



pennsylvania
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

Bureau of Clean Water

**Water Quality Management (WQM) and National Pollution Discharge
Elimination System (NPDES) Permit Application and Annual Fees**

25 Pa. Code Chapters 91 and 92a
49 Pa.B. 1518 (March 30, 2019) and 49 Pa.B. 1665 (April 6, 2019)
Environmental Quality Board Regulation #7-533
(Independent Regulatory Review Commission #3227)

Comment and Response Document

INTRODUCTION

On March 30, 2019, the Environmental Quality Board (EQB) published notice in the *Pennsylvania Bulletin* of proposed changes to 25 Pa. Code Chapters 91 and 92a [49 Pa.B. 1518], administered by the Department of Environmental Protection (DEP or Department). The changes are focused on updates to the fee schedules in 25 Pa. Code § 91.22 and 25 Pa. Code §§ 92a.26 and 92a.62, along with other minor edits and clarifications. On April 6, 2019, the EQB published a correction to the proposed fee schedule in 25 Pa. Code § 91.22 [49 Pa.B. 1665]. A 45-day comment period was provided, and interested parties were directed to submit comments to DEP's eComment system or by e-mail to ecomment@pa.gov. In addition, a public hearing was held on May 1, 2019 in Harrisburg, PA. The comment period ended on May 14, 2019.

DEP received comments and questions from 157 different individuals and organizations during the comment period, including testimony from one organization at the public hearing. The purpose of this document is to present DEP's responses to these comments and testimony, explain how the comments were considered in finalizing the regulatory changes, and answer all questions posed.

The names and, where available, addresses of individuals who submitted comments to DEP are identified in Attachment A, in no particular order. DEP will present each comment received in this document and identify the commenter(s) by number in parentheses, corresponding to the list in Attachment A.

COMMENTS AND RESPONSES

The list of commentators is located at the end of this document as Attachment A. Each commentator has been assigned a number. The number in parentheses at the end of each comment corresponds with the number assigned to the commentator in Attachment A.

Copies of all comments received by the Board are posted on IRRC's website at <http://www.irrc.state.pa.us>. Search by Regulation # 7-533 or IRRC # 3227.

- 1. Comment:** On behalf of the Chesapeake Bay Foundation (CBF) and its more than 275,000 members and e-subscribers, I am respectfully writing to comment on the Proposed Rulemaking: Water Quality Management (WQM) and National Pollution Discharge Elimination System (NPDES) Permit Application and Annual Fees under 25 Pa. Codes Chapters 91 and 92a.

CBF is a 501(c)(3) non-profit organization, founded in 1967. The organization's mission --carried out from offices in Maryland, Virginia, Pennsylvania (PA) and the District of Columbia -- is to restore and protect the ecological health of the Chesapeake Bay, the nation's largest and one of its most vital estuaries. As such, and on behalf of our members, we are very interested in matters that will impact the health of the Chesapeake Bay, the waters that feed into it, and the health of those who live and work within the Bay watershed. This proposed rulemaking could impact the health of local waters and ultimately to the Chesapeake Bay.

For more than a decade the Department of Environmental Protection (DEP)'s staff and resources have been significantly cut due to budget constraints despite changes in both industry and the environment. Importantly, in recent years the U.S. Environmental Protection Agency (EPA) has cited that several delegated programs, such as the federal Safe Drinking Water Act and stormwater management programs, administered by DEP, are so underfunded and understaffed that they are failing to meet standards. DEP has applied triage over the years while trying to still meet its mission by modernizing its permitting,

inspection and compliance processes. Without support from the General Fund, increasing the fees of WQM permit applications, NPDES permit applications and NPDES annual fees is fiscally responsible, competitive with neighboring states and appropriate to allow DEP to meet its legal mandates.

These fee increases provide a new revenue source separate from the General Fund which may allow DEP to properly administer these programs, expedite permit review times, conduct adequate and thorough inspections during vital stages of construction and post-construction, respond expeditiously to complaints or problems and enhance compliance. However, these benefits in a properly and efficiently implemented program can only occur if the fund increase from the fees are utilized to enhance and grow the program in proportion to the needs as opposed to simply filling a budget gap within DEP's operation. Therefore, we recommend that these funds be used accordingly and/or adjusted to allow the program to operate at full capacity.

Robust implementation of the NPDES and WQM programs in DEP is important to human health and safety but also for clean water, especially within the Chesapeake Bay watershed. As a requirement by the EPA, PA and other Chesapeake Bay watershed states were assigned pollution reduction goals which must be met by 2025. On April 12, 2019, DEP published its draft Phase 3 Watershed Implementation Plan (Phase 3 WIP). The Phase 3 WIP sets out practices and controls to provide reasonable assurances that PA will meet its commitments. Although overall PA is behind in meeting its goals, the wastewater sector has greatly reduced its pollutants which are integral in improving the health of the Chesapeake Bay.

To ensure that this effort of pollutant reduction continues to meet the Chesapeake Bay goals it is just as important now that DEP have all its resources to oversee these programs. As population and needs grow, so will the wastewater sector; accordingly, it is critical to have the NPDES and WQM programs develop with this trend to maintain the successes regarding pollutant reductions. Consistent oversight of current, new or expanding facilities through the NPDES and/or WQM programs not only helps DEP meet its mission, but also ensures that this Commonwealth is dedicated to its commitment to the health of its local waters as well as the overall restoration of the Chesapeake Bay.

In conclusion, we commend this proposed rulemaking package which will allow for appropriate and implementable NPDES and WQM programs without the use of additional taxpayer monies. As previously mentioned we recommend that these funds be used solely for the programs to operate at full capacity or otherwise be adjusted to do so. Finally, we recommend that the three-year fee adequacy review and written report to the Environmental Quality Board (as indicated in the regulations) include a careful analysis to understand if the fees are detrimentally impacting smaller facilities or owners of concentrated animal feeding operations (CAFO).

Thank you for your consideration of these comments. (1)

Response: Thank you for the comment. The Department believes that the commenter's assessment is correct. The increased fees will allow the Department to carry out its mission under the Clean Streams Law to protect public health and the environment, properly administer these programs, expedite permit review times, and conduct adequate and thorough inspections.

- 2. IRRRC Comment:** We submit for your consideration the following comments on the proposed rulemaking published in the March 30, 2019 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (RRA) (71 P.S. § 745.5a(a)) directs the Environmental Quality Board (EQB) to respond to all comments received from us or any other source.

a. Comments, objections or recommendations of a committee.

This proposed rulemaking would increase fees for Water Quality Management (WQM) permit applications and National Pollutant Discharge Elimination System (NPDES) permit applications and annual fees. Provisions have been added that require the Department of Environmental Protection (DEP) to adjust fees according to the United States Bureau of Labor Statistics Employment Cost Index for State and Local Government Compensation every two years. EQB states that the purpose of the rulemaking is to raise approximately \$8 million to increase program resources for the Bureau of Clean Water and the Clean Water Program (Program). The additional funding is needed so that DEP can accomplish its mission and meet its legal obligations to the public, regulated community, and federal authorities.

The proposed rulemaking has generated opposition from the General Assembly and the regulated community. On May 14, 2019, the House Environmental Resources and Energy Committee (Committee) voted to send a letter asking this Commission to disapprove the rulemaking in its proposed form and urging EQB to withdraw it. Concerns raised by the Committee relate to a lack of statutory authority and consistency with the intent of the General Assembly, reasonableness, and the fiscal impact on small businesses and farmers. The Committee is particularly concerned with the automatic adjustment of fees provision of the proposal.

Forty-three Republican members of the Pennsylvania House of Representatives submitted a joint letter expressing numerous concerns with the proposed rulemaking. These members believe the proposal is deviating from the legislative intent of the Clean Streams Law (CSL) (35 P.S. §§ 691.1—391.1001) and the regulatory authority granted to EQB to allow for reasonable fees for applications filed and permits issued. The members state it was never the intent of the legislature to fund a sizeable portion of the Program from these fees. Also, if the Legislature wanted to allow fees to be set based on an index, they would have stated that in statute. They also state the amount of the fee increases are not reasonable and would have an adverse effect on prices of goods services, productivity or competition. The fiscal impact of the rulemaking on local governments and the regulated community is another concern raised by the members.

Fifteen Republican members of Pennsylvania's Senate, including all majority members of the Senate Environmental Resources and Energy Committee, also submitted a letter opposing the proposed rulemaking. The letter emphasizes the negative fiscal impact the proposal will have on the agriculture industry. It concludes by stating that further discussion and a public hearing are needed to examine economic impact of the rulemaking.

In addition to the opposition expressed by the Legislature, various segments of the regulated community have expressed concerns with the proposed rulemaking, that are to a large degree, similar to those noted above. Segments of the regulated community that have submitted letters in opposition to the rulemaking include: business; water companies; local government; agriculture; and the automotive recycling/salvage industry.

One criterion of the RRA that this Commission must consider when determining if a regulation is in the public interest is the comments, objections or recommendations of a committee. As noted above, the Committee has issued comments and expressed objections to the regulation. If EQB proceeds with this rulemaking, we note that the objections raised by the Committee could be the basis for a disapproval by this Commission. However, a goal of the RRA and the regulatory review process is the resolution of objections to a regulation and reaching of consensus among this Commission, the

designated standing committees, interested parties and the promulgating agency. We ask EQB to work with all parties with an interest in this rulemaking, particularly the Committee and members of the Legislature, to create a regulatory environment that is consistent with the intent of the General Assembly, fair to the regulated community and protective of the Commonwealth's natural resources.

Response: DEP appreciates this comment and has attempted to resolve concerns of those having an interest in this rulemaking. DEP understands concerns about the impact of increased permit fees on the regulated community. The fee increases in this rulemaking aim to ensure that DEP has sufficient resources to protect the health and safety of the public, to protect the State's water resources, and to meet other State and Federal obligations while fairly and equitably distributing the cost to administer the Clean Water Program among the regulated community.

DEP's Clean Water Program has historically suffered from low funding levels in comparison to the volume of work that must be done to satisfy federal requirements under the Clean Water Act and state statutory responsibilities under the Clean Stream Law. DEP made the case in the proposed rulemaking that additional revenue must be collected in order to maintain levels of service to the public relating to the assurance of clean water that Pennsylvania has achieved in the past. DEP nevertheless understands the impacts these fees may have on the regulated community and has taken all public comments on the proposed rulemaking into consideration. In particular, small businesses, including agribusinesses, would be most impacted by the fees contained in the proposed rulemaking. DEP has, for the final-form rulemaking, reduced fees for the categories of permits that have or are expected to have the largest numbers of small businesses, in comparison to the proposed rulemaking, and has eliminated its proposal for an automatic adjustment to the fees, as explained further below.

DEP believes that this rulemaking is in the public interest. The fee increases will allow the Department to properly administer these programs, expedite permit review times, conduct adequate and thorough inspections during stages of construction and post-construction, and respond expeditiously to complaints or problems and enhance compliance. These increased fees will also allow DEP to carry out the objectives of the Clean Streams Law, which include preventing further pollution of the waters of the Commonwealth, and reclaiming and restoring to a clean, unpolluted condition every stream in Pennsylvania that is presently polluted. If this rulemaking is not approved the economic consequences could be grave, like the failure to issue permits in an expedited manner. Decreased inspections could result in harm to public health and the environment. The Clean Streams Law provides the EQB with adequate legislative authority to promulgate this rulemaking. DEP has shown that this rulemaking is financially necessary. Consequently, this rulemaking is in the public interest.

The General Assembly gave the Board the power and duty to adopt regulations to, among other things, implement the declaration of policy set forth in section 4 of the CSL. 35 P.S. § 691.5. The General Assembly expressly stated that the "objective of the [CSL] [is] not only to prevent further pollution of the waters of the Commonwealth, but also to reclaim and restore ... every stream in Pennsylvania" 35 P.S. § 691.4(3). Moreover, the General Assembly found that "[t]he prevention and elimination of water pollution is recognized as being directly related to the economic future of the Commonwealth." 35 P.S. § 691.4(4). The fee regulations fit directly within the statutory grant of authority given to the Board and Department. Without adequate financial resources, the Department's mission is at risk and the requirements of the CSL cannot be fulfilled. The legislature provided the Department the authority to charge "reasonable filing fees for applications filed and for permits issued." 35 P.S. § 691.6 (emphasis added). The plain language of the statute authorizes the Department to charge fees designed to cover the costs associated with 1) applications for permits and 2) permits that have been issued. This authorization allows the Department to meet its statutory

obligations in relation to permits issued, including, but not limited to, inspection and enforcement activities.

DEP believes that the interpretation advanced by the commenters would relegate DEP to an administrator of permits without any responsibility to monitor compliance or take enforcement action. That was not the intent of General Assembly when the CSL was passed. Section 5 of the CSL gives DEP explicit statutory duties and authority to modify, suspend, limit, renew or revoke permits as well as act on complaints, conduct inspections, and issue orders. 35 P.S. § 691.5. The General Assembly intended for the CSL to be a comprehensive statute to address water pollution throughout Pennsylvania. Many of those activities go beyond the mere issuance of permits and includes enforcement, monitoring activities, and the abatement of nuisances after permits are issued.

- b. Whether the regulation represents a policy decision of such a substantial nature that it requires legislative review.

A goal of this rulemaking is to increase funding for the Program. In the Preamble to the rulemaking, EQB states the following:

The administration of the Clean Water Program involves many activities including permit application reviews, inspections, enforcement, surface water assessments and related activities such as development and implementation of Federally required Total Maximum Daily Loads.

Comments from the House Committee and the 43 Republican members indicate that it was not the intention of the General Assembly to fund the Program through application fees authorized by the Clean Streams Law. In light of these comments, we believe funding the Program, beyond what is required to review permit applications, may be a policy decision that should be made by the General Assembly. As suggested in the letter from the 43 Republican members, EQB should present any funding changes for the Program to the General Assembly for consideration.

Response: The General Assembly gave DEP the power and duty to adopt regulations to, among other things, implement the declaration of policy set forth in section 4 of the Clean Streams Law (CSL). 35 P.S. § 691.5. The General Assembly expressly stated that the “objective of the [CSL] [is] not only to prevent further pollution of the waters of the Commonwealth, but also to reclaim and restore ... every stream in Pennsylvania” 35 P.S. § 691.4(3). Moreover, the General Assembly found that “[t]he prevention and elimination of water pollution is recognized as being directly related to the economic future of the Commonwealth.” 35 P.S. § 691.4(4). The fees regulations fit directly within the statutory grant of authority given to DEP. Without adequate financial resources, DEP’s mission is at risk and the requirements of the CSL cannot be fulfilled. The legislature provided DEP the authority to charge “reasonable filing fees for applications filed *and for permits issued.*” 35 P.S. § 691.6 (emphasis added). The plain language of the statute authorizes DEP to charge fees designed to cover the costs associated with 1) applications for permits and 2) permits that have been issued. This authorization allows DEP to meet its statutory obligations in relation to permits issued, including, but not limited to, inspection and enforcement activities.

The EQB promulgated annual fees for NPDES permits for the first time under Chapter 92a in 2010. 40 Pa.B. 5767 (October 9, 2010). These annual fees were established pursuant to Section 6 of the CSL (i.e., fees for permits issued), and support the activities of DEP to uphold its other responsibilities under the CSL related to permits issued and not solely for the processing of applications filed.

Additionally, the Administrative Code of 1929 (71 P. S. § 510-20) authorizes EQB to promulgate rules and regulations necessary for the proper performance of the work of DEP.

- c. Amount of the fee increases. — Statutory authority; Whether the regulation is consistent with the intent of the General Assembly; Direct and indirect costs to the Commonwealth, to its political subdivisions and to the private sector; Adverse effects on prices of goods and services, productivity or competition; Whether a less costly or less intrusive alternative method of achieving the goal of the regulation has been considered for regulations impacting small businesses.

When this regulation is fully implemented in fiscal year 2022-2023, EQB estimates it will cost the regulated community approximately \$8 million per year. In some instances, existing fees will increase by 500 percent. Commentators have raised two main concerns about the size and scope of the fee increases being proposed in § 91.22(a), 92a.26(b) and 92a.62(b). First, the commentators question if the proposed increases are consistent with the statutory directive that fees be reasonable. We note that Sections 5(b)(1) and 6 of the CSL (35 P.S. § 691.5(b)(1) and 691.6) have been cited by EQB as part of its statutory authority for this rulemaking. Section 5(b)(1) provides EQB with general rulemaking authority necessary to implement the CSL. Section 6 pertains to application and permit fees. It states the following:

The [EQB] is hereby authorized to charge and collect from persons and municipalities in accordance with its rules and regulations reasonable filing fees for applications filed and for permits issued.

Given the dollar amount and percentage increase of the fee increases, we ask EQB to explain why it believes the proposed fee structure is consistent with the legislative directive that fees be reasonable.

Second, the adverse effects the proposed increases would have on the price of goods and services, productivity or competition has been raised as an issue. For example, the National Federation of Independent Business states that EQB, “must consider the impact of drastically higher permit fees on the business environment, measured by lost investment and innovation, less productivity, and a higher regulatory cost burden as factors when weighing the impact of the rulemaking.” East Petersburg Borough submitted comments explaining how Safe Drinking Water fee increases by EQB in 2018 have impacted community water systems across the Commonwealth. They stress the importance of considering the fiscal impact of this rulemaking. Finally, representatives of the agriculture industry and individual farmers submitted comments highlighting the many challenges the industry is currently facing and how the proposed increases will negatively affect them.

We understand that DEP has an obligation to protect the Commonwealth’s natural resources and an obligation to meet federal mandates related to the Program. We appreciate the effort put forth by EQB to demonstrate and document the need and rationale for the proposed fee increases. If EQB moves forward with this proposal, we ask that DEP continue its efforts to reduce costs and find efficiencies that could possibly reduce the size and scope of the proposed increases. In addition, we ask EQB to work with small businesses and farmers to possibly find a less costly or less intrusive method of achieving the goal of the regulation.

Response: DEP believes that the fees are reasonable relative to the responsibilities of DEP’s Clean Water Program and relative to the fees charged by other state environmental agencies for equivalent permits. See comparisons in the Regulatory Analysis Form submitted for the proposed rulemaking. Also, Table 1 below compares the “minimum fees” assessed by the New Jersey Department of Environmental Protection (NJDEP) in 2019 for NPDES permits with DEP’s annual fee schedule for

NPDES permits in the final rulemaking. NJDEP develops a budget each fiscal year for its Clean Water Program and collects 100% of the revenue it needs from NPDES-permitted facilities to operate for the following fiscal year. Additional fees may be levied by NJDEP on top of the minimum fees, which are collected annually. The minimum fees levied by NJDEP may change from year to year depending on the program's operating expenses.

Table 1: Comparison of NJDEP Minimum Fees with DEP's Final Annual Fee Schedule in 25 Pa. Code § 92a.62(b) for Individual NPDES Permits.

Category	DEP Annual Fee	NJDEP Minimum (Annual) Fee for 2019
Single Residence Sewage Treatment Plant	\$100	*
Small Flow Treatment Facility	\$250	\$4,200
Minor Sewage Facility < 0.05 MGD	\$500	\$4,200
Minor Sewage Facility ≥ 0.05 MGD and < 1.0 MGD	\$1,000	\$4,200
Minor Sewage Facility with CSO	\$2,500	\$9,450
Major Sewage Facility ≥ 1.0 MGD and < 5.0 MGD	\$3,750	\$11,150
Major Sewage Facility ≥ 5.0 MGD	\$5,000	\$11,150
Major Sewage Facility with CSO	\$7,500	\$9,450
Minor Industrial Waste Facility not covered by ELG	\$1,500	\$4,200
Minor Industrial Waste Facility covered by ELG	\$3,000	\$4,200
Major Industrial Waste Facility < 250 MGD	\$7,500	\$9,950
Major Industrial Waste Facility ≥ 250 MGD	\$50,000	\$9,950
Industrial Stormwater	\$1,500	\$4,100
CAFO	\$500	*
MS4	\$2,500	\$900 - \$9,800 (depending on population)
CAAP	\$1,500	\$4,200
Pesticides	\$1,500	*
Stormwater Associated with Construction Activities	\$500	*

* Individual permits are not issued to these types of facilities in New Jersey.

As shown in Table 1, the majority of NJDEP's minimum annual fees exceed DEP's annual fees. Significantly higher fees may be added to the NJDEP minimum fees based on the mass of pollutants discharged during the prior calendar year. For example, New Jersey's largest municipal sewage treatment facilities were assessed a total annual fee of approximately \$706,000 in 2019.¹ The same size facilities in Pennsylvania paid 0.4% of this fee (i.e., \$2,500) in 2019. Pennsylvania's largest municipal sewage treatment facility would have paid approximately \$703,500 more in fees had it been located just a few miles east, across the Delaware River. NJDEP's fees are intended to cover

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¹ New Jersey Pollutant Discharge Elimination System FY 2018 Annual Fee Report and Assessment of Fees Proposal Document, approved and effective July 16, 2018 (see https://www.nj.gov/dep/dwq/pdf/NJPDES_Fee_Report_2019.pdf). DEP notes that New Jersey's fee program has resulted in concerns by the regulated community because of the unpredictable nature of the fees from year to year.

all operating costs of the program, including activities beyond permitting. While every state tends to handle fees differently, it appears that Pennsylvania’s fees as proposed in the March 30, 2019 edition of the *Pennsylvania Bulletin*, would remain amongst the cheapest in the nation for most categories of permits.

However, in response to comments received, DEP has reduced fees in the final rulemaking for categories of permits that include or are likely to include large numbers of small businesses and farmers. Table 2 provides a comparison between the proposed fees (as published in the March 30, 2019 edition of the *Pennsylvania Bulletin*) and the fees in the final rulemaking (all regulatory citations are for Title 25 of the Pennsylvania Code).

Table 2: Comparison of Fees Between Draft and Final Rulemakings for Fee Categories Where Fees Have Decreased.

Fee Category	Application/Fee Type	Regulatory Citation	Fee - Draft Regulation	Fee - Final Regulation
SFTF - NPDES Individual Permit (IP)	New Permit	§ 92a.26(b)	\$750	\$500
	Annual Fee	§ 92a.62(b)	\$500	\$250
Minor Sewage < 0.05 MGD - NPDES IP	New Permit	§ 92a.26(b)	\$1,500	\$1,000
	Annual Fee	§ 92a.62(b)	\$750	\$500
Minor IW not Covered by ELG - NPDES IP	New Permit	§ 92a.26(b)	\$5,000	\$3,000
	Annual Fee	§ 92a.62(b)	\$2,500	\$1,500
Minor IW Covered by ELG - NPDES IP	New Permit	§ 92a.26(b)	\$7,500	\$6,000
	Annual Fee	§ 92a.62(b)	\$3,750	\$3,000
Industrial Stormwater - NPDES IP	New Permit	§ 92a.26(b)	\$5,000	\$3,000
	Annual Fee	§ 92a.62(b)	\$2,500	\$1,500
CAFO - NPDES IP	New Permit	§ 92a.26(b)	\$3,000	\$500
	Annual Fee	§ 92a.62(b)	\$1,500	\$500
Joint Pesticide Permit	New Permit	§ 91.22(a)	\$500	\$250
Manure Storage - WQM Permit	New Permit	§ 91.22(a)	\$2,500	\$1,000

DEP may pursue other methods to collect the proposed revenue lost through these decreases.

- d. Automatic adjustment of fees. — Statutory authority; Whether the regulation is consistent with the intent of the General Assembly; Implementation procedures; Reasonableness.

EQB is adding new provisions that provide for an ongoing adjustment to its fees schedules. The new provisions are §§ 91.22(c), 92a.26(f) and 92a.62(c). The adjustments will be made every two years and will be based on the United States Bureau of Labor Statistics Employment Cost Index for State and Local Government Compensation or an equivalent index recognized by the United States Department of Labor and Industry. DEP will publish the final adjusted fee schedules and effective

dates in the Pennsylvania Bulletin. The fees will not be adjusted if the application of the index would result in fees exceeding DEP's costs to administer the Program. We have three concerns. First, commentators, including members of the General Assembly, do not believe Section 6 of the CSL provides EQB with the statutory authority to change fees via this method. Why does EQB believe that Section 6 of the CSL provides for this type of automatic fee adjustment? Can EQB cite to any other statute that would allow for these specific fees to be increased in this manner? Second, we question the reasonableness of increasing fees without public or legislative scrutiny. In the Preamble to the final rulemaking, we ask EQB to explain why this method of increasing fees is in the public interest. Finally, if EQB can justify the legality and reasonableness of the automatic adjustment provisions, we are concerned with the implementation of them. As written, DEP would not be able to adjust the index if the amount of the increase would exceed the increased costs of administering the Program. We suggest that the language be amended to allow DEP to increase the fees to the lesser of the index or the actual costs to administer the Program.

Response: DEP believes it is reasonable to interpret Section 6 of the CSL to authorize an automatic adjustment to fees based on the U.S. Bureau of Labor Statistics Employment Cost Index for State and Local Government Compensation because the majority of the statewide Clean Water Program's operating costs are related to personnel costs, which increase annually with inflation. The most recent DEP fee regulation that had an automatic adjustment was the Noncoal Mining Programs Fee regulation. 49 Pa.B. 2491 (May 18, 2019). However, DEP has removed this provision contained in the proposed rulemaking for the final rulemaking.

e. Miscellaneous clarity.

Subsection 91.22 (b) includes new language that states fees for a general permit "shall" be established in the general permit itself. Section 6.7(c) of the *Pennsylvania Code & Bulletin Style Manual* indicates that the word "will" should be used when the Commonwealth pledges to act. Since DEP will be determining the amount of the fee, we suggest that the word "shall" be changed to "will." Similar language is found in §§ 91.22(c), 92a.26(f) and 92a.62(c). (2)

Response: DEP agrees and has made these changes.

3. **Committee Comment:** As members of the House Environmental Resources and Energy Committee, we write to you to express our disapproval of proposed Environmental Quality Board (EQB) Regulation 7-533.

The Committee voted today, May 14, in favor of sending you this letter on behalf of our constituents, their businesses, and the municipalities which will be negatively impacted if the NPDES and WQM fee increases proceed as proposed. 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 the language and intent of the Acts on which they are based. This regulation fits neither criteria.

a. First, the Clean Streams Law, Act 394 of 1937, authorizes DEP "to charge and collect from persons and municipalities in accordance with its rules and regulations reasonable filing fees for applications filed and for permits issued." DEP is explicit about its intent to collect approximately eight million additional dollars annually from these fee increases to support its Clean Water Program. A clear reading of the language of the statute indicates that DEP should be collecting reasonable filing fees specifically for applications filed and permits issued. Thus, these fees should be correlated to the cost

of processing the specific permits for which the fees are collected, not generally funding DEP's Clean Water Program. Funding for the rest of the Clean Water Program should and has come out of DEP's General Fund appropriation, and not out of fees levied on businesses and municipalities throughout the Commonwealth. It was not the intention of the General Assembly to fund DEP's Clean Water Program through application fees authorized by the Clean Streams Law.

Response: See DEP's response to Comment No. 2.a. and b. In addition to the duties and responsibilities the General Assembly gave to DEP to adequately administer a state program to prevent water pollution and restore polluted streams, DEP also has obligations to meet under the federal Clean Water Act if DEP wishes to retain jurisdiction over certain elements of the federally delegated clean water program. See 33 U.S.C. § 1342(b). Failure to carry out those responsibilities may result in EPA withdrawing approval of Pennsylvania's program. See 33 U.S.C. § 1342(b). If EPA withdrew Pennsylvania's delegation, the federal government and not the state government would administer the clean water program in the Commonwealth. Consequently, the fee regulation ensures that DEP retains jurisdiction over its approved program by providing the agency with the resources needed to implement and enforce the program.

- b. Another important consideration regarding statutory authorization of these increases is the word reasonable. Though what is reasonable is certainly subjective, it is clear from the extreme percentage of the proposed increases that this regulation moves beyond reasonable by any definition. DEP is proposing exponential increases from existing fees, with the highest increase proposed being a 2,900 percent increase, an increase in the new WQM permit fee for major industrial waste treatment plants from \$500 to \$15,000.

Response: DEP's WQM permit application fees for this type of permit/facility have not increased since 1971. In addition, DEP analyzed the actual costs to administer WQM permits for all categories of permits when establishing fees. The WQM fees are generally consistent with other state fees for construction-related permits. These fee increases are reasonable in light of the fact that DEP's responsibilities have increased as the number of permits issued have increased since the last fee increase in 1971.

- c. As it is IRRC's role to analyze the economic and fiscal impacts of a regulation, the proposal will have an impact on every business and municipality which must pay these fees and make business decisions within the Commonwealth. Additionally, these regulations will have an effect on Pennsylvania's taxpayers and consumers as these fees will likely be passed down through the economic chain.

Instead of fulfilling government's role of supporting local Pennsylvania businesses and communities, this regulation would hurt many of those who can least afford it. Though the regulation would apply universally, smaller businesses and municipalities with limited resources would be disproportionately impacted by these excessive increases should the proposed regulation take effect. We note, for example, that you have already received comments from many farm owners, particularly from those with small, family-owned farms, who will be severely impacted by the increase in CAFO fees.

Response: See DEP's response to Comment No. 2.c. Moreover, without the fee increases in this rulemaking, DEP will be less able to issue Pennsylvania businesses timely permits required to conduct their business in a manner protective of public health and the environment. The lack of adequate resources will also reduce enforcement and monitoring activities that may result in more polluted waterways thereby impacting the quality of life in the state, which may make Pennsylvania a less attractive place to start and run a business or raise a family. Finally, insufficient resources may result

in DEP losing federal approval to issue certain permits, which would likely also result in longer delays for business operations.

- d. Finally, and perhaps the least palatable portion of this proposed regulation, is the proposal to adjust fees every two years based on changes to the U.S. Bureau of Labor Statistics Employment Cost Index for State and Local Government Compensation. Allowing fee increases to occur based on an index without going through the regulatory process circumvents the intent of the General Assembly to require that fee increases be set by regulation. This will also prevent the important step required by the Regulatory Review Act of public participation in the process by allowing future increases to happen out of the public's view, thus denying Pennsylvanians who will be impacted the ability to comment.

This proposed regulation is unacceptable, and if implemented would have a severe financial impact on the residents, businesses, and municipalities within our districts. We therefore ask IRRC to disapprove this regulation in its proposed form since the provisions of the regulation run contrary to the language and intent of the Act on which they are based and are patently unreasonable. We urge the EQB and DEP to withdraw this proposed regulation. We, the undersigned members of the House Environmental Resources and Energy Committee, write this letter to draw your attention to our concerns with this proposed regulation and respectfully ask for your consideration. (3 – 18)

Response: See DEP's response to Comment No. 2.d. In addition, DEP is not moving forward with the automatic fee adjustment provision at this time.

4. **Legislators' Comment:** We are writing in regard to the Department of Environmental Protection's (Department) proposal through the Environmental Quality Board (EQB) to amend the Water Quality Management (WQM) and National Pollution Discharge Elimination System (NPDES) fees. We have several significant concerns regarding the lack of statutory authority for the scope, structure, and magnitude of the proposed fees, as well as the fact that they are not reasonable when their full economic and fiscal impact are taken into consideration.

- a. As the Department notes in box 9 of the RAF the "charging fees for permits under Chapters 91 and 92a is not mandated by any federal or state law or court order or federal regulation." Nevertheless, the Clean Streams Law (CSL) does authorize the Department to "charge and collect from persons and municipalities in accordance with its rules and regulations reasonable filing fees for applications filed and for permits issued." 35 P.S. § 691.6. We agree that this statute does grant the department authority to promulgate regulations for "reasonable" fees, however, we strongly disagree with the scope of fees that the Department appears to simply assume the statute authorizes. Rather, we contend that the clear language of the statute is precisely and purposefully limiting in its scope and breadth as to what fees the Department may impose.

The Department apparently believes the statute authorizes them to promulgate fees to cover a sizeable share of the state's costs to administer this program. It states in box 7 of the RAF that "[t]hese fees support the whole range of activities involved with water quality protection by the Department." This is not, however, what the statute authorizes. A plain reading of the actual language of the statute (35 P.S. § 691.6) only, we repeat, only authorizes the Department to charge for "filing" fees. "Filing fees" are clearly not authorizing language for fees which are to fund "the whole range of activities..." of the Departments operations. Had the Legislature desired to delegate such expansive funding authority to the Department, it would have expressly done so. Rather, the Legislature's intent was clearly expressed when it authorized "reasonable filing fees for applications filed and permits issued." Thus,

the Department erred in asserting that these fees are meant to support the whole range of activities for this program. The statute must be construed to only allow for the charges it authorizes, that is, charging for the costs associated with the filing of applications and permits. In other words, the plain reading of the statute clearly conveys the intent of the Legislature that all other costs associated with ancillary and support activities are to be provided by federal funds and by general funds provided by the Legislature.

Had the Legislature intended for the fees to cover the whole cost of the program it would have indicated so in the statute and would not have included the restricting word “filing.” This is the case in other programs where the statute explicitly authorizes fees to cover additional costs of the program. For example, the Air Pollution Control Act authorizes “fees sufficient to cover the indirect and direct costs.” 35 P.S. § 4006.3 (a). The Board of Nursing is authorized by 63 P.S. § 221.2(a) to set fees by regulation to meet projected expenditures. Similarly, the Massage Therapy Law requires the Board to support its operations from the revenue it generates from fees, fines and civil penalties. 63 P.S. § 627.11(a). Finally, the Radiation Protection Act specifically authorizes the EQB to set reasonable annual fees “in an amount at least sufficient to cover the department's costs of administering the programs.” 35 P.S. § 7110.401. These examples illustrate that when the Legislature intends to authorize an agency to charge fees to cover all or a substantial portion of a program’s costs, it does so explicitly. There is no explicit authorization in the CSL to charge fees to cover all the costs of the WQM and NPDES programs. To the contrary, the explicit authorization in the CSL is limited to charging “filing fees” only.

Again, no such statutory authorization is provided in the CSL to charge fees beyond the costs for the filing of applications and permits.

Response: See Response No. 2. a. and b. Also, the absence of the phrase, “indirect and direct costs” from the CSL, as contained in the Air Pollution Control Act, does not imply the legislature intended for fees under the CSL to exclude non-permitting activities. The CSL provides adequate authority under section 6 of the act to increase the fees as contemplated under the fee regulation. Fees are not just for the filing of applications, but for permits issued as well. The interpretation advanced by the commenters would relegate DEP to an administrator of permits without any responsibility to monitor compliance or take enforcement action. That was not the intent of General Assembly when the CSL was passed. Section 5 of the CSL gives DEP explicit statutory duties and authority to modify, suspend, limit, renew or revoke permits as well as act on complaints, conduct inspections, and issue orders. 35 P.S. § 691.5. The General Assembly intended for the CSL to be a comprehensive statute to address water pollution throughout Pennsylvania. Many of those activities go beyond the mere issuance of permits and includes enforcement, monitoring activities, and the abatement of nuisances after permits are issued. Also see DEP’s response to Comment No. 2.b.

- b.** Next, we contend that the proposed fees go beyond the intent of the Legislature in magnitude. The Department notes in box 10 of the RAF that its “costs to process and issue WQM permits and perform follow-up compliance activities far exceed the current amount of fees generated.” This is how it should be if the Legislature only intended the fees to cover a fraction of the program. The Department continues later that “the revenue generated by the current fees only pays for approximately 10% of the total program costs. The remainder of the costs are paid through the Department’s annual appropriation from the General Fund.” Similarly, “fee revenue from the NPDES program only covers approximately \$3.7 million of program expenditures on average, or 18% of the cost to administer the NPDES Program.” It is unclear what percentage of costs go to the filing of applications and permits, but 10% and 18% appear to be reasonable amounts because the legislature did, in fact, only intend the fees to cover a fraction of the program’s costs.

Since the Legislature only intended the fees to cover a fraction of the program, the amount of staff costs that can be justified to be covered by the fees is also limited. In RAF box 10 the Department summarizes its workload analysis to evaluate its staffing needs for the Clean Water Program. They provide analysis for staffing the entire program and determined that an additional 63 positions are needed (38 in the regional offices and 25 in the Bureau of Clean Water). We are not disputing the Department's estimated number of needed staff. We are, however, disputing the number of staff whose cost can be presented as justification for increasing these fees. If the fees authorized by the CSL are only meant to cover applications and permits, then only the workload analysis for permit application review tasks found in Attachment B-1 and Attachment B-2 are relevant. The costs of the desired staffing increase for the other functions must be covered by other funding sources. Thus, the actual staffing increase that is statutorily authorized to be funded by fees is not 63, but rather, only 2, as per DEP's own statement in Attachment B-7: "the Department currently has 47 engineer positions across Pennsylvania that focus on the review of NPDES and WQM permit applications, and the Department determined that it requires two additional positions to fulfill all of its permitting responsibilities in an effective manner." If the fee increases that the Department is requesting were commensurate with the costs of adding these 2 positions, then they would potentially be within the scope and magnitude of the Legislature's intent.

The Legislature intended to cover a significant portion of the program's costs from the General Fund, yet the Department in their Three-Year Regulatory Fee and Program Cost Analysis Reports to the EQB on August 21, 2018 stated, "[g]iven the potential fluctuations in appropriations by the legislature, a more stable and sustainable funding source is desired." The Department is certainly entitled to advocate for their preferred funding source, however, they are not authorized to request it be fulfilled outside of their statutory authority. The Legislature, recognizing the variability and fluctuations in economic conditions which directly impact the amounts that may be appropriated, chose not to delegate this authority to the Department. Instead, the Legislature maintained this authority because they were aware that the available resources of the regulated community also fluctuates. If the Department wants the source and method of their funding to be changed, they must present to the Legislature their proposal to change the statute. Until then, the program must abide by the current fee structure designed by the statute.

Response: See Response No. 2. a. and b. The assertion that the legislature only intended the fees authorized by Section 6 of the CSL to cover a fraction of the program's costs is unsupported. The statutory language is not limited to cover the cost of permit fees alone. The General Assembly gave DEP comprehensive authority to protect public health and the environment under the CSL. This authority not only includes the issuance of permits, but monitoring compliance and enforcement of those permit limits. Nevertheless, under DEP's proposed rulemaking, fees would have continued to constitute only a fraction of the program's costs. Under the proposal, fees would have contributed approximately 39% of the program's needs, up from approximately 18%. With the permit decreases identified in the response to Comment No. 2.c. above, as part of the final rulemaking that fraction will decrease.

- c. The Department states in RAF box 10 that the "Department's total appropriations from the General Fund have been decreasing in recent years." This statement by the Department does not tell the entire story. The Department's total appropriations from the General Fund have both increased and decreased over the years. For fiscal year 2019-20, while the proposed total appropriation from the General Fund appears to be decreasing on paper, it is actually being offset by transfers that provide the Department with an overall increase of \$4.6 million or a 3% increase compared to FY 2018-19. This funding increase includes \$10 million from the Recycling Fund and \$15.480 million from the

Environmental Stewardship Fund. Thus, there is no decrease for 2019-20. In fact, there is a proposed 3% increase. Note the following chart which shows the last eleven years of funding of the Department by the Legislature:

Year	Amount	Percent Increase/Decrease
FY 2009-10 Actual	\$ 154,259,000	
FY 2010-11 Actual	\$ 142,114,000	-8%
FY 2011-12 Actual	\$ 132,509,000	-7%
FY 2012-13 Actual	\$ 124,837,000	-6%
FY 2013-14 Actual	\$ 125,856,000	+1%
FY 2014-15 Actual	\$ 139,233,000	+11%
FY 2015-16 Actual	\$ 142,620,000	+2%
FY 2016-17 Actual	\$ 148,356,000	+4%
FY 2017-18 Actual	\$ 146,477,000	-1%
FY 2018-19 Available	\$ 156,049,000	+7%
*FY 2019-20 Proposed	*\$ 135,186,000 Total funding will be \$160,666,000 when transfers are included.	*-13% *+3%

* Actual increase of 3% (See paragraph directly above.)

Response: DEP acknowledges the comment. DEP has been working toward recovering staff positions lost over the past decade and acknowledges that overall funding to DEP is nearing levels it received a decade ago. DEP’s workload, however, continues to increase as new programs and expectations (including but not limited to implementation of Pennsylvania’s Watershed Implementation Plan for the Chesapeake Bay) add to DEP’s core permitting and monitoring activities in the Clean Water Program, and overall funding has not kept pace with increasing personnel and operating costs. As a result, the fee increases will be used to cover the costs of those new programs and expectations.

- d. Another area of concern is the inadequacy of the fiscal note provided in the Bulletin notice. As you know, the Administrative Code directs the Office of the Budget to prepare a fiscal note for regulatory actions of administrative departments. Specifically, the “fiscal note shall state whether the proposed action or procedure causes a loss of revenue or an increase in the cost of programs to the Commonwealth or its political subdivisions.” 71 P.S. § 232. Incredibly, the fiscal note in the Bulletin merely states: “No fiscal impact. The Historical and Museum Commission (HMC) and the Department of Corrections (DOC) will face nominal costs resulting from the adjustments in the fee schedules.” Contrary to the assertion of "nominal costs" by the Office of the Budget, if these fee increases are approved there will be significant costs on political subdivisions throughout the Commonwealth. It is not known why the Office of the Budget only considered the costs to the HMC and the DOC and not the costs to political subdivisions which make up a substantial portion of all permittees. A more accurate measure of the full impact of these fees should be obtained from the Office of the Budget which should evaluate the eight enumerated points of consideration required by the Administrative Code and ultimately reissue a revised fiscal note.

Response: The RAF and the Preamble to the proposal have a robust accounting of the fiscal impacts that the proposal may have. Moreover, those accounting figures remain consistent in the final-form rulemaking. The figures in the RAF are the most accurate measure of the full impact of this rulemaking.

Under this final-form rulemaking, state agencies that do not contribute funding to the WQM program will be required to pay WQM permit fees for new water pollution control construction projects. The Department estimates that the WQM permit fee increase for state agencies resulting from this final-form rulemaking will be less than \$10,000 annually, in total. The previous Chapter 92a regulations provided a fee exemption for any state or federal agency that provides funding to the Department for the implementation of the NPDES program; that provision is not affected by this final-form rulemaking. There are a few state agencies that do not provide funding to the Department for implementation of the NPDES program that will be affected by this final-form rulemaking, including but not limited to the Department of Corrections and the Pennsylvania Historical and Museum Commission. The estimated increase in NPDES permit fees for these agencies resulting from this final-form rulemaking is \$10,000 per year.

- e. Having a better grasp of the impact of these fee increases will show whether the proposal is in keeping with another criterion of the CSL that the fees be “reasonable.” Admittedly, “reasonable” is a subjective standard, however, some of the proposed fee increases (up to 2,900%) would have a drastic, and therefore unreasonable, impact on some fee payers. As you know, the Regulatory Review Act requires the IRRC to consider the economic or fiscal impacts of a regulation, specifically the “adverse effects of prices of goods and services, productivity or competition.” 71 P.S. § 745.5b(b)(1)(ii).

Response: See DEP’s response to Comment No. 2.c. DEP believes that the fee increases are reasonable in light of what other states charge, and the increasing workload and expectations that have been placed on DEP.

- f. Because of the ripple effect these fee increases will have throughout the economy it is imperative that this particular proposal be viewed in the broader context of the Department’s other recently approved and currently proposed fee increases. For perspective, consider that since 2017 the Department has increased, or proposed to increase, various annual fees that will increase costs by nearly \$50 million (Radiological Health and Radon Certification, Safe Drinking Water, Noncoal Mining, Unconventional Well, NPDES, WQM, and Air Quality fees). Potentially to be added to these amounts, though not submitted to the regulatory review process yet, is the proposed cap and trade petition that the EQB voted to accept on April 16, 2019. The petitioners estimate this proposal will cost the Commonwealth \$1.563 billion to \$1.978 billion! In light of the actual and proposed substantially higher fee increases, a careful analysis of the impact on the individual or specific entity and the overall economy must be considered.

A comprehensive look at the impact of the NPDES and WQM fee increase must be considered in the context of all the fee increases in the aggregate. In reality, the consequences and ramifications of these fees ripple out across many dimensions of the Commonwealth and are presented here as evidence of a pattern of Departmental growth that the Legislature meant to limit when it passed the Regulatory Review Act to “curtail excessive regulation and to require the executive branch to justify its exercise of the authority to regulate before imposing hidden costs upon the economy of Pennsylvania.” 71 P.S. § 745.2. We contend that the Department has been, and is, by the instant submission, imposing hidden costs on the Pennsylvania economy without authority and without adequate justification.

Response: The Department disagrees that it is imposing hidden costs on the economy without adequate authority or justification. As previously noted, the fee rulemaking is well within the EQB’s CSL authority. DEP has laid out a solid financial basis for moving forward with this rulemaking. As it relates to the costs imposed by other rulemakings, those comments are outside the scope of this rulemaking. While DEP is cognizant of the cost that environmental protection mandates have on regulated communities, DEP must also fulfill the statutory obligations that the General Assembly have placed on DEP to protect public health and the environment. DEP’s complement has been reduced by over 20% in the past decade due to funding cuts. Funding DEP now at the same level as a decade ago still results in a net reduction in staff positions, because those positions cost more now and other operational costs have increased. All of DEP’s fee rulemakings, proposed and final, have been transparent and subject to public comment consistent with the Regulatory Review Act, and DEP has considered the comments received and, in some cases, adjusted its proposals based on those comments.

- g.** The final area of concern is the Department’s proposal to automatically adjust the fees every two years based on the Employment Cost Index. This proposal clearly circumvents the intent of the law that fees must be set by regulation. Furthermore, this proposal violates the essential principle of government transparency. The statutory design purposely and explicitly keeps fee changes in view of the public to allow for scrutiny rather than notification ex post facto. As you know, the Regulatory Review Act requires that the commission shall “determine ... whether the regulation conforms to the intention of the General Assembly in the enactment of the statute upon which the regulation is based.” 71 P.S. § 745.5b.(a). Automatically setting fees based on an index was not the intent of the General Assembly. In fact, “inflationary impact and conformity to legislative intent” were two factors the General Assembly cited that were not being sufficiently reviewed when they passed the Regulatory Review Act. 71 P.S. § 745.2.(a). If the legislature had wanted to allow setting the fees based on an index, they would have allowed for it in the statute, but they did not. For example, the Legislature explicitly allowed for the air emission fee to be increased based on the Consumer Price Index in the Air Pollution Control Act. 35 P.S. § 4006.3 (i). Because they did not explicitly authorize it in the CSL, this proposal should be denied. The democratic principles of our form of government demand that the people have input into how much they are taxed (assessed fees).

In summary, the Constitution requires that all taxation originate in the General Assembly. Fee increases are a form of taxation and, although the General Assembly may have outsourced some of its discretion on the setting of fee levels to the executive branch, it is important to remember that the source of this authority remains with the General Assembly. As you know, our nation was birthed over the issue of taxation without representation. Therefore, it is vitally important to carefully discern the will of the people, as expressed by their elected representatives in the General Assembly, for any proposal to raise taxes. The Department must not usurp this authority by expanding the fee setting discretion granted to them. In respect to the constitutional separation of powers, the Department must strictly adhere to Legislature’s authorized criteria for raising taxes. For the reasons laid out above, we contend that this proposal clearly and expressly exceeds the statutory authority in scope, in magnitude, and intent. Furthermore, the deleterious economic and fiscal impacts are not in the public’s interest. For these reasons, we, as elected members of the House of Representatives, respectfully request that the IRRC deny this proposal.

Thank you for your taking these concerns under review. (19 – 61)

Response: DEP does not believe this rulemaking is a tax. Pennsylvania courts describe taxes as “revenue-producing measures authorized under the taxing power of the government” and fees as “regulatory measures intended to cover the cost of administering a regulatory scheme authorized under the police

power of the government.” *City of Philadelphia v. Southeastern Pennsylvania Transp. Auth.*, 303 A.2d 247, 251 (1973). Based on Pennsylvania Supreme Court case law, this rulemaking is raising fees to cover the costs of a regulatory program and not revenue producing measures that go into the General Fund. See also DEP’s response to Comment No. 2.d. Moreover, the automatic fee adjustment has been removed from this final-form rulemaking.

- 5. Comment:** We write to you today opposing the proposed rulemaking amending Chapters 91 and 92a to establish new fee schedules for WQM permit applications, NPDES permit applications and NPDES annual fees, and to make clarifications in 25 Pa. Code §§ 91.1, 91.22, 91.27, 91.36, 91.52, 92a.26, 92a.32 and 92a.62, respectively. Having heard from many of our constituents on the proposed fee increases, we concur that this package is excessive and burdensome to permittees.

The Department acknowledges that the costs to comply with the proposed regulation for up to 10,300 NPDES and WQM-permitted facilities could be as high as \$8 million. Operators of approximately 4,000 facilities in this Commonwealth with individual NPDES permits would be affected by this proposed rulemaking. While certain categories of facilities would be subject to little or no fee increase, other categories would be subject to more significant increases, based on the nature and complexity of these facilities and the applications they submit.

One business sector that would be particularly harmed by the proposed fee increases would be agricultural operations, particularly dairy producers, who have CAFO permits. Pennsylvania has already lost 120 dairy farms within the past three years due to a myriad of factors. The state of the dairy industry combined with added state and federal mandates, have placed many current operations on difficult ground, creating another financial hardship. Increasing permit fees now would increase the financial stress on these businesses and likely cost many Pennsylvanians their jobs. As indicated in other comments, the proposed NPDES CAFO fees cannot be passed on to the customer, as they might be in various other industries.

The Department claims that increases are necessary to administer the WQM and NPDES programs and to implement the Pennsylvania Clean Streams Law, as well as the NPDES program mandated by the federal Clean Water Act. While it is certainly important to maintain adequate funding for environmental compliance monitoring, increasing financial burdens on entities in which these programs rely to generate such funding may actually decrease funds available.

Agriculture is Pennsylvania’s number one industry. Our unified goal this legislative session is to ensure Pennsylvania agricultural operations remain competitive and profitable for current and future generations of farmers. Increasing existing fees on an industry that is already contributing significantly to Pennsylvania’s overall economy and workforce should not be supported or considered at this time. Pennsylvania farmers are making great strides in adopting best management practices with clean water and sustainability in mind. Furthermore, these proposed regulations seem to conflict with the intent of the Governor’s PA Farm Bill aimed at bolstering the agricultural industry.

Based on the number of comments received on this proposed rulemaking, it is evident that further discussion is needed and a public hearing is necessary to further examine the costs of the permit fees, as well as the economic impact to our agriculture industry (and other industries) overall.

Thank you for your consideration of these comments. **(62 – 71)**

Response: Since 1998 DEP has expended nearly \$12 million in personnel costs related to CAFO permitting and inspections, including technical staff, inspectors, program management and attorneys to

defend DEP's actions to issue permits to CAFOs against third parties. This does not include laboratory, equipment and emergency response costs that have been incurred. DEP has collected less than \$250,000 in fees over those 20+ years, or about 2% of its costs. This is well below the 18% average rate for the entire Clean Water Program.

However, DEP understands the concerns expressed by agribusinesses and has finalized fees for individual NPDES CAFO permits that are similar to the annual Notice of Intent (NOI) fees that are imposed under the PAG-12 General Permit for CAFOs. The final fees for CAFOs with individual NPDES permits are as follows:

- Application Fee for New Permits – \$500 (reduced from \$3,000 in the proposed rulemaking and is less than the prior regulatory fee of \$1,500 as published in 25 Pa. Code § 92a.26 in 2010);
- Application Fee for Permit Renewals – \$0 (reduced from the prior regulatory fee of \$750 as published in 25 Pa. Code § 92a.26 in 2010), as there will no longer be renewal application fees for any fee category except for mining activities;
- Application Fee for Major Amendments to Permits – \$500 (reduced from \$1,500 in the proposed rulemaking and is less than the prior regulatory fee of \$750 as published in 25 Pa. Code § 92a.26 in 2010);
- Application Fee for Transfers of Permits - \$200 (reduced from \$500 in the proposed rulemaking); and
- Annual Fee - \$500 (reduced from \$1,500 in the proposed rulemaking).

DEP has reduced fees for new and existing CAFOs with individual permits in the final rulemaking by 72% and 67%, respectively, compared to the proposed rulemaking, over a 5-year permit term.

In addition, DEP has also reduced the WQM permit application fee for manure storage facilities in the final rulemaking by 60%, compared to the proposed rulemaking (from \$2,500 to \$1,000).

6. Comment: On behalf of the members of The Pennsylvania State Association of Boroughs (PSAB), I respectfully submit the following comments on the proposed WQM, NPDES & MS4 Application & Annual Fee regulation.

PSAB is a statewide, non-partisan, non-profit organization dedicated to serving 957 borough governments. Since 1911, PSAB has represented the interests of boroughs and helped to shape the laws that laid their foundation. The Association improves and assists local governments through legislative advocacy, research, education and other services. With more than 2.6 million Pennsylvanians residing in borough communities, our members strive to deliver quality leadership and service to citizens across the Commonwealth.

In general, we support the goals of the Clean Streams Law, which is a federal mandate from the Clean Water Act. We believe this public policy is an important mandate which must be funded by the mandating entities, i.e. the federal and state government. Unfortunately, we have seen a dramatic decrease in the appropriation to DEP to fund the Clean Streams Law implementation. The result is an ever-increasing pressure on the regulated community to subsidize the operations of the Bureau of Clean Water.

PSAB members would be affected by the proposed regulation as part of the regulated community. Our members hold permits for which the fees in the regulation would, for the most part, increase substantially. Take for example the MS4 fees for an Individual Permit. The annual fees would increase from \$500 to

\$2,500. These costs will be absorbed by the local taxpayers since most members do not have a stormwater utility.

We are also concerned by the Department's inclusion of an automatic index of the fees every two years based on the United States Bureau of Labor Statistics Employment Cost Index for State and Local Government Compensation. PSAB believes this automatic fee increase seeks to frustrate the Regulatory Review Act (71 P.S. §745.1 et. seq.) We strongly object to the lack of a public comment period before fees would be increased on the regulated community. Why has the Department chosen the Water Quality Management & NPDES permits for the automatic index and not other permits?

The fiscal impact to our members would be significant with local governments bearing an estimated \$2 million of the \$8 million of new fees. PSAB believes the additional revenue needed for the Bureau should come from the Commonwealth's General Fund.

Thank you for the opportunity to provide comments on this proposed regulation and respectfully request the Board's consideration. (72)

Response: DEP has established an additional exemption to fees under Chapters 91 and 92a in the final rulemaking. Municipalities that are designated as financially distressed by the Department of Community and Economic Development under the Municipalities Financial Recovery Act, Act of 1987, P.L. 246, No. 47 (Act 47) may be exempted from fees. Municipalities that provide evidence of this current designation will be exempted. Also, see DEP's responses to Comment Nos. 2.c. and 2.d.

7. **Comment:** I am writing on behalf of the Pennsylvania Chamber of Business and Industry (PA Chamber), the largest, broad-based business advocacy organization in the Commonwealth. Our nearly 10,000 member companies are involved in all industrial categories and are of all sizes. On behalf of these businesses, we welcome the opportunity to respond to the Department's invitation for public comments concerning the proposed rulemaking to increase fees for WQM and NPDES permits.

As the Department and its staff are aware, the PA Chamber has been actively and positively involved throughout the past 15 years or more in working with other stakeholders in helping to frame workable approaches to addressing the water quality challenges of the state. As the PA Chamber has expressed in our previous comments on various legislation regarding water policy, DEP and EPA proposed rulemakings, and proposals from interstate water basin commissions for the Delaware and Susquehanna rivers, the PA Chamber and its members recognize that development, use and stewardship of the state's water resources is vital to the health and success of the communities, industries and enterprises throughout the state. That stewardship of our water resources requires a thoughtful balancing of environmental and economic considerations. It is with this perspective that we offer the following comments.

- a. Broadly, the PA Chamber supports a well-functioning Department that is appropriately resourced with revenues and staff to effectuate its statutory and regulatory obligations in a consistent, timely, predictable manner. However, the membership of the PA Chamber is not persuaded by the documents supporting the proposal, which do not appear to include a substantial analysis and examination of the costs to administer the actual workload of reviewing and issuing permits and conducting inspections. We are concerned that the Department has positioned this proposal as an "either/or": either fees increase, or General Fund appropriations must. This is not the case.

The Department notes in its Regulatory Annex Form that the proposed fee increases will "allow the Department to properly administer the Clean Water Program to protect the quality of water resources

in the Commonwealth without any increases in the appropriation of general tax revenue to the Department.” While as a general principle we agree that the regulated community should bear a reasonable burden for the costs of administering relevant regulatory programs, clean water is, as we are often reminded, a matter of state constitutional right; therefore it is also reasonable that this administration would seek to support the Clean Water Program in part through the General Fund. It must also be noted that while we are aware of the reductions in General Fund appropriations that have occurred over the past decade, the General Fund is not the only source of revenue the administration may look to. A significant portion of the Department’s revenues come from the federal government, and the Department can, should and ought to advocate for increased federal funding given the substantial amount of federal law that is delegated to the state. The General Assembly, the Department and the administration are also not precluded from supporting environmental programs through revenues collected from the sale or lease of publicly held natural resources.

Response: The U.S. EPA disburses funds to DEP through the Clean Water Act Section 106 grant program (106 grant) for DEP’s administration of the NPDES program in Pennsylvania. Over the past decade, funds allocated to all states for all grant programs have been declining through the federal budget process. According to EPA, it is not uncommon for Congress to execute “rescissions”, i.e., general across-the-board reductions for state environmental programs. EPA is provided its allocation, and then, through a formula that consider factors such as population, the funds are distributed to states, U.S. territories, interstate commissions, and other recipients. DEP’s share of the 106 grant for federal fiscal year 2019 was less than \$6 million, representing a decrease from prior years, and the total cost for the Clean Water Program is approximately \$21 million. With respect to collecting revenues from other sources, DEP welcomes revenue opportunities as approved by the Governor and legislature. DEP is a member of many national organizations, such as the Association of Clean Water Administrators, that advocate on behalf of states’ program for increased federal funding.

- b. As it relates to the sufficiency of existing resources and staff, it is not clear how the Department arrived at its desired increase of staff complement that would be hired with the finalization of this proposal. Prior to finalizing the fee package, the Department should make public a report that includes an analysis of the staff and resource burden is borne by the agency for each of the Chapter 91 and 92a categories. The Department should also continue to focus efforts on streamlining review to avoid unnecessary steps and to give increased attention from executive management to the fact that there continue to be significant variations in regional workflow practices.

Response: The workload analysis that was completed by DEP to justify the proposed fee increases was included as an attachment to the RAF submitted to the Independent Regulatory Review Commission (IRRC) for the proposed rulemaking. Following completion of the workload analysis, an evaluation of the fiscal health of the Clean Water Fund has revealed that it is unlikely that DEP will be able to support all of the positions necessary to fulfill all of the Clean Water Program’s responsibilities. In other words, the new revenues under the final rulemaking will primarily go toward ensuring DEP is able to maintain its current level of activities and staffing. DEP has and will continue to investigate and implement procedures to streamline reviews when authorized under state and federal law. The workload analysis shows that significant resources are necessary to fulfill all state and federal obligations. DEP understands the concerns of the impact of increased permit fees on the regulated community. The fee increases in this rulemaking aim to ensure DEP has sufficient resources to protect the health and safety of the public, to protect the state’s water resources, and to meet other state and federal obligations while fairly and equitably distributing the cost to administer the Clean Water Program among the regulated community. The Department will continue to evaluate its revenues and expenses every three years and recommend fee increases to EQB as necessary to ensure adequate resources.

- c. Notably, the proposed rulemaking and the accompanying documents in support of the permit fee increases are silent with respect to one very notable issue: the awarding of attorneys' fees in Clean Streams Law litigation. While we recognize there is currently on-going litigation regarding the awarding of attorneys' fees in one particular case and that a fee package regulation is not the appropriate vehicle to resolve this issue, nonetheless the Department is well aware of the direct and indirect costs of this provision of the Clean Stream Law: directly, to the tens or hundreds of thousands of dollars annually the Department may have to transfer to third parties, and indirectly to the inordinate amount of staff time the Department commits to ensuring each permit will withstand litigation from such groups. To be clear: we recognize the Department has done an excellent job in defending its permitting decisions and are not asking for a change in work practice in this respect. We do, however, encourage the Department to support efforts to limit the awarding of fees to opposing counsel except in instances where a party has acted in bad faith in either a application or permit information submission or in challenging a permit. We also encourage the Department to support efforts to authorize contracting with licensed professionals to assist in the technical review of permits, in order to ease the administrative burden on the agency.

Response: DEP acknowledges the comment and notes that the concerns of the commenter do not pertain to the rulemaking or the rulemaking documents.

- d. The PA Chamber also encourages DEP to provide for reduced application fees for permit renewals in circumstances in which site design and operations have not significantly changed. While it is possible that relevant regulatory criteria (such as in-stream water quality standards under Chapter 93) may have changed in the period of time between the issuance of a permit and its expiration, if the bulk of the permit conditions in the previously issued permit are substantially similar to the renewal, the Department will not be expending the same amount of resources in reviewing the permit for renewal. The proposed fee schedule for most permit categories does not distinguish between new applications and renewals. Unless modified, this will result in existing facilities seeing an order of magnitude higher in permit fees for renewals. While all facilities' budgets are highly scrutinized by management, these increases will affect small and medium-sized businesses the hardest who may be limited in their ability to shift the cost for the higher fees from other operating functions.

Response: The fee schedule under 25 Pa. Code § 92a.26(b) applies only to applications for new individual NPDES permits. Renewal (reissuance) of permits will no longer require a fee, with the exception of mining activities. An annual fee will continue to be paid throughout the life of the permit without the need for a separate renewal application (except for mining activities).

- e. Finally, the PA Chamber does not support the portion of the proposal that seeks to authorize an automatic increase in permit fees commensurate with inflation. The Clean Streams Law is clear that the Department must every three years review the adequacy of its fees and present a recommendation to the EQB should the Department believe a change in the fee schedule is warranted. The Clean Streams Law and the Regulatory Review Act do not authorize the Department to increase fees without going through the regulatory development process.

Response: See DEP's response to Comment No. 2.d.

In closing, the PA Chamber supports the Department having adequate revenues to effectuate the timely issuance of permits and the protection of the waters of the Commonwealth. Other sources of revenue are available for the administration to look to beyond solely placing the burden of

implementation of the Clean Water Program on industry. There also remains significant work to be done with respect to improving processes and performance of the Department, as well as shoring up the loss of revenue through the awarding of attorneys' fees to third parties, before we can endorse this proposal.

Thank you for your consideration of our comments on this matter. (73)

- 8. Comment:** On behalf of the 12,500 Pennsylvania 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 Chapters 91 and 92a to provide for fees for water quality permits in Pennsylvania.

NFIB understands that the rulemaking, which increases permit fees substantially in the regulated community, is intended to address the Department of Environmental Protection's (DEP's) "funding gap" so that the agency has sufficient staffing and other resources in the Clean Water Program. These funds support the administration of the Clean Streams Law and permit the Department to serve as the enforcement agency for the administration of the National Pollution Discharge Elimination System (NPDES) program in Pennsylvania.

While we appreciate the need for appropriate resources to provide a robust program, there are several concerns we have about the proposed fees.

- a.** First, the proposed fee increases are substantial and will have detrimental impact on many small businesses and farms. Question 24 of the Regulatory Analysis Form (RAF) indicates that "[i]t is not anticipated that this rulemaking would adversely affect small business. The fee increases are not considered significant when compared to normal operating expenses..." As a representative of small businesses in the Commonwealth, we would like to challenge this assumption.

As an example, one small business in south-central Pennsylvania requires a "Minor Industrial Waste Facility without ELG" permit to operate its business. This family-owned business, which has been in operation in the community for more than 100 years, processes and ships the fruit of over 40 local farms, thereby supporting the local economy and many local farm families.

Under the proposed rule, this small business's annual fee for their NPDES-required permit will increase by five times, from \$500 to \$2,500. Most small businesses have small profit margins and would have trouble absorbing such a drastic increase in annual operating expenses. They will be required to cut costs or employee hours or increase their prices to mitigate the impact, thereby increasing costs for the 40+ farms that depend on their services to get their Pennsylvania products to market.

Another small business, which provides protective coating services for industrial materials, has an industrial stormwater permit, the annual fee for which is proposed to double from \$1000 to \$2000. This increase will likely raise prices for the other businesses purchasing their services and, as a result, make the company less competitive in the national marketplace.

Most farms in Pennsylvania are also small businesses. For example, one local family-owned dairy farm is integrally involved in its local community, regularly engaging in outreach and education about farming and giving school tours of its operation. This farm, with about 950 milk cows, is permitted as a Concentrated Animal Feeding Operation (CAFO) under section 91.22. This category of

permittee currently does not have an annual fee. Under the proposed rulemaking, this farm would need to pay \$1,500 every year just to maintain its permit. New CAFO permit applications would double from \$1,500 to \$3,000. Given the dire circumstances of many farmers, and in particular dairy farmers, pinched between rising costs and declining milk prices, \$1,500 in additional unplanned expenses every year is not insignificant. It is, in fact, around the cost of purchasing one additional milking system for use on the farm.

There are many such examples across the state. Indeed, question 15 of the RAF notes that there are approximately 2,500 small businesses with NPDES permits affected by the rulemaking, along with many small farms with water quality management (WQM) permits for manure storage facilities. It is likely that the vast majority of these small businesses would consider these increases “significant” when compared to their normal operating expenses.

Response: DEP is sensitive to the issues raised by the commenter. A number of the fees have been revised to reduce the impacts to small businesses in Pennsylvania. See also DEP’s responses to Comment Nos. 2.c. and 5.

- b. Second, NFIB questions the statutory authority of the Department to establish by rulemaking an automatic escalator provision for NPDES and WQM annual permit fees every two years as proposed in sections 91.22(c) and 92a.62(c). This proposed automatic escalator circumvents public notice and comment on future fee increases, which are critical to weighing the costs and benefits of any proposed administrative action, as set forth in the Commonwealth Documents Law.

In addition, we appreciate the Department’s statement in RAF question 16 that “[t]he Department is aware of areas of the program that could be improved or enhanced, in order to, for example, make the permit process less onerous and save applicants money.” However, if fee increases are provided every other year without having to justify them to the regulated community, there is little incentive for the Department to engage in cost-saving measures such as this over the long term. Ensuring that those impacted by the fees have a chance to review and comment on the Department’s proposed increases is an essential transparency and stop-gap measure to ensure that administrative agencies are responsive to the concerns of the regulated community.

Further, we note that where an escalator is provided to the Pennsylvania Fish and Boat Commission for boat and marine forfeiture, it is established in statute at 30 Pa.C.S. section 5331(c). If such a provision was intended for the Department’s Clean Water Programs, it would be provided by the General Assembly.

Response: See DEP’s response to Comment No. 2.d.

- c. Third, the Department provides justification for the fee increases by explaining the public health and economic benefits of the rulemaking in question 10 of the RAF. We believe that it is also necessary to consider the economic harm of the proposed regulation in order to fairly assess costs and benefits of the rulemaking and achieve an appropriate balance. For example, having established that many farms are impacted by the proposed fee increases, we note that a recent study found that agriculture supports 280,500 direct jobs and 579,000 indirect jobs in the Commonwealth, accounting for approximately \$83.8 billion in direct economic impact. Agriculture supports one out of every ten jobs in Pennsylvania. This same study found that the regulatory and business environment “limits investments in production, processing, and manufacturing in the state.” The report recommends that the state “reconsider policies that deter agricultural investments.” The drastic fee increases proposed certainly reduce the resources farmers and other agricultural businesses have to invest in their

operations, improve their production, and compete effectively, and therefore deserve to be examined in this light.

The proposed fee increases also affect many other small businesses, including the fruit packaging company and industrial coating firm mentioned above. Small businesses in Pennsylvania employ 2.5 million (or 46.6%) of its employees and create two out of every three new jobs. But small businesses, many of which operate with razor-thin profit margins, already function under burdensome and expensive regulatory restrictions and simply cannot absorb increased costs, such as the rulemaking provides. In fact, in a study of small business regulation, Pennsylvania ranked 49th among states for regulation costs impacting business.

These businesses will be forced to make difficult choices to manage the increased costs. They will likely raise the prices of their goods and services to cover it, but many will then be unable to compete with larger operations that benefit from better economies of scale. Others may choose not to invest in an expansion (and hire new employees) if the higher fees will make those investments less rewarding. The Department must consider the impact of drastically higher permit fees on the business environment, measured by lost investment and innovation, less productivity, and a higher regulatory cost burden as factors when weighing the impact of the rulemaking.

Response: DEP has analyzed costs associated with this rulemaking. DEP has revised the fees to reduce the impacts on small businesses. See also DEP's response to Comment No. 2.d.

- d. Lastly, we would like to encourage the Department to find other ways to fund the Clean Water Program in order to mitigate the burden the regulated community must bear through increased fees. For example, question 12 of the RAF compares the proposed fees to states that are "comparable" to Pennsylvania and those with "workloads similar to the Department." Has the Department examined how other states (that are not necessarily "comparable") regulate and administer their Clean Water Programs to determine whether less costly and less burdensome regulatory schemes may be appropriate in Pennsylvania? The RAF specifically mentions New York, which does not issue CAFO permits and verify compliance like most other states. They instead rely on third parties to do so. Has the Department examined this option in Pennsylvania as a means of reducing the workload in the Clean Water Program? If a statutory change is required to responsibly reduce the burden of administering the program, it should propose such a change to the General Assembly.

Response: DEP has discussed administration of Clean Water Programs with surrounding states and finds that there is significant variability among states in terms of statutory, regulatory, and budgetary schemes. DEP has and will continue to consider the implications of modifying its regulations where appropriate while maintaining its core responsibilities of protecting public health and the environment.

- e. We would also suggest that the Department return all revenue generated from fines and penalties in the Clean Water Program to the program to contribute toward its administration. The Department notes in RAF question 10, that revenue for the WQM program comes from fees and the General Fund, and the NPDES program is funded by fees, federal funds, and the General Fund, with fees covering about 18% of the total cost of the program. We note that penalties are not included here in revenue sources and wonder why.

Last year, a \$12.6 million penalty was assessed and was distributed as grants in 14 Pennsylvania counties. Indeed, while we understand this to be unique revenue impact, this single penalty would have covered 60% of the Clean Water Program costs this year, with no increase in fees necessary.

While the water quality, watershed restoration, and stormwater management goals of the grants are laudable, we believe that it is appropriate for penalties such as this to contribute to the administration of the Clean Water Program, especially in the areas of inspection and compliance monitoring, which constitute 36% of program costs, according to page 3 of the Preamble.

Response: Penalties are deposited into the Clean Water Fund, but there are numerous other activities and programs aside from the Clean Water Program that are funded in part or in whole through the Clean Water Fund. Additionally, it would not be considered sound fiscal management to rely on penalties as a source of revenue for a program in which a primary objective is compliance, for which penalties would not exist. Penalty money is never a consistent source of funding.

- f. We appreciate that the Department is basing proposed fees on the proportionate amount of time and effort required for staff to assess and process each permit application. But NPDES permit application/NOI reviews account for only 29% of program costs. Asking the regulated community that is utilizing the permitting process to comply with regulatory requirements to bear a disproportionate share of program costs is unreasonable, especially considering the above-cited impact on the business community of the drastically increased costs of the proposed fees.

Response: The regulated community is not only utilizing the permitting process to comply with regulatory requirements, but is also participating in the ongoing process of achieving and maintaining compliance overseen by DEP. For instance, all permittees are required to comply with the terms of their permit. DEP's compliance, enforcement, and monitoring activities ensure that permittees are meeting their obligations under the law. Also, see DEP's response to Comment No. 2.b.

- g. As recently as 2008, collected fines made up over 80% of revenue collected by the Clean Water Fund. We would suggest that the Department provide the total revenue generated from fines and penalties in the program and incorporate it into funding sources for the Clean Water Fund in order to reduce the cost impact on businesses complying with the law through permitting.

Response: DEP does not believe reliance of penalty money is sound public policy. See DEP's response to Comment No. 8.e.

Thank you for the opportunity to provide feedback on the rulemaking. Again, on behalf of the small business community, we ask that you consider the impact of the proposed increases on small businesses in Pennsylvania as well as the overall business climate. Also, please consider alternative regulatory schemes to reduce costs on the regulated community, along with additional funding sources for the Clean Water Program, such as penalty revenues.

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. (74)

- 9. **Comment:** We write to offer our comments on the Department of Environmental Protection's recently proposed regulations regarding WQM and NPDES permit application fees and annual fees that was published for public comment in the March 30, 2019, edition of the *Pennsylvania Bulletin*.

- a. As you know, the Pa. Clean Streams Law allows the department to charge and collect reasonable filing fees for applications filed and for permits issued. The level of the fee increases proposed in Sections 91.22(a), 92a.26(b), and 92a.62(b) are not reasonable, with some fees increasing by more than two or three times their previous levels. As the EQB's own analysis shows, the General

Assembly has for many years underfunded the department's budget, all at a time when the department's costs for staff salaries and benefits, as well as other operational costs, have been increasing. The result has been an overall decrease in staffing for the statewide Clean Water Program of approximately 25% since 2007.

Response: DEP believes that the fee increases are necessary to meet DEP's obligations under federal and state law to protect public health and the environment. As a result, the fee increases are reasonable for the continued operation of the water programs. See also DEP's response to Comment No. 2.c.

- b. Given that clean water is guaranteed by the state's Constitution, it is incumbent on the General Assembly to make up the shortfall in the department's efforts in our clean water program. Under this proposal, the regulated community (i.e., those persons requiring an NPDES and/or WQM permit) would be the ones paying an additional \$8 million per year to the department for what essentially is a core function of state government, and of that, nearly \$2 million would come from municipal governments. We submit that you withdraw this proposed regulation and instead make a request for increased funding from the state legislature rather than passing the burden of DEP's operational costs onto local government.

This spring, PSATS members voted to approve a resolution that opposes increases to fees levied by a state agency when applying for a stormwater permit. Our members have spoken very clearly that they cannot absorb the costs associated with this proposed regulation.

Response: DEP has made the General Assembly aware of the financial situation of the Clean Water Program. The fee regulations fit directly within the statutory grant of authority given to DEP and to EQB. Without adequate financial resources, DEP's mission is at risk and the requirements of the CSL cannot be fulfilled. The legislature provided DEP the authority to charge "reasonable filing fees for applications filed *and for permits issued.*" 35 P.S. § 691.6 (emphasis added). The plain language of the statute authorizes DEP to charge fees designed to cover the costs associated with 1) applications for permits and 2) permits that have been issued. This authorization allows DEP to meet its statutory obligations in relation to permits issued, including, but not limited to, inspection and enforcement activities. Additionally, the Administrative Code of 1929 (71 P.S. § 510-20) authorizes EQB to promulgate rules and regulations necessary for the proper performance of the work of DEP. See also Response to Comment 2.a. and b.

- c. In Sections 91.22(b), 92a.26(e), and 92a.62(c), the department indicates that fees for new general permits, and amendments to and transfers of general permit coverage, will be separately established in the general permit itself, and that such fees cannot exceed the relevant individual permit fee. Does this suggest that the department intends that general permit fees will be lower than individual permit fees?

Response: The fee limitation associated with general permits has remained the same since 2010, while costs of program administration related to those general permits have increased, just as with individual permits. To avoid confusion with how these general permit fees will be determined and implemented relative to individual permits, DEP has restored the language in § 92a.26 and applied a reasonable increase to the fee limitation. General permit fees are currently lower than individual permit fees, and likely will remain that way in the future. General permit fees will continue to be established in each general permit. Persons interested in each general permit will have an opportunity to comment on the associated fees at the time each general permit is proposed.

- d. We do want to take a moment and acknowledge the department for providing language in Section

92a.32(c) that allows some municipalities to seek a waiver from NPDES permit requirements for small MS4 operators. While the universe of municipalities eligible to take advantage of this waiver is small, we nonetheless welcome any regulatory relief that can be offered to municipalities with fewer than 1,000 residents while still providing protection to our important clean water resources in the Commonwealth.

Response: Thank you for the comment.

- e. If implemented, this proposed regulation would be counterproductive to restoring Pennsylvania’s aging infrastructure for many PSATS members. Fees should not be a replacement for decreased funding from the state. An increase in permit fees for local government water and wastewater is ultimately a tax on the Pennsylvanians that pay for these services. PSATS opposes proposed regulation #3227. (75)

Response: DEP does not believe this rulemaking is a tax. Pennsylvania courts describe taxes as “revenue-producing measures authorized under the taxing power of the government” and fees as “regulatory measures intended to cover the cost of administering a regulatory scheme authorized under the police power of the government.” *City of Philadelphia v. Southeastern Pennsylvania Transp. Auth.*, 303 A.2d 247, 251 (1973). Based on Pennsylvania Supreme Court case law, this rulemaking is raising fees to cover the costs of a regulatory program and not revenue producing measures that go into the General Fund. The fee increases are necessary for DEP to meet its federal and state legal obligations to protect public health and the environment.

10. Comment: The Pennsylvania Manufacturers’ Association adamantly opposes the proposed “Water Quality Management (WQM) and National Pollution Discharge Elimination System (NPDES) Permit Application and Annual Fees” increases before the Pennsylvania Independent Regulatory Review Commission.

- a. On March 12, 2019, the Pennsylvania Department of Environmental Protection (DEP) sent the proposed regulation to the Independent Regulatory Review Commission (IRRC), and then published the changes in the PA Bulletin on March 30, 2019. The Clean Streams Law authorizes the Department to formulate and adopt regulations, including fees, which are found in Chapters 91 and 92a of Title 25 of the Pa. Code. In addition to increasing the existing fees, the department is also proposing the removal of an existing cap on general NPDES permit Notice of Intent (NOI) fees and replacing it with a requirement that NOI fees may not exceed the equivalent in individual permit fees. As a result of these changes, the Department expects to collect an additional \$8 million per year. This is just one application and annual fee increase as there are others proposed by DEP on the IRRC docket for approval, totaling \$23 million per year.

Response: DEP acknowledges the comment. DEP also notes that the final-form rulemaking does not remove the cap on general NPDES permit NOI fees, but rather increases the cap from \$2,500 to \$5,000.

- b. Additionally, under the current system, the Department can only change the fees by regulation. In this proposal, they would adjust WQM and NPDES fees according to an Employment Cost Index every 2 years, limited only by the Department’s cost to administer the Clean Water Program.

Response: See DEP’s response to Comment No. 2.d.

- c. While the Clean Streams Law authorizes the Department to formulate regulations, including fees, the unprecedented increases in the proposal before IRRC seem far outside the intent of the General Assembly. The cost of this \$8 million per year increase will be paid on the shoulders of our commonwealth's taxpayers and businesses, hampering growth, and ultimately threatening the effectiveness of the programs. Not only will this increase the cost of doing business in Pennsylvania for our members through the direct payment of increased fees, but it will also cost our members in additional taxation for the municipalities in which they operate to comply with the new application and annual fee rate increases. Economic impact is a factor of consideration that IRRC must examine when reviewing regulation application and annual fee increases.

Response: DEP needs additional revenues to ensure that DEP is meeting its federal and state obligations to protect public health and the environment. Reduced funding means that DEP will have fewer resources to process permit applications, which will result in a slowdown of economic activity. Increased funding will ensure that water pollution is prevented and eliminated, which supports economic wellbeing and a higher quality of life. See also DEP's response to Comment No 2.c.

- d. Most disconcerting, it is our understanding that the Department of Environmental Protection has initiated fee increases such as this one in order to stabilize the funding for overall departmental operations because of volatile funding by the General Assembly. Fees for programs should be commensurate with the deployment of said program and not used to sustain or increase overall departmental funding. The overall funding of any state department of agency is a matter of the General Assembly and the Governor as the fiscal year budget is negotiated.

The public good that comes from regulations is compliance. The Department of Environmental Protection ought to act as a partner in achieving compliance rather than pricing businesses and municipalities out of progress, improvement, and innovation.

Response: DEP's analysis in the RAF for the proposed rulemaking clearly identified the relationship between the proposed fee increases, and revenues that would be generated, and the funding necessary to restore and maintain DEP's capabilities to carry out its responsibilities in the Clean Water Program. This analysis includes the cost to ensure compliance. The determination that the Clean Water Program's funding is unsustainable absent additional revenues was and remains independent of the consideration of any other agency program.

It is for these reasons that the Pennsylvania Manufacturers' Association opposes Regulation #7-533: Water Quality Management and National Pollution Discharge Elimination System Permit Application and Annual Fees. (76)

- 11. **Comment:** On behalf of over 500 member sewer and stormwater authorities, the Pennsylvania Municipal Authorities Association (PMAA) submits the following comments to the proposed increase to NPDES and MS4 permit fees and annual fees.

Issues:

1. There has seen a significant staff cut, 25% since 2007, in DEP's NPDES program (Chapter 92a). These cuts have impacted the roughly 4,000 required annual inspections at wastewater treatment plants across the Commonwealth.
2. Since 2010, EPA has warned Pennsylvania of possible sanctions, including cuts in federal funding if the Chapter 91 and 92a programs are not brought up to federal requirements. The penalty to Pennsylvania for this funding shortfall will be even "less" funding from EPA, and the risk of EPA

taking control of the program, much like they have threatened with the PA Drinking Water program. This would not be a sustainable solution to moving the program forward.

DEP's Proposed Solution:

Significant new program funding, \$8 million, is being proposed by DEP. If enacted, this will cover an additional \$7 million for the NPDES program, and an additional \$1 million for the Water Quality Management program. However, the money will now come from fee-based charges to wastewater and stormwater facilities directly resulting in higher bills to their customers.

Implementation:

1. Due to funding and staff cuts over time in the annual DEP budget, these programs have seen a significant downward spiral. Funding formerly provided in the General Fund, now proposed to be assessed against sewer and stormwater facilities, will be controversial.
2. When DEP faced a similar dilemma several years ago in the Safe Drinking Water program, they adjusted permit fees on the systems providing drinking water, escalating permit fees significantly, while also charging a new annual fee. This was done under threat from EPA to sanction the program. It also resulted in higher rates to customers statewide.
3. DEP is proposing a similar fee-based structure for the statewide wastewater and stormwater programs to finance departmental needs through increased annual and permit fees.
4. Like the drinking water program, this is DEP's "solution" for the DEP wastewater programs to make up their funding shortfalls from the state. And like the drinking water program, the wastewater program is already hearing criticism that a former environmental stipend in the annual budget will now become a fee-based charge to wastewater plants forcing them to escalate fees to all customers to meet their DEP-designated annual "contribution" to the Clean Water Program.
5. Specific program-based fees appears to be the new financial solution to environmental program needs. As this continues, we can expect significant backlash from customers of water and wastewater programs as they pay fees for operating funds previously provided by the Commonwealth.

We believe core functions of DEP, like those involving the NPDES program, should be covered by the General Fund. The taxpayers (our customers) are already paying for the program through tax dollars; therefore, fees should never be relied upon to cover the cost of this program directly related to the public's health.

Our support for this is noted in one of our resolutions adopted by our membership this past September at our 2018 annual conference:

Resolution 22-18

RESOLVED, That PMAA urge the PA General Assembly and Congress to address the underfunding of water and wastewater infrastructure and to offset the billions of dollars necessary to rebuild aging water and sewer systems.

We were disappointed when DEP did not request additional funding at its 2019 budget hearings, and instead, opted to implement this proposed fee package to address the funding gap.

Finally, we note that the long-term cost this rulemaking package will have on wastewater and stormwater providers includes a proposed automatic escalator increasing these fees every two years. We oppose an

automatic escalator as it circumvents the regulatory review process denying public comment on proposed fee increases.

PMAA appreciates the opportunity to present these comments on this proposed rulemaking and respectfully requests the EQB's consideration. (77)

Response: DEP notes that the fee increases are necessary to protect public health and the environment, and to fulfill the mandated legal obligations under federal and state law. See also DEP's responses to Comment Nos. 2.c., 2.d., and 9.b.

12. Comment: The National Association of Water Companies (NAWC), Pennsylvania Chapter respectfully submits the following comments regarding the Water Quality Management (WQM) and National Pollutant Discharge Elimination System (NPDES) Permit Application and Annual Fees.

The NAWC (www.nawc.org) represents all aspects of the private water service industry including ownership of regulated drinking water and wastewater utilities and the many forms of public-private partnerships and management contract arrangements. The Pennsylvania Chapter consists of five-member companies that provide safe and adequate drinking water service to over 3.1 million Pennsylvanians in 492 communities in 39 counties. In addition, three-member companies provide wastewater service to approximately 195,000 Pennsylvanians in 34 communities across nine counties.

The Environmental Quality Board (EQB) proposes to amend Chapters 91 and 92a (relating to general provisions; and National Pollutant Discharge Elimination System permitting, monitoring and compliance) to establish new fee schedules for Water Quality Management (WQM) permit applications, National Pollutant Discharge Elimination System (NPDES) permit applications and NPDES annual fees, and to make clarifications in 25 Pa. Code §§ 91.1, 91.22, 91.27, 91.36, 91.52, 92a.26, 92a.32 and 92a.62, respectively.

The purpose of this proposed rulemaking is to raise approximately \$8 million in increased fees annually, as determined by the Department of Environmental Protection's (DEP) workload analyses, to increase program resources for the Bureau of Clean Water and statewide Clean Water Program, and increase program resources to support additional positions, so that the DEP can accomplish its mission and legal obligations to the public, regulated community, and federal authorities.

Chapter 91 – Water Quality Management (WQM) Permits

WQM permits are required under Pennsylvania's Clean Streams Law (35 P.S. §§ 691.1 – 691.1001) and 25 Pa. Code Chapter 91 for the construction of water pollution control facilities, discharges to waters of the Commonwealth, and other activities that may cause or contribute to pollution to waters of the Commonwealth.

- EQB proposes to create “fee categories” for different types of projects requiring WQM permits, with the fee commensurate with the level of effort necessary to review and process the permits.
- EQB proposes to clarify fees for amendments to and transfers of WQM permits.
- EQB also proposes to eliminate the cap of \$500 on general WQM permit Notice of Intent (NOI) fees and establish that NOI fees may not exceed the equivalent individual WQM permit application fees.
- EQB is proposing to add language that will require the DEP to adjust WQM permit application fees according to changes to the U.S. Bureau of Labor Statistics Employment Cost Index for State and Local Government Compensation (ECI) every two years.

- The adjustment would be based on the cost difference, if any, of the ECI for the most recent two-year period.
- The proposed revision requires DEP to publish any changes to the fees based on the ECI in the *Pennsylvania Bulletin*.
- Fee increase exceeding the ECI change would require promulgation of a rulemaking.
- Fee will not be adjusted if application of the index would result in fees exceeding the DEP's costs to administer the Clean Water Program.
- Finally, EQB plans to update references within Chapter 91 to Chapter 92a, which replaced Chapter 92 in 2010.

Approximately \$1 million in additional revenue would be generated from the receipt of WQM permit applications, and an average of 500-600 applications are received annually. The balance of program expenses would continue to be paid for through the DEP's general fund allocation. The increase in WQM fees is designed to cover most of the DEP's costs in reviewing applications.

Comments:

- a. Section 691.6 of the Clean Streams Law allows DEP to charge filing fees for application by regulation, provided that the fee is "reasonable."

"The department is hereby authorized to charge and collect from persons and municipalities in accordance with its rules and regulations reasonable filing fees for applications filed and for permits issued." 35 P.S. §§ 691.6

A plain reading of the statute only authorizes DEP to charge "reasonable filing fees." However, DEP intends to use the proposed fees to cover the entire program costs ("*...it currently costs \$1,427,000 annually to administer the WQM program or approximately ten times the current revenue collected for WQM permit application and NOI fees.*")

Response: DEP believes that this interpretation of the statute is not correct and would result in DEP merely being an administrator who issues permits. The breadth and scope of DEP's responsibilities extend well beyond the administration of permit applications, including responsibilities related to compliance, enforcement, and monitoring activities associated with permits issued. See also DEP's response to Comment No. 2.a. and b.

- b. According to DEP, they reviewed the typical costs for construction projects subject to WQM permits and analyzed how this proposed fee increase would affect those costs. DEP estimates that the average cost of a new minor sewage treatment facility is approximately \$3 million. A professional engineer must design or oversee and approve the design of all construction projects under existing Chapter 91 regulations. DEP estimates that the design and engineering costs associated with a \$3 million sewage treatment project is approximately \$200,000. The proposed WQM permit application fee would increase from \$500 to \$5,000, but the increase would represent only 0.15% of overall project costs and 2.5% of engineering costs.

While DEP uses the overall project costs to minimize the impact of this proposed fee increase, it's important to note that the actual proposed fee increase is ten times the current fee, which is unreasonable by any measure for a filing fee.

Response: See DEP's response to Comment No. 2.c.

- c. Moreover, EQB is also proposing automatic fee increases (by merely publishing said increases in the *Pennsylvania Bulletin*) every two years according to changes to the U.S. Bureau of Labor Statistics Employment Cost Index for State and Local Government Compensation (ECI). Although the fee will not be adjusted if application of the index would result in fees exceeding the DEP's costs to administer the Clean Water Program, how will the regulated community know that when the DEP is only required to develop a report every three years summarizing its fee program for the EQB? Also, automatically setting fees based on an index is not authorized under the Clean Streams Law so it stands to reason that the General Assembly did not intend for such a mechanism.

Response: See DEP's response to Comment No. 2.d.

In addition, what would prevent the DEP from transferring/allocating/prioritizing general fund revenues to other programs within DEP, and then backfilling the Clean Water Program with increased fees?

Response: If DEP receives additional general fund revenues in the future, it would help offset the need for further fee increases.

- d. Finally, we are concerned with typing application fees to the overall cost of the permit review process because there are no incentives for DEP to become more efficient in reviewing complete permit applications. Providing DEP with more funding and additional staff has not produced the promised benefits of faster decisions on permit applications; thereby reducing costs to the regulated community. This is the danger of automatic increases without justification and regulatory review, particularly by the Independent Regulatory Review Commission (IRRC); therefore, we oppose the adoption of automatic fee increases.

Response: See DEP's response to Comment No. 2.d. Moreover, DEP has made significant improvements in its permitting processes over the past decade in response to declining general fund revenue and compliment. In 2008, DEP processed new NPDES and WQM permits in an average of 164 days. In 2018, DEP processed new NPDES and WQM permits in an average of 96 days. In the six years prior to DEP's publication of its Permit Decision Guarantee/Permit Review Process policy (2007 – 2012), DEP processed 4,613 applications for new NPDES and WQM permits in an average of 165 days. In the six full years following release of this policy, DEP processed 6,361 applications for new NPDES and WQM permits in an average of 97 days, representing a 40% decrease in review time. DEP therefore disagrees with this comment; DEP has produced faster decisions on permit applications and has reduced costs to the regulatory community. The increased revenue from fees will ensure this level of efficiency can continue and may help DEP further address shortfalls in completing all of its responsibilities.

Chapter 92a – National Pollutant Discharge Elimination System (NPDES)

NPDES permits are required under the federal Clean Water Act (33 U.S.C. § 1342), the Clean Streams Law, and 25 Pa. Code Chapter 92a for the discharge of pollutants to surface waters.

- EQB proposes to increase NPDES permit application and annual fees for most, but not all, categories of facilities.
- The existing fee categories established by the 2010 rulemaking would generally remain the same, but most fees would be increased.

- EQB proposes to eliminate the cap of \$2,500 on general NPDES permit NOI fees and establish that NOI fees may not exceed the equivalent individual NPDES permit application fees.
- EQB proposes to amend 25 Pa. Code § 92a.32 by clarifying that industrial facilities that seek a NO Exposure Certification in lieu of NPDES permit coverage and municipal separate storm sewer systems (MS4s) that seek a waiver from NPDES permit requirements must submit the relevant NOI or application along with the appropriate fee.
- EQB also proposes to add language that will require the DEP to adjust NPDES permit application fees according to changes to the U.S. Bureau of Labor Statistics Employment Cost Index for State and Local Government Compensation (ECI) every two years.
 - The adjustment would be based on the cost difference, if any, of the ECI for the most recent two-year period.
 - The proposed revision requires DEP to publish any changes to the fees based on the ECI in the *Pennsylvania Bulletin*.
 - Fee will not be adjusted if application of the index would result in fees exceeding DEP's costs to administer the Clean Water Program.
 - Fee increases exceeding the ECI change would require promulgation of a rulemaking.
- The proposed rulemaking would eliminate permit reissuance fees for most categories of facilities so that five annual fees are due per permit term rather than four annual fees and one reissuance fee.
- Additionally, the proposed rulemaking would establish a fixed date for payment of annual fees based on the effective date of the latest issued or reissued permit.

Approximately \$5 million in additional revenue would be generated from the receipt of NPDES permit applications and assessment of annual fees on approximately 4,000 facilities with individual NPDES permits. Moreover, if the ceiling of \$2,500 on NPDES general permit NOIs is removed from Chapter 92a as proposed, DEP may be able to collect up to \$2 million in additional revenue.

Comments:

- e. Section 691.6 of the Clean Streams Law allows DEP to charge filing fees for applications by regulation, provided that the fee is “reasonable.” The Clean Streams Law also allows for charging and collecting fees for permits issued (35 P.S. §§ 691.6).

According to DEP, they evaluated the actual operating budgets of several large (> 1 MGD) sewage treatment facilities in Pennsylvania. The average cost to treat a gallon of wastewater is approximately \$0.68/gallon (this value increases when flow is less, and decreases when flow is more), meaning that the average treatment cost to plants is \$3.4 million. A 5 MGD sewage treatment plant currently pays \$12,500 over a 5-year permit term and would pay \$25,000 under the proposed rulemaking.

Again, DEP uses a percentage of estimated operating expenses of a 5 MGD sewage treatment plant to minimize the impact of this proposed fee increase, but it is actually double the current fee over the 5-year permit term and, in our view, unreasonable by any measure for a filing fee.

Response: DEP is sensitive to the impact these fees may have on certain treatment facilities, but believes these increases are reasonable. These increases will allow DEP to administer its programs to ensure that permits are issued in an expedited manner and the terms of those permits are properly enforced. See also DEP's response to Comment No. 2.c.

- f. Finally, as with the WQM permit fee, EQB also proposes to add language that will require the DEP to adjust NPDES permit application fees according to changes to the U.S. Bureau of Labor Statistics Employment Cost Index for State and Local Government Compensation (ECI) every two years. For

the same reasons as mentioned above with respect to the WQM permit fees, we oppose the adoption of automatic fee increases for NPDES permits without justification and regulatory review, particularly by the IRRC.

Response: See DEP's response to Comment No. 2.d.

Thank you for the opportunity to comment on this proposed rulemaking. (78)

13. Comment: *Note: This comment was submitted twice on behalf of the Pennsylvania Farm Bureau.*

Commentator 79 provided the following introduction to these comments given as testimony at the May 1, 2019 public hearing. Good afternoon, Secretary McDonnell and members of the Board. I am Chris Hoffman, and I serve as Vice President of the Pennsylvania Farm Bureau.

Commentator 80 provided the following introduction to these comments submitted as written comments. Pennsylvania Farm Bureau wishes to offer its comments on the Department of Environmental Protection's (DEP) proposal to increase fees for Water Quality Management (WQM) permit applications and National Pollutant Discharge Elimination System (NPDES) permit applications.

The following comments were both submitted by Commentators 79 & 80.

Farm Bureau is a general farm organization, made up of more than 62,000 members. Since 1950, Farm Bureau has provided support, advocacy and informational and professional services for Pennsylvania agriculture and farm families, including numerous operators who will be affected by the Department of Environmental Protection's (DEP) proposal to increase fees for Water Quality Management (WQM) permit applications and National Pollutant Discharge Elimination System (NPDES) permit applications and annual fees.

While we are aware of DEP's position relative to the challenges it faces in administering its programs, as well as its estimates of the cost of the staff time previously devoted to administering the NPDES CAFO (Concentrated Animal Feeding Operation) and other water quality management programs, the fee proposal in this package is excessive and burdensome to permittees. Specifically, we offer the following comments on the proposal:

- a. Livestock producers are unable to recover the lost revenues to pay the increased fees for NPDES permits. The affected producers are price takers, and as such have next to no control over what they can charge for what they produce, meaning that they cannot simply pass the increased permit costs onto their customers.

Response: See DEP's response to Comment No. 5.

- b. The proposed section Section 91.22, containing the proposed changes to 25 PA Code section 91.22(c), allows fee increases every two years based on the U.S. Bureau of Labor Statistics Employment Cost Index for State and Local Government Compensation. This is unacceptable to agricultural producers.

Response: See DEP's response to Comment No. 2.d.

- c. Livestock producers realize that the DEP fee increases that are proposed for the Individual NPDES Permit will most likely apply to the General Permit fee structure at the next review. (See item #8).

Response: The individual permit fees for CAFOs are now essentially equivalent to the general permit fees for CAFOs. In this final-form rulemaking, the cost for a new individual NPDES CAFO permit is \$500 and the annual fee for an individual NPDES CAFO is \$500. The current NPDES CAFO general permit has an annual NOI installment fee of \$500. Both individual and general NPDES CAFO permits require a fee of \$500 to be paid on an annual basis.

- d. The proposed section titled “Compliance Costs” brings opposition from livestock producers, who oppose being forced to financially support the legal obligations, permitting activities and additional positions for DEP as it increases its revenues via an additional \$6 million extracted from NPDES and WQM permittees from industry and agriculture.

Response: See DEP’s response to Comment No. 5.

- e. A greater number of livestock producers are likely to be classified as CAFO operations due to the increase in animal weights recently adopted by the State Conservation Commission and be subject to pay substantial permit fees.

Response: See DEP’s response to Comment No. 5.

- f. Livestock producers that are classified as CAFOs are concerned about the adverse business climate created by the DEP permit fee increases, the level of which may reach the threshold of closing livestock operations in the state or discouraging new operations.

Response: See DEP’s response to Comment No. 5.

- g. In the proposal section titled “D. Background and Purpose,” DEP mentions that an inspection program with the new fees (implied) could be expanded to all farms (this was previously suggested by a member of the Agricultural Advisory Board).

Response: See DEP’s response to Comment No. 5.

- h. The proposed Section 91.22 mentions that persons seeking a General Permit need to submit a Notice of Intent (NOI). DEP proposes to remove the current ceiling for a General Permit of \$500.00 with new language that states NOI fees for a General Permit may not exceed the amount established for the Individual WQM permit application fees for equivalent projects. This suggests a substantial increase in fees over the current ceiling of \$500.00 for the General WQM permit.

Response: Decisions on general permit NOI fees will be made as such permits come up for renewal and will include a public comment period.

- i. The proposal section titled “Benefits, Costs and Compliance” states that the DEP will not be able to properly administer the Clean Water Program without increases in the appropriation of general tax revenue. If that is indeed the case, perhaps DEP should strongly advocate that the Clean Water Program take priority over other state funded programs and shift funds from those sources to fund NPDES and WQM permits.

Response: All of DEP’s programs serve vital functions for protecting public health and the environment.

- j. In the proposal section titled “H. Sunset Review,” there is no sunset review date, which means the permit fee increases along with successive increases every two years are permanent.

Response: The fees will become effective upon the effective date identified in the regulation and will be evaluated by DEP every three years. Also, see DEP’s response to Comment No. 2.d.

- k. The proposed section titled “Applications and Permits”, Section 91.22 (Fees), shows a substantial proposed fee increase for new manure storage facilities – from \$500.00 to \$2,500.00 under the new rulemaking (or 400 percent).

Response: See DEP’s response to Comment No. 5.

- l. The process and information required to get a general permit is not significantly different than that required to get an individual permit, but there is more paperwork associated with the individual permit.

Response: See DEP’s response to Comment No. 5.

- m. This type of proposal undermines DEP’s claim to seek a good-faith partnership in areas like the Chesapeake Bay cleanup. As producers have done what is asked of them to install BMPs and improve water quality, DEP demands still more in the form of the proposed fee increases.

Response: See DEP’s response to Comment No. 5.

Instead of seeking to impose new and/or increased fees on the regulated community, we urge the rejection of this proposal and support exploring the development of other funding and resource allocation alternatives that allow DEP to adequately fulfill its core objectives. We appreciate the opportunity to provide comments on this important proposal. **(79) (80)**

14. Comment: On behalf of the more than 600 business members affiliated with PennAg, an agriculture trade association in existence since 1878 whose mission focuses on working to create and maintain an effective, viable and competitive environment for Pennsylvania agribusiness to grow and prosper, we respectfully oppose the proposal as well as raise the following issues regarding proposed fee increases associated with NPDES WQM Permit Fees.

- a. The proposed fee increases for NPDES CAAP and CAFO’s increasing to \$3,000 for a new permit; \$750 for a permit renewal; \$200 for amendments and \$1,500 as an annual fee for the purpose of funding additional inspectors is a tremendous taxation on the food supply system. While we recognize the situation DEP has been placed in due to decreased funding in the General Budget, it is unfair to expect the private sector to carry the burden of providing all the funding. It is not a function of private industry to fund government entities.

As it currently stands, if we assume there are 430+/- NPDES CAFO’s and CAAP’s in Pennsylvania, of which 98+/- are NPDES Individual CAFO’s and CAAP’s who will be held to this new permit fee structure once the regulation package is complete and the remaining 332+/- are General NPDES CAFO’s who will experience a similar fee hike in the near future – what is the true intention of the Department? To put additional financial hardship on the most regulated; best operated farms or put agriculture out of business?

Response: DEP is not seeking to place financial hardship on the regulated community. Fees were only raised to ensure that DEP has the financial resources necessary to carry out its mission and obligations under the CSL. Also, see DEP's responses to Comment Nos. 2.c. and 5.

- b. What justification/protocol did DEP follow to determine the appropriate funding level needed? Did DEP investigate what adjoining States charge for NPDES Permits? Our research indicates the following:
- New York, the annual fee for CAFO is only \$50 per year.
 - Maryland, the permit fee for CAFOs is waived.
 - Ohio the application fee for a new CAFO is \$200 and there is no annual fee.

In these States, there is no WQM (Water Quality Management) permit for new storage structures. Permit fees such as those being proposed is yet one more example of the Commonwealth not striving to promote its core business: Agriculture. Actions such as those being proposed hinder the growth of agriculture which in turn impacts the cost of food.

Response: DEP acknowledges that there are a number of states that would have fees lower than DEP's, but there are other states that have higher fees, as noted in the Regulatory Analysis Form prepared for the proposed rulemaking. Furthermore, each state has distinct constitutional, statutory, and regulatory provisions, which influence the extent and costs of regulatory programs in each state. Also, see DEP's response to Comment No. 2.c.

- c. What is the Department's plan for the use of these funds? What assurances and improved service will the agriculture sector see from this new windfall of money to allow DEP to hire more employees? Will permits be issued in a timelier manner? Will DEP reinstate the Permit Decision Guarantee/Permit Time Clock – in that DEP would refund money to the applicant when DEP is unable to fulfill the expectation of a timely review of a permit action? What is DEP willing to offer to the agriculture sector to show good faith that these funds will help agriculture grow and prosper in the Commonwealth? Would the Department accept a change in the process – in that a permit fee is paid in full when the permit review is complete? This would put the responsibility on DEP to become more efficient in their review process because the only way money is coming into the Department is for work accomplished. This is much like the processes of normal business – one pays for services rendered upon the successful and acceptable completion of said services.

Response: DEP will use new revenues to maintain its current staffing and service levels, and to address shortfalls in fulfilling its responsibilities to Pennsylvania's citizens. DEP replaced the Money Back Guarantee process with the Permit Decision Guarantee/Permit Review Process in 2012. DEP will continue to investigate and implement ways to improve the permitting process but notes that government is inherently different than "normal business."

- d. Making some general assumptions, 98+/- Individual NPDES CAFO and CAAP Permits x \$750 (permit renewal fee) x 4 years of Annual Renewal fees at \$1,500 will on average cost a single NPDES CAFO Permit holders \$7,500 in fees over a 5 year period of time. Not to mention if an amendment is needed at an additional cost of \$200. Thus, netting DEP approximately \$735,000 (\$7,500 x 98). What stipulations will be in place to ensure there is not another fee increase next year? How will future fee increases be determined and what input will the public sector have in this process?

Response: DEP is authorized to propose fee increases every three years through the EQB. DEP will propose fee increases if there is a discrepancy between the cost to administer the program and

revenues received. If EQB approves DEP's proposal, a draft rulemaking will be published for public comment. Also, see DEP's response to Comment No. 5.

- e. If the intention of the Department is to collect funds to cover the cost of field work and inspections then perhaps the Department should have been more judicious with the funds they have received from EPA in the past. Funds from EPA which were earmarked for inspections on all farms in the Commonwealth to ensure compliance with state and federal programs. Instead, the Department is focusing taxation on the small number of NPDES Farms expecting those heavily regulated farms to bear the burden of generating funds for the Department. Perhaps the Department should reevaluate the manner in which inspections are conducted and stop the duplication of work between DEP and County Conservation Districts. This alone would net both DEP and Conservation District staff extra time as well as financial savings.

Too often, we have heard from our members about DEP and Conservation District inspectors driving past violations just to do an inspection of a NPDES CAFO Farm – Why you ask? Because it was easier to inspect the CAFO farm rather than having an uncomfortable perhaps difficult conversation with a farmer who may need compliance assistance or guidance. What perimeters will the Department follow to ensure that ALL farms are treated equally and that ALL farms are inspected to ensure compliance with the rules and regulations which have been in place since the early 1970's?

Response: DEP, the State Conservation Commission, and county conservation districts generally work together to streamline inspections of agricultural operations, often times performing joint inspections, but these agencies oversee different programs with different requirements. There is little duplication of effort. The State Conservation Commission and the conservation districts also conduct annual status reviews on farms that are not CAFOs, but rather are regulated under Act 38 as Concentrated Animal Operations (CAOs). Since 2016 DEP has been inspecting not only CAFOs, but all agricultural operations within the Chesapeake Bay watershed, regardless of size, and is seeking to ensure that regulatory requirements in place since the 1970s are being met. Funds provided by EPA for the purposes of inspecting farms can only be utilized within the Chesapeake Bay watershed. Complaint follow-up is conducted regardless of the size of operation and location throughout the state. Also, see DEP's responses to Comment No. 7.a and 4.g.

It is time for the Department to respect the role of Pennsylvania Agriculture and the benefits it provides to the Commonwealth and to stop looking at Agriculture as the root of all evils associated with the Chesapeake Bay and most importantly to stop assessing fees on animal agriculture to resolve management problems within the Department.

We do thank the Environmental Quality Board for soliciting public input and allowing for those impacted by this action to provide you with consultation and thoughts as you move forward with the decision making process.

We would welcome the opportunity to engage in constructive and meaningful dialogue on this issue and will make our schedule amenable to your availability. **(81)**

- 15. Comment:** A number of commenters expressed concerns about impacts that the proposed fee increases would have on farming operations and farmer livelihoods. **(82-118; 120-132).**

Response: See DEP's response to Comment No. 5.

16. Comment: The Lancaster County Agriculture Council is an agriculture education and farmer advocacy organization. The Council's Board has 11 farmers on it (among other Board members), and we are in regular communication with many more farmers.

On behalf of the Council's members and in its own right, the Council is opposed to the fee increase being proposed by DEP. It would appear that the gist of DEP's "raise the fees" proposal is rooted in the concept that the bigger a farm is, the "more fair" it is that such farms absorb the DEP costs for running CAFO/water quality programs. However, for the following reasons and other reasons, the proposal is in fact not fair and should be rejected.

- A. In many cases, the fee increase represents a doubling of the current fees causing an expense increase that might, for certain farmers anyway, be measured in thousands of dollars per year. This is an excessive increase to ask farmers to absorb in a single phase.
- B. The cost is being placed on producing farmers, many of whom already currently are facing significant financial challenges due to low commodity prices, disastrous weather in 2018, and rising fixed costs.
- C. Not all CAFOs and water quality permittees are "big" operations capable of absorbing a fee increase of this nature. To the contrary, many are family farms that whose cost structure includes employment of numerous people in the local economies they operate in.
- D. Unlike the fees for waste treatment plants, these costs cannot be passed on to customers. In fact, the fee increase, to many farmers, is just one more example of the Commonwealth government adding burdens to family farms and family businesses leading to a bigger disadvantage for Pennsylvania farm families. These family farms already have the burden of complying with significant paperwork requirements promulgated by various regulations.
- E. Comparison to other states is also informative. In New York, the annual fee for CAFO is only \$50 per year. In Maryland, the permit fee for CAFOs is waived. In Ohio the application fee for a new CAFO is \$200 and there is no annual fee. In these states, Water Quality Management permits are not required for new manure storage facilities. All of this reflects the competitive disadvantage that Pennsylvania farmers are put to.
- F. The Commonwealth and DEP need to consider alternative ways to administer these programs in a more efficient manner through the use of technology, partnerships and modern efficiencies. Farmers in general are certainly proponents of clean water. The Clean Water Partners initiative, for example, is active here in Lancaster County. But increasing the number of and fees for the increasing number of regulations is not the solution to the clean water challenge.
- G. One of our members asked a non-farmer about the fee increase, and the reply was:

"Why does the cost of running this program have to be paid for by those who are regulated under the program when the outcome of those regulations is a cleaner environment for all citizens of the Commonwealth? Those citizens, through the general fund, should bear the cost of implementing this program since they are the persons who are gaining the most from it."

The Council hopes your Board will give careful consideration to these comments and reject the proposed fee increases. (119)

Response: See DEP's responses to Comment Nos. 5 and 9.b.

17. Comment: We are writing with regards to the above proposed legislation. As a middle income citizen living on a low \$200k property, we have a SFTF-Individual permit. We have been at this residence for 20 years and this system was one of the first to be installed in Carroll Township, York County.

We are regulated by DEP and submit annual reports, which were not even recorded or filed a few years ago by DEP. We have consistently fulfilled the requirements placed on us over the years. These requirements have ranged from laboratory testing 20 years ago, to reapplying for renewed contracts, which require the hiring of an engineer.

In addition, we have complied with any rewritten requirements of which some we could not fulfill, since it would have wrecked our system. This required for us to hire a sewerage inspector to validate our system to DEP. Furthermore, we have \$3,000 cash deposited with the township as a security requirement.

Our System is regulated, maintained and does not create any environmental problems. This is why we do not believe that we should be charged any further costs. This system has already devalued our property. This would only make it worse. Why is it be that something that is regulated would incur more cost?

We have spent 20 years communicating with DEP and adjusting to their needs. This new legislation is very distressing. (133)

Response: See DEP's response to Comment No. 2.c. DEP has reduced the fees for small flow treatment facilities in the final rulemaking as compared to the proposed draft rulemaking. For single residence sewage treatment facilities, there will be an annual fee of \$100 per year if such facilities have an individual NPDES permit. There is currently no fee for SRSTPs under the PAG-04 General NPDES Permit.

18. Comment: I am writing to you on behalf of the Newberry Township Board of Supervisors in York County. Newberry Township operates a sanitary sewer system and wastewater treatment plant that serves 3,055 residents and businesses. Newberry Township has reviewed Water Quality Management permit applications and the National Pollutant Discharge Elimination permit applications and annual fees. The Newberry Township Board of Supervisors is strongly opposed to the fee increases in this proposed regulation. This fee proposal is excessive and burdensome to permittees. Should these fees be adopted it necessitates that these fee increases be passed along to the users of our sewer system, thus increasing a financial burden on these households and businesses. The Newberry Township Board of Supervisors wishes to thank you for the opportunity to provide comments on this proposal and again urges the rejection of the proposal. (134)

Response: See DEP's responses to Comment Nos. 2.c. and 6.

19. Comment: I am writing to you on behalf of the Newberry Township Board of Supervisors in York County. Newberry Township is an MS4 mandated municipality with a population of 15,439. Newberry Township has reviewed Water Quality Management permit applications and the National Pollutant Discharge Elimination permit applications and annual fees. The Newberry Township Board of Supervisors is strongly opposed to the fee increases in this proposed regulation. This fee proposal is excessive and burdensome to permittees. In recent years, Newberry Township has needed to increase our annual budget by \$130,000 to meet our obligations as an MS4 mandated municipality. Should these fees be adopted it places additional expenditures on an already tight municipal budget. The only remedy would be to cut other areas of services in the budget or increase revenue in the form of taxes to the residents of our township, thus increasing a financial burden on these households and businesses. The

Newberry Township Board of Supervisors wishes to thank you for the opportunity to provide comments on this proposal and again urges the rejection of the proposal. (134)

Response: See DEP's responses to Comment Nos. 2.c. and 6.

20. Comment: A RESOLUTION OF THE BOARD OF SUPERVISORS OF CARROLL TOWNSHIP, YORK COUNTY, PENNSYLVANIA IN OPPOSITION TO THE RULE CHANGE AND INCREASE IN DEPARTMENT OF ENVIRONMENTAL PROTECTION PERMIT FEES

WHEREAS, the Pennsylvania Department of Environmental Protection is considering a rule change removing regulatory action for fee increases and an increase in fees for permits under the title "Water Quality Management and National Pollutant Discharge Elimination System Permit Application and Annual Fees"; and

WHEREAS, Independent Regulatory Review Commission (IRRC) must consider if the regulation is in the public interest and the proposed regulations economic or fiscal impact; and

WHEREAS, the Township of Carroll has existing permits subject to these proposed increases and undertakes work requiring permits subject to these increases; and

WHEREAS, landowners and businesses within Carroll Township have existing permits subject to these proposed increases and often require permits for work subject to these increases and

WHEREAS, the Water and Sewer Authority serving significant portions of Carroll Township have existing permits subject to these proposed increases and often require permits for work subject to these increases and

NOW THEREFORE BE IT RESOLVED, and it hereby resolved by the Board of Supervisors of the Township of Carroll, County of York, Pennsylvania, that the Township of Carroll firmly opposes the increase in fees for the following reasons:

- a. The Board of Supervisors are elected by its citizens and are directly accountable to them for Municipal Budgets and control of expenses for projects and this will increase costs to municipalities and residents with no additional benefit to the Township.
- b. Landowners, Businesses and Sewer and Water Authority within Carroll Township will be directly and negatively impacted by these fee increases and will be required to pass those increases on to customers and landowners with no additional benefit to the landowners or businesses in the Township.
- c. The Board of Supervisors believes there are efficiencies and work process improvement that DEP should implement that would eliminate the need for the increases and that the enduring inefficiencies should not be a burden on the residents and businesses of the Township.
- d. The Board of Supervisors are elected officials of Carroll Township and subject to election by residents of the Township and therefore are responsible for and qualified to set rates and fees on their residents and businesses. This proposal allows for non-elected and unknown government officials to set fees.

- e. Under the Pennsylvania Constitution, Article VIII, the operating budget of DEP is determined by appropriations by the General Assembly and is not permissible via a Department increasing its' fees or permit costs to cover its budget. It appears the Department is not attempting set fees or permits that are reasonably related to cost and expenses that correspond to the work related to the fee or permit. It appears the Department is attempting to raise revenue via the permit and fees, for its operations.

BE IT FURTHER RESOLVED, that a copy of this Resolution shall be delivered by First Class Mail to our State Representative(s), State Senator, and Governor to so indicate the Carroll Township Board of Supervisors opposition and to request the DEP abandon this plan.

DULY ADOPTED this 13th day of May 2019, by the Carroll Township Board of Supervisors York County, Pennsylvania. (135)

Response: The Department appreciates the time it took to write and pass this resolution. However, the fee increases ensure that DEP meets its duties and obligations under the CSL. See also DEP's responses to Comment Nos. 2.c., 4.b., 4.c., 6, and 12.d.

- 21. Comment:** As you are aware, the final form regulation increasing the Safe Drinking Water fees was published on August 18, 2018. As a result, Community Water System's fees across the Commonwealth saw a drastic increase in their annual fees. Although it varied by population, in our situation the fee went up 7,900 percent (from \$250 to \$20,000). This drastic increase posed a tremendous shock to our budget and jeopardized our ability to fulfill our duty to our customers. We have an ageing water system we are trying to upgrade which is a huge expense. We formulated a 10-year upgrade program for our water system and have been implementing this program to offer the residents of East Petersburg Borough the best, safest water. We have been increasing our rates at least 5% each year for this reason. We would like to stress our opinion of the importance of considering the fiscal impact of the regulation, specifically the "adverse effects of prices of goods and services, productivity or competition." 71 P.S. § 745.5b (b) (1) (ii).

We are respectfully requesting that the IRRRC take a hard look at both the fiscal impact of the proposal on the regulated community and at whether the regulation is within the scope of its statutory authority.

Thank you for the opportunity to submit these comments and for your careful consideration of this matter. (136)

Response: See DEP's response to Comment No. 2.c.

- 22. Comment:** The Board of Supervisors of North Newton Township oppose the extreme increase of fees for the Water Quality Management and National Pollution Discharge Elimination System programs. Some of the fees proposed are 2,000% over the current fee schedule.

While we realize the cost of doing business increases with time, this rate hike is excessive. As an example, township residents who apply for a Small Flow Treatment Facility would face an increase of 400% and be required to pay a new annual fee of \$500. Please consider the impact of these fees to our residents and their effect on development within our township. (137)

Response: See DEP's response to Comment No. 2.c.

23. Comment: The Environmental Quality Board (Board) proposes to amend Chapters 91 and 92a (relating to general provisions; and National Pollutant Discharge Elimination System permitting, monitoring and compliance) to establish new fee schedules for Water Quality Management (WQM) permit applications, National Pollution Discharge Elimination System (NPDES) permit applications and NPDES annual fees, and to make clarifications in 25 Pa. Code §§ 91.1, 91.22, 91.27, 91.36, 91.52, 92a.26, 92a.32 and 92a.62, respectively.

Pennsylvania American Water Comment

As the largest investor owned drinking water and wastewater utility company operating in the commonwealth, Pennsylvania American Water supports the mission of Department of Environmental Protection to maintain the health and safety of Pennsylvania's world-class water resources. Through the assessment of fees, Pennsylvania American Water helps to insure adequate staffing and the resources needed to carry out the responsibilities of the Clean Water program and the Clean Water Fund that supports it.

While the solvency of the program's Fund is of paramount importance to the environmental health of the commonwealth, changes to the department's fee structure warrant close examination. As a regulated public utility, we are not only accountable to our regulators, but also to our customers. It is therefore incumbent upon us to insure that any proposed fee increase is not excessive and represents the actual program costs as well as improved efficiencies, as our customers will ultimately absorb the costs through higher rates.

It is with our customers and the environment in mind that Pennsylvania American Water offers the following comments on changes proposed to 25 PA. CODE CHS. 91 AND 92a.

a. § 92a.26. NPDES permit application fees

Proposed: Using revenue gained from its proposed fee increases, the Department plans to hire 63 new employees, of which only two (2) additional full time employees (FTEs) would be dedicated to reviewing NPDES/WQM permits.

Pennsylvania American Water position: Pennsylvania American Water believes the proposed plan to dedicate only two (2) of the 63 planned new FTEs to NPDES/WQM permit review is insufficient and will result in increased permitting delays. Pennsylvania American Water recommends that DEP balance its focus between inspection and assessment with an adequate number of permit reviewers. Pennsylvania American Water is currently experiencing delays of over two months in permit review for DEP drinking water programs and fears a similar effect caused by the expansion of NPDES costs and complexity.

Pennsylvania American Water suggests that before expanding an already inefficient system, any changes to the administration of the NPDES and WQM programs should instead prioritize efficiency gains within the existing program framework. As proposed, the department has no incentive to streamline existing procedures or implement cost saving measures. Such programmatic changes and fee increases drive up costs for Pennsylvania utilities without demonstrating meaningful reform or progress in meeting the goals of the NPDES or WQM programs; a detailed plan for reducing permit lag time and departmental efficiency should be a condition of approval for the proposed regulation.

Response: DEP’s workload analysis determined that DEP has most of the permit application reviewers that it needs to effectively and timely review permit applications, but is lacking primarily in other positions such as inspectors, compliance specialists and biologists. As a result of DEP’s Permit Decision Guarantee/Permit Review Process policy, the development of standard operating procedures, and other streamlining measures, DEP has improved its permit review times for NPDES and WQM permits over the past decade. Also, see DEP’s response to Comment No. 12.d.

b. § 91.22 (c) (d) Fees [Applications and Permits]

Proposed: The Department proposes to adjust fees every 2 years based on the US Bureau of Labor Statistics Employment Cost Index for State and Local Government Compensation ‘or an equivalent index.’

Pennsylvania American Water position: Pennsylvania American Water objects to the elastic and unpredictable nature of the Department’s two-year fee adjustment cycle. Pennsylvania American Water believes the biannual adjustment of NPDES fees based on the US Bureau of Labor Statistics’ Employment Cost Index is an effort to side step due process by circumventing the state’s regulatory process. Under existing procedures, fee increases are vetted through the state’s regulatory review process and allows for stakeholder participation and input.

Because utility cost increases are ultimately paid by utility customers through increased rates— fee increases should be subject to rigorous public review, including legislative oversight. Simply increasing fees by departmental declaration sets a dangerous precedent and represents immeasurable harm to the rights of utilities’ and their customers to transparent government oversight.

Additionally, a two-year adjustment period for such a significant fee category is counter to the industry’s goal of extending the length to time between base rate cases. Increasing fees on a biannual basis without public participation will lead to more frequent base rate cases—growing customer costs and introducing otherwise avoidable instability in the utility sector.

Response: See DEP’s response to Comment No. 2.d.

c. § 92a.62. Annual fees. [Monitoring and Annual Fees]

Proposed: The Department proposes fee increases ranging from 150% to 500% without consideration of the impact on utility customers.

Pennsylvania American Water position: Pennsylvania American Water requests that the Department produce the burden of proof, as delineated by the state’s Independent Regulatory Review Commission (IRRC), that the economic and fiscal impacts of the regulation are necessary and reasonable.

As proposed, the increases for the 11 NPDES permit categories is exorbitant and seemingly arbitrary. There is no supporting documentation or evidence legitimizing the gross increase in fees, other than the need to fill a budget deficit by the customers of those utilities viewed as having the deepest pockets.

Consider this: PAWC currently holds approximately 30 permits for facilities classified as Minor Industrial Waste Facilities w/o ELG. The proposed increase from \$500 to \$2,500 per permit would result in a cost increase of \$60,000 to our ratepayers on a single type of permit. The potential impact

of the fee increases on Pennsylvania American Water customers could total more than \$85,250 over what was paid for NPDES permits currently held.

Pennsylvania American Water requests that the Department meet the burden of proof as required by the state’s Independent Regulatory Review Commission (IRRC) and demonstrate specific, clear reasoning for the fee increases requested.

See referenced increases in chart on p. 4.

Category	N. of PAWC Facilities	PA – Existing	PA – Proposed
Minor Sewage Facility (<0.05 MGD)	1	\$250	\$750
Minor Sewage Facility (≥0.05 MGD and <1 MGD)	9	\$500	\$1,000
Minor Sewage Facility w/ CSO	1	\$750	\$2,500
Major Sewage Facility (≥1 MGD and <5 MGD)	3	\$1,250	\$3,750
Major Sewage Facility (≥5 MGD)	1	\$2,500	\$5,000
Major Sewage Facility w/ CSO	3	\$5,000	\$7,500
Minor Industrial Waste Facility w/ ELG	0	\$1,500	\$3,750
Minor Industrial Waste Facility w/o ELG	30	\$500	\$2,500
Major Industrial Waste Facility (<250 MGD)	0	\$5,000	\$7,500
Major Industrial Waste Facility (≥250 MGD)	0	\$25,000	\$50,000
Industrial Stormwater	1	\$1,000	\$2,000

Response: See DEP’s response to Comment No. 2.d.

- d. Proposed: DEP proposes expanding permit complexity and levying associated fees for the Water Quality Management program.

Pennsylvania American Water position: Pennsylvania American Water recommends that a higher percentage of the revenue realized from higher fees be dedicated to increasing the number of FTEs reviewing WQM permits.

As referenced in § 92a.26 application review time is of critical importance to regulated utility system improvement. Pennsylvania American Water anticipates that moving from three permit categories to the 11 proposed will not only increase permit complexity, but also review time and subsequently lag time. Pennsylvania American Water suggests that DEP commit more of the proposed fee resources to permit review as fair treatment to the larger regulated utility organizations which pay the majority of fees.

Response: DEP is not proposing expanding permit complexity. Additionally, DEP does not expect that permit review time will be affected by the WQM fee schedule. DEP’s fee categories for WQM

permits was developed to equitably distribute fees based on the complexity of applications already received. The fee schedule in itself will not affect the existing level of complexity.

- e. Further, currently the maximum fee associated with a WQM permit application is capped at \$500. As the chart below demonstrates, DEP’s proposed fees are exorbitant and unreasonable, and will have a significant impact on Pennsylvania American Water ratepayers. Illustrating the dramatic increases proposed, the fee for Sewer Extension permits is currently \$100. The \$2,500 proposed fee represents a staggering increase. This is only one of several such dramatic increases.

Category	Application Type	Fee
Joint Pesticides Permit	New and Reissuance	\$500
	Amendment	\$100
	Transfer	\$50
Major Industrial Waste Treatment Facility	New	\$15,000
	Amendment	\$2,000
	Transfer	\$500
Minor and Non-NPDES Sewage Treatment Facility	New	\$5,000
	Amendment	\$500
	Transfer	\$250
Minor and Non-NPDES Industrial Waste Treatment Facility	New	\$7,500
	Amendment	\$500
	Transfer	\$250
Single Residence Sewage Treatment Plant	New	\$200
	Amendment	\$100

	Transfer	\$50
Small Flow Treatment Facility	New	\$1,000
	Amendment	\$200
	Transfer	\$100
Sewer Extensions	New	\$2,500
	Amendment	\$500
	Transfer	\$250
Pump Station	New	\$2,500
	Amendment	\$500
	Transfer	\$250
Land Application and Reuse of Sewage	New and Reissuance	\$5,000
	Amendment	\$1,000
	Transfer	\$250
Land Application and Reuse of Industrial Waste	New and Reissuance	\$10,000
	Amendment	\$2,000
	Transfer	\$250
Manure Storage and Wastewater Impoundment	New	\$2,500
	Amendment	\$500
	Transfer	\$250

Pennsylvania American Water again recommends that fee increases be reduced to a more reasonable level in consideration of numerous recent fee increases in other DEP program areas and the unreasonable burden the proposed increases will put on Pennsylvania ratepayers.

Response: The fees for WQM permits have remained largely unchanged since 1971. The consumer price index has increased nearly 700% since that time. The WQM fees are reasonable in comparison to other states (i.e., DEP's final fees are lower than some states, the same as some states, and higher than some others for certain categories) and in comparison to the costs to review and administer WQM permits.

For example, a new major sewage treatment facility will, under the final-form rulemaking, pay \$10,000 for a WQM permit. The fees for a similar facility in Ohio, Virginia, Florida, and New Jersey would be \$15,000, \$13,500, \$10,000 and \$10,000 (or higher), respectively.

To avoid substantial increases in the future, DEP will endeavor to pursue fee increases more frequently, which should allow for more gradual increases. Also, see DEP's response to Comment No. 2.c.

- f. As an alternative to the proposed rulemaking, Pennsylvania American Water suggests that efficiency gains within existing departmental procedure are a reasonable alternative to meeting the NPDES and WQM program goals. As proposed, the rulemaking does not incentivize efficiency gains in permit review or facility inspection, objectives which must be a critical goal of any change to the current regulations.

Response: See DEP's response to Comment No. 12.d.

Thank you for your consideration of our comments relative to the proposed changes to 25 PA Code Chapters 91 and 92a. Pennsylvania American Water is encouraged by the DEP's commitment to surface water protection and shares this as a critical organizational goal. We hope that the above concerns can be integrated into the final form regulation for the benefit of the commonwealth and our 2.5 million customers. (138)

**24. Comment: WESTERN CUMBERLAND COUNCIL OF GOVERNMENTS
RESOLUTION 2019-02**

**A RESOLUTION REGARDING THE REQUEST FOR INCREASE OF FEES BY THE
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

AND NOW, this 13th day of May, 2019, the member municipalities of the Western Cumberland Council of Governments, consisting of the Big Spring School District, four (4) Boroughs and nine (9) Townships, hereby adopts and enacts the following Resolution related to the request for the increase in fees for the Water Quality Management (WQM) and National Pollution Discharge Elimination Systems (NPDES) Programs by the Department of Environmental Protection.

WHEREAS, the member School District and Municipalities have received notice of proposed changes in fees which will impact water quality as well as air quality programs within the Commonwealth of Pennsylvania and Cumberland County.

NOW Therefore, the members of the Western Cumberland Council of Governments hereby resolve the following:

That the dramatic increase in the schedule of fees is excessive and will create burdens which will impact the ability of municipalities to adequately provide the essential services of clean air and water; and

That the current cap on fee increases should remain in order to protect the residents of Cumberland County, Pennsylvania from experiencing sudden excessive fees which are not able to be anticipated in municipal budgets and will adversely impact its citizens, and

That the current system of charging the fees by regulation remain instead of a system of automatic adjustments without regulation.

NOW THEREFORE, this Resolution is hereby ADOPTED AND APPROVED by the Members of the Western Cumberland Council of Governments on the date set forth above. (139)

Response: See DEP's responses to Comment Nos. 2.c. and 2.d.

25. Comment: Our company appreciates the opportunity to provide comments regarding the Department of Environmental Protection (DEP)'s proposed regulation to increase fees for the Water Quality Program and National Pollution Discharge Elimination System. As a participating company permitted under Minor IW Facilities not covered by ELG we have serious concerns with the significant increase in fees as this would present burdensome financial consequences on our family owned and operated small business.

We certainly understand the desire of DEP to maintain a strong permitting program to prevent and eliminate water pollution within the Commonwealth, and to collect reasonable filing fees for applications and permits. However, the proposed rate of increase is simply staggering and trying to comprehend the fee as an existing permit holder, the annual fee would increase by 500 percent, from \$500 to \$2,500.

As a member of the Pennsylvania Automotive Trade Society (PARTS) I believe we have demonstrated a history of a positive working relationship with the Department of Environmental Protection on making the necessary state regulations related to stormwater permitting issues the best that they can be for the waters, citizens and regulated industries of the Commonwealth.

I strongly urge the IRRC to oppose these proposed fee increases for these two programs as well as the proposed changes to the oversight process for changing the fees. The increase in fees represents a serious burden for most professional automotive recycling businesses and would have far reaching consequences on the waters, citizens and regulated industries businesses. (140 – 152)

Response: DEP has reduced annual fees for those permittees with individual NPDES permits in fee categories of industrial stormwater and industrial waste without ELG, the categories in which most automotive recycling facilities fall into, by 40% in the final rulemaking as compared to the proposed draft rulemaking. Also, see DEP's response to Comment No. 2.c.

26. Comment: The Automotive Recyclers Association (ARA) represents over 4,500 professional automotive recyclers across the United States and in 14 countries internationally. ARA appreciates the opportunity to provide comments regarding the Department of Environmental Protection (DEP)'s proposed regulation to increase fees for the Water Quality Program and National Pollution Discharge Elimination System. ARA has serious concerns with the significant increase in fees as this would have serious negative

consequences and potentially put many small automotive recycling facilities in Pennsylvania out of business.

ARA understands the desire of DEP to maintain a strong permitting program to prevent and eliminate water pollution within the Commonwealth, and to collect reasonable filing fees for applications and permits. However, the proposed rate of increase is simply staggering. ARA members categorized as Minor IW Facilities not covered by ELG would see the fee for a new individual permit increase by 500 percent, from \$1,000 to \$5,000. This could be a significant deterrent for some businesses. For existing permit holdings, the annual fee would also increase by 500 percent, from \$500 to \$2,500. That is an extra \$2,000 that some small businesses may not have – and these are law abiding, legally operating facilities.

ARA and its affiliate state chapter, the Pennsylvania Automotive Recycling Trade Society (PARTS), have a history of a positive working relationship with the Department of Environmental Protection on making the necessary state regulations related to stormwater permitting issues the best that they can be for the waters, citizens and regulated industries of the Commonwealth. Likewise, ARA has much experience with working with the U.S. Environmental Protection Agency (EPA) on stormwater permitting issues.

I strongly urge the IRRC to oppose these proposed fee increases for these two programs as well as the proposed changes to the oversight process for changing the fees. The increase in fees represents a serious burden for many professional automotive recycling businesses and would have far reaching consequences on the waters, citizens and regulated industries businesses. **(153)**

Response: See DEP's response to Comment No. 26.

27. Comment: The Pennsylvania Automotive Recycling Trade Society (PARTS) represents 130 professional automotive recyclers in Pennsylvania. PARTS appreciates the opportunity to provide comments regarding the Department of Environmental Protection (DEP)'s proposed regulation to increase fees for the Water Quality Program and National Pollution Discharge Elimination System. PARTS and our members have serious concerns with the significant increase in fees as this would have serious negative consequences and potentially put many small automotive recycling facilities in Pennsylvania out of business.

PARTS understands the desire of DEP to maintain a strong permitting program to prevent and eliminate water pollution within the Commonwealth, and to collect reasonable filing fees for applications and permits. However, the proposed rate of increase is simply staggering. PARTS members categorized as Minor IW Facilities not covered by ELG would see the fee for a new individual permit increase by 500 percent, from \$1,000 to \$5,000. This would be a significant deterrent for most businesses. For existing permit holdings, the annual fee would also increase by 500 percent, from \$500 to \$2,500. That is an extra \$2,000 that most small businesses may not have – and these are law abiding, legally operating facilities.

PARTS has a history of a positive working relationship with the Department of Environmental Protection on making the necessary state regulations related to stormwater permitting issues the best that they can be for the waters, citizens and regulated industries of the Commonwealth.

I strongly urge the IRRC to oppose these proposed fee increases for these two programs as well as the proposed changes to the oversight process for changing the fees. The increase in fees represents a serious burden for many professional automotive recycling businesses and would have far reaching consequences on the waters, citizens and regulated industries businesses. **(154)**

Response: See DEP's response to Comment No. 26.

28. Comment: We are writing you concerning the new Tax (Fee) that is to be taking place. As a small business owner of an auto parts and recycling business, we always make sure to take the nessary actions to prevent any damage to the environment. For an example we have built another garage to processes all vehicles and to store all engines and transmission to keep them off the ground. We have also stoned our whole property where the cars sit on out in the yard. Wintermyer's has to do a semi annual water collection of the stream that flows through our yard. We also hired VET Environment Engineering LLC group to help us make sure we are doing everything we can to protect the environment. VET also inspect our facility yearly and any recommendations that are suggested we make sure to do in a timely manner. If this new fee is implemented it will be a burden on our Family owned small business along with other small businesses. This fee will also keep us from make improvements at our facility. **(155)**

Response: See DEP's response to Comment No. 26.

29. Comment: We are writing to express our opposition to the proposed fee increases being considered by the Department of Environmental Protection (DEP) under the title of the Water Quality Management and National Pollutant Discharge Elimination System (NPDES) Permit Application and Annual Fees, IRRC reference number 3227. These proposed increases would have a significant economic impact on the auto salvage industry.

We have operated a family business in Pennsylvania for over 50 years. We are a small business that provides jobs, services, and tax revenue to their community. Our operation is classified as a Minor Industrial Waste Facility not covered by an Effluent Limitation Guideline. We have faithfully paid our NPDES permit fees annually. The existing fee rate is \$500, which the proposed legislation would increase to \$2,500 – a fivefold increase. The proposal also allows the DEP to further increase fees every two years without legislative review.

Auto salve yards are a vital part of the Pennsylvania economy and have a major impact on resource conservation. By recycling automotive parts, we save the natural ores, oil, water, and energy needed to manufacture new parts. This reduces air pollution as well as our nation's dependence on foreign oil. Additionally, parts that cannot be reused provide the number one source of our national scrap metal supply. Tons of cast iron, steel, aluminum, platinum, copper, and lead are recovered annually by the automotive recycling industry.

Many of the auto salvage yards operating in Pennsylvania today are small family-run businesses that cannot afford dramatic increases in fees and expenses. Our business would be unduly burdened by the proposed fivefold increase in the permit fee and we strongly oppose the proposed rule change. We urge you to reject the proposed regulation IRRC 3227 regarding Water Quality Management and National Pollutant Discharge Elimination System Permit Application and Annual Fees. **(156)**

Response: See DEP's response to Comment No. 26.

30. Comment: I am writing to express my opposition to the proposed fee increases being considered by the Department of Environmental Protection (DEP) under the title of the Water Quality Management and National Pollution Discharge Elimination System (NPDES) Permit Application and Annual Fees, IRRC

reference number 3227. These proposed increases would have a significant economic impact on the auto salvage industry.

I have a small business that provides jobs, services, and tax revenue to my community. My operation is classified as a Minor Industrial Waste Facility not covered by an Effluent Limitation Guideline. I have faithfully paid the NPDES permit fees annually. The existing fee rate is \$500, which the proposed legislation would increase to \$2,500 – a fivefold increase. The proposal also allows the DEP to further increase fees every two years without legislative review.

Auto salvage yards are a vital part of the Pennsylvania economy and have a major impact on resource conservation. By recycling automotive parts, we save the natural ores, oil, water, and energy needed to manufacture new parts. This reduces air pollution as well as our nation's dependence on foreign oil. Additionally, parts that cannot be reused provide the number one source of our national scrap metal supply. Tons of cast iron, steel, aluminum, platinum, copper, and lead are recovered annually by the automotive recycling industry.

Many of the auto salvage yards operating in Pennsylvania today are small family-run businesses that cannot afford dramatic increases in fees and expenses. My business would be unduly burdened by the proposed fivefold increase in the permit fee and I strongly oppose the proposed rule change. I urge you to reject the proposed regulation IRRC 3227 regarding Water Quality Management and National Pollution Discharge Elimination System Permit Application and Annual Fees. **(157)**

Response: See DEP's response to Comment No. 26.

ATTACHMENT A LIST OF COMMENTATORS

- (1) Harry Campbell, Chesapeake Bay Foundation, Harrisburg, PA 17102.
- (2) David Sumner, Independent Regulatory Review Commission.
- (3) Daryl D. Metcalfe, PA House Environmental Resources & Energy Committee.
- (4) Martin Causer, PA House Environmental Resources & Energy Committee.
- (5) Cris Dush, PA House Environmental Resources & Energy Committee.
- (6) Jonathan Fritz, PA House Environmental Resources & Energy Committee.
- (7) R. Lee James, PA House Environmental Resources & Energy Committee.
- (8) Ryan Mackenzie, PA House Environmental Resources & Energy Committee.
- (9) Carl Walker Metzgar, PA House Environmental Resources & Energy Committee.
- (10) Tim O'Neal, PA House Environmental Resources & Energy Committee.
- (11) Jason Ortitay, PA House Environmental Resources & Energy Committee.
- (12) Jeff Pyle, PA House Environmental Resources & Energy Committee.
- (13) Kathy Rapp, PA House Environmental Resources & Energy Committee.
- (14) Thomas Sankey, PA House Environmental Resources & Energy Committee.
- (15) Paul Schemel, PA House Environmental Resources & Energy Committee.
- (16) Ryan Warner, PA House Environmental Resources & Energy Committee.
- (17) Dave Zimmerman, PA House Environmental Resources & Energy Committee.
- (18) Pamela Snyder, PA House Environmental Resources & Energy Committee.
- (19) Bett Miller, PA House of Representatives.
- (20) Bryan Cutler, PA House of Representatives.
- (21) Keith J. Greiner, PA House of Representatives.
- (22) Kate Klunk, PA House of Representatives.
- (23) Barbara Gleim, PA House of Representatives.
- (24) Garth Everett, PA House of Representatives.

- (25) Valerie Gaydos, PA House of Representatives.
- (26) Mike Jones, PA House of Representatives.
- (27) David Maloney, PA House of Representatives.
- (28) Kathy Rapp, PA House of Representatives.
- (29) Jeff Wheeland, PA House of Representatives.
- (30) Greg Rothman, PA House of Representatives.
- (31) R. Lee James, PA House of Representatives.
- (32) Marcy Toepel, PA House of Representatives.
- (33) Rich Irvin, PA House of Representatives.
- (34) Dawn Keefer, PA House of Representatives.
- (35) George Dunbar, PA House of Representatives.
- (36) Torren Ecker, PA House of Representatives.
- (37) Tina Pickett, PA House of Representatives.
- (38) Dave Zimmerman, PA House of Representatives.
- (39) Russ Diamond, PA House of Representatives.
- (40) Clint Owlett, PA House of Representatives.
- (41) Mark Gillen, PA House of Representatives.
- (42) Andrew Lewis, PA House of Representatives.
- (43) Brad Roae, PA House of Representatives.
- (44) Paul Schemel, PA House of Representatives.
- (45) Jonathan Fritz, PA House of Representatives.
- (46) Mindy Fee, PA House of Representatives.
- (47) Jack Rader, PA House of Representatives.
- (48) Jim Cox, PA House of Representatives.
- (49) Steven Mentzer, PA House of Representatives.

- (50) Aaron Bernstine, PA House of Representatives.
- (51) Stephanie Borowicz, PA House of Representatives.
- (52) Eric Nelson, PA House of Representatives.
- (53) Dan Moul, PA House of Representatives.
- (54) Jeff Pyle, PA House of Representatives.
- (55) Seth Grove, PA House of Representatives.
- (56) Frank Ryan, PA House of Representatives.
- (57) Cris Dush, PA House of Representatives.
- (58) Tarah Toohil, PA House of Representatives.
- (59) Sheryl Delozier, PA House of Representatives.
- (60) Lynda Schlegel Culver, PA House of Representatives.
- (61) Johnathan D. Hershey, PA House of Representatives.
- (62) Gene Yaw, PA State Senate.
- (63) Joe Scarnati, PA State Senate.
- (64) Jake Corman, PA State Senate.
- (65) Camera Bartolotta, PA State Senate.
- (66) Scott Hutchinson, PA State Senate.
- (67) Scott Martin, PA State Senate.
- (68) Elder Vogel, PA State Senate.
- (69) Judy Ward, PA State Senate.
- (70) Pat Stefano, PA State Senate.
- (71) Michele Brooks, PA State Senate.
- (72) Ronald Grutza, PA State Association of Boroughs, Harrisburg, PA 17110.
- (73) Kevin Sunday, PA Chamber of Business and Industry, Harrisburg, PA 17101.
- (74) Gordon Denlinger, NFIB-PA, Harrisburg, PA 17101.

- (75) David M. Sanko, PA State Association of Township Supervisors.
- (76) Carl A. Marrara, Pennsylvania Manufacturers' Association, The Frederick W. Anton III Center, Harrisburg, PA 17101.
- (77) John Brosious, PA Municipal Authorities Association, Wormleysburg, PA 17043.
- (78) Erik Ross, National Association of Water Companies, PA Chapter, Harrisburg, PA 17101.
- (79) Chris Hoffman, Pennsylvania Farm Bureau, McAlisterville, PA 17049.
- (80) Grant Gulibon, Pennsylvania Farm Bureau, Camp Hill, PA 17001.
- (81) Christian R. Herr, PennAg Industries Association, Harrisburg, PA 17112.
- (82) Ernest Harrop, Harrop Farms.
- (83) Daniel Chorba, Dallas, PA 18612.
- (84) Ryan Janes.
- (85) Dolores Krick, Airville, PA 17302.
- (86) Corey Wilt.
- (87) Don Bucci.
- (88) Brian Doutrich, Lebanon, PA 17042.
- (89) Neil Bushong, Columbia, PA 17512.
- (90) Austin Zimmerman, Richland, PA 17087.
- (91) Brian Bashore.
- (92) Justin Risser, Meadow Vista Dairy, LLC, Bainbridge, PA 17502.
- (93) Rose Crane.
- (94) Jason Rudolph, Lebanon, PA 17046.
- (95) Cindi Kunz.
- (96) Ken Martin, Quarryville, PA 17566.
- (97) John Hess, Gettysburg, PA 17325.
- (98) Lance Nimmo, New Castle, PA 16101.

- (99) David Graybill, Mifflintown, PA 17059.
- (100) John Huber, Lancaster, PA 17601.
- (101) W.J. McChesney, New Galilee, PA 16141.
- (102) Jay L. Hess.
- (103) Bryan D. Preston, Country View Family Farms.
- (104) John Williamson, TeamAg, Inc., Ephrata, PA 17522.
- (105) Earl and Joan Ebling, Bethel, PA 19507.
- (106) Jason Vangilder.
- (107) Mike Martin, Cold Springs Farm, Ephrata, PA 17522.
- (108) Gwennie Francis, Paxinos, PA 17860.
- (109) Lloyd Reitz, Shamokin, PA 17872.
- (110) Pamela Reitz, Shamokin, PA 17872.
- (111) Taryn Reitz, Shamokin, PA 17872.
- (112) Andrew Reitz, Shamokin, PA 17872.
- (113) Noah and Susan Sauder, Myerstown, PA 17067.
- (114) Tim Stoner, Stoner's Hijos Hill, Inc., Mercersburg, PA 17236.
- (115) Dennis and Barbara Mattern, Dornsife, PA 17823.
- (116) Virgil E. Gutshall, Sr., Blain, PA 17006.
- (117) LaMar E. Troup, BDS Farms LLC, Beaver Springs, PA 17812.
- (118) James Harbach, Loganton, PA 17747.
- (119) George T. Cook, Lancaster County Agriculture Council, Lititz, PA 17543.
- (120) Randy Reppert, RanShar Farms LLC, Hamburg, PA 19526.
- (121) Alan Harnish, Lancaster, PA 17603.
- (122) Shawn Saylor, Hillcrest Saylor Dairy Farms LLC, Rockwood, PA 15557.
- (123) Howard Reyburn, Oxford, PA 19363.

- (124) Brad Rohrer.
- (125) Lorin and Sandra Stough, Dillsburg, PA 17109.
- (126) Daniel Heller, Flintrock Corporation, Lititz, PA 17543.
- (127) Marvin Long, Greencastle, PA 17225.
- (128) Joseph A. Decker, Kingsley, PA 18826.
- (129) Alfred Wanner, Wanner's Pride-N-Joy Farm LLC, Narvon, PA 17555.
- (130) Luke Brubaker, Brubaker Farms, Mount Joy, PA 17562.
- (131) Lori Dotterer Butler, Dotterer Dairy, Mill Hall, PA 17751.
- (132) William Fink, Hopewell, PA 16650.
- (133) Rosalie Calvo, Dillsburg, PA 17109.
- (134) Don Keener, Newberry Township Board of Supervisors, Etters, PA 17319.
- (135) Faye Romberger, Carroll Township Board of Supervisors.
- (136) Robin Hemperly, East Petersburg Borough Council, East Petersburg, PA 17520.
- (137) Michael L. Gutshall, North Newton Township Board of Supervisors, Shippensburg, PA 17257.
- (138) Neil Manganaro, Pennsylvania American Water Inc., McMurray, PA 15317.
- (139) Sharon Shifflet, Western Cumberland Council of Governments.
- (140) Paul Henderson, Henderson Auto Inc.
- (141) Gene E. Noll, Village Motors Inc.
- (142) Carl Weber, Weber Brothers Auto.
- (143) Roger A. Novak, Novak Auto Parts, Inc., New Brighton, PA 15066.
- (144) Samuel Schlosberg, Green Lane Auto Sales & Parts Inc., Pennsburg, PA 18073.
- (145) Doug Reinert, Chuck's Auto Salvage, Douglassville, PA 19518.
- (146) Dakota L. Reinert, Chuck's Auto Salvage, York, PA 17408.
- (147) Joyce Winfield, Winfield Salvage Company LLC.
- (148) Michael Darrah, Darrahs Automotive & Recycling Inc.

- (149) Richard T. Cherico, Chapman Auto Parts and Sales, Inc.
- (150) Todd Mueller, Mueller's Auto Recycling and Sales, Inc.
- (151) Richard E. Krishart, Rick's Used Auto Parts, Inc., Kersey, PA 15846.
- (152) Lawrence A. Hunt, M&R Motors LLC, Walnutport, PA 18088.
- (153) Sandy Blalock, Automotive Recyclers Association, Manassas, VA 20110.
- (154) Sandy Blalock, PA Automotive Recycling Trade Society, Mechanicsburg, PA 17055.
- (155) Clair and Mystery Wintermyer, York Haven, PA 17370.
- (156) Frank Mayak, Jr., Stoystown Auto Wreckers, LC, Stoystown, PA 15563.
- (157) Joshua Morrow, Baughman's U-Pull-It.