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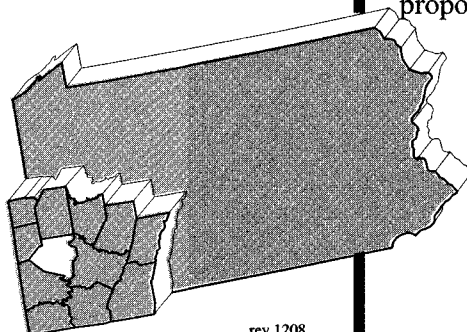
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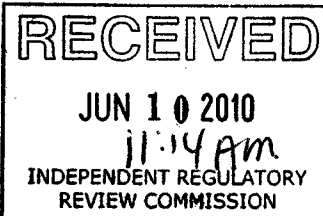
rev 1208

HOUSE OF REPRESENTATIVES Southwest Caucus

June 1, 2010

2806

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



RE: Comments on EQB Regulation 7-446 (IRRC 2806)

To Members of the Commission:

We, the undersigned Members of the Southwest Caucus, appreciate the opportunity to comment on the Department of Environmental Protection's proposed revisions to Chapter 95 that deals with wastewater treatment requirements.

We would like to specifically make the following comments:

1. DEP's failure to grant advanced notice of final rulemaking limited public input;
2. Lack of clarity in the rule's intent;
3. The revised regulation singles out just one industry;
4. Absence of detailed data surrounding the fiscal impact of the rule; and
5. An unreasonable effective date.

DEP's failure to grant advanced notice of the final rulemaking limited public input

The Caucus would like to express our disappointment in the Department's rush to move this regulation forward without allowing for adequate public input. Considerable revisions were made to the Chapter 95 proposal that the Commission reviewed in March. However, the final language was not released to the public until May 6, and the Department changed the date of the EQB meeting, moving it ahead a few days. Those actions did not provide enough time for interested parties to understand the potential impact of the proposed regulation and severely limited public input. One of the advantages of an Advance Notice of Final Rulemaking is to ensure that the public has an opportunity to identify issues that may have arisen when major revisions are made to a proposed rule, and this was even more critical for this rule because the new language proposed by the Department is unclear.

Lack of clarity in the rule's intent

Following discussions that the Department had with stakeholder and industry groups, it was our understanding that the Department would assure stakeholders that the intent of the proposed regulation was to apply only to *new* TDS discharges and would not impact existing discharges. However, the Department did not capture this intent within the language of the proposed rule itself. The proposed rule should not be enacted without specific language inside the regulation that includes appropriate definitions of existing discharges that are exempt from the rule.

The revised regulation singles out just one industry

The revised proposal singles out only the oil and gas industry for more stringent treatment requirements than other industrial users. Restricting the natural gas industry from treatment options and procedures that are available to other industrial users is unfair to the industry, and will unnecessarily increase expenses.

Absence of detailed data surrounding the fiscal impact of the rule

In its March 15 comments, the Commission stated: "The EQB needs to demonstrate that it fully considered the potential costs of complying with the regulation. The EQB should submit a detailed fiscal impact study with the final-form regulation." The EQB and the Department have not done such a study, and there remains considerable disagreement over the cost of compliance. While the Department asserts the claims by the technology providers that the cost of TDS treatment is \$0.25 per gallon, affected industries that would have to pay the bill claim the cost is much higher.

An unreasonable effective date

The Department intends to have the proposed regulation take effect immediately upon publication in the Pennsylvania Bulletin in its final form. Given technical limitations, including but not limited to the time required to identify, acquire, and install water treatment technology that might be necessary, it is unclear and unreasonable to assume that affected industrial users would be able to comply, even with extraordinary efforts.

Thank you for the opportunity to provide comments on the Chapter 95 rule.

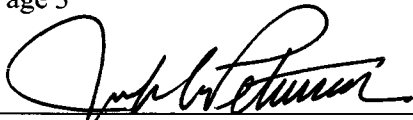
Sincerely,

/Signatures attached

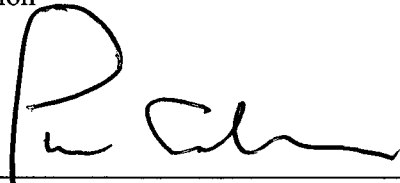
Independent Regulatory Review Commission

June 1, 2010

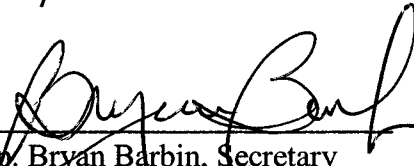
Page 3



Rep. Joseph A. Petrarca, Chairman



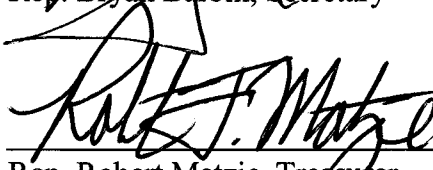
Rep. Tim Solobay, Vice Chairman



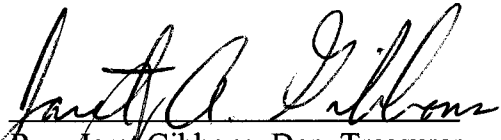
Rep. Bryan Barbin, Secretary



Rep. Frank Burns, Dep. Secretary



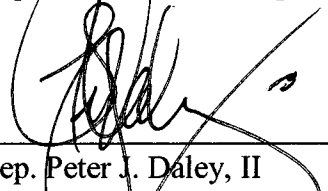
Rep. Robert Matzie, Treasurer



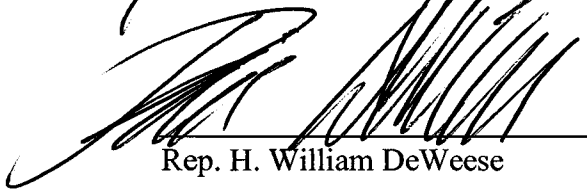
Rep. Jarek Gibbons, Dep. Treasurer



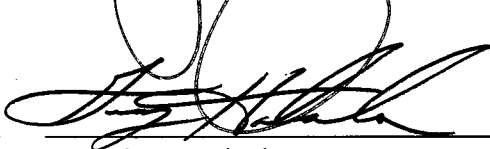
Rep. James Casorio, Jr.



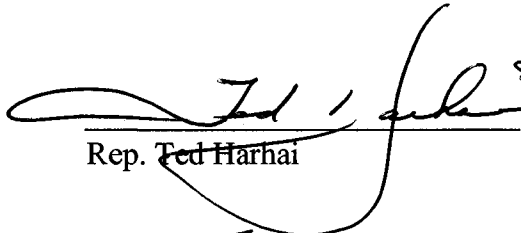
Rep. Peter J. Daley, II



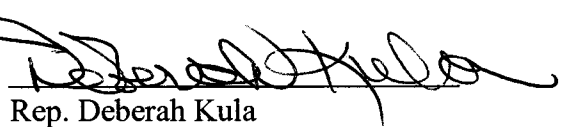
Rep. H. William DeWeese



Rep. Gary Haluska



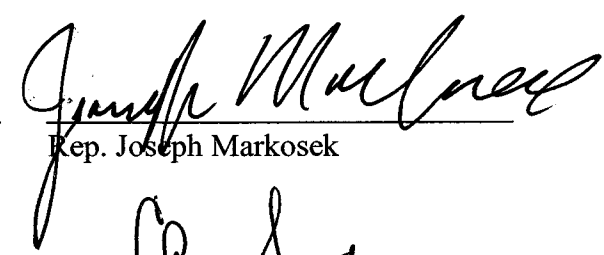
Rep. Ted Harhai



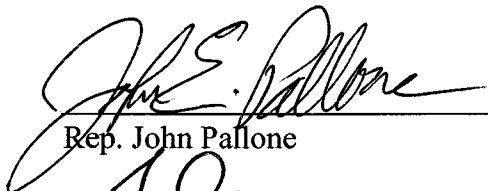
Rep. Deberah Kula



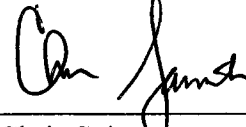
Rep. Tim Mahoney



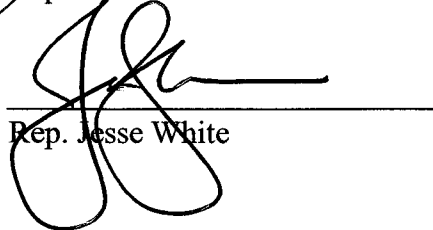
Rep. Joseph Markosek



Rep. John Pallone



Rep. Chris Sainato



Rep. Jesse White