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September 25, 2017

**Re: Environmental Quality Board Proposed Regulation  
Safe Drinking Water; General Update and Fees**

Environmental Quality Board  
c/o Pennsylvania Department of Environmental Protection  
Rachel Carson Building  
400 Market Street  
Harrisburg, PA 17101

To whom it may concern:

On behalf of the 14,000 small-business members of the National Federation of Independent Business (NFIB), I am writing to comment on the above-referenced proposed rulemaking, which amends Chapter 25 Pa. Code Chapter 109 to provide for general updates and fees related to safe drinking water in the commonwealth.

NFIB understands that the rulemaking is intended, in large part, to address the Department of Environmental Protection's (DEP's) "funding gap" so that the agency has sufficient staffing and other resources in the Safe Drinking Water Program to continue to serve as the primary enforcement agency for the administration of this program in Pennsylvania under Federal law.

NFIB also notes that states that provide primary enforcement of their public water supply program under section 1413 of the federal Safe Drinking Water Act (SDWA) have minimum critical services under the program that must be provided. These are listed by the Board under Part II (page 7) of the preamble. The paragraph that follows states that "[f]ailure to provide these fundamental services may result in an increased risk to public health as well as the loss of approval from EPA for the Department to serve as the primary enforcement agency..."

Section 4 of Pennsylvania's Safe Drinking Water Act requires that the Board adopt requirements for drinking water "no less stringent than those promulgated under the Federal act..."

However, the rulemaking, in Question 11 of the Regulatory Analysis Form (RAF) lists several areas where the proposal is more stringent than federal requirements, including: turbidity and filtration, comprehensive monitoring plan requirements, system resiliency requirements, and requirements for responding to significant deficiencies.

In other words, this rulemaking adds complexity and costs to businesses and other regulated entities that are not mandated by the federal government. For example, in order to comply with proposed state requirements for resiliency through auxiliary power, costs for businesses to comply range from an estimated \$3000 for small systems to up to \$200,000 for large treatment plants.

NFIB questions, at a time when program resources are at a premium (federal, General Fund, and program revenues) and large fee increases are proposed, whether now is the right time to suggest increasing the complexity of the program beyond the requirements of federal law. In fact, DEP cites the “ever-increasing complexity of the drinking water program” as an agency workforce limitation on page 10 of the preamble. This complexity is compounded for small businesses who must comply with the program.

It would be prudent to limit the requirements of the program to the minimum federal program elements, thereby reducing the program’s responsibilities surrounding the permitting, verification, monitoring, and enforcement of these specific provisions, which the federal government has deemed adequately addressed in other ways. It may also help limit fee increases and stabilize program resources, until the impact of the new regulations is clear. Limiting regulatory requirements to federal minimum standards at this time would help bring program resources into line and allow DEP to focus on its inspection program without jeopardizing Safe Drinking Water Program primacy.

NFIB was disappointed with the rulemaking’s responses in the RAF to questions related to the impact on small businesses. Our individual members found it difficult to discern how the rulemaking applies to their businesses and therefore, difficult to craft comments. Page 7 of the preamble notes that 68% of water systems in the commonwealth are considered small businesses, though answers to questions pertaining to small businesses did not address their specific concerns. The answer to question 15 of the RAF, which speaks specifically to the impact on “number and types” of “persons, businesses, small businesses, and organizations,” uses the federal statutory definition of “small water system” to estimate the number of small businesses affected to be 5,780. It would be most helpful if the rulemaking would provide more specific details about the types of businesses these “small water systems” are because most of them likely do not consider themselves to be “water systems,” but rather campgrounds, motels, restaurants, gas stations, ski resorts, manufacturers, etc.

Many small businesses, especially in rural areas, provide water to customers from a ground water source and are considered “water systems” under this rulemaking. Some of these businesses, including motels, restaurants, and gas stations, are transient noncommunity water systems. Other businesses, including factories, manufacturers, and other small businesses, which regularly provide water to more than 25 employees, are nontransient noncommunity water systems. There are also some small businesses, like small private communities and long-term campgrounds that are community water systems. Others are retail water facilities that bottle and sell water. Each of these types of small business are treated differently under the proposed rulemaking. The agency has permit data from these businesses and could provide more specific information that may be helpful to discerning the impact of the proposed regulatory changes on each type of entity, but the rulemaking does not attempt to do this.

Question 15 notes that some of these small public water systems “will be affected by the need to change operations and make capital improvements to comply with some of the proposed provisions” and refers readers to the answers to subsequent questions for details. But, although it

may be clear to regulators, it is not clear to many others how the new proposed requirements will apply to these specific types of businesses and how much the additional costs will be.

For example, proposed amendments to section 109.706 combine paragraphs pertaining to community water suppliers and noncommunity water suppliers into one section and update the requirements of the water system map. Many noncommunity water suppliers are small businesses, but it is unclear exactly how the updates to this section will affect them. This is one small example, and likely, one of the least burdensome of the proposed new requirements.

Section 109.505, relating to requirements for noncommunity water systems, contains several changes for systems that are not required to obtain construction and operation permits if they satisfy specific conditions. The Board is proposing to increase the requirements for this permit exemption, which we believe would affect many small businesses. It is not clear in the rulemaking, however, how many entities will be affected by these changes because a number is not provided, nor is the total cost impact on these affected businesses.

The new applications required by section 109.505 are proposed to cost \$50 upon submission, which, if they were one-time application fees for approval of the water system, are limited, but paragraph 109.505(2)(ii) would also require the noncommunity water system to submit a new application any time there is a "proposed modification" (as opposed to a "substantial modification") or a "change of ownership." NFIB questions what a "proposed modification" is and whether changes such as conversions to LLCs, changes of partners or names, typos on applications, etc. are included and a new application (additional paperwork) and \$50 fee would be required of the applicant each time.

Most concerning of all related to the non-permitted noncommunity water systems affected by section 109.505 is the lack of clarity about whether these entities are subject to the annual fees in section 109.1402. It appears from statements throughout the rulemaking that these noncommunity water systems, which do not currently pay a fee because they are exempt from permit requirements, will not only be subject to the \$50 application fee discussed above, but also to the annual fees provided in paragraphs 109.1402(a)(2) and 109.1402(a)(3), which range between \$50 and \$1000 per year, depending on population served.

These new and unexpected fees are an enormous cost to bear, especially for small businesses that do not currently pay a fee at all for their water systems and who are not permittees of the department. These entities should be limited in their responsibility to finance the Clean Drinking Water program because they are exempt from the permitting requirements maintained by the program.

If the intent, despite the language in the rulemaking, is to exempt these noncommunity water system applicants from the annual fees, we would suggest providing language in section 109.1402, related to annual fees, similar to that provided in 25 Pa. Code, section 92a.62, which refers to annual fees in the Clean Water Fund paid by "permittees."

NFIB appreciates that the Board is proposing graduated fee schedules to help small businesses, which often find it more difficult to comply with onerous regulatory requirements than their larger counterparts. However, we would also ask that the Board consider alternatives to drastically increasing fees across the regulated community.

Finding efficiencies and alternatives to the proposed fee increases help the businesses who directly pay them, but also help customers and public water system users, who will pay higher prices (user fees) as a result of these increased regulatory burdens. Almost all small businesses are consumers of water and will bear the burden of these increased fees, even if they are not public water systems.

Please consider, as mentioned above, proposing federal minimum requirements for the SDWA program at least until program resources and funding can be brought into alignment. In question 27 of the RAF, the Board notes that “[o]ther regulatory methods were not considered.” We ask the Board to consider regulatory methods that do not include exorbitant fee increases, including *less* onerous regulations, which still comply with federal statute, but will reduce the burden of enforcing the SDWA requirements on program staff. This will reduce the costs and complexity of the program and therefore the burden on the regulated community and the citizens and businesses of the commonwealth, while still maintaining protection of the public.

Please do not hesitate to contact me if you have any questions on this or any other issue affecting the men and women who own or work for Pennsylvania small business.

Sincerely,

A handwritten signature in black ink that reads "Kevin Shivers". The signature is written in a cursive style with a large, stylized 'K' and 'S'.

Kevin Shivers  
Executive Director