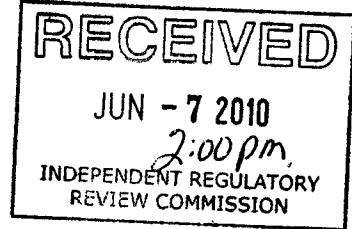


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June 7, 2010



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Independent Regulatory Review Commission  
333 Market Street  
14th Floor  
Harrisburg, PA 17101

Subject: Comments on EQB Regulation 7-446 (IRRC 2806)

To Members of the Commission:

On behalf of the Greater Pittsburgh Chamber of Commerce, I appreciate the opportunity to comment on the Department of Environmental Protection's proposed revisions to Chapter 95.

In 2000 the Greater Pittsburgh Chamber of Commerce entered into a strategic affiliation with the Allegheny Conference on Community Development, along with the Pennsylvania Economy League of Southwestern Pennsylvania and the Pittsburgh Regional Alliance. The affiliation plays to the strengths of each organization – the advocacy efforts of the Chamber, the research and analysis expertise of the Economy League, and the marketing intelligence capabilities of the PRA. These strengths, guided by private sector leadership, enable an efficient model for regional improvement.

The Chamber's history of environmental advocacy is long and distinguished, and we appreciate and respect the Department's concern for water quality in the Commonwealth's waterways. However, we believe the Chapter 95 revisions as forwarded by the Environmental Quality Board should be rejected by the Commission for the following reasons:

**1) The Department's intent is not adequately reflected in the language of the proposed rule:** In the wake of the Commission's March 15 comments on the rule as originally proposed, the Department met extensively with industry representatives and stakeholders across the Commonwealth to better understand concerns about how the proposed regulation would impact existing industrial users. Throughout those discussions the Department sought to assure stakeholders that the intent of the proposed regulation was to apply only to *new* TDS discharges and would not impact existing discharges. "From the inception of the rule, the intent of the Board was to exempt existing discharges..." (Wastewater Treatment Requirements Order, p. 17)

However, that intent is not captured within the language of the proposed rule itself. Rather, the proposed rule exempts "maximum daily discharge loads of TDS or specific conductivity levels that were authorized by the Department prior to" the effective date of the proposed regulation.

That formulation ignores the reality that most TDS discharges in the Commonwealth are not specifically *authorized* by the Department, but rather are *not prohibited*. The Department attempts to clarify this condition by describing within the Order what constitutes an “authorization” by the Department – in essence, any TDS discharge that the Department is aware of but has not prohibited: “Therefore, if TDS (or conductivity) data have been reviewed by the Department as part of an application for an authorized discharge, the discharge load of TDS has been authorized upon issuance of the permit (or other vehicle), regardless of whether there is an actual limitation or monitoring requirement.” (Order, p. 18)

However, this explanation is not consistent with the plain reading of the language in the proposed rule. That inconsistency will make enforcement of the proposed regulation difficult, will place Department personnel assigned to enforce it in an untenable position, and will inevitably lead to unnecessary litigation. The proposed rule should not be promulgated unless and until the language includes appropriate definitions of existing discharges that are exempt from the new proposed regulations.

**2) The language in the order is materially inconsistent:** While attempting to define existing discharges that are exempt from the proposed regulation, the Department provides conflicting definitions for the same term within the Order. On page 18 of the order, it defines “existing discharge load” as “the maximum daily discharge load authorized ‘prior to’ the effective date of the final rule...even if the facility has in fact typically discharged at a lower load than that authorized by its permit.”

In the very next paragraph, on page 19, the Order states: “...existing discharge loads can be established through sampling of the existing discharge. At least 10 daily composite samples, representative of the discharge during normal operations and taken at least one week apart, should be adequate to characterize the existing discharge load.”

These conflicting definitions of a key provision of the proposed regulation – what, precisely, would be subject to the new regulation and what would be exempt – by themselves constitute a fatal flaw in the proposed regulation.

(The above discussion underscores the problem identified in #1: If the contradictory language were in the proposed rule itself, it would be easy to cite 95.10 (sub section) (subsection) contradicted 95.20 (subsection) (subsection). Since the Order contains no such structure, it is difficult to ensure that parties are examining the same sentences when discussing perceived problems.)

**3) The proposed regulation treats the oil and gas industry inappropriately:** The oil and gas industry is singled out for more stringent treatment requirements than other industrial users. By restricting the natural gas industry from treatment options and procedures that are available to other industrial users places the natural gas industry in a regulatory strait-jacket that is unnecessary and inordinately expensive.

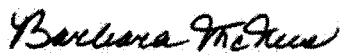
**4) Lack of understanding of the fiscal impact of the proposed regulation:** In its March 15 comments, the Commission stated: “The EQB needs to demonstrate that it fully considered the potential costs of complying with the regulation. The EQB should submit a detailed fiscal impact study with the final-form regulation.” The EQB and the Department have not done such a study. And there remains considerable disagreement over the cost of compliance. The Department asserts the claims by the technology providers that the cost of TDS

treatment is \$0.25 per gallon; affected industries that would have to pay the bill claim the cost is much higher.

**5) Effective date:** The Department proposes that the proposed regulation take effect immediately upon publication in the Pennsylvania Bulletin in its final form. Given technical limitations, including but not limited to the time required to identify, acquire, and install water treatment technology that might be necessary, it is unclear whether affected industrial users would be able to comply even with extraordinary efforts.

Thank you for the opportunity to comment on the proposed revisions to Chapter 95.

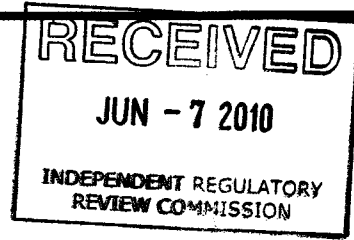
Sincerely,



Barbara McNeese  
President, Greater Pittsburgh Chamber of Commerce

2806

**From:** Jennifer Beer [jbeer@alleghenyconference.org]  
**Sent:** Monday, June 07, 2010 11:00 AM  
**To:** IRRC  
**Cc:** RegComments@state.pa.us  
**Subject:** Comments RE: #7-446 (#2806)  
**Attachments:** Chamber IRRC 2806 Comments (06-07-10).pdf



Please find attached comments from the Greater Pittsburgh Chamber of Commerce regarding regulation #7-446 (#2806).

Please feel free to contact me with any questions or concerns.

Thank you.

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