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Senate Environmental Resources and Energy Committee

Senator Mary Jo White

Chairman

Patrick Henderson, Executive Director

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February 18, 2010

John Hanger, Chairman
Environmental Quality Board
15th Floor Rachel Carson Building
Harrisburg, PA 17105

**Re: Reg. # 7-446 Wastewater Treatment
Requirements**

Dear Chairman Hanger:

I am writing to offer comments for consideration by the Environmental Quality Board (EQB) regarding the above-referenced proposed rulemaking.

Numerous commentators have submitted extensive comments and documentation to date regarding this rulemaking. While some of the comments submitted have provided detailed analysis, recommendations and requests for justification, I am also aware that the Department has received a significant number of comments generated by a letter-writing campaign to essentially "protect our water from Total Dissolved Solids (TDS), chlorides, sulfates" and other components related to natural gas drilling activity. I certainly appreciate the level of interest this regulation has generated, and share the stated goal outlined in the proposed regulation of ensuring that Pennsylvania's waterways are protected for all uses, especially for drinking water and aquatic life.

However, after reviewing many of the comments submitted, including from affected permit holders and potential applicants, I do have serious concerns regarding the specific standards established for total dissolved solids, chlorides and sulfates by the Department. I also strongly urge the Department to re-evaluate the feasibility of a January 2011 effective date for this regulation. I have reviewed the comments submitted by the Pennsylvania Chamber of Business and Industry. These comments are extensive, detailed, and seek appropriate justification for the scope of the rulemaking, the proposed timeline of implementation and the rationale for establishing a statewide total dissolved solids water quality standard. They request scientific justification based on historical data that should be fully evaluated by both the Department and the Independent Regulatory Review Commission prior to submittal of a final rulemaking to the EQB.

The genesis for this rulemaking was as a response to concerns expressed over elevated levels of TDS in the Monongahela River. Initial reports centered on a belief that the elevated levels 1) spiked compared to historic levels and 2) were attributable to discharges of either insufficiently treated fracking wastewater or production flowback water from natural gas drilling

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Subsequent reports and analyses seem to suggest that, while the TDS levels were inappropriately high, they were not definitively linked to wastewater related to natural gas drilling activity. As the Department knows, many waterways of the Commonwealth are affected by acid mine drainage from abandoned mines, and this serves as perhaps the largest single contributor of TDS to our waterways. Historic data also suggests that the Monongahela River, and other waterways where DEP has historic data to evaluate, have in the past experienced similar spikes of elevated TDS, sulfate and chloride levels. Therefore, it is unclear whether the targeted waterways that the Department seeks to improve through adoption of this regulation will see an appreciable improvement in their water quality even if this regulation is fully implemented.

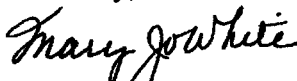
Given this uncertainty, I believe it is critical that the Department outline clearly the benefits of the proposed regulation. Further, should the Department continue to seek a statewide water quality standard for TDS, sulfates and chlorides, it is incumbent that the Department sunset the regulation and periodically report back to the General Assembly whether the results advertised are actually achieved.

It is my understanding that no neighboring state has implemented a comparable TDS standard. I am concerned that Pennsylvania may be imposing a water quality standard which places the Commonwealth at a competitive disadvantage, while providing our citizens with little if any appreciable environmental or health benefit. I urge the Department to give serious consideration to alternatives to a statewide water quality standard, including standards based on watershed or, perhaps more appropriately, a case-by-case permit limit.

Given the far-reaching scope of this proposed regulation, the demonstrated level of public interest, the potential compliance costs associated with the rule, existing questions concerning the scientific rationale or anticipated benefits of the rule, and the wide array of employers affected by these proposed standards, I urge the Department to utilize an Advanced Notice of Final Rulemaking prior to proceeding with a final rule to the EQB. This will allow those interested or affected by this rulemaking to evaluate the Department's response to their comments and recommendations and lead to a more fully informed process for members of the EQB, the IRRC and the legislative committees as they review this regulation.

Thank you very much for your consideration of these comments.

Sincerely,



Mary Jo White, Chairman
Senate Environmental Resources
& Energy Committee