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STATE GOVERNMENT COMMITTEE
CHAIRMAN

House of Representatives
Commonwealth of Pennsylvania
Harrisburg

January 22, 2020

Independent Regulatory Review Commission
333 Market St
Harrisburg, PA 17101

Dear Commissioners:

As members of the House Environmental Resources and Energy Committee, we write to you to express our disapproval of final Environmental Quality Board (EQB) Regulation #7-534.

The Committee voted today, January 22, in favor of sending you this letter disapproving of the regulation regarding the Triennial Review of Water Quality Standards on behalf of our constituents and businesses. 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, consistent with the intent of the Acts on which they are based, and proposed in a manner consistent with the law.

As part of the regulatory process, DEP is required to complete a Regulatory Analysis Form. One of the questions which the General Assembly by statute has required DEP to answer is that DEP must "identify the types and number of persons, businesses, small businesses and organizations which will be affected by the regulation." DEP stated in their Regulatory Analysis Form that it was not possible for them to do so. Not only is this completely unacceptable, but it violates the law. Because of this clear error, the regulation should not be allowed to move forward until and unless DEP does the job that the General Assembly has required them to do, and complies with the law.

Additionally, our Committee held an informational meeting on this regulation last week, where we heard information that in its rush to promulgate this regulation, DEP failed to develop this regulation with proper diligence on behalf of the Pennsylvanians they should represent, both by including items that should not be in the regulation, and by not including items that should be in the regulation.

First, the Human Health Water Quality Criteria (HHWQC) which DEP has proposed to adopt, with some exceptions straight from the Environmental Protection Agency's (EPA) recommended criteria, do not reflect the waters and citizens of our Commonwealth. The HHWQC developed by the EPA rely on overly conservative assumptions, many of which are patently absurd as indicators of behaviors of the vast majority of Pennsylvanians. Adopting these HHWQC will generate negligible health benefits, while the use of these criteria may create stringent permit limits and higher compliance costs, which will directly harm our business community.

Independent Regulatory Review Commission
January 22, 2020
Page 2 of 2

There is another way, however. The EPA has emphasized many times that under the federal Clean Water Act, states have the primary responsibility for developing appropriate standards to their interests. The EPA issues the HHWQC as a conservative guideline, and does not require, nor necessarily intend, that any state adopt these figures as they have developed them.

Many other states have indicated that they will be developing their own criteria, specific to the citizens of their states. DEP has not even attempted to do so, to the detriment of our citizens and business community. Pennsylvanians should not be punished because of DEP's inability to adequately complete the tasks assigned to them.

Additionally, DEP has failed to include a necessary change which they should have as part of this regulation. A group submitting comments requested that DEP include a provision as part of this regulation to provide appropriate notice to landowners and municipalities of DEP's stream classification activities. DEP has been making changes to stream classifications without consulting with or giving any opportunity to participate to local individuals who know the most about their streams.

Improper stream classification can impair the use of properties, hampering local businesses' attempts to develop and use land in safe and environmentally friendly ways. Including a reasonable provision in this regulation to provide notice to landowners and municipalities would have been a simple and essential change for DEP to make, but this step was not taken. Again, this failure hurts the business community and property owners throughout Pennsylvania.

This final regulation is unacceptable, and if implemented would have negative repercussions for the business community in Pennsylvania, including many small businesses. Additionally, DEP did not comply with the law when developing the regulation. We therefore ask IRRC to disapprove this regulation in its final form since the provisions of the regulation are plainly unreasonable. We urge the EQB and DEP to withdraw this final regulation. We, the undersigned members of the House Environmental Resources and Energy Committee, write this letter to draw your attention to our concerns and disapproval of this final regulation and respectfully ask for your consideration.

Sincerely,

Daryl D. Metcalfe
Chairman
House Environmental Resources & Energy Committee

DDM:pn

Cc: Environmental Quality Board
Department of Environmental Protection