

March 12, 2010

PENNSYLVANIA MUNICIPAL AUTHORITIES ASSOCIATION

SUMMARY OF COMMENTS ON PROPOSED RULEMAKING
25 PA CODE CHAPTER 92a

1. Downplaying of Potential Major Impacts of the Proposed Rulemaking

In various sections of the preamble, the Department has portrayed these changes as having minimal impact on the regulated community. To the contrary, certain provisions of the proposed regulation (particularly section 92a.47 Sewage Permit) could pose major technical and economic challenges, and could create major compliance and enforcement problems, for many public and privately-owned sewage treatment systems across the state. For example:

- The Department has arbitrarily decided to drop key "variance" provisions to EPA's Secondary Treatment regulation, 40 CFR Part 133 that allow for modification of effluent requirements based on: a) systems with combined sewers; b) systems with certain industrial waste loadings; c) systems using waste stabilization ponds; d) systems with less concentrated influent wastewater; and e) treatment equivalent to secondary treatment.
- The Department has also arbitrarily created a set of "tertiary treatment" effluent requirements for some situations that would be, in some respects, even more stringent than what is being required of significant sewage dischargers in the Chesapeake Bay watershed. Imposing these requirements could also hamper the Department's efforts to implement a Bay nutrient reduction trading program.
- It is unclear as to why a "tertiary treatment" standard is even needed, given the fact that the Department has comprehensive requirements for developing effluent limitations stricter than "secondary treatment" in order to prevent impairment of receiving streams.

The preamble discussion of these changes is generally superficial and there is no indication in the preamble that the Department has actually conducted a detailed legal, technical and economical analysis of these potential consequences in order to support these proposed changes.

2. The Proposed Fee Schedules Appear to be Contrary to State Law and Fundamentally Flawed

Pennsylvania's Clean Streams Law simply states that:

SECTION 6. APPLICATION AND PERMIT FEES

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.

This is the only provision in the law authorizing the Department to impose fees for sewage, industrial wastewater and (possibly) stormwater permitting. "Reasonable" is not defined, but the law has always intended that they be used to help offset, not cover the entire cost, of permit application review and permit issuance. The Law does not appear to authorize imposition of annual fees to help offset the cost of monitoring, compliance evaluation, administration and training and enforcement activities associated with the NPDES program.

In addition, the Department has not presented evidence that the majority of permittees will receive any benefits in return for paying these annual fees.

3. Several of the Proposed Provisions (Including Some Definitions) are Unclear or Otherwise Potentially Problematic for the Department and/or Regulated Entities

These are addressed in our detailed comments.

4. We suggest that the Department go through an Advanced Notice of Final Rulemaking process before finalizing this regulation update.