraphs should be renumbered.

Paragraph (3)(ii)

Under this paragraph, certain gardens, landscaped areas, trees and shrubs may be watered between 5 p.m. and 9 a.m. A commentator noted that water bags are used to irrigate trees. The bags are installed and left in place for several days. As a result, they would not meet the time of day restriction for watering included in this paragraph. Has PEMA considered exempting the use of water bags from the time of day restriction?

Paragraph (4)

In this paragraph, the regulation establishes a time frame for plan approval of “no earlier than 3 years prior to the month of use during an emergency.” How was the three-year time frame determined?

Paragraph (4)(iv)

This paragraph requires meters and meter records to be available to representatives of the local law enforcement authority or the CDC. The final-form regulation should clarify if the records are to be made available by the golf course operator or the local water supplier.

Paragraph (4)(vi)

This provision allows limited watering of heat sensitive grasses on golf courses between 10 a.m. and 5 p.m., provided that the watering is done with a hand-held hose with an automatic shut-off nozzle. Has PEMA considered allowing automated systems for this watering if they are timed and supervised?

Paragraph (5)(i) – (iv)

These paragraphs list the exceptions to the prohibition on the use of water for washing paved surfaces. A commentator noted that washing of manufacturing plant roads should be allowed when it is required to meet an environmental permit condition or other regulatory requirement for dust control. This specific exemption is not included under Paragraphs (i) through (iv). The final-form regulation should clearly state whether paved surfaces can be washed to meet a permit or other regulatory requirement.

Paragraph (7)(v)(B)

The regulation allows car dealers to wash vehicles on certain days of the week. Car dealers with even or no street addresses may wash cars on Wednesdays. In the existing regulation, dealers with no street address were permitted to wash cars on a separate day. Why have the even and no street addresses been combined in the proposed regulation?

3. Section 119.6. Procedure for exemptions or variance from the prohibition of nonessential uses of water. - Clarity.

Duration of exemption or variance

Is an exemption or variance permanent, or just for the duration of a drought? A public water supply agency could be under the impression that an exemption approved during a drought constitutes a plan revision. The regulation should clearly state that an exemption granted for a particular drought does not automatically apply to a future drought.

Subsection (b)

The criteria for reviewing a water supplier’s application for an exemption are not clear. What criteria will be used to determine “the ability of law enforcement agencies locally or throughout the drought emergency area to enforce these or other emergency regulations”?

Subsection (c)

The phrase, “other personal or economic loss which is substantially more severe than the sacrifices borne by other water users subject to the prohibition of nonessential use of water” is vague. What factors will PEMA consider to make this determination?

Subsection (d)(5)

This subsection states “When possible...” the drought coordinator will provide a decision within certain time frames. What circumstances would prevent the CDC from rendering a decision within these time frames?