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ARROWHEAD® September 25, 2017

DEER PARK® Hon. Patrick McDonnell
Chairperson


ENVIRONMENTAL QUALITY BOARD
PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
CALISTOGA® Rachel Carson State Office Building, 16th Floor
400 Market Street

ICE MOUNTAIN® Harrisburg, PA 17101-2301

Ozarka® Re: Proposed Rulemaking: 25 Pa. Code Ch. 109, Safe Drinking Water; General Update and Fees, 47 Pa. Bulletin 4986 (August 26, 2017).

Poland Spring® Dear Secretary McDonnell and Members of the Environmental Quality Board:

Zephyrhills® Nestlé Waters North America, Inc. ("Nestlé Waters") very much appreciates the opportunity to provide these comments on the proposed rulemaking to amend the 25 Pa. Code Chapter 109 relating to safe drinking water.

 As the nation's largest producer and distributor of bottled water, Nestlé Waters has a steadfast and enduring commitment to stewardship of water resources and production of quality drinking water that meets all applicable federal and state drinking water standards and regulations. Our 7,500 employees and 29 bottled water facilities across the U.S. and Canada produce 15 leading bottled water brands. For the past two decades, Nestlé Waters has been a strong and growing part of Pennsylvania's drinking water industry. Currently, Nestlé Waters operates seven spring water source sites across the Commonwealth, providing source water to our bottling plants near Allentown. We have invested over \$350 million in capital in our Lehigh Valley campus since our first Pennsylvania plant opened in 1996, and expend about \$174 million annually with local Pennsylvania companies. The fact is that bottled water consumption has grown by 120% since 2000, and as a result, we're looking to expand in the mid-Atlantic region to meet the increasing demand of customers.

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In Pennsylvania and across the nation, Nestlé Waters seeks to set the standard for the highest quality operations. A leader in technological innovation and quality management, Nestlé Waters has supported continuing improvements in drinking water standards and program management at both the federal and state levels. We have long-standing and positive regulatory relationships with the Food and Drug Administration ("FDA"), which has the lead in regulating bottled water manufacturing and distribution on the federal level, together with state drinking water and public health agencies across the country.

It is with these perspectives that we would offer comments on several elements of the proposed Ch. 109 regulations.

The requirements in §109.503(a)(1)(A) for a "pre-drilling plan" should be clarified and adjusted to avoid duplication with similar aquifer test plan requirements administered by other agencies.

The Department has proposed to amend §109.503(a)(1) (construction permit requirements) to add a new step in the process – requiring submission and Department approval of a "pre-drilling plan" for any new groundwater source "prior to well construction and conducting an aquifer test." As part of this "pre-drilling plan," the proposed rule would require submission of the preliminary results of a source water assessment, a hydrogeologic description, an aquifer test monitoring plan, and a proposed well construction design.

We would offer several points for your consideration.

- As we believe the Department knows, many bottled water operators and other public systems operators will conduct preliminary hydrogeologic studies and tests to evaluate potential sources before conducting more formal "aquifer tests." Such hydrogeologic studies often involve drilling a series of test wells and conducting preliminary short duration pumping to evaluate specific capacity and take water quality samples in order to ascertain whether the site is likely a suitable source. In this regard, the proposed language of §109.503(a)(1) is confusing. It refers to a "pre-drilling plan," which suggests by its terms that something must be submitted to and approved by the Department before any well is drilled. But then §109.503(a)(1) also calls for submitting with the plan the preliminary results of source water assessments, a key part of which involves water quality samples – and such source samples can't be taken without some type of test well. The Department should be encouraging, not limiting, the installation of test wells and performance of hydrologic evaluations that gather better background geologic and water quality data as a predicate to production well design and aquifer testing.
- As highlighted throughout the preamble to the proposed rulemaking, the Department's drinking water staff is already stretched very thin, finding it difficult

to address the minimum requirements for Safe Drinking Water Act primacy in terms of inspections and permit oversight to assure drinking water quality. In that context, a question must be raised as to whether and why it is necessary to establish a new approval requirement under which all public water systems must stop and wait for agency staff to review aquifer test plans before proceeding with the tests required for a full construction permit application. The Department has provided guidance concerning aquifer testing protocols which allows system operators and their hydrogeologic consultants to design appropriate test plans. The Department currently reviews such plans on an informal basis, and often provides comments. But by mandating formal agency approval before proceeding (basically, making this another permit requirement), this rule could create a new bottleneck in the process of obtaining required sources of water to meet water system quantity and quality demands.

- The fact is that aquifer test plans are currently reviewed by other agencies, sometimes in much greater detail than the Department can accord. For example, over two-thirds of the Commonwealth, the Susquehanna River Basin Commission already requires submission of aquifer test plans for groundwater withdrawals involving 100,000 gallons per day or greater from one or a combination of wells. There should be no need to duplicate those other agencies' aquifer plan review efforts.

Considering the above points, we would suggest that the Department reconsider the concept of mandating "approval" of an aquifer test plan before proceeding with a test. The current arrangement for informal review seems to be working.

At the very least, we would recommend that §10.503(a)(1) be modified to make clear that this is not a "pre-drilling plan" but rather a plan that would precede conduct of a formal aquifer test.

The requirements for provision of system maps under §109.706 should be limited to community and non-community systems; a map requirement is unnecessary and inappropriate for bottled water, vended water, and bulk hauling systems.

As a result of wording changes proposed in §109.706, what had been a requirement imposed on community and non-community water systems (those which distribute water via pipes) to provide a system map would be expanded to any "public water supplier" – ostensibly including bottled water, vended water and bulk hauling operations.

The clear focus of the mapping requirement in §109.706 is on those systems which distribute water via pipes. The detailed mapping content includes, for example, pumping station locations; the size, location and construction material of pipes;

pressure zones; and interconnections with other public water systems. None of these are apposite to bottled water systems.

The Department currently obtains, as part of its permit applications for bottled water systems, detailed information concerning source locations and plant locations and processes, including the specifics of storage units (tanks and silos), treatment equipment layouts, monitoring plans, etc. Imposing a separate “mapping” requirement on bottled water producers does not appear to serve any public benefit or drinking water quality purpose. Hence, we would suggest that this requirement be focused, as it is in the current regulations, on community and non-community systems where the layout of the entire system, including distribution lines, is important in order to adequately monitor and maintain regulatory oversight.

While we support adoption of reasonable permitting fees to help defray a significant portion of the drinking water program administration cost, the permitting fee provisions as applied to bottled water systems warrant reconsideration and modification.

Nestlé Waters understands and appreciates the need for the Department and Environmental Quality Board to consider adjustment of the current Ch. 109 permitting fees and adoption of an annual fee in order to provide increased revenues and resources to support and rebuild the Department’s drinking water program. The challenges of maintaining an adequate permit review and inspection program staff are real, and we are more than sympathetic to the issues highlighted in the proposed rulemaking preamble. All of us – taxpayers that obtain water from public water systems and the regulated community alike – have a stake in assuring that the fiscal resources available to the drinking water regulatory program are sustainable, predictable and adequate to support a program that is designed and managed in an efficient and cost-effective manner. The key elements to reaching that objective are:

- Continuing efforts to improve efficiency in the regulatory program delivery (including better tools for electronic permit submissions and reporting, improved training, and streamlining processes to focus on those issues most important to protecting public health.
- Ongoing support of adequate General Fund appropriations to reflect the public’s stake in the drinking water program.
- Ongoing support from federal program grants.
- Adoption of reasonable and well-targeted program fees to better reflect the costs of program operations and help provide a base of funding for the permitting and inspection programs.

As the Department knows, all of these elements are critical. Raising permit fees alone won't solve the challenge or meet the objective. A sound platform for the state's drinking water program requires all four legs.

With this perspective, Nestlé Waters supports the adoption of reasonable permitting fees to help defray a significant portion of the cost of drinking water program administration. We believe such fees should be determined and allocated among regulated entities with a close eye to the relative costs of reviewing and issuing permits to each type of entity, and to the relative costs of inspecting each type of entity.

In §109.1406(a), the Department has proposed a fee for any new or major amendment to a bottled water construction permit that ranges from \$500 to \$10,000, depending on the "population served" by the bottled water entity. We have four significant concerns about the structure and fairness of those permitting fees as applied to bottled water systems:

- First, "population served" is not a concept typically utilized in relation to classification of bottled water operations, and it is far from clear what it means here. Bottled water manufacturers do not have a way to count or ascertain the number of different individuals who drink their product each day or over a year. A small company that produces just 800 bottled water cases of 24 16.9 ounce bottles each per day (19,200 bottles/day = 2535 gallons per day) could be viewed as serving a population over a year of 365,000 if you assume that each case is purchased by a different person, or a population of 8,760,000 if you assume each bottle produced in a year is consumed by a separate person. The point is that the calculation of population served by a bottled water system is impossible, and rather meaningless, and bears no relation to the size or complexity of the operation in terms of drinking water permit review and inspection time.
- Second, the fee schedule appears to bear no relationship to the time or cost involved in permit review and inspection for bottled water operations, particularly when compared to community water systems. Using the example above, under the Department's proposal, the permitting fee under §109.1406 for such a very small bottled water producer (2535 gpd) would equate to that imposed under §109.1404 for the very largest community water systems (with populations of over 100,000), such as Allentown and Philadelphia. To put this in perspective, a community system serving population of 100,000+ population would be expected to have a daily production of 10 million gallons per day (based on consumption of 100 gallons per capita per day) -- or more than 3,900 times the amount produced daily by the small bottled water producer.¹ That seems hard to justify, given that

¹ From another perspective, a piped water system that only distributes 2535 gpd would be on the cusp of not even qualifying as a public water system, as that amount would support just 25 individuals at a per capita use of 100 gpd.

almost all bottled water operations utilize groundwater sources, with relatively straightforward filtration and disinfection systems and no issues related to distribution systems, compared to community and non-community systems which often use surface water or groundwater under the influence of surface water sources, and have extensive distribution systems requiring testing at not only the point of entry but at distant points of delivery.

- Third, from what we can discern, the time and effort of regulating bottled water systems is not related to production volume (bottles produced or number of customers), but rather the nature of the operation. The permitting application for a "small" bottled water producer with a production line that involves storage, filtration, disinfection and bottling should take the same amount of time to review and respond to as that of a larger bottled water producer using the same types of equipment. Indeed, we suspect that the time expended by the Department in dealing with smaller, less sophisticated producers is probably greater than the efforts needed to address permit applications from companies who have more professional engineering and production quality management staff.
- Fourth, the pending proposal suggests that the same fee be imposed for an entirely new construction permit or for any "major construction permit amendment." The concept of "major amendment" under §109.1005(f)(1)(i) includes new sources, additions or deletions of treatment techniques or processes and new types of products. While we don't have any issues with charging a significant application fee for new sources (which clearly require more complexity and review time), some of the other amendments swept into these high fees are of a different nature. Under §109.1005(f), ostensibly the mere addition of an additional ultraviolet light unit, or the production of water in a new size of bottle, could be considered a "major amendment" triggering an application fee of \$10,000 for an application that should not take substantial time to review.

Reflecting on these concerns, we would suggest that the permit fees for bottled water systems be reconsidered, with classifications set not based on the size of the manufacturer but rather on what is being proposed. Operations with similar configuration and complexity should be treated equally, with fees reasonably associated with the time and effort required to review the application. A permit application for a new spring or well source of supply have the same content for all bottled water producers, and likewise the fee for that application should be the same. A permit application for installation of new UV treatment equipment should be the same whether the equipment is installed at a "small" plant or a "large" plant. Nestlé Waters is well prepared to pay its fair share for support of the drinking water regulatory program, but all of those engaged in the bottled water business should do likewise – and no segment should be expected to subsidize others.

September 25, 2017

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We appreciate the consideration of these comments by the Department and Environmental Quality Board. Should you have any questions concerning the points raised, please do not hesitate to contact me or our regulatory counsel, R. Timothy Weston of K&L Gates LLP (tim.weston@klgates.com; 717.231.4504). Nestlé Waters looks forward to continuing to work with the Department in many positive efforts toward improving the drinking water program, particularly in relation to bottled water operations.

Sincerely yours,

A handwritten signature in black ink that reads "Kevin Mathews". The signature is written in a cursive style with a long horizontal flourish at the end.

Kevin Mathews

Vice-President, Regulatory and Scientific Affairs

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