Summary of Primary Comments on Proposed 25 Pa. Code Chs. 92 and 92a – NPDES Regulations
City of Allentown, Robert Kerchusky, Manager of Operations

Secondary Treatment Should Not Include Fecal Coliform Instantaneous Maximum Limits

With EPA declaring that daily pathogen requirements are "subject to random variation" and that the "geometric mean is the more relevant value for ensuring that appropriate actions are taken to protect and improve water quality because it is a more reliable measure" (69 Fed Reg. 67224 (2004)), NPDES states are amending their regulations to eliminate daily pathogen requirements. Oddly, the proposal would now establish summer and winter instantaneous maximum limits. The preamble does not discuss the basis for these values or any explanation of the deletion from the current standard allowing exceedance in less than 10% of the samples tested. Nor does the proposal identify why such qualification was not added to the new winter limit. Due to the "random variation," a properly-operated and maintained POTW would not be able to meet the proposed limits 100% of the time. The proposal should not be finalized.

Tertiary Treatment Standards for POTWs Should Not Be Imposed: The proposal to impose TTS should not be promulgated. Municipalities are already facing financial difficulties – there is no basis for imposing advanced "treatment for treatment's sake" with no environmental benefit. Moreover, there is no indication how the TTS for the different pollutant parameters were developed. These values appear to be arbitrary. While we do not believe TTS should be imposed at all, we note the inappropriate overly-broad nature of the proposal in that it would apply: (a) to dischargers not identified as causing the impairment; (b) to situations where the pollutants regulated by TTS have nothing to do with the impairment (*e.g.*, temperature) and would require total nitrogen removal even where the impairment is not caused by nutrients; and (c) to *de minimis* changes to a facility (based upon the definition of "expanding facility or activity"), even for those changes that would not even require DEP approval under proposed § 92a.26.

Such Radical Permit Costs Should Not be Imposed: The proposal would increase the cost of our five-year NPDES permit 3000%, from $500 to $15,000. Such an increase is not reasonable. While the Clean Streams Law provides the Department the authority to impose reasonable permit application fees, it does not provide the authority for such significant increase or annual fees. Even if annual fees were somehow legal, it does not appear that such funds could appropriately go to DEP as opposed to the State treasury.

SSO Prohibition: The proposal would eliminate the authority of DEP to authorize SSO's in NPDES permits even where such authorization is consistent with federal law. The deletion of the exception would purport to preclude any defense for sewer overflows even if due to Hurricane Ivan or another catastrophic storm typically considered "acts of God" and not controllable. In essence, this new provision requires the design of a collection system to withstand any and all storms regardless of intensity. It presumes that DEP has adopted such a design requirement for collection systems when it has not. Surely, municipalities cannot reasonably be expected to design their sewer systems (and treatment plants) to handle all flows associated with such catastrophic events. The existing regulation should be maintained

Schedules of Compliance: Whereas existing § 92.55 would limit permit compliance schedules to three years only if a deadline specified in the CWA has passed, the proposal would limit **all compliance schedules to three years.** If a new requirement is put in a permit (*e.g.*, tertiary treatment for POTWs, new water quality standard, long-term control plans for CSO communities), compliance cannot reasonably be expected to occur in three years in all situations. This concern is particularly exacerbated by the decrease in DEP personnel as compliance would involve DEP action in approving plans (*e.g.*, Act 537 Plans) and issuing permits in addition to the various actions required by the permittee to design, finance, plan, construct and begin operation of a plant upgrade. As such, the regulations would artificially place permittees in noncompliance. Particularly troubling about the proposal is that nowhere in the preamble or elsewhere does the proposal identify this change. The general public has not been provided due process notice of the change or the reasons for the change. The change should not be made.