One Page Summary of Primary Comments on Proposed 25 Pa. Code Chs. 92 and 92a – NPDES Regulations
Milton Regional Sewer Authority (MRSA), George Myers, Superintendent

Notice of Proposed Rulemaking is Insufficient: The preamble informs the pubic that the proposal merely reorganizes the regulations to be consistent with federal regulations and the only new costs are those associated with permit fees. In fact, the regulations would impose **costly** new requirements **beyond that required by federal law** (*e.g.,* deletion of secondary treatment standard adjustments and imposition of tertiary treatment standards ("TTS")). Moreover, the preamble fails to provide one iota of information even identifying the change or the underlying rationale for a number of changes that would have significant impact (*e.g.,* limiting all compliance schedules to three years, deletion of fecal coliform exceedances being allowed in 10% of the samples) or that are otherwise proposed (*e.g.,* precluding variances based upon any EPA regulation enacted after November 18, 2000). Failure to provide such information does not meet applicable due process requirements which require, at a minimum, a brief explanation of the proposed regulation or change. In addition, the proposal must also have a reasonable estimate of economic impacts – something it fails to do.

Secondary Treatment Adjustments Should Not Be Eliminated and Industrial Discharges Should Not Have Their Technology-Based Limits Artificially Restricted: The proposal would eliminate adjustments to secondary treatment standards ("STS") provided for by federal regulations at 40 CFR Part 133 to address atypical situations. This includes adjustment to POTW BOD and TSS effluent limitations to proportionately apply industrial technology-based standards when more than 10% of the POTW's design flow or loading is from a particular industrial category. The EHB (In *Municipal Authority of Union Township v. DEP* (2002)) declared illegal the very thing the EQB proposes -- "by failing to make an adjustment to account for the mixed nature of the wastestream, the Department's action effectively imposes a treatment standard for sewage on industrial wastewater" and "has taken the technology that must be dedicated to the treatment of one type of wastestream and imposed it on a different wastestream that has its own technological requirements." The assertion in the preamble that these adjustments are "outdated" and that "any competent sewage treatment operation can readily achieve STS" is unsubstantiated. If ConAgra, a major industrial user comprising more than 10% of MRSA's flow, were to increase its production and discharge a larger percentage of MRSA's flow (*e.g.,* 90%) MRSA could not reasonably be expected to meet traditional STS. Elsewhere in the proposal it is recognized that the industry, if treating the same wastewater, could, at a minimum, have monthly average limits of 60 mg/l yet MRSA would now be required to treat the same wastestream to 30 mg/l. The existing regulations with the federal adjustments must be maintained.

The proposal to limit the BOD and TSS technology-based limits for industrial facilities is similarly inappropriate. EPA undertakes extensive analyses in establishing effluent guidelines. The proposal provides no underlying analysis but merely asserts that EPA guidelines are "outdated," even those that have recently been promulgated. If water quality is a concern, then water quality-based effluent limitations should be imposed. Technology-based standards should not be artificially limited. Such approach would impede the ability of industry to increase production and provide much-needed jobs to our communities.

Tertiary Treatment Standards for POTWs Should Not Be Imposed: The proposal to impose TTS for discharges that affect surface waters that are not achieving water quality standards 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 also note the inappropriate overly-broad nature of the proposal in that it: (a) would apply to dischargers not identified as causing the impairment; (b) would apply 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) would apply 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. Furthermore, as the Chesapeake Bay is listed as impaired, it appears that the TTS might apply to all POTWs in the Chesapeake Bay Program. This would significantly impact the trading program and essentially eliminate the trading cost-savings DEP has been espousing to State legislators and the regulated community.