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PennFUTURE

Every environmental victory
grows the economy.



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December 28, 2006

Environmental Quality Board
P.O. Box 8477
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INDEPENDENT REGULATORY
REVIEW COMMISSION

Re: **Proposed Rulemaking
Water Resources Planning
36 Pa.B. 7260
Saturday, December 2, 2006**



Dear Sir or Madam:

Citizens for Pennsylvania's Future ("PennFuture") appreciates the opportunity to provide these comments to the proposed rulemaking regarding water resources planning published at 36 Pa.B. 7260 on Saturday, December 2, 2006. PennFuture is a Pennsylvania nonprofit organization that enforces environmental laws and advocates for the transformation of public policy, public opinion and the marketplace to restore and protect the environment and safeguard public health. PennFuture is interested in this proposed rulemaking because a major focus of our work is the protection of watersheds and water quality.

PennFuture agrees with the Department of Environmental Protection ("DEP") that water resources planning and associated sustainable investment, development and land use management can improve the quality of aquatic resources and public health and safety. PennFuture commends the goals of this proposed rulemaking to establish requirements for registration, reporting and recordkeeping of water withdrawals and uses and to promote water conservation. However, PennFuture believes that the regulations would benefit from some limited reworking, and offers the following comments.

The Regulations Should Include Some Discussion of "Sticks" and "Carrots"

The Water Resources Planning statute at 27 Pa.C.S. Chapter 31 sets forth the enforcement mechanisms available to DEP for violations of the regulations promulgated thereunder. See 27 Pa.C.S. § 3132-3135. The statute also alludes to some of the benefits that may be available to those who engage in voluntary water conservation. See 27 Pa.C.S. § 3118(b)(3), 3120-3121. Like the statute, the implementing regulations should include some discussion of these "sticks" and "carrots."

At a minimum, PennFuture believes that the enforcement mechanisms and benefits set forth in the statute should be referenced in the regulations. However, PennFuture believes that the regulations should also elaborate on these enforcement mechanisms and benefits so that the regulated community will clearly understand both the consequences of noncompliance and the potential benefits of voluntary cooperation. More specifically, PennFuture would like to see the regulations develop the Water Resources Technical Assistance Center and the other benefits of voluntary water conservation to encourage the highest level of participation possible.

The Definition of "System" is Underinclusive

Section 110.1 defines "System" as "Two or more facilities that are adjacent or geographically proximate to each other, operated concurrently or sequentially for use in a common operation and owned, managed or operated by the same person." PennFuture believes that this definition may exclude certain facilities that were intended to be covered by the regulations. PennFuture is concerned

that this definition creates a loophole whereby a facility could outsource part of its water withdrawal functions to another facility that it does not own, manage or operate, and thereby avoid the requirements of the regulations.

To avoid this seemingly unintended result, PennFuture recommends that this definition be revised to read "Two or more facilities that are adjacent or geographically proximate to each other, operated concurrently or sequentially for use in a common operation and owned, managed or operated by **or for** the same person." Alternatively, the requirement of joint ownership, management or operation could be eliminated altogether, as follows: "Two or more facilities that are adjacent or geographically proximate to each other, operated concurrently or sequentially for use in a common operation **[and owned, managed or operated by the same person].**"

The Recording Frequency Section Requires Clarification

Section 110.502 does not clearly prescribe the recording frequency for withdrawals and uses subject to more than one of the metering and measuring requirements set forth in Section 110.501. It is conceivable, for example, that a person could both be a large user, subject to Section 110.501(c), as well as a user subject to compact basin commission requirements more stringent than those provided in the regulations, subject to Section 110.501(e). The regulations are unclear about whether such a person is required to record withdrawals and uses on a weekly basis, because the withdrawals and uses are subject to Section 110.501(c), or on a monthly basis, because the withdrawals and uses are subject to Section 110.501(e). In addition, the regulations should provide that a person who is subject to compact basin commission requirements demanding greater recording frequency than the recording frequency provided for in Section 110.502 should follow the compact basin commission requirements demanding greater recording frequency.

To address these comments, PennFuture recommends that Section 110.502 be revised to read: "Withdrawals and uses subject to § 110.501(a) and (b) (relating to metering and measuring requirement) shall be recorded on a daily basis. Withdrawals and uses subject to § 110.501(c) **but not subject to § 110.501(a) or (b)** shall be recorded on a weekly basis. Withdrawals and uses subject to § 110.501(e) and (f) **but not subject to § 110.501(a), (b) or (c)** shall be recorded monthly. **Withdrawals and uses subject to compact basin commission requirements demanding greater recording frequency than is provided for in this section shall record at the greater frequency provided for by the compact basin commission requirements.**

PennFuture appreciates your consideration of these comments. If you have any questions, please do not hesitate to contact me at 215.545.9694.

Sincerely,



Brian Glass
Staff Attorney