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

June 21, 2002

Honorable John Oliver, Secretary
Department of Conservation and Natural Resources
400 Market Street, 15th Floor
Harrisburg, PA 17101

Re: Regulation #7B-3 (IRRC #2260)
Department of Conservation and Natural Resources
State Parks; General Provisions

Dear Secretary Oliver:

Enclosed are the Commission's Comments which list objections and suggestions for consideration when you prepare the final version of this regulation. These Comments are not a formal approval or disapproval; however, they specify the regulatory criteria which have not been met.

The Comments will soon be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

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

Robert E. Nyce
Executive Director

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Enclosure

cc: Honorable Arthur D. Hershey, Majority Chairman, House Environmental Resources and Energy Committee
Honorable Camille George, Democratic Chairman, House Environmental Resources and Energy Committee
Honorable Mary Jo White, Chairman, Senate Environmental Resources and Energy Committee
Honorable Raphael J. Musto, Minority Chairman, Senate Environmental Resources and Energy Committee

Comments of the Independent Regulatory Review Commission

on

Department of Conservation and Natural Resources Regulation No. 7B-3

State Parks; General Provisions

June 21, 2002

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 Department of Conservation and Natural Resources (Department) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

1. Section 11.201. Definitions. - Reasonableness; Clarity.

Commercial activity

Commentators contend that activities sponsored by charitable or nonprofit organizations are also defined as “commercial activity” if these organizations charge fees to cover their costs. The Department should consider adding a definition for activities sponsored by charitable or nonprofit organizations.

Pet

A pet is defined as “A dog, cat or other domestic animal.” It is unclear what other types of animals would qualify as domestic animals. For example, would the Department consider pet ferrets, birds and snakes as domestic animals? This definition should be amended to clearly state which animals are considered pets and must meet the requirements of Section 11.212.

2. Section 11.203. State park waters. - Clarity; Consistency with statute.

This section identifies areas of water that are under the jurisdiction of the Department. If this jurisdiction is established via statute, this section may be unnecessary. What new rules or procedures does this section establish that apply to members of the public? The Department should cite the specific statutory citations that provide for the jurisdiction described in Subsection (1) and for the specific bodies of water in Subsections (2) and (3).

3. General – Use of direct, positive statements. - Reasonableness; Clarity.

The format of certain sections of the proposed regulation is confusing because the sections are written in the negative as lists of prohibitions. This negative format becomes even more complicated when an allowed activity is stipulated as an exception to the prohibition. Chapter 8 of the *Pennsylvania Code & Bulletin Style Manual* recommends “directness” and the use of

“positive ideas” rather than “exceptions” in drafting regulations. The Department should review these recommendations in the *Manual* as it develops the final-form regulation. The following sections are examples.

Section 11.207. Traffic and parking.

Subsection 11.207(a)(1) states, “Operation of a motor vehicle, as defined by the Vehicle Code, as follows is prohibited: On a State park road at a speed in excess of the posted limit or, where no speed limit is posted in excess of 25 miles per hour.” Alternatively, it could be direct, stand alone and read: “The maximum speed limit on a State park road is 25 miles per hour unless a different speed limit is posted.”

Similarly, Subsection (b)(3) states, “The following activities are prohibited: ... Parking a bus in an area that is posted as being closed for buses.” This could mean that every area in the park not intended for bus parking would need to be posted. As an alternative, the provision could be direct, stand alone and read: “Buses shall be parked only in posted bus parking areas or other areas designated by the State park.”

Section 11.210. Fires.

This section states, “The following activities are prohibited without the written permission of the Department: (1) Starting or maintaining a fire except in a fireplace, grill, stove or other facility designated by the Department for campfires. (2) Leaving a fire unattended. (3) Disposing hot charcoal except in a facility designated by the Department for charcoal disposal.” We have two concerns.

First, this section is confusing because the allowed activity is stated as an exception to the prohibition and the accompanying requirements are indirectly stated.

Second, the phrase “without written permission of the Department” is duplicative of the Department’s discretion stated in Subsections (1) and (3). The phrase is also misleading because it implies the possibility the Department would grant written permission to leave a fire unattended.

This section would be clearer if it is written directly and in the positive. For example, it could state, “Fires are only permitted in fireplaces, grills, stoves or other facility designated by the Department. Fires must be attended at all times. Hot charcoal must be disposed in facilities designated by the Department for charcoal disposal.”

Section 11.211. Natural resources.

This section is confusing because Subsection (1) is a prohibition that contains exceptions to the prohibition. The exceptions in Subsections (1)(i) and (ii) could stand alone as positive statements.

4. Written permission of the Department. - Protection of public health and safety; Effect on natural resources; Reasonableness; Implementation procedure; Clarity.

A number of provisions in this regulation include phrases such as “permission of the Department” or “approved by the Department.” However, there is no indication of how one may

obtain this permission or approval. The regulation should inform the reader on how to apply for “approval” or indicate where this information is available. In certain cases, a reference to information on the Department’s website may be sufficient. The following sections are examples.

Section 11.209. Miscellaneous activities.

Subsection (a) is a list of activities, including commercial activities, that are prohibited without written permission of the Department. There is no indication of how this permission is obtained.

Section 11.211. Natural resources.

This section states that certain activities impacting natural resources are prohibited without written permission of the Department. There are two concerns.

First, it is unclear when and if written permission is required for activities listed in Subsections (1)(i) and (ii). This issue is similar to the format concern discussed in Issue #3.

Second, commentators expressed concerns with this provision. Is it the Department’s intent to allow removal of timber, plants, clay, sand or other natural resources from State parks? If so, what is the process for individuals or businesses to apply for permission? Is the public given notice and an opportunity to comment? What factors does the Department consider in determining whether to grant permission such as the extent of the project and its impact on recreational and natural resources?

Section 11.213. Organized events; public assemblies; distribution of printed matter.

This section prohibits organized events or exhibitions in State parks “without written permission of the Department.” To obtain this written permission, Subsection (b) requires that an application be submitted on “a form prescribed by the Department.” The regulation should include information on how to obtain the application form.

Section 11.217. Swimming.

This section is a list of prohibitions. Subsection (3) prohibits the “use of underwater breathing apparatus or a snorkel” but adds the following caveat:

However, with **permission of the Department**, the equipment may be used by an emergency or rescue unit conducting a rescue operation or training or by a diver certified by an organization **approved by the Department**. (Emphasis added)

There are two concerns. First, the regulation provides no information on how these organizations may obtain or apply for permission of the Department. Second, does the Department maintain a list of approved organizations that certify divers? If so, how can one obtain a copy?

Section 11.218. Camping; overnight facilities.

This section states that camping or using a cabin or other overnight facility in a State park is prohibited without a valid permit. The regulation does not indicate how to obtain a valid permit.

Section 11.224. Prices.

Subsection (b) indicates that the Department may reduce or waive prices. There is no instruction on how to apply for a waiver or where applicants should submit a request for a waiver. The regulation should inform the reader of the process for obtaining a waiver or reduction.

5. Section 11.207. Traffic and parking. - Reasonableness; Clarity.

Subsection (a) Traffic.

This subsection references a “motor vehicle as defined in the Vehicle Code.” It should include the specific reference to this definition in Section 102 of the Vehicle Code (75 Pa.C.S.A. § 102). As an alternative, the definition of a “motor vehicle” could be added to Section 11.201 with a specific reference.

Subsection (a)(4) is vague. How will the Department interpret the phrase a “reasonable person of normal sensitivities”? This question also applies to Section 11.209(b)(3).

Subsection (a)(5) is unclear and also needs a cross-reference to the Vehicle Code. It states, “Operation of a motor vehicle, as defined in the Vehicle Code, as follows is prohibited: ... Not in obedience to traffic-control devices.” In addition to our concern with the negative format previously mentioned in Issue #3, this subsection should reference the definition of “official traffic-control devices” at 75 Pa.C.S.A. § 102.

Subsection (b) Parking.

Paragraph (1) uses the terms “a person with a disability” or “severely disabled veteran.” Paragraphs (1)(i) and (ii) should be combined into one paragraph or subsection. The new subsection need only refer to a valid plate or placard issued in accordance with Sections 1338 and 1342(a) and (b) of the Vehicle Code.

Paragraphs (1)(i) and (ii) contain the phrase “or a substantially equivalent issuance from another state.” We have two concerns with this phrase. First, how would a person with an out-of-state plate know whether it is “substantially equivalent” to a Pennsylvania plate? Since other jurisdictions issue plates and placards, any valid plate or placard from another jurisdiction should be allowed. Our second concern is that the regulation should be expanded beyond “another state” to include jurisdictions such as Canadian provinces and the District of Columbia.

Paragraph (1)(iii) is confusing because it refers to a “placard...indicating issuance of authorization to operate the vehicle on State park land” with no reference to parking or people with disabilities. The paragraph does not include the word “disability.” It is our understanding that it is referring to a placard that is part of the Department’s policy for fostering greater access to State parks for persons with disabilities. People with disabilities who use a motor vehicle for personal mobility may obtain a placard from the Department to use their vehicle on pathways where other motor vehicles are prohibited. There are two concerns.

First, the Department should consider formalizing this policy by adding a new subsection to Section 11.207 (relating to traffic and parking) indicating that persons with disabilities who use this type of personal vehicle may apply to the Bureau of State Parks for this placard.

Second, Subsection (b)(1)(iii) should be amended to explain that Paragraph (1)(iii) is limited to people with disabilities that use a motor vehicle for personal mobility.

Subsection (e) Parking tickets.

Paragraphs (2) and (3) include citations to 234 Pa. Code. These should cite the specific rule(s) in 234 Pa. Code that apply.

Subsection (f) Violations of parking provisions of the Vehicle Code.

This subsection specifies that the fine for a parking ticket is \$15 and references Sections 3351-3354 of the Vehicle Code. However, the minimum fine for parking in spaces reserved for a person with a disability is \$50 and fines may be greater pursuant to Sections 3354 of the Vehicle Code (75 Pa.C.S.A. §§ 3354(f) and (g)). The regulation should directly specify or reference the fines for violations of parking provisions of the Vehicle Code.

Location of violations subsections

Violations provisions are located separately in Subsections (d) and (f). These violations provisions should be combined into one subsection that lists all violation provisions.

6. Section 11.208. Schedule; closure. - Reasonableness.

In the Preamble, the Department states:

New § 11.208 adds hunting, trapping and snowmobiling as activities that are permitted 24 hours a day. This provision reflects current Bureau policy.

There has been public comment questioning why these activities are allowed 24 hours per day when other activities are restricted to daylight hours. The Department should provide further explanation for why each of these activities should be allowed 24 hours per day. Does snowmobiling 24 hours per day have an impact on wildlife or overnight park visitors? Are snowmobiles limited to certain areas or designated trails? In addition, should this section include camping or use of overnight facilities as a 24-hour activity and reference Section 11.218? Finally, what is the intent of Subsection (h)? What types of activities may be prohibited? What notice will be provided to the public?

7. Section 11.210. Fires. - Clarity.

A State park may need to restrict fires in dry periods or drought to prevent forest fires. We recognize the general provisions to prohibit activities in Section 11.208(h). We suggest that this section include notice that fires may be further restricted by a State park due to drought or dry forest conditions.

8. Section 11.212. Pets. - Reasonableness; Clarity.

Proposed Subsection (d) states, "A pet is not permitted in an overnight area unless the area is designated by the Department for pets." It appears that this is the same policy expressed in existing Section 11.11(b). However, several commentators expressed concern that the Department is banning pets. The Department should explain whether the proposed regulation is a change in policy and what restrictions apply to pets in overnight areas. Additionally, if there is

no change in policy, the Department should consider amending the language to state pets are permitted in overnight areas subject to restrictions.

Subsection (f) exempts hunting dogs from Subsections (b)(1) to (5). Subsection (b)(3) does not allow a dog to "behave in a manner that may reasonably be expected to disturb or intimidate another person." Subsection (b)(4) does not allow a pet to "behave in a manner that may cause damage to property." Why are hunting dogs exempt from Subsections (b)(3) and (4)?

9. Section 11.213. Organized events; public assemblies; distribution of printed matter. - Reasonableness; Clarity.

Subsections (a)(1) and (2) do not specify the minimum size of an event or group to which the restrictions in this section apply. For example, would a group of a dozen scouts be required to obtain permission 24 hours ahead as required by Subsection (b)? There are two concerns.

First, Subsection (a) should clearly state what specific activities require a permit. It should also specify the minimum number of people that constitute a group or event covered by this section.

Second, Subsection (c) states that the Department "will grant or deny a permit without unreasonable delay." What is "unreasonable delay"?

10. Section 11.215. Weapons and hunting. - Consistency with other statutes; Public safety; Reasonableness; Clarity.

Several subsections refer generally to the Game and Wildlife Code. The regulation should specifically reference the pertinent sections of the Game and Wildlife Code that apply.

Subsections (3) and (4) prohibit the use and possession of a firearm in a State park except for hunting or target shooting. However, Section 6109 of the Pennsylvania Uniform Firearms Act of 1995 (18 Pa.C.S.A. § 6109) allows individuals to obtain a license to carry a firearm for purposes besides hunting or target shooting. The Department should consider including a reference to Section 6109 in this section as an exception to the prohibition of using or possessing a firearm.

11. Section 11.216. General recreational activity; horses; snowmobiles; all-terrain vehicles; mountain bikes. - Clarity.

Greater clarity would be achieved by combining Subsections (b)(1) and (4) rather than using the reference to Paragraph (4) in Paragraph (1).

Subsection (c) should specifically reference the pertinent section(s) of the Motor Vehicle Code.

12. Section 11.219. Boating. - Clarity.

Subsection (b) General.

Subsections (b)(1) and (b)(3) do not need to be listed as separate provisions. They should be combined by adding the word impoundment to Subsection (b)(1) and deleting Subsection (b)(3).

In Subsections (b)(4)(iv) and (v), what is the intent of using the word "novelty-type" for different kinds of watercraft. The term is vague. The regulation needs to clarify the types of watercraft covered by this term.

The description of an inflatable device in Subsection (b)(4)(vi) differs from the one used for “whitewater boating” in Section 11.220(a)(2)(ii). What is the reason for the difference?

Should a provision be added to prohibit annoying others by causing loud noises similar to Section 11.207(a)(4)?

Subsection (c) Motorboats.

The language in Subsection (c)(3) is unclear. The regulation does not define or explain the phrase “personal watercraft, regardless of horsepower.” A description of this type of watercraft can be found in the regulations of the Pennsylvania Fish and Boat Commission (PFBC) at 58 Pa. Code § 109.3(a). This subsection should cross-reference the description of “personal watercraft” at 58 Pa. Code § 109.3(a).

The PFBC also lists safety requirements for personal watercraft in 58 Pa. Code § 109.3, including a requirement for a Boating Safety Education Certificate (58 Pa. Code § 109.3(h)). This proposed regulation should include or cross-reference the safety requirements at 58 Pa. Code § 109.3.

Subsection (e) Mooring, anchoring and storing.

In Section (e)(1)(ii), the meaning of “temporarily” is vague. The Department should indicate the maximum time limit for mooring watercraft along the river wall during the day.

13. Section 11.220. Whitewater boating. - Public safety; Reasonableness; Clarity.

Subsection (a) General requirements

Subsection (a)(2)(ii) uses the phrases “tough durable construction,” “tough laminated material” and “commercial grade” to describe the requirements for inflatable watercraft for whitewater boating at specific State parks. These are vague standards. The regulation should specifically describe the minimum standards for inflatable watercraft.

Subsection (c) Ohiopyle State Park.

In Subsection (c)(1)(iii)(C), what is meant by “watercraft must be other than commercially rented watercraft”? The intent and structure of this subsection are unclear.

Subsections (c)(1)(iv)(A) and (c)(2)(iii)(B) waive watercraft requirements for “state park-licensed concession watercraft.” Assuming the watercraft requirements are for safety, why are “state park-licensed concession watercraft” exempt?

There are three concerns with Subsection (c)(1)(iv)(B). First, the intent of “other than commercially-rented watercraft” is unclear. Second, the regulation should provide information on how watercraft operators or owners could obtain approval for high performance watercraft. Third, what are the size or performance standards that qualify as “high performance” and require Departmental approval?

There are two concerns with Subsection (c)(3). First, the subsection is written broadly and it could apply to any waterfall in this State park. The subsection reads: “Waterfall running is prohibited without written permission of the Department.” Numerous commentators from

Pennsylvania and other states expressed concerns with this subsection. It is our understanding that this prohibition applies only to one particular stretch of river before and just below the “Ohiopyle Falls.” The subsection should be amended to specifically identify the river segment for which waterfall running requires written permission.

Second, this provision should be amended to identify the process and procedures for obtaining written permission. Can representatives of a group obtain approval or written permission for group members or must each individual apply separately?

Subsection (d) Lehigh Gorge State Park.

Inflatable canoes and kayaks are exempted from the requirements of Subsections (d)(2), (3) and (4). What is the purpose of this exemption? What are the minimal standards for these types of watercraft?

14. Section 11.224. Prices. - Reasonableness; Consistency with statute; Clarity.

Subsection (a) Schedule of prices.

This subsection states: “the Department will establish, by publication in the *Pennsylvania Bulletin*, a schedule of prices for activities, uses and privileges.” There are two concerns.

First, the regulation should state that the schedule of prices will be posted on the Department’s website and should include the website address.

Second, the final-form regulation should include a reference to Section 314 of the Conservation and Natural Resources Act (71 P.S. § 1340.314) (Act). This section of the Act places limitations on the setting of fees by the Department including the limitation that charges and fees “shall be used solely for the acquisition, maintenance, operation or administration of the State Park system....”

Subsection (c) Prices for goods and services.

Subsection (c) states: “The Department will set reasonable prices for the sale of goods and services to the public.” What is meant by the word “reasonable”? What factors will the Department consider in determining what is “reasonable”?