Summary of Primary Comments on Proposed 25 Pa. Code Chs. 92 and 92a
Pennsylvania Periphyton Coalition, Gary Cohen (Hall & Associates)

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

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

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

EPA Approval of State Regulations Is Required: It has been thirty-two years since Pennsylvania's NPDES program was approved by EPA pursuant to 40 C.F.R. Part 123. Since that time there have been numerous changes to EPA and Pennsylvania's NPDES rules. The preamble to the proposal readily acknowledges that "[s]ome of these provisions are needed to ensure continued federal approval of Pennsylvania's program." Part 123 requires that significant changes must go through the State program modification process. It is imperative that the State follow such federally-mandated procedures before modifying its regulations. The proposed changes are significant and Part 123 procedures must be followed.