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ENVIRONMENTAL RESOURCES AND  
 ENERGY COMMITTEE  
 CHAIRMAN



September 13, 2022

Independent Regulatory Review Commission  
 333 Market Street  
 Harrisburg, PA 17101

Dear Commissioners:

As members of the House Environmental Resources and Energy Committee, we write to you to express our disapproval of final-form Environmental Quality Board (EQB) Regulation 7-553.

The Committee voted on September 13th in favor of sending you this letter on behalf of the citizens and businesses in our districts who will be negatively impacted if this regulation goes into effect as written. As the standing House Committee with legislative oversight over the Department of Environmental Protection (DEP), it is our role to ensure that regulations proposed by DEP through the EQB are reasonable and consistent with our statutes. This regulation fits neither criteria.

While there are a number of substantive concerns we have with the regulation primarily because of the enormous negative consequences it will have on vital industries within our state because of the burdensome nature of the regulations, we will focus this letter on the two violations of the law which this regulation represents, which we as the standing committee of review are uniquely positioned to discuss. The DEP's refusal to follow the Regulatory Review Act (RRA) in the development of this regulation and their refusal to follow the clear text of Act 40 of 2017 means both that the regulation should be found to not be in the public interest because it does not conform to the intention of the General Assembly and because it fails to comply with the Regulatory Review Act and we respectfully urge you to find the same.

First, as we discussed when this regulation was proposed and as you queried DEP about in your comments regarding this regulation, DEP's proposed regulation does not meet the definition of a proposed regulation under the RRA. A proposed regulation is defined as "[a] document intended for promulgation as a regulation which an agency submits to the commission and the committees..." in Section 3 of the RRA. DEP in this circumstance submitted a proposed regulation which included two alternative points of compliance which means that they submitted two options within one single rulemaking package. Because of these two options, the document

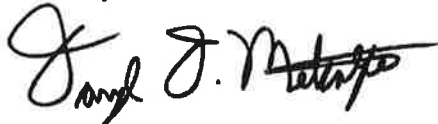
that they submitted could not possibly be intended for promulgation as a regulation, as one of the options would need to be removed before the regulation could be promulgated.

This violation of the RRA is not one without consequences. Doing so makes it difficult for the interested public and industry to track, comment, and analyze the impact of the proposed regulation. No interested parties will have certainty about this regulation until DEP brings forward a final regulation to the Environmental Quality Board, after which the timeline before enactment is compressed and there is much less room for public participation than at the proposed stage. Additionally, after reviewing the comments received at the proposed stage, much of the discussion was unfortunately about the benefits of one version of the regulation as opposed to the other version of the regulation, instead of the ultimate question, which is the benefits of this single, specific regulation that will be promulgated as opposed to not moving forward with that specific regulation.

The unfortunate part of this illegitimate procedure is that the DEP went down this road to attempt to be able to claim that they were following the directive of Act 40 of 2017, but they have still so clearly failed to do so. Act 40 of 2017 required that DEP promulgate a regulation to move the point of compliance for manganese from the point of discharge and be applied at the potable water supply withdrawal point. DEP claims that they have complied with this statute because they included this as an alternative option at the proposed stage, but this claim is patently absurd. The General Assembly clearly intended that a regulation be promulgated and go into effect which changed the point of compliance. The directive of the Act was crystal clear and the failure of the Department to do so means that this regulation is not in the public interest.

This regulation is unacceptable, and if implemented would have a severe financial impact on our Commonwealth's businesses, particularly considering the present economic climate. It would also set an improper precedent of allowing agencies to thwart the regulatory process by proposing alternatives within the same regulatory package. We therefore ask IRRC to disapprove this regulation in its final form since the provisions of the regulation run contrary to the language and intent of the Act on which they are based and are against the public interest. We, the undersigned members of the House Environmental Resources and Energy Committee, write this letter to draw your attention to our concerns and disapproval of this final form regulation and respectfully ask for your consideration.

Sincerely,



Daryl D. Metcalfe, Chairman  
Environmental Resources & Energy Committee



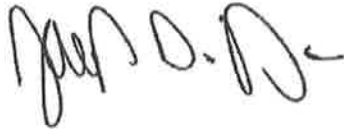
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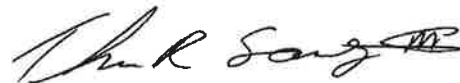
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Rep. Pam Snyder  
50<sup>th</sup> Legislative District

CC: Environmental Quality Board  
Department of Environmental Protection