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December 1, 2015

Environmental Quality Board
PO Box 8477
Harrisburg PA 17105

RE: THE DEPARTMENT OF ENVIROMENTAL PROTECTION
Proposed Rulemaking : Revised Coliform Rule
25 Pa Code 109

To whom it may concern,

Please accept the following comments to the Proposed Revised Coliform Rule and Regulatory Analysis Form.

For background purposes MC Resource Development provides Spring Water to bottled water companies in Pennsylvania from its water source in Schuylkill County. MCRD operates as a Public Water Supply under Permit from the DEP.

General Comments

1. Bottled water is a food regulated by the Food and Drug Administration, not by the Environmental Protection Agency as a water supply. This delineation of regulatory authority was first recorded in a Memorandum of Understanding between the respective Agencies in 1979. A clear standard for adoption of Quality Standards for bottled water was later codified at 21 U.S.C. 349.
2. Pennsylvania is the only state in the country that regulates bottled water as a public water supply.
3. Historically the Department, Pennsylvania bottlers, the International Bottled Water Association and other stakeholders have worked closely in balancing the Primacy Mandate in the Safe Drinking Water Act for the Public Water Industry and the development and promulgation of State Bottled Water Regulations that provided the highest level of protection and quality to our customers located throughout the country.

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Comments on Regulatory Analysis Form

1. Paragraph 9. Should be amended to include reference to the FDA Final Coliform Rule as the FDA has expressed its intent that certain portions of the Rule, specifically Sec.165.110(b)(2), Preempts state regulations for bottled water.
2. Paragraph 12. Appears inconsistent when applied to the bottled water industry. No other state is required to adopt the RTCR for the bottled water industry.
3. Paragraph 14. Please note that the bottled water industry is not represented at the TAC Board.
4. Paragraph 15. The NAICS Code for Bottled Water is 312112, and the definition is 500 employees.

Comments on Revisions to Subchapter J

Generally, the department inadvertently cites 40 CFR 141 et al. as a federal mandate for the regulation of bottled water. Since FDA sets the regulatory mandates for bottled water, the reference would likely be 21 CFR 165 or 210.

Specifically, Section 109.1003 (a)(1) should be amended to be consistent with the FDA's preemptive language for bottled water systems. Entry point sampling, currently interpreted by the department as at the filler; is not the same as a representative sample of primary containers of product. See generally 165.110(b)(2)

Section 109.1003(a)(3) appears to be inconsistent with FDA regulations.

109.10089 (g) perhaps the Department would consider including licensed Geologists, engineers and hydrogeologists to perform assessments, particularly as it relates to watershed evaluations and source construction and protection. Experience indicates these fields of expertise provide the best insight into risk and failure in these two areas. NSF and related entities provide second to none value in the facility operation and sanitation arenas

I thank the Board and the Secretary for their consideration, and wish all the very best in this Holiday Season.

James J Land Jr