

Testimony of
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Good morning Chairman Erickson and the members of the committee. Thank you for the opportunity to appear here this morning and present testimony regarding the Pennsylvania Department of Environmental Protection (DEP) permitting process. Aqua has considerable experience with this process, mostly for public water supply facilities, but also for wastewater, residual waste, and more recently, storage tank and air permits.

With company roots dating back over 100 years, Aqua America has grown to be one of the country's largest investor owned water utilities. Although Aqua now has operations in fourteen states, those in Pennsylvania are by far the largest, serving over 1.4 million customers in 30 counties. With this presence and history, Aqua has a lot of experience navigating the DEP permitting process.

Let me first say that in Aqua's experience, DEP programs other than the Drinking Water Program, and agencies outside DEP like the County Conservation Districts and the river basin commissions, impose permitting hurdles and costs as great or greater than the DEP Drinking Water Program. Overlapping authority, such as with the river basin commissions, inevitably leads to duplicative fees. The river basin commissions also impose fees that for all practical purposes are taxes on Pennsylvanians, paid through their water or electric bills or the cost of products. The Delaware River Basin Commission is currently proposing to double water user charges over the next two years.

Secondly, DEP is proposing a large increase in permit review fees. In some cases, an increase is probably justified. Aqua would readily acknowledge that the cost to the Department to process some permits – like a surface water allocation under the 1939 Water Rights Act, or an application for a Public Water Supply Permit for a new water treatment plant – can be substantially higher than the fees that might have been set by statute or regulation many decades ago.

The True Cost of Permits:

However, the true cost of a permit is more than the permit review fee paid to DEP. Each permit application costs many times the amount of the permit fee. The first level of cost is the professional services to prepare the required forms and documentation. The next tier can be design, operating or reporting requirements imposed through the agency permit review process, sometimes with very little benefit to society or the environment. The last tier of cost is related to delay of a project -- the carrying cost of capital, escalation of construction and material costs, lost production.

Too many permits:

Not every activity in life, or in business, should require a permit. The list of activities subject to permitting requirements is constantly expanding. The answer to recovering a shortfall in revenue from permit review functions should not be to increase volume by expanding the universe of activities requiring permits.

Let me cite two specific examples from the water supply sector: water storage tank painting and groundwater disinfection under the new Groundwater Rule.

Tank Painting Permits:

Two decades ago, DEP generally did not require a Public Water Supply Permit to repaint an existing water storage tank. Tank repainting was, and still is, an activity that cannot be done in the winter when the weather is too cold for the coating to cure, or in the peak of summer when the storage tank is most needed to ensure adequate water supply. Water utilities would try to conduct tank inspections in the fall, budget for repainting the following year, and plan the work for the spring in time to get the tank back in service for the peak demand season.

Occasionally DEP would hear of complaints about dust from the preparation of the tank for painting or a complaint of taste or odor in water from a freshly coated tank. To address these occasional issues, some regional DEP offices began interpreting the Chapter 109 regulations as requiring utilities to obtain permits in advance of repainting water storage tanks. The application requirements and the list of permit conditions grew along with the time spent on preparation of the applications by utilities and review by DEP. It became increasingly difficult to budget for a tank painting job, get a permit, and complete the re-painting before the next summer season.

DEP now universally applies permitting requirements on tank painting activities. Some are taking the process another step by requiring a separate permit from a different division of DEP to discharge dechlorinated, clean drinking water in preparation for tank painting.

The Groundwater Rule:

A second example of proliferation of permits is the Ground Water Rule. The federal rule became effective December 1, 2009. DEP implemented its version of this rule December 26, 2009. The purpose of the federal rule was to set up processes by which public water supply wells that were potentially microbiologically contaminated would be identified and disinfection would be required to protect public health. The rather rigorous criteria for treatment of these wells in the federal rule was disinfection with chlorine to ensure 99.99% (4 log) inactivation of disinfectant-resistant viruses. States that allow unchlorinated public water supply wells have generally relied on initial testing of new wells to demonstrate a lack of contamination, but there was seldom a mechanism for ongoing testing. Pennsylvania had long required disinfection of all public water supply

sources, including all wells. Still, many public supply wells in Pennsylvania were installed prior to the adoption of the standards. Others cannot meet the stringent 4-log virus inactivation requirements in the federal rule. Pennsylvania is the only state in which Aqua operates that has taken the approach of requiring universal 4-log virus inactivation on all public water supply wells. This requirement is clearly above and beyond the requirement of the federal Ground Water Rule, and it will impose significant costs on Pennsylvania utilities with very little, if any, incremental benefit in public health protection. Utilities have only begun to apply for certifications for their wells and DEP staff faces a huge burden to review these applications. Although it is probably too late to reverse this regulation now, this circumstance it presents an opportunity to find ways to streamline the DEP permitting process.

Self Certification

One state in which Aqua operates, the Commonwealth of Virginia, in the face of staff cuts at the Virginia Department of Environmental Quality (VDEQ) and an increasing backlog of permit applications to review for wastewater facilities, implemented a process for self-certification for permitting. The agency no longer reviews in detail the design plans and calculations submitted by licensed engineers. Once an application is reviewed for completeness and has been deemed complete, a Certificate to Construct is issued. When construction is complete, the engineer submits a certification that the construction has been done in conformance with the plans and specifications and with VDEQ regulations and standards, and an operating permit is issued.

DEP might be reluctant to go this far in every aspect of environmental permitting in Pennsylvania. However, for something like certification of 4-log virus inactivation for public water supply wells, it would seem that this process could be effective. If DEP were concerned that unqualified engineers might issue self-certifications for non-compliant designs, DEP could provide training and certify or approve specific water utility and professional engineers to perform the self-certifications.

Regional Inconsistencies:

Although inconsistencies among regions, between regions and the central office, and within departments in the regions and in the central office, can be frustrating to permit applicants, rigid consistency has the potential to bring even worse results. A specific permit requirement, or even a determination as to whether an activity requires a permit, might be appropriate in for the City of Philadelphia but not for a suburban community in Delaware County, or a rural community in Forest County.

The requirements for permits for repainting water storage tanks illustrates the potential consequences of imposed consistency. In response to the inconsistent imposition of requirements for tank painting permits, a consistent set of permit requirements emerged that was based on the most restrictive regional requirements further enhanced by anecdotes of issues regulators thought should be addressed by the permit process. The

result was a permit process that might have improved tank painting practices across the state, but at a cost that is probably greater than what would have been incurred by the adoption of best practices by inspectors, coating manufacturers and contractors over that same period of time regardless of the regulations. The hidden cost has been the time that has been added to the process of planning and preparing for a tank repainting project, and the loss of flexibility to take advantage of optimum weather conditions for an activity that is very dependent on weather.

Recommendations:

Through its representation on federal interstate river basin commissions, DEP should aggressively work to avoid overlap and duplication of its authority and imposition of taxes masquerading as fees on businesses and citizens of Pennsylvania by agencies are not otherwise accountable to the voters of Pennsylvania.

DEP should be entitled to recover a fair portion of the cost of processing permit applications. However, the permitting process imposes costs on applicants far in excess of the fees and sometimes extracts benefits to society or the environment. Accordingly, fees should cover no more than half the costs incurred by DEP, the other half being borne by the public as recipients of the public goods that should flow from the process.

DEP should be discouraged from expanding the number of activities requiring individual permits. The use of permit by rule or general permits should be encouraged where appropriate

Pre-application conferences with DEP should be encouraged, and applicants that take the time to apprise DEP in advance of their intentions and follow DEP advice should be rewarded by clear guidance and expeditious processing of applications, not repeated requests for additional information that "stop the clock" on the permit review process.

Lastly, and probably most importantly, DEP should adopt a self-certification program specifically for certification of 4-log virus inactivation under the Ground Water Rule. If the program were found to be effective and efficient, the principle could be expanded to other aspects of permitting in the Drinking Water program, and to other permits in other DEP programs.

It should be a priority for DEP, for the Pennsylvania Legislature, and for regulated business and public utilities to make the DEP permitting process more efficient, sensible and responsive.

Thank you for the opportunity to share these experiences and I am happy to answer any questions you might have.