



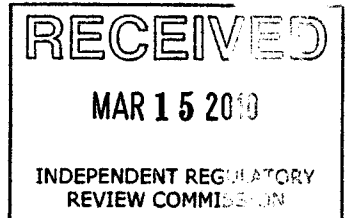
2819

LEHIGH COUNTY AUTHORITY 1053 SPRUCE STREET * P.O. BOX 3348 * ALLENTOWN, PA 18106-0348
610-398-2503 * FAX 610-398-8413
email: service@lehighcountyauthority.org

**Department of Environmental Protection Proposed Amendment of the National Pollutant
Discharge Elimination System (NPDES) Permitting, Monitoring and Compliance
Regulations [25 PA. CODE CHS. 92 and 92a]**

Issued: 40 Pa.B. 847 Saturday, February 13, 2010

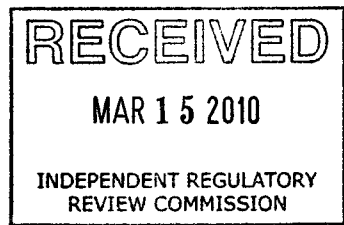
Comment Deadline: March 15, 2010



1. **Summary:** Although the stated intents for the Chapter 92 revisions are commendable; the changes will:
 - a. Create more confusion or the opposite effect of clarity in many cases,
 - b. Add significant and in some cases dramatic changes and associated costs to the public for new and unjustified wastewater treatment requirements.

2. **Stated Intent:**
 - a. *"The primary goal of the proposed rulemaking is to reorganize the existing NPDES regulations outlined in Chapter 92 so that the organization of the regulations is consistent with the organization of the companion Federal regulations ..."*
 - b. *Every effort has been made to revert to the baseline Federal requirements except where additional or more stringent requirements in Chapter 92 were clear, well understood, and have an appropriate basis in The Clean Streams Law or other appropriate basis.*
 - c. *"... the proposed rulemaking does not include any new broad-based treatment requirements that would apply to most facilities."*
 - d. *"...so that the total additional cost to the regulated community will be approximately \$4.25 million per year"*

3. **Consequences:**
 - a. Federal "variance" provisions have been dropped
 - b. Requires tertiary treatment at significant costs *even on non- HQ or EV streams or impaired waters -see 92a (a)(1) after the "or"*
 - c. New broad based revised and/or additional standards will apply to many POTW as they increase hydraulic capacity to address wet weather issues or increase their capacity in the future, which is inevitable costing hundreds of millions
 - d. Lack of scientific or economic justifications for many of the significant changes that will affect costs and compliance.



2819

LEHIGH COUNTY AUTHORITY 1053 SPRUCE STREET • P.O. BOX 3348 • ALLENTOWN, PA 18106-0348
610-398-2503 • FAX 610-398-8413
email: service@lehighcountyauthority.org

March 13, 2010

Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

RE: Proposed Amendment of Chapter 92 The National Pollutant Discharge Elimination System (NPDES) Permitting, Monitoring and Compliance Regulations [25 PA. CODE CHS. 92 and 92a]

Dear Board Members:

Lehigh County Authority provides public drinking water and wastewater services to approximately 19,000 customers throughout Lehigh County. As a public water and wastewater service provider, we are familiar with the current regulations regarding NPDES permitting and compliance.

Generally, we are supportive of the change to regulations that are protective of the environment and consumers based on rational economic and scientific evidence and applaud efforts to streamline and clarify such regulations. However, we find that many of the proposed changes to Chapter 92 will further increase confusion, have eliminated longstanding time tested standards, added unjustified and unnecessary additional treatment requirements with costs that have the potential to reach into the billions of dollars. The preamble contains statements that appear unjustified, provides no citations of authoritative studies or sources, and misrepresents the significant requirements and costs of the proposed changes. We provide more specific concerns with this proposal below. While we believe all of the issues cited below are important and need to be addressed, we begin with those which believe to be the most significant. In addition we refer you to the extensive and detailed concerns of two parties that will provide you with valuable, knowledgeable and insightful comments, questions and recommendations; namely Pennsylvania Municipal Authorities Association (PMAA) and Randall G. Hurst, Esq. (RGH). We request that you extend the deadline for comments and open a dialogue between the Department and a representative group of knowledgeable stakeholders to achieve your original goals for streamlined, unambiguous regulations that are well coordinated with their federal counterparts and that do not add unjustified additional treatment burdens on the public's already strained finances.

Due to its significance we will first draw your attention to § 92a.47 (b).

(b) Sewage, except that discharged from a CSO that is in compliance with subsection (d), or that discharged from a small flow treatment facility, shall be given a minimum of tertiary treatment if either of the following apply: (1) The discharge from a new source, new discharger, or expanding facility or activity is to a surface water classified as a High Quality Water or an Exceptional Value Water under Chapter 93 (relating to water

quality standards), or to a surface water or location for which the first intersected perennial stream is classified as a High Quality Water or an Exceptional Value Water.
(2) The discharge from a facility or activity affects surface waters of this Commonwealth not achieving water quality standards, with the impairment attributed at least partially to point source discharges of treated sewage.

§ 92a.47 (b) Tertiary treatment Requirement This new standard will require substantial treatment requirements for discharges to impaired or antidegradation streams (or those that intersect first with a stream designated as HQ or EV- see the next paragraph below) that may be unnecessary depending on the site specific issues. There are substantial current regulations that address these water quality issues that have been validated over time. The proposal has not substantiated that the existing regulations are not achieving or are unable to achieve their goals. In addition the likely outcome is that dischargers that would be subject to this provision will chose to build satellite facilities in lieu of expanding the capacity of existing (and most likely larger) facilities due to the lower costs of new capacity in a new satellite plant; therefore, these older and in some cases larger facilities will continue at their current level of treatment due to this grandfathering provision, which may undermine the goals of The clean Streams Act. The old adage of "one size fits all" obviously has little validity in our modern more precision oriented society, especially in complex, highly technical environmental infrastructure issues. The application of appropriate tailored solutions to these issues is require for the efficient use of limited environmental capital. The planning and design of facilities for efficient higher treatment level upgrades would be more rational and appropriate than requiring substantial treatment investment before the technically required to meet water quality standards.

In addition to the concerns expressed above, the language in this section after the "or" would require that a discharge to a larger stream or river that maybe a Warm Water Fishery that intersects with the first perennial stream (that could be an insignificant fraction of the larger stream's flow) classified as High Quality or Exceptional Value would be required to meet the new Tertiary Treatment Standards at a minimum. We assume that this is not the intent; however, the consequences are extremely significant. Lehigh County Authority (LCA) has been investigating several new discharge locations as well as an expansion of the City of Allentown's plant on the Lehigh River and each one of these scenarios would be impacted by discharged to a large stream that fist intersects with a HQ or EV stream. This requirement would cost the City of Allentown in excess of \$200MM for a 10% or 4MGD increase in flow and would cost LCA \$70-80MM for an additional capacity in the form of a new discharge should the City not expand it plant.

The tertiary treatment requirement is triggered by a new source, new discharger, or expanding facility or activity. Due to the above provision and the definition of expanding facility or activity if an existing facility is ordered or wishes to increase it hydraulic capacity to better manage wet weather flows even though it will not increase any pollutant loads, it will now need to meet the tertiary standards although it is not increasing its' annual average design flow. The facility is expending large resources to address one problem and automatically triggers another more expensive regulatory requirement although it not contributing any more pollutants. DRBC has exempted an increase in hydraulic capacity for wet weather attenuation, as requested by LCA, from its trigger points for compliance with its Special Protection Waters. This is an appropriate exemption and we request that it be added.

§ 92a.47 (a) Secondary treatment Requirement The proposed rule provides no authoritative justification for the changes to secondary treatment and conflicts with the applicable Federal rules in Part 133. In addition it dismisses time tested Federal standards developed over the last 40 years without providing scientific and engineering analysis to justify the changes. No economic analysis of the potential consequences of the proposed change has been provided.

§ 92a.61 Annual Fees It appears that the proposal is increasing fees for Department expenses beyond those expenses delineated in the Clean Streams Act which specifically states the Department is authorized to collect "reasonable filing fees for applications filed and for permits issued." Given a 660% increase in fee, the Department should provide a detailed analysis of the legitimate costs of operating the permitting process and the legal case for the increased fees.

§ 92a.41(c) Permit Conditions—absolute ban on floating material, FO&G, and other discharges. If as noted in the preamble the existing language is "cryptic and nebulous" the simple solution is to better define the goal or standard; eliminating the existing language and creating a ban on "floating substances," "sheen," and "color, taste, and turbidity." that would put a vast majority of POTW in immediate non-compliance is certainly not an acceptable solution. There are minute analytically measureable amounts of these substances in all discharges; however, it does not appear that regulating the minute was the intent of the existing regulations.

§ 92a.2 Definitions

Daily Discharge, subparagraph. (ii) According to EPA "To compute average pH readings, you will need to convert the pH reading into the hydrogen ion concentration, average the hydrogen ion concentration, and then convert the average hydrogen ion concentration back into a pH reading." <http://www.epa.gov/epawaste/hazard/tsd/ldr/icr/sisfaq1.htm>

Expanding facility or activity. This needs to be further defined as it is too broad of a definition. What are benchmarks against which one measures an increase in flow or pollutants? Facilities are planned and designed for the future given a projected growth in demand and it is expected that flows and loads will increase. Therefore the existing permitted pollutant mass loads should be the benchmark for measuring an increase in the discharge of pollutants. We do not believe an "expanding" flow should be a sole trigger of the tertiary treatment standard as noted above concerning expanding hydraulic capacity needs for wet weather flow control, when the annual average flow has not changed. If this is not further defined, the term "Expanding facility or activity" could be interpreted that a natural increase in flows and loads within the original design and permit as an expanding facility, which would trigger tertiary treatment requirements at a significant cost to the public for many plants under the proposed regulations.

Immediate Four hours maybe very difficult for many facilities when they are in an emergency mode and responding to the actual event, especially small operations with limited resources; 8 hours would be more appropriate. The definition and the reporting requirement do not designate when the immediate 4 hour window of notifications would begin. To reduce confusion the Department should clarify this point such that it begins at the point that the owner first becomes aware of the situation or reasonably should have known about the situation.

POTW Subparagraph (iii) should be clarified, otherwise, the subparagraph could be interpreted to mean that private sewers, landfills, biosolids application sites or sewage hauling vehicles are part of the POTW unless "the phrase is owned by a municipality" is added at the end of the sentence.

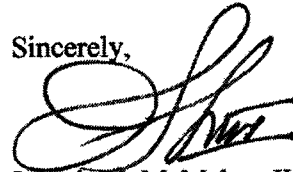
§ 92a.26(a) Permitting procedure There needs to be deadlines for actions required of both the regulated as well as the regulatory parties, without which there is no incentive for timeliness of submittals and approvals. The consequences of no deadlines should be obvious.

Given the lack of clarity, the major treatment requirements, the potential for cost increase in the billions of dollars, the lack of scientific, engineering or economic justifications; it is clear that both the regulated community as well the Department will see an increase in cost and workload as a result of these proposed changes which will not accomplish the Departments stated objectives. These regulations should be withdrawn and a properly documented, scientifically and technically sound, proposal resubmitted for comment.

To reduce the potential for further problems in drafting new regulations it is suggested that the Department involve a knowledgeable group of stake holders and professionals in this technical discipline to develop both the framework for regulatory reconstruction as well as draft language that meets the objectives of the Clean Streams Act while streamlining and clarifying the regulations.

We thank the Board for this opportunity to comment on the proposed regulations and would be pleased to answer any questions or provide further information related to our comments or other matters that may arise as this regulatory process is pursued.

Sincerely,



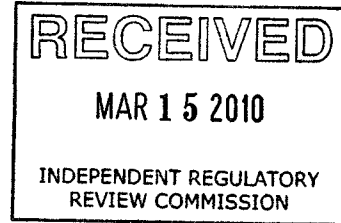
Joseph M. McMahon III
Projects Manager

cc: Aurel Arndt, LCA
Pete Slack, PMAA
Randall Hurst, Esq.
John Brosious, PMAA

2819

From: Joseph McMahon [josephmcmahon@lehighcountyauthority.org]
Sent: Saturday, March 13, 2010 11:45 AM
To: EP, RegComments
Subject: Proposed Chapter 92 a Comments
Attachments: Chap 92a EQB.pdf; Scan001.pdf

Importance: High



Good Day,

Please see the attached comments and summary sheet.

Regards,

Joe

Joseph M. McMahon III
Projects Manager
Lehigh County Authority
1053 Spruce Street P.O. Box 3348
Allentown, PA 18106
Tel. 610-398-2503
Fax 610-398-8413
<http://www.lehighcountyauthority.org>
josephmcmahon@lehighcountyauthority.org