



House of Representatives  
Commonwealth of Pennsylvania  
Harrisburg



May 7, 2021

Independent Regulatory Review Commission  
333 Market Street  
14<sup>th</sup> Floor  
Harrisburg, PA 17101

Re: Proposed Rulemaking: Regulation #7-533: Water Quality Management and National Pollution Discharge Elimination System Permit Application and Annual Fees; IRRC reference number: 3227

Dear Commissioners,

We are writing to submit comments in response to the Department of Environmental Protection's (DEP) final regulation regarding Water Quality Management (WQM) and National Pollution Discharge Elimination System (NPDES) Permit Application Fees and Annual Fees. While we appreciate some of the revisions from the proposed regulation, we maintain that the substance of our objections submitted in response to the proposed regulation remain unresolved. As such, we are writing to reiterate our strong conviction that this regulation lacks the requisite statutory authority for its scope, structure, and magnitude and therefore urge the Commission to vote to disapprove this regulation.

One of the fundamental strengths of a democratic form of government is that it is accountable to its people. To further provide for accountability and transparency, our founders divided up our government into three separate branches, each with constitutionally prescribed roles and responsibilities. One of the primary responsibilities of the legislative branch is to determine the amount of funding to appropriate to the executive branch's departments.<sup>1</sup> The purpose in having a deliberative body address the reality of scarcity, that of having unlimited wants but limited resources, is so we can pull together people from across the entire Commonwealth to represent the diverse interests of their constituents. In putting together a budget, the members of the General Assembly each must put forth their best case for why the priorities of their constituents should receive a portion of the funds available to the Commonwealth. Rarely does anyone receive all they want, but everyone has a place at the table. Under this arrangement, the members of the General Assembly are directly accountable to the people for our revenue raising and funding decisions.

We maintain that it was never the intention of the legislature in passing the Clean Stream Law to turn the DEP into an unaccountable self-appropriating agency. The DEP's claim that Sections 5(b)(j) and 6 of the Clean

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<sup>1</sup> Pa. Const. art III, §§ 10 and 11

Streams Law (CSL) provides the statutory authority for this regulation is demonstrably false. These sections only authorize the DEP to make regulations to implement the CSL and to collect *“reasonable filing fees for applications filed and for permits issued.”* Had the General Assembly wanted the DEP to be self-appropriating they would have explicitly written this in statute. Because the Legislature only allowed the DEP to raise funds for a narrowly defined purpose (filing fees), it is clear that their intent was the primary funding source for the Clean Water Program would be appropriated by the General Assembly. However, contrary to the statute, the DEP wants these fees to *“support the whole range of activities involved with water quality protection by the Department.”*<sup>2</sup> While we are aware that the DEP would prefer not to have to request funding from the Legislature,<sup>3</sup> this is how the statute designs the funding for this program.

If the DEP’s claims are true that the Clean Water Program is suffering from low funding levels, then the proper remedy is to work with the Legislature to revise the current appropriation amounts. The improper remedy being sought by this regulation is to fundamentally alter the program’s funding structure in a manner that contradicts the explicit design of the statute.

The reluctance of the DEP to work with the legislature lends credibility to the notion that it is attempting to circumvent the General Assembly with this regulation. Furthermore, in its comments to the EQB, this Commission noted that *“a goal of the RRA and the regulatory review process is the resolution of objections to a regulation and reaching of consensus among this Commission, the designated standing committees, interested parties and the promulgating agency. We ask EQB to work with all parties with an interest in this rulemaking, particularly the Committee and members of the Legislature.”*<sup>4</sup> The EQB has yet to reach out the Legislature in regard to our objections to this regulation, nor do we find their responses in the Comment and Response Document satisfactory in addressing them either. In short, we do want the CSL adequately administered and enforced, and we are willing to engage in discussions with the DEP about the appropriate funding levels needed to accomplish this. However, we believe the DEP is usurping the General Assembly’s policy making authority by rejecting the funding methodology prescribed in the statute.

Next, in addition to this regulation not conforming with the intention of the General Assembly in the enactment of the statute upon which the regulation is based,<sup>5</sup> we also maintain that it is not in the public’s interest due to the deleterious economic and fiscal impacts of the regulation.<sup>6</sup> While we appreciate the DEP’s revision of some of the fees to be less onerous on small businesses and agricultural operators, we reaffirm the position in our previous comments that these fee increases go beyond the intent of the Legislature in magnitude. Although the costs to the regulated community has been reduced from \$8 million to \$6.5 million,<sup>7</sup> these are still overly burdensome on the regulated community that is still recovering from the fiscal challenges

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<sup>2</sup> RAF Final Regulation Box 7 p.1

<sup>3</sup> *“Given the potential fluctuations in appropriations by the legislature, a more stable and sustainable funding source is desired.”* Three-Year Regulatory Fee and Program Cost Analysis Reports to the EQB on August 21, 2018 p.2  
<http://files.dep.state.pa.us/PublicParticipation/Public%20Participation%20Center/PubPartCenterPortalFiles/Environmental%20Quality%20Board/2018/August%2021/Fee%20Reports/Chapter%2091%20Fee%20Report.pdf>.

<sup>4</sup> Comments of the Independent Regulatory Review Commission, p.2.  
<http://www.irrc.state.pa.us/docs/3227/IRRC/3227%2006-13-19%20COMMENTS.pdf>

<sup>5</sup> 71 P.S. § 745.5b. (a)

<sup>6</sup> 71 P.S. § 745.5b. (b) (1)

<sup>7</sup> RAF Final Regulation Box 17 p.13

related to the COVID-19 pandemic. Ultimately, these fees will result in higher business costs and municipal taxes that eventually destroy jobs and raise the overall cost of living for all Pennsylvanians.

In summary, the DEP's proposed regulation lacks statutory authority, violates the intention of the legislature, and is not in the public's interest. For the reasons stated in our previous letter, and reiterated above, we urge the Commission to perform its oversight role and evaluate this proposal in accordance with the criteria prescribed by the RRA. In doing so, we believe that the shortcomings of this regulation warrant the Commission's vote to disapprove.

We are grateful for the opportunity to present these concerns to the Commission and respectfully request your careful consideration of them as you review the Department's proposal.

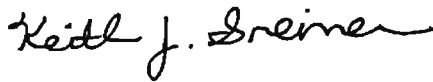
Sincerely,



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R. Lee James  
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Keith J Greiner, CPA  
Representative, 43<sup>rd</sup> District



Jack R Rader  
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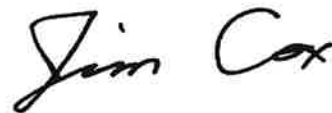
Russ Diamond  
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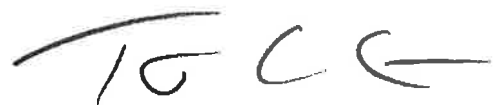
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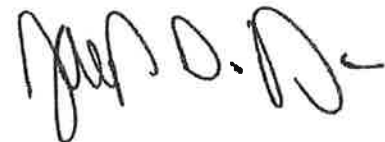
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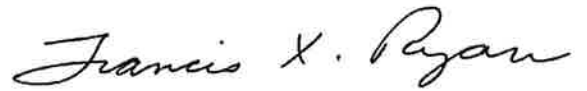
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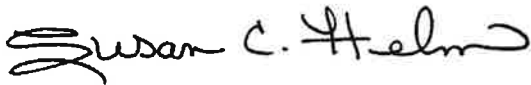
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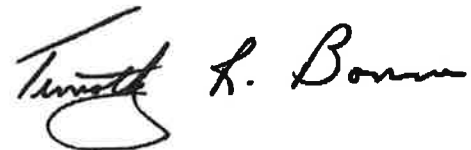
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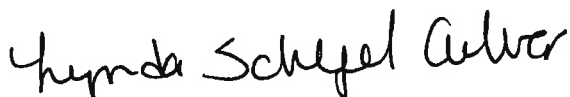
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