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February 3, 2021

The Honorable Patrick McDonnell  
Pennsylvania Department of Environmental Protection  
Rachel Carson State Office Building  
400 Market Street  
Harrisburg, PA 17101

Secretary McDonnell,

I am writing in reference to the Proposed Rulemaking before the Environmental Quality Board listed in the Pennsylvania Bulletin (Volume 50, Issue 49), Dam Safety and Waterway Management ([50 Pa.B. 6863), 25 PA. Code Ch. 105. Upon detailed review of the proposed changes to this important regulatory statute, I have a number of concerns and clarifying questions related to the negative impacts this proposed rulemaking change would have on our Commonwealth's environmental health.

As a Pennsylvania State Senator, who is elected to serve the public, getting feedback and stakeholder comment is instrumental in the process of developing thoughtful and comprehensive policy that is in the greater good for all Pennsylvanians. Input from a diverse and wide reaching list of stakeholders is vital during the development of any meaningful policy proposal. However, in some cases, when the desired outcome is preferred, requests for stakeholder feedback may be limited to only those organizations or individuals with known positions. I find strong evidence that this is the case in the current proposed rulemaking example. Specifically, when I approached stakeholders who I assumed would have been involved in the development of these changes, such as environmental and community organizations, they were unaware that the Department was contemplating such modifications to Chapter 105. However, upon review, it was discovered that organizations, such as the Pennsylvania Chamber of Business and Industry, were contacted for feedback almost one full year ago. If the Department was interested in sincere feedback regarding the environmental impact of these proposed rules, I find it necessary to expand the list of consulted stakeholders to include all interested parties, including those organizations that prioritize people and

environment over profits as a mission. Otherwise, this proposed rulemaking is simply a means to a desired and predisposed end, and could cause irreversible or extensive harm on both environmental and public health.

From a technical standpoint, in this proposed rulemaking, a number of terms are further defined. For example, the Department is seeking to define 'Maintenance' as, "a defined term to identify that periodic activities may be conducted to preserve the conditions of a dam, water obstruction, or encroachment as authorized by the Department." While this may seem benign, proposed rulemaking changes filed for the Pennsylvania State Programmatic General Permit - 6 (PASPGP-6) modified activities authorized at 25 PA Code § 105.131(c) – Maintenance of Reservoirs of Jurisdictional Dams. Specifically, this change required reporting of 'maintenance' when the activity is greater than .10 acre of jurisdictional wetland permanently impacted. This change removed the condition of temporary impacts to jurisdictional wetlands from reporting criteria and may therefore increase unreported environmental harm due to these definition modifications. Why the department, whose soul mission is to protect clean air, clean water, public health, and conserve working farms, forests, and natural lands, would propose any change to current rulemaking to increase unreported environmental harm is incredibly concerning.

Further, the proposed rulemaking defines permanent impacts as those impacts as, "both direct and indirect impacts that result from the placement or construction of a water obstruction or encroachment and include areas necessary for the operation and maintenance of the water obstruction or encroachment located in, along or across, or projecting into a watercourse, floodway or body of water," and temporary impacts as, "those areas affected during the construction of a water obstruction or encroachment that consists of both direct and indirect impacts located in, along or across, or projecting into a watercourse, floodway or body of water that are restored upon completion of construction."

I am concerned that construction related environmental impacts defined as temporary may be exempt from reporting requirements and respectfully request that this provision of the proposed rule be modified to ensure that all activity that could result in environmental damage, permanent or temporary, requires a permit and is subject to all reporting criteria.

I am equally as troubled regarding the impacts associated with § 105.13 (e)(4) of the proposed rulemaking that would allow the Department, conservation district, or delegated local agencies to make case-by-case determinations regarding the time period an applicant would have to remedy an inadequate application. It is my understanding that under the current regulation, there exists a 60-day period to provide information related to incomplete applications. This set period allows for the community to provide input related to an application, encourages awareness of any project that may create environmental harm, and ensures that technically deficient projects are rejected in a timely manner. Allowing individual agencies or departments to waive this requirement creates the potential for projects to be rushed through the process without proper public awareness or input. Rather, I would recommend additional requirements to increase public awareness during the permit process. After all, when a project

damages public or private drinking water resources, contaminates an exceptional value stream, or pollutes a public reservoir located in a Pennsylvania State Park, it is the public that is directly harmed. Further, the Clean Streams Law mandates protection of the waters of the Commonwealth as this vital resource belongs to the commons. The state oversees this resource in trust and on behalf of all Pennsylvania residents.

§ 105.401 would require project applicants to identify all public water supply wells within a one mile radius of any proposed discharges of dredged or fill material into aquatic resources. While the proposed amendments to paragraph (5) would require that the dredged or fill material is not contaminated and does not contain toxic material regulated under section 6 of the Toxic Substances Control Act (15 U.S.C.A. § 2605), a hazardous waste as defined by the Resources Conservation and Recovery Act of 1976, or a hazardous material as defined by regulation at 49 CFR 171.8, this proposed rule should incorporate private wells in addition to public water supplies. In my district, and throughout Pennsylvania, damage to private wells caused by Departmental approved activity often results in the complete abandonment of private water resources, forcing homeowners to pay for public water or, in rural areas of our Commonwealth, rely upon Water Buffaloes for clean water. It is simply unacceptable that permitted activity approved by the DEP would harm public water or render private water supplies unusable and I urge the department to incorporate private well identification as a requirement of any activity.

Further, following water impacts in my district, and toxic leachate seeping from landfills that accept radioactive waste from the fracking industry, I was shocked to discover that the Department does not adequately test for baseline groundwater quality and when contamination events are experienced, the testing protocol implemented by the DEP is extremely limited. For example, rather than testing for the full range of chemical and radioactive impacts, the Department simply tests for a handful of Volatile Organic Compounds, Volatile Inorganic Compounds, and several heavy metals. This is simply unacceptable to the environmental and public health for all Pennsylvanians. I urge the DEP to fully and completely test for the full range of possible contaminants in Commonwealth waters and hold those actors accountable that render our shared water resources impure.

Finally, I am especially concerned with a proposed amendment to § 105.13(d) that would allow projects crossing county boundaries to be submitted under one permit application. While the proposal does not specify, this type of change would directly support permit applications for multi-country pipeline projects. The single permit will remove aspects of local control associated with permitted activities and limit public participation associated with the consideration of future permits. In addition, the Departments directly states that this proposed change would result in additional cost savings for the regulated community. This is confounding as it should be the mission of the department to protect environmental resources and not assist in the pinching of pennies for industry partners. I must strongly reject any argument that this change would improve future constitutions of our environmental communities and urge the immediate rejection of modification that would make it easier for environmental harm to be caused throughout our Commonwealth.

I thank you for your consideration of these concerns and trust that the board will act in a manner that is in the best interest of environmental quality. Many of the proposed rules presented fail to meet the full mission of the DEP and I hope that they will not be incorporated when a file rule is presented.

Sincerely,

A handwritten signature in black ink, appearing to read 'Katie Muth', with a stylized, cursive flourish extending to the right.

Senator Katie Muth, SD44