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Environmental Quality Board
P.O. Box 8477
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ENVIRONMENTAL QUALITY BOARD

INDEPENDENT REGULATORY
REVIEW COMMISSION

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Dear Sir or Madam,

I am writing you to provide my comments, suggestions and objections to the EQB proposal to amend 25 Pa. Code Chapter 95 (relating to Wastewater Treatment Requirements).

I am opposed to the proposed rule changes. It is poorly conceived and will have extremely negative impacts on the general economy of Greene, Fayette and Washington counties.

I am currently employed in the mining industry in Greene County. Among my other responsibilities, I manage several mine wastewater treatment plants. I have nearly 25 years of experience treating and handling acid mine drainage in southwestern Pennsylvania. That experience has provided me some practical knowledge that the Board may find useful as it considers the benefits and costs of the proposed changes to the law.

Under "Benefits, Costs and Compliance", the statement that "treatment costs could be on the order of \$0.25/gallon" appears accurate, but to also say that "Existing facilities will have minimal additional costs" is misleading since the proposed rule is not clear about what an existing operation is. In addition there is general confusion at DEP about how the proposed rule change will be enforced. When a new rule is being considered, it is incumbent on the government to provide the public a clear understanding of how the rule will be enforced. How can the public comment on a rule change when we don't know what the final impact will be?

To provide a comparison of costs, we currently spend approximately \$0.00146 per gallon to treat the discharges at our facilities to remove acidity, and metals (but not TDS, sulfates or chlorides). So the result of the proposed rule change as I understand it will make our treatment cost 170 (one hundred and seventy) times more expensive as it is currently.

Pertaining to the specific language in the proposed rule change:

The definitions of new discharge, expanded discharge, additional discharge and increased discharge are vague.

The proposed rule change imposes end of pipe standards to each discharge. This method of regulation is easy for the regulatory agency to enforce but in my opinion, it is, without doubt, the most expensive alternative (from both capital and operating cost standpoints), difficult to

implement (permitting these new treatment facilities will take time, patience and community acceptance), and a waste of resources. I say a waste of resources because TDS can be controlled in other ways. Just think about the power used for the treatment of all this water, the massive amount of wastes generated that will require disposal, how many existing/prospective businesses will either leave this area or not come to this area in the first place because other states manage their watersheds in a way that allows business to exist while protecting the environment.

The electric distribution system in our area can't support the demand that will be placed on it if reverse osmosis and zero liquid discharge treatment facilities (the only viable alternative for TDS removal with the proposed rule) to treat all the water. There is no way around this problem to meet the proposed rule deadline. It currently takes 1 to 1-1/2 years just to get electric service even if the infrastructure was in place to provide the power.

How will this affect projects that now collect and treat orphan acid mine drainage at no cost to the taxpayer? The extremely high costs of treating water for TDS will force most of these privately funded projects to stop treatment of existing sites and avoid new ones. If these orphan waters are not treated for acidity and metals, (iron, manganese and aluminum) wouldn't the impact of those pollutants far outweigh the sporadic impact of the few TDS spikes in the streams? Maybe these activities are exempt from the proposed rules, but it isn't clear.

Some of the alternatives to imposing end of pipe limits are watershed management, managed interruptible discharges, in stream water quality limits, dilution using on/off site water, and trading. Why can't these alternatives be considered? Why can't the company or person affected by the new rule be allowed to propose a specific method of compliance that best suits the environment and the business?

There is no compliance schedule for new facilities listed. If the proposed rule becomes the final rule, when must it be implemented? The time to design, permit, construct, and commission water treatment facilities on this scale is 2 to 3 years if the permits are approved in a timely manner and there is no public opposition to the permit.

The assimilative capacity of the streams is not utilized at all times or even most of the time. DEP's Southwest Regional Office portrays the streams as having high TDS levels at all times and I know from our own limited data that this is incorrect. DEP doesn't even use an approved EPA method when they test samples for TDS. The TDS levels increase as the amount of rainfall is reduced. Why not use the available assimilative capacity of the receiving stream to dilute the TDS from the regulated discharges as long as the mixing zone isn't adversely impacted?

All water discharges are unique. Some discharges must flow all the time for the business to operate. Others can shut down periodically. Some must increase the discharge rate during dry conditions and visa versa. A common sense approach would be to provide a mechanism for the discharger to submit a plan to DEP detailing how they will reduce or eliminate their impact on the receiving stream.

The costs of design, permitting, construction and commissioning large water treatment facilities of the size needed for compliance with the proposed rule would be enormous. Private companies will seek alternatives that save them money. One of these alternatives is to shutter or permanently close the business due to financial failure. The irony in this is in some cases the untreated mine water will continue to discharge. This doesn't appear to me to be the best way to manage the watersheds.

Water quality in the Monongahela River has steadily improved since the 1970's. Most of the improvement has occurred because active/abandoned mine discharges are treated. The TDS in the treated water is there naturally when it comes from mines, like it or not. An active company being forced to treat its discharges for TDS now is not fair to the people who invested hard earned money in a mining operation only to have the rules change. This proposed rule appears to me that it will impact existing operations. The proposed rule should be modified so that it can be applied equitably to companies and individuals that made decisions based on one set of rules and now may be forced to comply with a new rule that may eliminate any chance at being profitable.

In closing, I appreciate the opportunity to comment. I trust the Board will use common sense and ask DEP to further study this issue and come up with better methods of protecting the waters of the Commonwealth.

Sincerely,

Brian M. Osburn