



pennsylvania environmental council

June 3, 2019

To: Members of the Senate Environmental Resources and Energy Committee
From: John Walliser, Pennsylvania Environmental Council
Re: June 4, 2019 Voting Meeting of the Committee

Dear Senators:

The Pennsylvania Environmental Council (PEC) respectfully submits the following comments on legislation that will be considered by the Environmental Resources and Energy Committee tomorrow. For the reasons stated below, we ask that you support Senate Bill 108 and oppose Senate Bill 619.

SUPPORT Senate Bill 108 (P.N. 80)

Senate Bill 108 would create the "Keystone Tree Fund" as a voluntary donation checkoff box to the Pennsylvania Department of Transportation's driver's license application (original and renewal) and vehicle registration renewal application. These donations would be allocated to programs within the Department of Conservation and Natural Resources for the Tree Vitalize and Riparian Forest Buffer Grant Programs. Both programs help protect water quality, which, as noted in the co-sponsorship memo to the legislation, "every Pennsylvanian relies on for daily living and recreational activities." The memo further notes that: "Despite its abundance, or maybe because we have taken that abundance for granted, almost one-quarter of Pennsylvania's 86,000 miles of rivers and streams are classified as "impaired" under the Federal Clean Water Act, meaning they are not safe for drinking, fishing, swimming or a combination of uses. Pennsylvania's list of impaired waters is twice as long as the state in second place [Michigan]."

Senate Bill 108 is a simple, voluntary measure to help improve and protect water quality in our state. For this reason, we ask you to Support Senate Bill 108.

OPPOSE Senate Bill 619 (P.N. 762)

Senate Bill 619 fundamentally changes two water protection and reporting standards pursuant to the Clean Streams Law.

Changes to Definition of Water Pollution

Senate Bill 619 changes the definition of water pollution under the state Clean Streams Law by

saying an accidental spill only constitutes pollution if it violates a numeric surface water quality standard in the Department of Environmental Protection's (DEP) Chapter 93 regulations.

The problem with this modification is that Chapter 93 contains few numeric water quality criteria; in fact, there are only 15 specifically named in the regulation itself.¹ While the Chapter contains additional standards, they are technically not numeric because they are based on designated uses or quality of the waterway.² It is possible that under the change offered in this bill, neither DEP nor the Fish and Boat Commission could require the cleanup of a spill, require a fix for the problem that caused a spill, or take other enforcement actions unless the spill violated the limited set of numeric water quality criteria in the regulation.

Thus, if a spill temporarily or irreparably harmed aquatic life, or temporarily or permanently prevented a stream or river from being used according to its designated use, without violating a numeric standard, neither DEP nor the Fish and Boat Commission could take any action.

Further, the new language would also rule out taking any action against anyone causing a spill that affected groundwater and not surface water, again if the spill did not violate numeric water quality criteria in Chapter 93.

Changes Spill Reporting Requirements

This legislation also makes changes to spill reporting requirements by saying a person or entity that caused a spill must first make a determination if the spill violates water quality criteria under Chapter 93, or if it exceeds federal reporting requirements (1,000 gallons in any one incident or 42 gallons in each of 2 discharges), before reporting a spill – and then only after they take into account the steps they have taken to control or remediate the impact of the spill.

25 Pa Code §91.33 requires any individual or entity that spills a “toxic substance or another substance which would endanger downstream users of the waters of this Commonwealth, would otherwise result in pollution or create a danger of pollution of the waters, or would damage property, is discharged into these waters – including sewers, drains, ditches or other channels of conveyance into the waters – or is placed so that it might discharge, flow, be washed or fall into them” to notify DEP of the spill. They must also notify known downstream users of the water, like a drinking water company, a farmer withdrawing water for irrigation, or

¹ These include alkalinity, ammonia nitrogen, bacteria, chloride, color, dissolved oxygen, fluoride, iron, manganese, nitrite plus nitrate, osmotic pressure, pH, Phenolics, sulfate, and temperature. [See 25 Pa Code §93.7]

² See, for example, 25 Pa Code §93.7 – “The list of specific water quality criteria does not include all possible substances that could cause pollution. For substances not listed, the general criterion that these substances may not be inimical or injurious to the existing or designated water uses applies.” See also §93.6 – “Water may not contain substances attributable to point or nonpoint source discharges in concentration or amounts sufficient to be inimical or harmful to the water uses to be protected or to human, animal, plant or aquatic life” and “In addition to other substances listed within or addressed by this chapter, specific substances to be controlled include, but are not limited to, floating materials, oil, grease, scum and substances that produce color, tastes, odors, turbidity or settle to form deposits.” See also §93.4, which protects High Quality and Exceptional Value Waters by saying the stream's existing water quality cannot be degraded from the chemical and biological values established during a formal assessment of stream water quality.

an industrial user so they can take appropriate steps to protect their systems. The individual or entity spilling the substance must also immediately take steps to prevent harm downstream.

Senate Bill 619 would change this requirement to require reporting not when they “create a danger of pollution of the waters, or would damage property,” but rather only when, *after* taking into account any control and remedial measures they have taken:

- The individual or entity first makes a determination the spill violates surface water quality criteria under Chapter 93; or
- It exceeds federal reporting requirements (1,000 gallons in any one incident or 42 gallons in each of 2 discharges) – and only after they take into account the steps they have taken to control or remediate the impact of the spill.

The practical realities of making a determination pursuant to these changes would require a company or entity to:

- Know the amount and precise chemical composition of the material being spilled and, if it isn't known, to take, analyze, and report those results;
- Know the classification, designated use, and any special numeric water quality standards in place at the location the spill would enter a surface water; and
- Taking, analyzing, and reporting the results of water samples upstream, at the point of the spill, and downstream of the spill to determine if the numeric standard was violated at the time of the spill.

Likewise, if DEP or the Fish and Boat Commission wanted to take any compliance or enforcement action for a spill with the change in definition of pollution proposed in Senate Bill 619, they would have to prove a numeric water quality standard was violated at the exact time of the spill, which would not be possible after the fact.

These sweeping changes made by Senate Bill 619 would fundamentally change how Pennsylvania's surface and groundwater is protected from pollution, significantly restrict the ability of DEP and the Fish and Boat Commission from taking action to require the cleanup and prevention of spills and to assess penalties, and to the requirements for reporting spills.

For these reasons, we ask you to [Oppose Senate Bill 619](#).

Thank you for your consideration.

Sincerely,

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