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REGIONAL HEARING CLERK 2012
EPA REGION III, PHILA. PA

Shawn Garvin
Administrator
U.S. EPA REGION 3
1650 Arch Street
Philadelphia, PA 19103-2029

Re: Docket No.s
CWA-03-2012-0092
CWA-03-2012-0093
CWA-03-2012-0094
CWA-03-2012-0095

Dear Administrator Garvin,

I write to you again to echo the many concerns of my constituents regarding EPA's actions against several central Pennsylvania municipalities. Since our last correspondence regarding the city of Lebanon, it has come to my attention that EPA is fining three additional municipalities (York, Manor Township, and Swatara Township) for allegedly failing to comply with their National Pollutant Discharge Elimination System (NPDES) permits issued by the Pennsylvania Department of Environmental Protection (PA DEP). This raises total EPA fines pending against Pennsylvania municipalities to \$128,608. It is my hope that we can find a compromise that allows these fines to be waived.

I appreciate EPA's letter of March, 13 2012 commenting on the fine EPA levied against the city of Lebanon. That said, I feel this letter was an incomplete explanation as to why EPA is taking such aggressive action against Lebanon and did not adequately explain EPA's rationale for assessing such a large penalty. I also appreciate EPA's stated commitment to keeping PA DEP informed of all enforcement activities, though I remain disappointed that EPA failed to provide PA DEP with official copies of enforcement documents until more than 30 days after they had been issued. These actions demonstrate EPA's failure to live up to its commitment to increased transparency as called for by Administrator Jackson in her memo entitled "CWA Action Plan Priorities," dated May 11, 2012.

With this in mind, I respectfully request that EPA reconsider its fines against these four municipalities and provide detailed answers to the following questions:

1. Your previous letter references EPA's "Interim Clean Water Act Settlement Penalty Policy" (Policy) (March 1, 1995). This document lists "economic benefits" of noncompliance as the leading factor in determining the size of a penalty. Did EPA determine that any of the four municipalities received an economic benefit from their alleged violations? If so, please elaborate on how EPA reached this conclusion.
2. Title 33 § 1319 (g) of the United States Code requires EPA to take into account an entity's "ability to pay" before assessing a penalty. How did EPA determine that these

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municipalities were financially capable of paying tens of thousands of dollars in penalties?

- a. Specifically, how did EPA account for the financial strains caused by damages from Tropical Storm Lee and other natural disasters in central Pennsylvania in 2011?
 - b. Does EPA recognize that the City of Lebanon will either forgo replacement of a police cruiser or laying off a police officer in order to pay for the fine?
3. In your letter, you note that "EPA also invited Lebanon to propose a green infrastructure project to benefit the Chesapeake Bay, credit for which could potentially be used to further reduce the penalty if the project met certain criteria." It is my understanding that Lebanon's proposed project would have benefited the Chesapeake Bay. Despite this fact, EPA chose to deny this project because it was not fully financed by Lebanon and was not located entirely within its MS4 jurisdiction. Can you please state where in EPA's policy guidelines these criteria are listed as grounds for denying such a project? Has EPA ever used these criteria to deny a project before?
4. Would EPA consider conditionally removing the fines provided that certain benchmarks are met by the municipalities facing these fines?

Please feel free to contact my office at any time to discuss this issue in further detail. I appreciate your consideration and look forward to response.

Sincerely,



Pat Toomey
U.S. Senator.

Cc: Regional Hearing Clerk (3RC00)