

Comments of the Independent Regulatory Review Commission



Environmental Quality Board Regulation #7-535 (IRRC #3150)

Stream Redesignations (Sobers Run, et al.)

August 24, 2016

We submit for your consideration the following comments on the proposed rulemaking published in the June 11, 2016 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Environmental Quality Board (EQB) to respond to all comments received from us or any other source.

1. RAF (18) Explain how the benefits of the regulation outweigh any cost and adverse effects. – Economic impact.

The response to Regulatory Analysis Form (RAF) (18) explains that the benefits of clean water outweigh the cost of treatment technology and best management practices. The response also references responses to RAF (15) and (17). These RAF responses cite multiple benefits that include dollar estimates such as \$3.7 billion annually generated by sport fishing in Pennsylvania between the years 1995 to 1997. While these industry-wide evaluations provide useful information, that is not the question the RAF poses. The question posed is directed at the benefits of the amendments in this regulation. For example, how will this regulation incrementally affect the overall \$3.7 billion sport fishing industry or any of the other benefits presented in the RAF?

In regard to costs, the information presented is vague. The RAF (15) response indicates that the increased protection may result in higher design, engineering, construction and treatment costs, and that there are 20 known pollution control facilities affected. The responses to RAF (19), (20) and (23) do not provide any dollar estimates and state either that the costs cannot be determined because they are site-specific or that there are no costs. The RAF (20) response is inconsistent. It states, “No costs will be imposed directly upon local governments,” then states “certain municipalities . . . may be affected,” then concludes that the costs would be site-specific. We are concerned that the impact of the redesignations on existing discharges is not sufficiently explained and the costs are not estimated. In addition, the redesignations limit future land uses, but there is no sufficient explanation or estimation of that impact on current landowners. The RAF asks for a specific estimate of costs associated with compliance with this regulation. Just because costs are site-specific, does not mean there are no costs or that an estimate could not be derived from other projects.

A conclusion that the benefits of this specific regulation outweigh the costs and adverse effects should be based on numbers specific to this regulation. Therefore, we ask the EQB to amend the RAF responses to provide information specific to this regulation. In support of its determination that benefits outweigh any cost and adverse effects, we ask the EQB to provide more thorough and specific explanations of benefits, costs and adverse effects in the RAF submitted with the final-form regulation.

- 2. RAF (22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements. – Economic impact.**

Both the response to RAF (22) and the Preamble's Section F under the subtitle *Paperwork Requirements* explain that some permits and paperwork will be required. However, the response to RAF (22) did not include the detail requested in RAF (22). We ask the EQB to provide a more thorough response to RAF (22) in the final-form regulation submittal.

- 3. RAF (7) Briefly explain the regulation in clear and nontechnical language. – Clarity.**

The first sentence of the second paragraph in this response states, "This proposal modifies Chapter 93 to reflect the recommended redesignation of streams shown on the attached list." We did not find an attachment and are not clear regarding what this response references. The EQB should either include this list with the final-form submittal or amend the response to clarify what document it references.

- 4. RAF (15), (16) and (17) Responses relating to small businesses.**

RAF Questions (15), (16) and (17) ask the agency to identify, list and identify the impact on several entities, including small businesses. We ask the EQB to directly address small businesses in these responses.