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RE: Water Quality Management and National Pollution Discharge
Elimination System Permit Application and Annual Fees (7-533)

Dear Environmental Quality Board:

The National Association of Water Companies (NAWC), Pennsylvania Chapter respectfully submits the following comments regarding the Water Quality Management (WQM) and National Pollution Discharge Elimination System (NPDES) Permit Application and Annual Fees.

The NAWC (www.nawc.org) represents all aspects of the private water service industry including ownership of regulated drinking water and wastewater utilities and the many forms of public-private partnerships and management contract arrangements. The Pennsylvania Chapter consists of five-member companies that provide safe and adequate drinking water service to over 3.1 million Pennsylvanians in 492 communities in 39 counties. In addition, three-member companies provide wastewater service to approximately 195,000 Pennsylvanians in 34 communities across nine counties.

The Environmental Quality Board (EQB) proposes to amend Chapters 91 and 92a (relating to general provisions; and National Pollutant Discharge Elimination System permitting, monitoring and compliance) to establish new fee schedules for Water Quality Management (WQM) permit applications, National Pollution Discharge Elimination System (NPDES) permit applications and NPDES annual fees, and to make clarifications in 25 Pa. Code §§ 91.1, 91.22, 91.27, 91.36, 91.52, 92a.26, 92a.32 and 92a.62, respectively.

The purpose of this proposed rulemaking is to raise approximately **\$8 million in increased fees annually**, as determined by the Department of Environmental Protection's (DEP) workload analyses, to increase program resources for the Bureau of Clean Water and statewide Clean Water Program, and increase program resources to support additional positions, so that the

DEP can accomplish its mission and legal obligations to the public, regulated community, and federal authorities.

Chapter 91 – Water Quality Management (WQM) Permits

WQM permits are required under Pennsylvania's Clean Streams Law (35 P.S. §§ 691.1-691.1001) and 25 Pa. Code Chapter 91 for the construction of water pollution control facilities, discharges to waters of the Commonwealth, and other activities that may cause or contribute to pollution to waters of the Commonwealth.

- EQB proposes to create “fee categories” for different types of projects requiring WQM permits, with the fee commensurate with the level of effort necessary to review and process the permits.
- EQB proposes to clarify fees for amendments to and transfers of WQM permits.
- EQB also proposes to eliminate the cap of \$500 on general WQM permit Notice of Intent (NOI) fees and establish that NOI fees may not exceed the equivalent individual WQM permit application fees.
- EQB is proposing to add language that will require the DEP to adjust WQM permit application fees according to changes to the U.S. Bureau of Labor Statistics Employment Cost Index for State and Local Government Compensation (ECI) **every two years**.
 - The adjustment would be based on the cost difference, if any, of the ECI for the most recent two-year period.
 - The proposed revision requires DEP to publish any changes to the fees based on the ECI in the *Pennsylvania Bulletin*.
 - Fee increases exceeding the ECI change would require promulgation of a rulemaking.
 - Fee will not be adjusted if application of the index would result in fees exceeding the DEP's costs to administer the Clean Water Program.
- Finally, EQB plans to update references within Chapter 91 to Chapter 92a, which replaced Chapter 92 in 2010.

Approximately \$1 million in additional revenue would be generated from the receipt of WQM permit applications, and an average of 500-600 applications are received annually. The balance of program expenses would continue to be paid for through the DEP's general fund allocation. The increase in WQM fees is designed to cover most of the DEP's costs in reviewing applications.

Comments:

Section 691.6 of the Clean Streams Law allows DEP to charge filing fees for application by regulation, provided that the fee is “reasonable.”

“The department is hereby authorized to charge and collect from persons and municipalities in accordance with its rules and regulations reasonable filing fees for applications filed and for permits issued.” 35 P.S. §§ 691.6

A plain reading of the statute only authorizes DEP to charge “reasonable filing fees.” However, DEP intends to use the proposed fees to cover the entire program costs (“...it currently costs \$1,427,000 annually to administer the WQM program or approximately ten times the current revenue collected for WQM permit application and NOI fees.”

According to DEP, they reviewed the typical costs for construction projects subject to WQM permits and analyzed how this proposed fee increase would affect those costs. DEP estimates that the average cost of a new minor sewage treatment facility is approximately \$3 million. A professional engineer must design or oversee and approve the design of all construction projects under existing Chapter 91 regulations. DEP estimates that the design and engineering costs associated with a \$3 million sewage treatment project is approximately \$200,000. The proposed WQM permit application fee would increase from \$500 to \$5,000, but the increase would represent only 0.15% of overall project costs and 2.5% of engineering costs.

While DEP uses the overall project costs to minimize the impact of this proposed fee increase, it’s important to note that the actual proposed fee increase is **ten times** the current fee, which is unreasonable by any measure for a filing fee.

Moreover, EQB is also proposing automatic fee increases (by merely publishing said increases in the *Pennsylvania Bulletin*) every two years according to changes to the U.S. Bureau of Labor Statistics Employment Cost Index for State and Local Government Compensation (ECI). Although the fee will not be adjusted if application of the index would result in fees exceeding the DEP’s costs to administer the Clean Water Program, how will the regulated community know that when the DEP is only required to develop a report every three years summarizing its fee program for the EQB? Also, automatically setting fees based on an index is not authorized under the Clean Streams Law so it stands to reason that the General Assembly did not intend for such a mechanism.

In addition, what would prevent the DEP from transferring/allocating/prioritizing general fund revenues to other programs within DEP, and then backfilling the Clean Water Program with increased fees?

Finally, we are concerned with tying application fees to the overall cost of the permit review process because there are no incentives for DEP to become more efficient in reviewing complete permit applications. Providing DEP with more funding and additional staff has not produced the promised benefits of faster decisions on permit applications; thereby reducing costs to the regulated community. This is the danger of automatic increases without justification and regulatory review, particularly by the Independent Regulatory Review Commission (IRRC); therefore, we **oppose** the adoption of automatic fee increases.

Chapter 92a – National Pollutant Discharge Elimination System (NPDES)

NPDES permits are required under the federal Clean Water Act (33 U.S.C. § 1342), the Clean Streams Law, and 25 Pa. Code Chapter 92a for the discharge of pollutants to surface waters.

- EQB proposes to increase NPDES permit application and annual fees for most, but not all, categories of facilities.

- The existing fee categories established by the 2010 rulemaking would generally remain the same, but most fees would be increased.
- EQB proposes to eliminate the cap of \$2,500 on general NPDES permit NOI fees and establish that NOI fees may not exceed the equivalent individual NPDES permit application fees.
- EQB proposes to amend 25 Pa. Code § 92a.32 by clarifying that industrial facilities that seek a NO Exposure Certification in lieu of NPDES permit coverage and municipal separate storm sewer systems (MS4s) that seek a waiver from NPDES permit requirements must submit the relevant NOI or application along with the appropriate fee.
- EQB also proposes to add language that will require the DEP to adjust NPDES permit application fees according to changes to the U.S. Bureau of Labor Statistics Employment Cost Index for State and Local Government Compensation (ECI) every two years.
 - The adjustment would be based on the cost difference, if any, of the ECI for the most recent two-year period.
 - The proposed revision requires DEP to publish any changes to the fees based on the ECI in the *Pennsylvania Bulletin*.
 - Fee will not be adjusted if application of the index would result in fees exceeding DEP's costs to administer the Clean Water Program.
 - Fee increases exceeding the ECI change would require promulgation of a rulemaking.
- The proposed rulemaking would eliminate permit reissuance fees for most categories of facilities so that five annual fees are due per permit term rather than four annual fees and one reissuance fee.
- Additionally, the proposed rulemaking would establish a fixed date for payment of annual fees based on the effective date of the latest issued or reissued permit.

Approximately \$5 million in additional revenue would be generated from the receipt of NPDES permit applications and assessment of annual fees on approximately 4,000 facilities with individual NPDES permits. Moreover, if the ceiling of \$2,500 on NPDES general permit NOIs is removed from Chapter 92a as proposed, DEP may be able to collect up to \$2 million in additional revenue.

Comments:

Section 691.6 of the Clean Streams Law allows DEP to charge filing fees for applications by regulation, provided that the fee is "reasonable." The Clean Streams Law also allows for charging and collecting fees for permits issued (35 P.S. §§ 691.6).

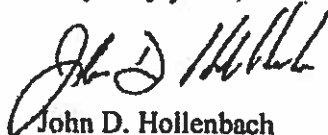
According to DEP, they evaluated the actual operating budgets of several large (> 1 MGD) sewage treatment facilities in Pennsylvania. The average cost to treat a gallon of wastewater is approximately \$0.68/gallon (this value increases when flow is less, and decreases when flow is more), meaning that the average treatment cost to plants is \$3.4 million. A 5 MGD sewage treatment plant currently pays \$12,500 over a 5-year permit term and would pay \$25,000 under the proposed rulemaking.

Again, DEP uses a percentage of estimated operating expenses of a 5 MGD sewage treatment plant to minimize the impact of this proposed fee increase, but it is actually **double the current fee** over the 5-year permit term and, in our view, unreasonable by any measure for a filing fee.

Finally, as with the WQM permit fee, EQB also proposes to add language that will require the DEP to adjust NPDES permit application fees according to changes to the U.S. Bureau of Labor Statistics Employment Cost Index for State and Local Government Compensation (ECI) every two years. For the same reasons as mentioned above with respect to the WQM permit fees, we **oppose** the adoption of automatic fee increases for NPDES permits without justification and regulatory review, particularly by the IRRRC.

Thank you for the opportunity to comment on this proposed rulemaking.

Very truly yours,



John D. Hollenbach
Chairman



Erik A. Ross
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