

*Chamber Testimony on DER Reform
House Environmental Resources and Energy Committee
Thursday, April 27, 1995
Room 8 East Wing, Capitol Building, Harrisburg*

Good morning. My name is Fred Sembach. I am the Vice President of Government Affairs for the Pennsylvania Chamber of Business and Industry. This morning, it is my pleasure to appear before the Committee to share our thoughts on HB-1400 on behalf of our 4,000 members.

AGENCY STRUCTURE

The Pennsylvania Chamber of Business and Industry strongly supports legislation to reorganize the administration of Pennsylvania environmental programs by creating a new Department of Conservation and Natural Resources (DCNR) and a new Department of Environmental Protection (DEP). In order to most effectively move forward with other comprehensive efforts to improve the management of environmental programs, the Chamber supports the enactment of reorganization legislation.

Industry itself has done much "re-engineering" in recent years and has learned that much value can be derived from analyzing and revamping service delivery mechanisms. The Chamber supports government's attempts to look critically at itself and to re-organize in a manner that benefits taxpayers. But, let me make it very clear, that the Chamber views the structural reorganization of DER's hierarchy and reporting lines as only a down-payment on true reform of the agency and its functions. More important than structural changes are the core values and philosophy of the management team and key personnel of the new

DEP. The senior management of the agency must articulate a vision of the new "culture" that emphasizes a customer orientation -- helping the regulated community to comply with realistic, risk-based performance standards. DEP must hire technically competent people whose personal value systems match the new culture. And, DEP should institute cross-training programs for its personnel to effectively prepare the staff to implement and work within the new customer-oriented culture. We would not want reorganization to be the end-point of the Ridge Administration's environmental work. Reorganization should be a tool to reach the proper balance between economic competitiveness and environmental protection.

Let me briefly elaborate on what we view as the critical elements of complete DER reform and improvement.

OBJECTIVE BASED APPROACH TO REGULATION

The current DER uses a traditional command and control style of environmental policy-making. DER rule-makings are replete with "shalls" and "musts." It is not uncommon for DER to specify equipment, procedures and operating rules required for permittees. This is a failed and outdated strategy. The greatest shortcoming of command and control is its lack of operational flexibility. An objective based regulation system allows the business community to do what it does best: find the most cost effective way to achieve desired goals. As a bonus, an objective based regulatory system will reduce DEP paperwork and man-hours, resulting in more efficient and less costly government. Best of all, the environment is better served.

A FOCUS ON COMPLIANCE ASSISTANCE RATHER THAN ENFORCEMENT ACTIONS

DEP should undertake public outreach programs to improve compliance. In the very near future, DER and the Chamber will jointly sponsor pollution prevention roundtables. We view this type of outreach as tremendously positive and we encourage the new DEP to undertake similar outreach efforts to develop consensus for policy reform process.

CONSISTENCY AND COMPATIBILITY WITH FEDERAL LAW AND RULES

Pennsylvania has frequently adopted rules that differ significantly from federal rules. The most notable examples are the Title V rule, storage tank program, residual waste rule, and the infamous "PK-4" hazardous waste rule. Historically, DER has also taken license in its interpretation of state statutes so that policy is implemented in a manner unique to Pennsylvania. "No more stringent than federal," has become the battle cry of the regulated community as a result. But, stringency is only half of the issue. Conformity and consistency with federal rules are critical. For example, the PK-4 definitions of waste, by-product and co-product require the very costly regulation of substances that are exempt from federal regulation. Pennsylvania's residual waste rule represents the "Subtitle D - Non-Hazardous Industrial Waste" portion of the federal rule that has not yet been promulgated by EPA. Will the Pennsylvania rule be re-written to conform to the coming federal rule? Or, will it be repealed and the federal rule adopted by reference?

RISK ASSESSMENT & COMPARATIVE RISK ANALYSIS TO SET POLICY PRIORITIES

The use of scientific risk assessment as an analytical tool and comparative risk analysis to compare and contrast policy alternatives should be hallmarks of the Ridge Administration. State government and Pennsylvania businesses work in environments of scarce resources. The use of risk assessment and cost benefit analysis should become part of everyday DEP functions and decision-making. This step is part and parcel of the structural overhaul; an overhaul of the thought process. If proposed regulations are accompanied by a comparative risk analysis, and a cost-benefit analysis, the Administration and the Legislature could compare and contrast programs.

An amendment to the Administrative Code or IRRC law requiring such analysis would transcend the current Administration. Such an analytical framework would make Pennsylvania more competitive by introducing rationality into the Commonwealth's regulatory scheme.

CENTRAL OFFICE POLICY-MAKING -- MINIMAL DISTRICT OFFICE INTERPRETATION

Policies should be made by the DEP central office with little room for interpretation and strong guidance to the district offices. There must be consistency across district offices in the application and enforcement of rules. This is not to say that district personnel should not be consulted in the development of DEP policy. Field people can offer valuable insight. However, there cannot be wide variations among regions on the content of policies and procedures, or on their application.

CLEAR LEGISLATIVE OBJECTIVES -- MINIMAL DEP FLEXIBILITY IN POLICY-MAKING

Throughout the course of the Administration, many environmental bills will be written by the Department, and all will undergo agency review. There is always a tension between the political appointees whose job it is to make policy, and the career bureaucrats whose job it is to carry out these policies. Moreover, you as legislators -- and especially as members of this committee -- have the ultimate say in policy-making. It is no coincidence that the Legislature is addressed prior to the Executive Branch in the state's Constitution. The Chamber hopes that you will clearly articulate your policy goals in the bills that come before this Committee and that you will work with the regulated community to see that the goals are carried out by the bureaucracy.

CUSTOMER-ORIENTED -- PROMPT TURN AROUND ON APPLICATIONS / INQUIRIES

This is a key goal of the reorganization plan as described in campaign documents. We encourage the Ridge Administration to do everything in its power to make this a part of the new DEP culture. The Chamber knows that your Committee can do much to inspire and foster this goal. It would be useful to incorporate into DEP, a commitment to "total quality management" where a customer focus is at the heart of the service process.

Thank you for your time and attention. Let me just repeat that the Chamber views the structural reorganization of DER as only a down-payment on true reform of the agency and its functions. The Chamber looks forward to working with your Committee to ensure that our goals for true reform are met. In fact, we would appreciate the opportunity to, at some point in the future, offer our views on the DEP's progress in policy reform. I'll be happy to take any questions.