

House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

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June 14, 2010

Mr. Arthur Coccodrilli
Chairman
Independent Regulatory Review Commission
14th Floor, Harrisown 2
333 Market Street
Harrisburg, PA 17101

Dear Chairman Coccodrilli:

We are writing to you today to offer comments on the Final Form Amendments to 25 PA Code Ch. 95, Wastewater Treatment Requirements, IRRC No. 2806, Reg. No. 7-446. This rulemaking seeks to make changes to existing regulations governing the discharge of Total Dissolved Solids (TDS) into Pennsylvania's waterways. The main component of this rulemaking is a TDS limit of 500 milligrams per liter.

We are concerned that this final form rulemaking continues to create very serious economic consequences while not producing any appreciable environmental effects. It is our recommendation that the Independent Regulatory Review Commission (IRRC) reject this regulation on the basis that it is not in the best interest of the Commonwealth to proceed. Should IRRC find after its review, that the regulation should move forward, then we suggest that the Commission recommend to the Environmental Quality Board that it undertake an Advanced Notice of Final Rulemaking (ANFR) in an effort to help resolve a number of key issues associated with this regulation.

We would further offer the following specific comments to support our recommendations:

- 1) Improperly Based Effluent Limits – The EQB within the regulation suggests that the 500 milligram per liter effluent limit is similar to the U.S. Environmental Protection Agency's (EPA) technology based, sector specific, effluent standards. This comparison is not appropriate. The EPA, under the Clean Water Act, has statutory direction to develop these types of standards, with Congress specifying how effluent standards are to be established. There is no provision in the Pennsylvania Clean Streams Law which directs or permits the EQB to develop technology based effluent limits. Additionally, the EPA, when establishing such a standard, routinely engages in a detailed data gathering process coupled with a thorough analysis. The EQB should have followed the same process that EPA follows and should also have conducted a comprehensive data analysis.
- 2) Treatment Options – It continues to be evident that the final rule understates the feasibility, cost, and economic impacts associated with a TDS effluent standard. While technology exists to treat TDS effluent, that technology is limited, complex, and expensive. The technologies that exist involve extremely high energy use, are very costly to install and maintain, and require long lead times for design, permitting, and construction. It is evident that these key issues have been underestimated and in some instances have failed to be addressed in the final regulation. The department and the EQB continue to reference the projected costs (at least to one industry), in the \$0.12 to \$0.25 per gallon. It is

important to realize that Pennsylvania industries produce waste water containing TDS with volumes ranging in the hundreds of millions of gallons per day. Given these amounts and presuming the \$0.12 to \$0.25 per gallon is correct, this would actually put industry costs in excess of one billion dollars per year. This, in our view, would have significant consequences on the competitiveness of Pennsylvania industries.

- 3) Inconsistent and Confusing Text – The final rule as presented is confusing and contradictory. Further, the rule does not contain definitions, criteria, or other important language to provide direction to the regulated community. This is further complicated by the fact that critical items are contained in a lengthy, and non-binding preamble text as opposed to being presented in clear and concise text in the actual regulation. One example of this lack of clarity is displayed in the concept of what constitutes a new or expanded mass loading of TDS, and the fact, that this is not defined in the regulation. The rule only lists what are not new and expanded mass loading, leaving the regulated community to wonder precisely what is or is not covered by this regulation. The key concepts to a regulation should be clearly defined and not framed in the negative.

Finally, we believe, that while DEP contends that this rule is focused on one industry (oil and gas), which we believe is problematic in its own right, the rule continues to encompass a number of industries from mining, to electric power generation, to chemicals manufacturing. This points to yet another area of confusion which demands additional clarification.

This final form regulation continues to pose a number of serious and unresolved questions. It is for the reasons stated above we recommend that the Commission reject this regulation, and at a minimum remand it back to the EQB with provision that the Board engage in an Advanced Notice of Final Rulemaking process.

We appreciate the opportunity to offer these comments on such an important and far reaching public policy issue.

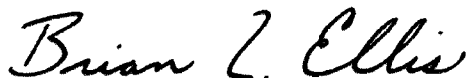
Sincerely,



Scott E. Hutchinson
PA State Representative
64th Legislative District



Mike Turzai
PA State Representative



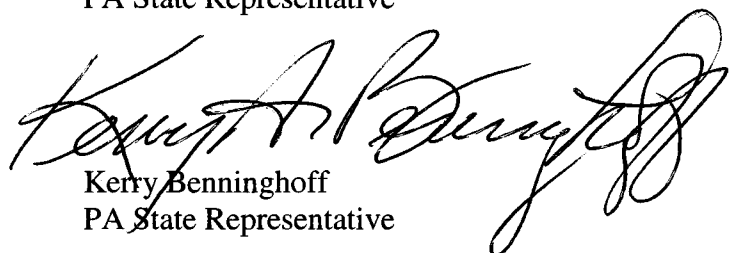
Brian Ellis
PA State Representative



Brad Roae
PA State Representative



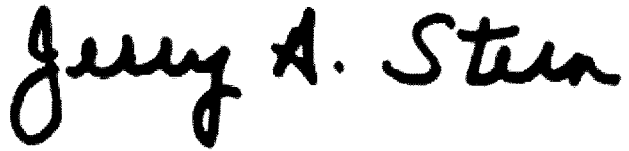
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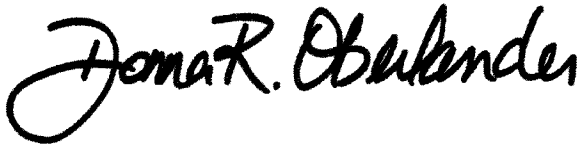
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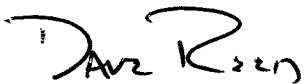
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