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March 15, 2010

Via email: RegComments@state.pa.us

Environmental Quality Board
Rachel Carson State Office Building, 16th Floor
400 Market Street
P.O. Box 8477
Harrisburg, PA 17105

Re: Proposed Changes to 25 Pa. Code Ch. 92 and 92a, National Pollutant Discharge Elimination System (NPDES) Permitting, Monitoring, and Compliance, 40 Pa. Bulletin 847 (Feb. 13, 2010)

Members of the Board:

On behalf of its membership comprising thousands of businesses of all sizes and across all industry sectors, the Pennsylvania Chamber of Business and Industry ("Chamber") respectfully offers the following comments concerning the proposal to rescind Chapter 92 and replace it with Chapter 92a to present a complete rewrite and reorganization of PA's NPDES regulations.

This proposal represents a very significant change to PA DEP's current NPDES regulations. It is, in essence, a complete rewrite of the regulation. DEP's goal was to reorganize the pre-existing regulations to incorporate Federal NPDES regulations (40 CFR 122) by reference, incorporate additional new and more stringent requirements, and establish a new increased NPDES fee structure, and then organize the new NPDES chapter so that the regulated community and DEP staff more easily see and understand the differences between the Federal and additional PA requirements.

Section 92a.2 Definitions

The Chamber recommends changing the definition of "Minor Amendment." In the proposed regulation, DEP provides the definition of Minor Amendment as "An amendment to an NPDES permit to correct a typographical error, increase monitoring requirements, change interim compliance dates by no more than 120 days, delete an outfall, change a construction schedule for a discharger that is a new source, or to incorporate an approved pretreatment program into an existing permit."

This is not a definition of a minor amendment; it is simply a short, specific list of items that would be considered minor changes to a permit. Further, the list of items constituting a minor amendment does not include everything that could possibly be a minor amendment item and it does not allow for professional judgment on the part of the permit writer. The Chamber recommends the following definition:

"Minor Amendment - Any change to the basis for a permit that does not require a new application or a 30-day public comment period for the change. Some examples of minor permit amendments include: to correct a typographical error, increase monitoring requirements, change interim compliance dates by no more than 120 days, delete an outfall, change a construction schedule for a discharger that is a new source, or to incorporate an approved pretreatment program into an existing permit. This list is not all inclusive and site-specific determinations will be made by the Department."

Section 92a.5 Prohibitions

In the proposed language for 92a.5(b), the Department states, "A permit may not be issued, modified, or reissued for a sanitary sewer overflow." This language is a distinct change from current PA DEP regulation 92.73(8), which states that a permit will not be issued, modified, or reissued "for a sanitary sewer overflow, except as provided for in the Federal regulations." The Chamber is concerned that this change in language in the proposed rule, specifically the deletion of "as provided for in the Federal regulations" ignores or disallows the language as contained in 40 CFR 122.41(m)(4)(i)(A)-(C), which provides exception to a treatment system bypass if a bypass is (a) unavoidable to prevent severe property damage or personal injury, (b) there were no feasible alternatives, and (c) the NPDES authority was notified. The Chamber is also concerned that the proposed language of 92a.5(b) also disallows any EPA regulation or policy on bypass or blending, such as EPA's proposed November 2003 wet weather blending policy. The Chamber requests that the proposed 92a.5 language be modified to specifically allow these Federal regulations and policies.

Section 92a.26 New or increased discharges, or change in waste streams

The Chamber questions the relevance of the 60-day notification requirement for "**facility expansions** or process modifications, which may result in increases of permitted pollutants that do not have the potential to exceed ELGs or violate effluent limitations specified in the permit." In the preamble, DEP states that these discharges may be initiated without prior approval of the Department, and allows flexibility and limits the burden on both the permittee and the Department. But, the Chamber is very concerned about the relationship between this "flexible notification allowance," and the proposed tertiary treatment standards in section 92a.47, which state that a discharge from an **expanding facility** to EV, HQ, or impaired waters will be required to meet the proposed tertiary treatment standards. By way of the proposed 60-day notification rule, will a facility expansion that still meets ELG or permit limit requirements now be told by the Department at some date after they have commenced the increased discharge, which is pre-authorized under proposed section 92a.26, that they will now have to go back and meet the proposed tertiary treatment standards? The Chamber is extremely concerned about this potential situation, and recommends adding language to 92a.26 that states that facility expansions that still meet ELGs and permit limits be exempted from the treatment standards in section 92a.47.

Sections 92a.28 (Application Fees) and 92a.62 (Annual Fees)

In the proposed rule, DEP intends to replace the current \$500 application fee for an individual NPDES permit with a sliding scale application fee, and start a new sliding scale annual fee. In both cases, the fee is based on the size of the discharge. According to section D of the preamble (Background and Purpose), the new fee structure will produce \$5 million annually for DEP versus \$750,000 per year

under the current fee structure. The preamble also points out that this \$5 million in revenue will only cover 40% of the cost to administer the state NPDES program, with other 60% (equal to \$7.5 million) coming from Federal grant. This equates to a total annual cost to run the PA NPDES program of \$12.5 million. This is equivalent to 125 Full Time Employees (FTE) to run one specific aspect of PA DEP, with 50 of those FTEs coming from the new fee structure. The preamble states that prior this proposed fee structure, the Commonwealth of PA subsidized their share (40%) of administering the NPDES program and subsequent regulation of the dischargers, but further state that this is no longer financially feasible. In other words, DEP is now asking the regulated community to fully bear the costs of the NPDES program. In this spirit, the PA Chamber of Business and Industry requests that DEP provide the accounting and financial documentation that demonstrates the costs of administering the NPDES program and regulating the dischargers. From our perspective, the regulated community already pays a substantive portion of money to subsidize the NPDES program. The regulated community pays for personnel to do sampling, pays laboratory fees for analytical work, and pays for engineers and consultants to prepare reports and permit applications.

As business entities that have invested much in Pennsylvania, we want to assure that – if the Department is going to shift to an arrangement where program costs are almost wholly borne by the regulated community – those costs are fully accountable and the associated program is performing in a responsive and responsible manner.

First, to support any such fee increase, DEP should come forward with complete program cost information, explaining the amount of time and resources required for review of individual permit applications, including the steps considered to control those costs. Generalized numbers are not sufficient to justify a significant permit fee increase, or to demonstrate that the proposed fee increases and additions are "reasonable." A more fulsome disclosure of program levels of effort and costs would be expected. Specific questions that the Chamber is seeking answers to are:

- How many of NPDES permits are there under each of the proposed fee tiers?
- How many come up for renewal each year?
- What are the man-hours required to review each application?
- What activities are required each year for ongoing management and administration of each existing permit, and what man-hours are devoted to each of those activities?

Second, the regulated community that bears such program costs will reasonably expect the program will perform in a responsive manner, delivering timely actions on applications.

- For example, under 92a.7, the proposed rule states that if a permittee has submitted an administratively complete permit application, and DEP, through no fault of the permittee cannot reissue or deny a permit before the expiration date, then the expiring permit remains in effect. The Chamber has to ask, for the substantive fee increases, why would an application ever be allowed to get to that point? Secondly, according to 92a.75, DEP may administratively extend an expiring NPDES only for minor facilities. Why, for the extensive amount of money that many permittees will pay, are only minor facilities eligible for administrative permit extension?

Very simply, almost half of the funds that DEP needs to run the state NPDES program are now going to be coming from private, not public monies. Regulated dischargers are already doing most of the work and paying substantive quantities of money to administer and run their NPDES programs. The

initial perception of these fee increases is that PA is simply trying to make up for a budgetary shortfall, and these fee increases will have no impact or improvement on the environment, nor any improvement on permit review and approval. So the regulated industries are asking for efficiencies and appropriate performance from DEP for these significant fee increases.

Section 92a.36 Cooling water intake structures

1. The federal regulations listed in this section (40 CFR 125.80 – 125.89) are applicable to new facilities (Phase I). When U.S. EPA finalizes the Phase II regulations for existing facilities, 40 CFR 125.90 – 125.99 will need to be added.
2. Section 92a.36 states in its proposed language that the location, design, construction, and capacity of a cooling water intake structure must reflect the Best Technology Available (BTA) in accordance with 316(b) of the Federal Clean Water Act (33 U.S.C.A. §1326), and that PA DEP will determine if a facility with a cooling water intake structure reflects the BTA for minimizing adverse environmental impacts. In the preamble of the proposed rule, EQB further states that they believe that a permittee for a cooling water intake structure is obligated to the 316(b) BTA, that the proposed language in 92a.36 reflect the minimum requirements of 316(b), and that the proposed language is consistent with one other state's regulatory language regarding cooling water intake structures. However, the Chamber believes that until such time when EPA issues their new draft Phase II 316(b) rule, the Department should not presume that they can or should determine if a facility with a cooling water intake structure reflects the BTA for minimizing adverse environmental impacts, even with a site-specific evaluation. BTA has not been defined for the (pending) new rule yet, and as such, DEP should wait until EPA moves forward with the new draft Federal regulation. Pre-emptive State requirements such as the proposed section 92a.36 may conflict with what is ultimately deemed to be BTA and disallow portions of the Federal rule. The Department provides no supporting basis other than at least one other state has done this.

Section 92a.38 Department action on NPDES permit applications

Subsection (b) states, "The Department will consider local and county comprehensive plans and zoning ordinances developed pursuant to the PA Municipalities Planning Code when evaluating NPDES permit applications, provided that the plans are not preempted by State Law." In the context of existing NPDES permits that are subject to renewal, such a review of zoning makes no sense. Once a facility has been established, the Department should not be in the position of judging whether such a facility can continue in operation based upon whether it is consistent with a comprehensive plan or zoning ordinance. Indeed, such plans and zoning ordinances cannot affect established and vested uses, and the suggestion in §92a.38 that DEP could deny a permit renewal based upon inconsistency with plans or zoning adopted after a facility was established is simply untenable.

Section 92a.41 Conditions applicable to all permits

In 92a.41(c) as proposed, DEP eliminated the words "amounts sufficient to be inimical to the water uses," stating in the preamble that the Department thought the language was "too cryptic and nebulous to be useful, with the result that even substantial visual or odiferous indicators....may be overlooked during an inspection." The Chamber does not agree with this rationale as explained in the preamble, and in fact removal of this language puts the Department in the position of not being able to decide on the significance of such discharge situations, and therefore deciding there will be no allowable discharge of

color or taste, for example. In addition, removal of this language could cause a conflict with the Department's reason for removing "foam" from the proposed 92a.41(c). While we understand DEP's reasoning for not including foam in the proposed regulation, removing "amounts sufficient to be inimical to the water uses" will result in situations where inspectors will disallow discharge of any minor, transient foaming, even though DEP's intent was to allow this. The Chamber requests that the words "amounts sufficient to be inimical to the water uses" be reinserted in 92a.41(c).

Section 92a.47 Sewage Permit

In various sections of the preamble, the Department has portrayed this proposed section as having minimal impact on the regulated community. For example:

Superficially, Chapter 92a is not substantially different from Chapter 92 in most areas, but the Board expects that the reorganization of the NPDES regulation will have a substantive positive effect on Pennsylvania's NPDES program...

... No new requirements are proposed in this proposed rulemaking that would require general increases in personnel complement, skills or certification....

...the proposed rulemaking does not include any new broad-based treatment requirements that would apply to most facilities. The compliance costs of the proposed rulemaking for most facilities is limited to the revised application and annual fees.

To the contrary, these revisions could pose major economic challenges for many public and privately-owned sewage treatment systems across the state, such as those costs that would be required to comply with the new tertiary treatment standards.

In subsection (a), the Department establishes minimum secondary treatment standards for all sewage discharges except discharges from a CSO that is in compliance with subsection (d). It appears from the proposed subsection (a) that DEP has arbitrarily decided to drop key "variance" provisions from EPA's secondary treatment regulation, 40 CFR 133, that allows modification of effluent requirements based on: a) systems with combined sewers; b) systems with certain industrial waste loadings; c) systems using waste stabilization ponds; d) systems with less concentrated influent wastewater; and e) treatment equivalent to secondary treatment.

The Chamber is concerned with the apparent lack of information in the preamble to support these changes. While the secondary treatment standards (STS) may have first been promulgated in the early 1970s, it has been reviewed and modified several times since then (the most recent being 1989). It is a national standard that has held up to scrutiny for many years. These are national standards and there were good reasons for EPA to allow for such variances in the STS. The Department's only justification for removing them is that they "*are outdated and have been misinterpreted in some cases.*" It is not clear what "outdated" refers to, and just because there have been some misinterpretations does not mean these should be deleted. Is the Department referring to the 2002 Environmental Hearing Board ruling against the Department for refusing to grant one of the abovementioned modifications to secondary treatment effluent requirements [Municipal Authority of Union Township vs. DEP, EHB Docket No. 2001-043-L, 2/4/02]? If so, this does not justify removing these variance provisions entirely from this regulation.

In subsections (b) and (c), DEP has established mandatory new technology-based tertiary treatment standards for discharge of treated sewage for all new or expanding discharges to impaired waters where the impairment has been attributed to discharges of treated sewage, or to surface waters designated as High Quality or Exceptional Value. In the preamble, DEP indicates that the more stringent of the applicable tertiary treatment standard limit or water quality-based effluent limit will be applied. In situations where the water quality-based effluent limit is the more stringent limit, the new tertiary treatment standards shall be applied for the other parameters. DEP attempts to justify this new technology-based discharge standard by explaining that they are establishing a balanced approach to managing all likely pollutants of concern to offset vulnerabilities in the WQBEL process without undue burden on the permittee. DEP also attempts to justify the new tertiary treatment standard by explaining that a WQBEL may not be available at the appropriate time, such as when a sewage treatment plant is expanding and a TMDL has not yet been established for the pollutants of concern. Application of the new tertiary standard, therefore, will benefit the permittee, explains DEP, by preventing over-planning and over-designing the proposed expansions due to distortions or misperceptions in the WQBEL establishment process by having these proposed advanced-treatment standards already in place.

The proposed tertiary treatment standards for new or expanded dischargers are:

- CBOD₅: 10 mg/l (monthly average)
- TSS: 10 mg/l (monthly average)
- Total Nitrogen: 8 mg/l (monthly average)
- Ammonia Nitrogen: 3 mg/l (monthly average)
- Total phosphorus: 1 mg/l (monthly average)
- Dissolved oxygen: 6 mg/l (minimum at all times)
- No allowance for Chapter 93 seasonal modifiers

Through this proposal, DEP is attempting to impose broad-brush, one-size-fits-all end-of-pipe treatment standards. Imposition of the proposed tertiary treatment standards bears the same issues and fallacies as the proposed Chapter 95 total dissolved solids (TDS) standards in that DEP is attempting to require end-of-pipe treatment standards that are not supported by statewide water quality data and watershed-specific issues, and which exceed current PA water quality standards. These treatment standards will result in dischargers installing treatment, and thus unnecessarily expending monetary resources, to meet standards that are already being met in their specific watershed in accordance with existing PA water quality criteria, rather than addressing specific discreet impairments or water quality specific needs in their watershed in accordance with existing regulatory authority.

For example, a specific watershed may have been designated as impaired due to siltation and due to phosphorus. In accordance with existing authority, DEP will establish Total Maximum Daily Loads (TMDLs) for these parameters, and subsequently issue waste load allocations (WLA) to direct dischargers in that watershed. According to this proposed tertiary treatment standard, a discharger that is expanding will have to meet the stricter of the WLA or the proposed treatment standard for the applicable pollutants (TSS and phosphorus in this case). In addition, the discharger will be required to install or upgrade their treatment facilities to comply with the other proposed tertiary treatment standards in the proposal even though that specific watershed is not impaired for those parameters. In this scenario, the discharger will be required to install very expensive denitrification technology to remove nitrogen even though the stream is not impaired for nitrogen.

The proposed tertiary treatment exceeds current PA water quality standards. In addition to the nitrogen treatment standard which will unnecessarily require expensive denitrification systems for watersheds that are not impaired for nitrogen, of additional particular concerns are the dissolved oxygen standard, and the removal of seasonal modifiers.

In 25 PA Code Chapter 93.7, Table 3, only one dissolved oxygen standard, DO₄ for HQ-CWF waters is more strict than the proposed dissolved oxygen treatment standard. The other three dissolved oxygen standards are:

DO ₁	For flowing waters, minimum daily average 6.0 mg/l; minimum 5.0 mg/l. For lakes, ponds and impoundments, minimum 5.0 mg/l.	CWF, HQ-WWF, HQ-TSF
DO ₂	Minimum daily average 5.0 mg/l; minimum 4.0 mg/l.	WWF
DO ₃	For the period February 15 to July 31 of any year, minimum daily average 6.0 mg/l; minimum 5.0 mg/l. For the remainder of the year, minimum daily average 5.0 mg/l; minimum 4.0 mg/l.	TSF

The dissolved oxygen standard is particularly based on designated/existing uses. The proposed dissolved oxygen treatment standard exceeds the Chapter 93 standard for dissolved oxygen for the majority of Chapter 93 uses. The proposed dissolved oxygen tertiary treatment standard is not necessary to ensure Chapter 93 compliance for the majority of PA's stream uses.

The removal of the seasonal modifier, which is specifically allowed in the Chapter 93 TSF-use standard for dissolved oxygen, is also of particular concern for ammonia nitrogen. A wastewater treatment facility's capacity to remove nitrogen is impacted by ambient temperature conditions. The removal of the seasonal modifier in the proposed tertiary treatment standard is essentially requiring affected dischargers to design and operate ammonia nitrogen removal systems for the most restrictive and difficult ambient temperature condition. This results in a plant's ammonia nitrogen removal system being over designed and over used during the other ambient temperature periods of the year. This conflicts with DEP's rationale in the preamble when they attempt to justify that this proposed treatment standard will minimize the risk of treatment plants being overdesigned. Quite the opposite is true.

An end-of-pipe treatment standard that is more strict than current water quality standards including criteria based on designated or existing uses, and is in excess of a particular watershed's water quality needs is not actually fixing an environmental compliance problem for the majority of the Commonwealth, and in fact is actually an attempted grab by DEP to obtain certain water quality standards and conditions without going through the regulatory-change process for Chapter 93.

This end-of-pipe tertiary treatment standard also seems to preclude effluent trading, a tool developed and encouraged by DEP, as well as administrative re-rating of POTWs, a tool currently being used across PA to more effectively and efficiently utilize a POTW's capacity. It therefore seems that incorporation of the proposed tertiary treatment standards would in fact generate inefficiencies and additional work for the Department as a result of preclusion of these valuable compliance tools. The inability to utilize effluent trading and POTW re-rating would require additional valuable DEP personnel resources to review and manage the increased number of NPDES and Water Quality Management permit applications that would result from the inability to utilize these two existing tools.

The Chamber opposes this exceedence of existing regulatory authority, and requests that DEP remove the proposed tertiary treatment standard, and continue to use existing regulatory tools to meet watershed-specific quality needs that exist in PA without imposing additional expensive and unnecessary treatment requirements.

Section 92a48 Industrial Waste Permit

- 1) In developing the revisions to Chapter 92, the Department has chosen to take a "one size fits all" approach for regulating conventional pollutants from industrial point source discharges. Industrial point sources vary drastically and a "one size fits all" approach is not applicable.

25 Pa. Code §92a.48(a)(4) states that:

"For facilities discharging conventional pollutants in industrial waste, the monthly average discharge limitation for BOD₅ and TSS may not exceed 60 milligrams per liter. If CBOD₅ is specified instead of BOD₅, the limitation may not exceed 50 milligrams per liter."

Wastewater discharges from industrial point sources are currently regulated under industry specific federal Effluent Limitations Guidelines (ELG's) promulgated by EPA. In the ELG development process, EPA individually evaluated each point source discharge category to determine applicable ELG's. Under 33 U.S.C.A. §§ 1316, ELG's are developed as:

"standards for the control of the discharge of pollutants which reflect the greatest degree of effluent reduction which the Administrator determines to be achievable through the application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants"

Influent loading strengths vary drastically from industrial point source to industrial point source. EPA has recognized this drastic variation in influent loading strength and taken an industry specific approach to determine the best available technology that is economically achievable for each point source category. EPA has chosen to develop industry specific effluent guidelines because they recognize that a "one size fits all" approach is not applicable to industrial point sources.

For example, per EPA's Pharmaceutical ELG development document (EPA 821-R-95-019), influent loadings of BOD₅ and TSS to pharmaceutical wastewater treatment plants are as follows:

- BOD₅ – Mean of 1975 mg/L for direct dischargers
- TSS – Mean of 963 mg/L for direct dischargers

Assuming the above mean influent concentrations, achieving effluent concentrations of 60 mg/L for BOD₅ and TSS would represent the following reductions via treatment:

- BOD₅ – 97% reduction
- TSS – 94% reduction

The Pharmaceutical Effluent Limitation Guidelines (40 CFR § 439) require a 90% removal efficiency for BOD₅ (with 1.6 multiplier for TSS). This removal efficiency is greater than the 85% removal that is required by the secondary treatment regulation (40 CFR §133.102).

We ask that the Department reconsider the effluent limits proposed under 25 Pa. Code Chapter 92a.48 as the Department has not considered the variability of high strength industrial wastewaters and the degree of treatment required to meet the proposed limitations. EPA has individually evaluated each point source category, and individually determined effluent limits which reflect the greatest degree of effluent reduction that is achievable.

The Department has not conducted individual evaluations for individual point source categories and has not presented any technical basis for effluent limitations of 60 mg/L for BOD₅ and TSS.

2) In the preamble to the Proposed Rulemaking for §92a.48, the Department states:

"A new proposed revision would require that industrial discharges of conventional pollutants be assigned technology-based limits of no greater than 50 mg/L CBOD₅ and 60 mg/L TSS. This provision is intended to address situations where the application of certain outdated technology-based requirements for industrial sources may result in inappropriately permissive technology-based effluent limits. For industrial sources, the Federal Effluent Limitation Guideline (ELG) often is the applicable technology-based requirement. In some cases, the Federal ELG is based on units of mass pollutant per unit of production, such that a production operation might be assigned a permissible number of pounds of CBOD₅ that may be discharged per unit of production. When converted into concentration units, the effluent limits may be inappropriately permissive."

Although some ELG's are defined on a mass per unit of production basis, that is not the case for all Industrial Point source categories. In the case of the Pharmaceutical Point source category, effluent limitations for BOD₅ and TSS are specified based on 90% removal of BOD₅ from the treatment plant influent. Effluent limitations are not permissively high as they are based on treatment efficiencies greater than the requirement of the secondary treatment regulation.

As was stated above, the Department is making generalizations that are not valid for all industrial point source categories. Prior to finalization of the revisions to Chapter 92, the Department must consider all categories of industrial point sources.

3) The Department states in the preamble that compliance costs for most facilities are limited to the revised application and annual fees.

Again, the Department is making generalizations based on limited information about industrial wastewater treatment facilities. Per the Department's technical guidance for Industrial Wastewater Management (DEPID 362-0300-004) wastewater treatment requirements are determined for industrial facilities based on technology based effluent limits as defined by EPA's ELG's under

Section 301 of the Federal Clean Water Act. Thus, the basis of design for industrial wastewater treatment facilities is meeting EPA's effluent limitation guidelines. The Department has reviewed and approved these designs as part of the water quality management permitting process.

Facilities with ELG's that are higher than the proposed limitations under §92a.48 will be required to upgrade treatment facilities to continually meet proposed effluent limits as these facilities are not currently designed to achieve these limitations.

One PA pharmaceutical company has estimated multi-million dollar upgrades would be necessary to achieve the proposed level of treatment. The Clean Streams Law (35 P.S. 691.5(a)(5)) requires the Department to consider the immediate and long range economic impacts of this proposed regulation. Because the Department states that the compliance costs for this regulation will be limited to increased fees, it is evident that the Department has not fully considered the economic impacts of this regulation as required by the Clean Streams Law.

- 4) To echo the previous comments for §92a.47 (above), the Department already has mechanisms in place to protect the water quality of receiving water bodies via Chapter 93. Department water quality engineers model each discharge with the WQM 7.0 model to determine if additional water quality based effluent limitations for BOD₅ are required to protect water quality during each permit renewal cycle. If effluent limits are justified to prevent in-stream water quality violations, they are applied at the discharge point. This modeling method has proven very effective in protecting in-stream water quality across the Commonwealth.

If the basis of promulgating additional technology based effluent limits for industrial dischargers is violation of water quality standards on receiving water bodies, the Department needs to re-evaluate the dischargers that are causing water quality violations instead of blanketing all industrial point source categories with an unjustified technology based standard. The mechanisms are already in place under Chapter 93 to prevent in-stream water quality violations.

Section 92a.52. Variances

In this section, DEP states, "Any new or amended Federal regulation enacted after November 18, 2000, which creates a variance to existing NPDES permitting requirements is not incorporated by reference."

The Chamber does not support this exclusion of incorporating a Federal regulation by reference. This language creates a potential conflict with the language of 92a.3 that states that Federal NPDES regulations including appendices, future amendments and supplements are incorporated by reference. A variance would very likely be part of those regulations and not easily separated. In response to WRAC comments, the Department indicated that they included this language to allow them to evaluate each new Federal exclusion on a case-by-case basis. This intention is completely missed in the proposed regulation and accompanying preamble. Instead, the proposed language draws a hard line in the sand. The Chamber recommends that DEP change the language to read: "For any new or amended Federal regulation enacted after November 18, 2000 which creates a variance to existing NPDES permitting requirements, the Department will review any new variances to determine that they are appropriate for the Commonwealth under the provisions of the Clean Streams Law."

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Due to the extensive and complete rewrite and reorganization of DEP's NPDES regulations, and the new more stringent requirements incorporated into this proposal, the Chamber has some serious concerns. We look forward to working with the Department in examining and refining these proposed regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Gene Barr". The signature is fluid and cursive, with the first name "Gene" and the last name "Barr" clearly distinguishable.

Gene Barr,
Vice President, Government & Public Affairs

Cc: Independent Regulatory Review Commission