

Hamon, Jeff R. 2819

To: RegComment@state.pa.us
Subject: Chapter 92a proposed regulation - Glatfelter comments
Attachments: EQB Chap 92a Glatfelter summary.pdf; EQB Chap 92a Glatfelter comments.pdf

Dear Environmental Quality Board:

The P.H. Glatfelter Company (Glatfelter) submits the attached comments regarding the Chapter 92a regulations proposed by the Environmental Quality Board. Glatfelter thanks you for this opportunity to provide comments and your consideration of them. Return correspondence can be directed to me using the contact information provided below.

Sincerely,

Jeff Hamon
Assistant Environmental Director
P.H. Glatfelter Company
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G L A T F E L T E R
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March 15, 2010

Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-2301

Re: P. H. Glatfelter Company's Comments regarding the Proposed Replacement of 25 Pa. Code Chapter 92 with Newly-Proposed Chapter 92a.

Dear Environmental Quality Board:

The Environmental Quality Board (EQB) has proposed to rescind the regulations currently at 25 Pa. Code Chapter 92 and to replace them with a set of new regulations to reside at a new 25 Pa. Code Chapter 92a (collectively, the Proposed Regulation). The P. H. Glatfelter Company (Glatfelter) submits the following comments regarding the Proposed Regulation, which was published on February 13, 2010, at 40 Pa. Bull. 847. The EQB states that its primary goal in replacing the existing Chapter 92 is to organize the Pennsylvania NPDES regulations in a manner that is consistent with the federal NPDES regulations. However, in so doing, the EQB has altered certain language carried over from Chapter 92 such that it now appears to impose an outright ban on the discharge of color and other listed characteristics. This carried-over language does not appear in the federal rules. If it meant what it appears to say, no discharger -- not Glatfelter or any other municipal wastewater treatment plant, industrial discharger, farm, or construction site -- could achieve compliance.

Background on Glatfelter

Glatfelter's Spring Grove facility is an integrated pulp and paper mill located in York County that discharges approximately 14.5 million gallons of treated effluent per day to the Codorus Creek. The mill produces approximately 650 tons of bleached kraft pulp and 950 tons of uncoated paper daily, and operates two off-machine coaters and significant power generation facilities. Approximately 900 people are employed at the mill. In comparison with other kraft pulp and paper mills, the Spring Grove mill is one of the most efficient mills in the United States in terms of water use and conservation. It also serves as a model in terms of water effluent quality.

The Proposed 25 Pa. Code §92a.41 in Effect Prohibits the Discharge of Color, which is a Practical Impossibility for Glatfelter's Spring Grove Facility

The existing 25 Pa. Code §92.51 provides standard conditions to be included in all NPDES permits. As noted in the preamble, the existing Section 92.51(6) provides:

That the discharger may not discharge floating materials, oil, grease, scum, foam, sheen, and substances which produce color, taste, turbidity, or settle to form deposits in concentrations or amounts sufficient to be, or creating a danger of being, inimical to the water uses to be protected or to human, animal, plant or aquatic life.

This language synthesizes the two subsections of 25 Pa. Code §93.6, which set forth general water quality criteria for waters of the Commonwealth. Section 93.6(a) states that those waters may not contain substances attributable to point and non-point discharges *"in concentration or amount sufficient to be inimical or harmful to the water uses to be protected or to human, animal, plant or aquatic life."* Section 93.6(b) states that, in addition to other substances regulated by the chapter, *"specific substances to be controlled include, but are not limited to, floating materials, oil, grease, scum and substances that produce color, tastes, odors, turbidity or settle to form deposits."*

Together, the language of the existing 25 Pa. Code §§92.51(6) and 93.6 provide a realistic basis for regulation of substances that may fall outside the normal suite of numeric parameters. Section 93.6(b) affirms DEP's authority to regulate these non-numeric substances, and Section 93.6(a) provides a backstop against which DEP's regulation is to be measured. Section 92.51(6) spells out that, for the Section 93.6(b) substances, that backstop is to be applied. Implicit in this statement is the fact that DEP may, in fact, spell out a specific limit to be contained in a permit in addition to the permit condition required by Section 92.51(6). This regulatory approach provides DEP with flexibility to address variability in point source discharges around the state.

In this regard, we note that specific numerical standards do apply to some of these substances. For example, the water quality standard for color in most waters of the Commonwealth, including the main stem of the Codus Creek, is 75 platinum-cobalt units ("pcu"). 25 Pa. Code §93.7. Neither a narrative standard nor some other prohibition is necessary to regulate color, because the ordinary mechanisms for establishing water quality based effluent limitations work for color. Glatfelter has had a long history of addressing its color discharge under this numerical rubric. Application of a numerical water quality based effluent limit ("WQBEL") induced Glatfelter to spend tens of millions of dollars over decades to achieve compliance. This inducement arose due to the application of the color limit in Glatfelter NPDES permit, not the narrative backstop contained in Section 92.51(6). However, this does not undermine the important purpose of the narrative backstop -- making sure that every permit contains some limit on the listed characteristics, even if the permit's numeric limits do not address them.

In the Proposed Regulation, the EQB has not only abandoned the sensible approach embodied in Chapter 92, but it has also imposed a misguided regulatory prohibition that simply cannot be technically achieved. In particular, the EQB has, while moving 25 Pa. Code §92.51 to the new 25 Pa. Code §92a.41, removed the qualifying clause, "*in concentrations or amount sufficient to be, or creating a danger of being, inimical or harmful to the water uses to be protected or to human, animal, plant or aquatic life*" from the prohibition on discharges of the indicated materials and substances. In effect, the language of the proposed Section 92a.41 could be interpreted to operate as an outright ban on the discharge of the following: floating materials, oil, grease, scum, sheen, and substances which produce color, taste, turbidity, or settle to form deposits. The EQB has removed foam from the list of materials prohibited by the Proposed Regulation, as discussed further below.

By way of explanation, the EQB has offered that the removed phrase is "too cryptic and nebulous to be useful, with the result that even substantial visual or odiferous indicators of problems with effluent quality may be overlooked during an inspection." 40 Pa. Bull. at 852. The EQB fails to acknowledge that inspections into aesthetic and other, less measureable qualities of wastewater are by necessity somewhat subjective. If "substantial visual or odiferous indicators" are being missed, the problem is not with the subjective standard, but with the inspector. Rather than address the subjective nature of these qualities in a forthright manner, the Proposed Regulation institutes an outright ban that is not technically achievable by many facilities in Pennsylvania, including Glatfelter's Spring Grove facility.

Prohibiting the Discharge of Color is Inconsistent with DEP's Course of Dealing with Glatfelter over a 50 Year History

The Section 92a.41(c) list continues to include substances that produce color. Color is a difficult characteristic to manage, as treatment is technically challenging and impractical in many facilities. The color in pulp and paper mill effluents comes from the naturally produced tannins and lignins in wood, the primary raw material in the pulp and paper making processes. This color comes from the same source as the color in naturally colored black water streams that drain swamps and bogs. To address color, pulp mills (including Glatfelter's Spring Grove facility) invest tens of millions of dollars in equipment to reduce the amount of color in the effluent. These processes include, among others, the liquor recovery process, oxygen delignification, advanced washing and screening of unbleached pulp, and liquor spill prevention and recovery programs. Glatfelter's Spring Grove mill has one of the lowest, if not the lowest, levels of color per ton of pulp produced of any mill in the United States.

Glatfelter's current NPDES permit allows for the discharge of color from its process wastewater outfall at the following levels:

	Avg. Monthly	Max. Daily	Instant. Max.
Color (pcu)(Effluent) (5/1 to 10/31)	140	280	350
Color (pcu)(Effluent) (11/1 to 4/30)	123	246	307

These effluent limits were designated to assure that the instream water quality standard of 75 pcu is attained.

The history of how Glatfelter came to attain that standard may be instructive. In the 1960s, the Commonwealth initially adopted a standard of 50 pcu, a standard more stringent than in all but one other stream in Pennsylvania. At the time, Glatfelter knew of no technologically practicable means of complying, and exercised its right to appeal. Through a series of settlements and ultimately litigation in both the Environmental Hearing Board and the federal district court, a numerical limitation and a timeline for compliance were agreed in 2001, and achieved in 2004. Since then, Glatfelter has consistently met its effluent limit for color, with few exceptions, thanks not only to the investment of capital, but also to the knowledge, experience and diligence of its employees.

The Chapter 92a regulations now proposed would add a narrative prohibition to the numeric WQBEL. Surely, the EQB would not intend to impose a condition with which literally no discharger could comply, so were the EQB to adopt this proposal, dischargers would contend that the Department would have to understand the narrative prohibition to be more flexible than it appears, and to either be superseded by the numerical standard, to incorporate the numerical standard by reference, or to mean something else. "Zero color" or "zero turbidity" or "zero settleable solids" are simply not meaningful standards because no one can meet them.

The uncertainty of the narrative prohibition would only add to the difficulty that any discharger would face justifying the investment necessary to comply. How would one know that spending millions or tens of millions of dollars to control color or turbidity or the like would achieve compliance, because no one would know what the narrative prohibition really meant? Permit appeals rather than candid, good faith permit negotiations would determine that meaning in too many cases.

Color, in particular, is not a simple issue. Surely, streams should not look like iced tea. But that does not mean that color should be prohibited entirely. Iced tea in a glass would typically in the range of 1000-2000 pcu of color, and no one suggests that dischargers be allowed to discharge that kind of concentration. Were one to view water in clear drinking goblets at 50 pcu, 75 pcu, and 100 pcu, all of them would look drinkable and they would be almost indistinguishable one from the other. Tap water would not

meet a “no color” standard. The effort needed to improve from “dark” to a few hundred pcu is enormously costly in many operations. To improve from there to “zero” is often impossible and is frankly unnecessary considering that many waters of the Commonwealth have considerable natural color.

Suggestions for a More Realistic Regulation

The solution to the problem created by the outright ban in the proposed Section 92a.41(c) is simple but critical -- insert a phrase that clarifies that the prohibition is not a blanket one, so that the permit can contain more specific limits for the identified characteristics. As modified to resolve the problem, the proposed Section 92a.41(c) would read:

Except as may be set forth explicitly in this permit, the discharger may not discharge floating materials, oil, grease, scum, sheen and substances that produce color, taste, odors, turbidity or settle to form deposits.

This would allow the permit holder to rely on the discharge limits that may be set forth in the outfall-specific part of the permit without undermining the need for a definitive direction of inspectors. Another option would be to retain the existing language in 25 Pa. Code §92.51. While the EQB may believe this language is imperfect, its implications are known and predictable.

In either event, it is important to note that the details of this comment apply with equal force to the other listed characteristics of the proposed Section 92a.41(c), even though we address only color here in detail.

Codifying Requirements for Cooling Water Intake Structures Should Be Delayed until the Federal Direction is Clear

In the preamble to the Proposed Regulation, the EQB states that all cooling water intake structures will be required to implement “Best Technology Available” (“BTA”), although the federal regulations are still under development. Glatfelter does not believe incorporating the BTA standard is appropriate without the completion of the federal rulemaking process. Furthermore, we note that the federal rules on this subject are relatively complex, with three separate regulatory packages having gone through the federal administrative rulemaking process, some with several iterations and subsequent litigation, and each with different applicability and requirements. Glatfelter does not believe the EQB has addressed this complexity in the one paragraph in the preamble and therefore requests that this component of the Proposed Regulation be withdrawn for further analysis and explanation.

Conclusion

Glatfelter thanks you for this opportunity to provide comments and your consideration of them. We support efforts in preserving and protecting the water quality of the Commonwealth.

Sincerely,

GLATFELTER

A handwritten signature in cursive script that reads "Jeff R. Hamon".

Jeff R. Hamon
Assistant Environmental Director

**Summary of the Comments of the P. H. Glatfelter Company
to the proposed 25 Pa. Code Chapter 92a
40 Pa. Bull. 847 (Feb. 13, 2010)**

The P. H. Glatfelter Company ("Glatfelter") owns and operates an integrated pulp and paper mill in Spring Grove, York County, Pennsylvania. The Spring Grove facility discharges approximately 14.5 million gallons of treated effluent per day to the Codorus Creek. Over the past twenty-five years, Glatfelter has invested tens of millions of dollars to improve the effluent quality of the Spring Grove mill, particularly with regard to its color.

The rule proposed by the Environmental Quality Board ("EQB") at 40 Pa. Bull. 847 (the "Proposed Regulation") seeks to delete the entirety of 25 Pa. Code Chapter 92 and to replace it with a new Chapter 92a. The primary goal of this effort is to update the Pennsylvania regulations so they are organized in a manner that is consistent with the federal National Pollutant Discharge Elimination System permit regulations.

As part of this effort, the EQB has proposed to relocate the language currently found at 25 Pa. Code § 92.51(6) to the new 25 Pa. Code § 92a.41(c), with certain modifications. With the language to be modified indicated, the new Section 92a.41(c) will read:

~~That t[he] discharger may not discharge floating materials, oil, grease, scum, foam, sheen, and substances which produce color, taste, odors, turbidity, or settle to form deposits in concentrations or amounts sufficient to be, or creating a danger of being, inimical to the water uses to be protected or to human, animal, plant or aquatic life.~~

By removing the qualifying clause, "in concentrations or amount sufficient to be, or creating a danger of being, inimical or harmful to the water uses to be protected or to human, animal, plant or aquatic life," from the provision, the EQB is creating an outright ban on discharges of the indicated materials and substances. *This is inconsistent with the 50-year history of the regulation of the Spring Grove facility, is practically impossible to achieve and is contrary to the explicit limits contained in Glatfelter's NPDES permit.*

Virtually no facility in Pennsylvania will be able to achieve the result suggested by this revised permit condition. Glatfelter suggests that the EQB add a clause to the beginning of the new Section 92a.41(c) that that provides an exception based on the parameters set forth in the NPDES permit ("Except as may be set forth explicitly in this permit, ..."). Another option would be to refrain from deleting the qualifying phrase. While this qualifying phrase is imperfect, that aspect of the language is understood and generally accepted by the regulated community.

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2819

DELETED

From: Smith, James M.
Sent: Friday, March 19, 2010 2:33 PM
To: IRRC
Subject: FW: Proposed Regulation 7-443
Attachments: EQB Chap 92a submittal.pdf

#2819 – Please put the attachment on the website.

From: Patrick H. Zaepfel [mailto:zaepfel@kkaglaw.com]
Sent: Friday, March 19, 2010 2:27 PM
To: Smith, James M.
Subject: Proposed Regulation 7-443

Jim --

Attached please find the comments of the P. H. Glatfelter Company to the above proposed regulation. These comments were forwarded to the EQB via email on March 15, 2010.

Thanks,
Pat Zaepfel

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