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MEMO**DATE:** April 5, 2010**RECEIVED****SUBJECT:** Chapter 253 Proposed Rulemaking Comments**APR - 5 2010****TO:** Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

ENVIRONMENTAL QUALITY BOARD

FROM: Brian G. Thompson, P.E.
Director
Bureau of Design

The Pennsylvania Department of Transportation (PennDOT) offers the following comments on the PROPOSED RULEMAKING for 25 PA. CODE Ch. 253, Administration of the Uniform Environmental Covenants Act as published in the Saturday, March 6, 2010 PA Bulletin. If you have any questions please contact Mr. Gary C. Fawver, P.E. of my staff at telephone number (717) 787-1024.

PennDOT is committed to operating Pennsylvania's highway system in an environmentally friendly manner in keeping with the Commonwealth's constitutional obligation to act as a trustee of Pennsylvania's public natural resources. PennDOT is also committed to properly addressing contamination issues when they arise within the highway system. Toward these ends, PennDOT expends considerable effort consulting with local, state and federal resource agencies along with interested members of the public when designing highway projects, and PennDOT has achieved certification under the ISO14001 environmental management standard for its maintenance operations.

PennDOT must also ensure that the highway system is operated in an economically responsible manner. The need for economic responsibility has assumed added weight in recent years due to the crisis in transportation funding. *See Addressing Pennsylvania's Transportation Funding Crisis*, Pennsylvania Transportation Funding and Reform Commission (November 2006). To maintain Pennsylvania's highways effectively, PennDOT relies on its ability to treat highway miles uniformly. Imposing use restrictions on isolated sections of highway through environmental covenants is neither an effective nor an efficient way to operate a state-wide highway system. Also, environmental covenants on highway right-of-way offer little, if any, environmental benefit: such property is already controlled by the Commonwealth and is unlikely to change from its existing use.

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The following information was obtained from a source who has provided reliable information in the past. It is being provided to you for your information only. It is not to be disseminated outside your agency.

The source has provided information regarding the activities of a group of individuals who are active in the area of [redacted]. The source has provided information regarding the activities of a group of individuals who are active in the area of [redacted]. The source has provided information regarding the activities of a group of individuals who are active in the area of [redacted].

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PennDOT proposes that it continue to work with the Department of Environmental Protection to properly address contamination issues when acquiring new highway right-of-way, or when they arise in existing right-of-way, without the use of environmental covenants. This goal could be facilitated by requiring environmental covenants to contain a provision for termination upon acquisition by the Commonwealth for use as highway right-of-way and by adding a definition for the term "eminent domain proceeding" to the proposed regulations.

PennDOT is also committed to properly addressing contamination issues at its facilities that are located outside of highway right-of-way. Environmental covenants do not present the same issues at these facilities as they do for highways. With regard to its efforts to address contamination outside the highway right-of-way, PennDOT believes that the proposed regulations could be strengthened by clarifying proposed §253.5(c) to provide that additional information is not required with the submission if already contained in the environmental covenant; by expanding the deadline for recording environmental covenants to 90 days; and by expressly waiving the fee for agencies of the Commonwealth.

4390/GCF/bjg

CC: Troy Conrad, PADEP
Kurt Klopkowski, PADEP
Neal Brofee, 9th Floor, CKB
William Cressler, 9th Floor, CKB
Danielle, Spila, 8th Floor, CKB
Gary C. Fawver, P.E., 7th Floor, CKB

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Tate, Michele

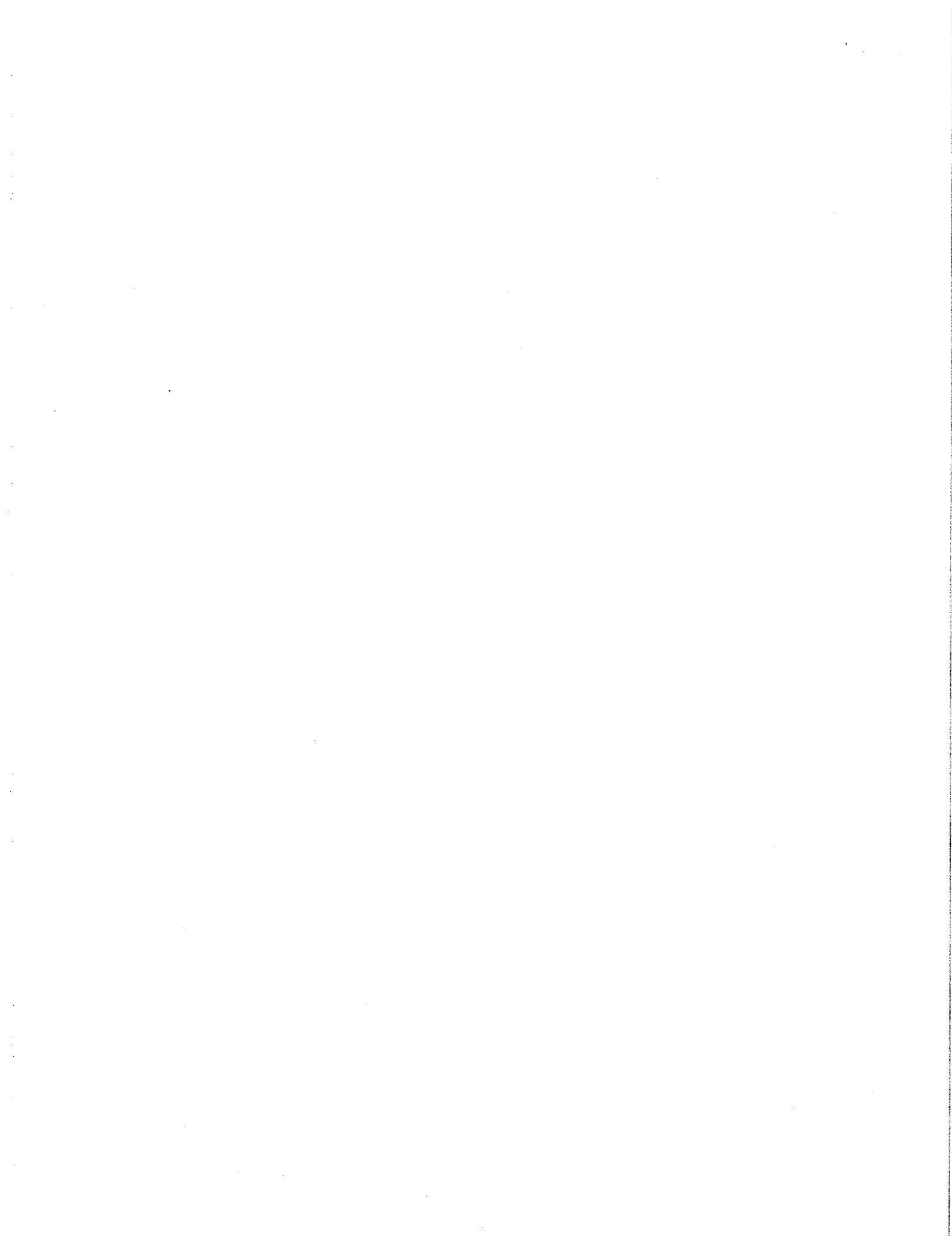
From: Fawver, Gary
Sent: Monday, April 05, 2010 3:58 PM
To: EP, RegComments
Cc: Spila, Danielle K; Brofee, Neal; Cressler, William; Conrad, Troy; Klappkowski, Kurt E
Subject: Administration of the Uniform Environmental Covenants Act, Proposed Rulemaking, Comments by PennDOT

To Whom It May Concern:

Please find attached the Pennsylvania Department of Transportation's comments on the Environmental Quality Board's Proposed Rulemaking on the Administration of the Environmental Covenants Act. This email is being sent in addition to a hard copy of the comments which will be hand delivered to the Environmental Quality Board at the Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301.

Please advise me if there is any problem with the receipt of these comments. Thank you for your assistance.

Gary C. Fawver, P.E. | Chief
PA Department of Transportation
Bureau of Design | Environmental Quality Assurance Division
400 North Street – 7th Floor | Harrisburg PA 17120
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DEPARTMENT OF TRANSPORTATION
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