

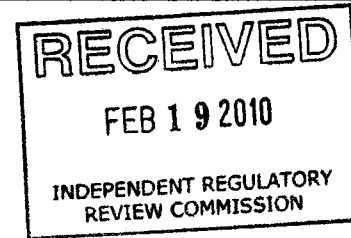


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AMFIRE Mining Company, LLC
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February 10, 2010

PA Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477



RE: Comments on Proposed Amendments to 25 PA Code, Ch. 95 Effluent Standards for TDS

Dear Mr. Chairman:

This letter is in response to the Notice of Proposed Rulemaking published in the November 14, 2009, PA Bulletin pertaining to an amendment to establish new effluent standards for new sources of wastewaters containing high concentrations of Total Dissolved Solids (TDS). I provide these comments on behalf of AMFIRE Mining Company, LLC, with offices in Latrobe, PA. Our company operates five underground and thirteen surface coal mines, two coal cleaning plants and four blending/loadout facilities that employ 430 people in eight Pennsylvania counties. AMFIRE Mining Company, LLC, is an active member of the Pennsylvania Coal Association (PCA), and in addition to these general comments, we support and incorporate the technical comments provided on this issue by that association. We appreciate the opportunity to offer input to this very important issue and sincerely hope the agency will consider these comments as this process proceeds.

We write in opposition to the rulemaking because the proposal is premature and is neither based on sound science nor economic realities. In order to provide a clear context of the reasons for our opposition, we have crafted our comments consistent with how the Independent Regulatory Review Commission could evaluate them pursuant to the Regulatory Review Act (P.L. 73, No.19, as amended June 1989).

Sec. 5.2(b)(3)(iii) – Need for the regulation. First, the lab method used by the DEP in testing of the Monongahela River in 2008 (which is the only testing data provided to the public to justify the rulemaking) is different from the approved method required by US EPA and PA DEP as it relates to official reporting of TDS results for purposes of compliance. EPA and PA DEP require certified laboratories to use Standard Methods 2540C, while the DEP indicated in its letter to the Pennsylvania Coal Association dated September 3, 2009, that it uses USGS-I-749 for purposes of the 2008 sampling as well as for Water Quality Programs. The EPA approved method dries the sample at a higher temperature than the USGS method (180 versus 105 degrees C). Consequently the USGS method could overstate the results. Therefore, since the Department used a non-EPA approved method in their 2008 monitoring of the Monongahela River and that data was the only empirical evidence provided in the Public Notice as a basis for this rulemaking, and because that non-approved method could overstate the TDS results, the agency has not yet demonstrated a clear need for a statewide regulation.

Secondly, it is clear that the proposed rulemaking is, by DEP's own admission, predicated on very limited sampling in the Monongahela River between October and December 2008 when river levels were at historical lows and there were high dissolved solids concentrations entering the Commonwealth from West Virginia. Again, by DEP's own admission, TDS levels dropped after the prolonged dry weather moderated and rainfall conditions returned to normal. On that basis, the DEP is proposing statewide effluent limits for all point sources premised on a temporary condition in the main-stem of the

Monongahela River. Further, the DEP asserts in the Nov. 14th PA Bulletin that studies performed by government agencies document the adverse effects of discharges of TDS on the aquatic communities in certain receiving streams. The regulated community has asked numerous times for copies of those studies. To date, the DEP has not provided any of that data that could even allow an independent analysis, much less arrive at a reasoned conclusion that a statewide standard is appropriate. In short, the DEP is basing this rulemaking on data that is either non-representative of statewide conditions or has not seen the light of public review. For these reasons the department has not yet provided to the public sufficient evidence that a statewide need for this rulemaking is warranted. Therefore, the proposal is premature.

Sec. 5.2(b)(1)(i)(ii) and (iv) – Economic or fiscal impacts of the regulation on publicly owned entities and the private sector. The DEP makes contradictory statements in the PA Bulletin by initially stating that "currently no treatment exists for TDS, sulfates and chlorides, other than dilution," then goes on to state that "treatment costs could be in the order of \$0.25 per gallon." While we all appreciate that the DEP has made a preliminary effort to project the economic consequences of this action, the proposed rule is far reaching and will adversely impact many sectors of the economy, especially those with high volume discharges. Subsequent to an analysis of a majority of the coal industry, and as we have already indicated to DEP through the Advisory Council process, the only viable treatment technology available today is Reverse Osmosis followed by Evaporation and Crystallization. The minimum estimated costs of treatment to meet the limits imposed by this rule, based on real data, will result in capital and operating costs of over \$49,000 per gallon per minute. Industry wide, it is estimated that treatment costs alone will require \$1.3 billion in capital expenditures and operating costs are estimated at \$133 million annually. This is far from the estimated \$0.25 per gallon suggested by the agency. And this does not even include the solid waste stream that will result from this treatment process. This solid waste has to be landfilled somewhere, and the DEP's cost estimate does not address this at all. Neither has it considered the implications of the enormous electricity consumption that would be needed to run these large treatment facilities.

In addition, the DEP has not fully evaluated the widespread economic impact of this action. To be sure, this rule will have significant impact statewide, as it will impose additional water treatment costs on any new discharges and all existing facilities that add to or increase their discharges consequent to economic expansion, regardless of what activity the discharger is engaged in. Public water treatment plants and publicly owned sewage treatment facilities will be impacted by this rule, and the costs of meeting the proposed rule will likely be borne by the rate payer. Privately held sewage treatment sites serving residential developments, commercial facilities, and industrial and mining companies that wish to expand and add new business will also be affected by the rule, wherever they might be located in the state. This approach ignores local conditions and stifles economic development throughout the Commonwealth when we need it most. Clearly, the DEP has not completely investigated the cost/benefits of this rule, and we all would be well served to understand the impacts of this action before it is imposed in less than one year from now.

Sec. 5.2(b)(3)(iv) – The feasibility and reasonableness of the regulation, including the timetables for compliance by the public and private sectors. The timeframe for implementation is totally unreasonable. If the rule is imposed as written, we estimate that it would take 2.5 to 3 years to conduct feasibility studies, design a treatment plant and permit such a facility. In addition, given the DEP's recent budget losses and reduction in ranks, it is simply unreasonable to impose a compliance deadline of January 2011 when the Department is ill-positioned to handle the additional permitting load required to meet these requirements.

In summary, this rule is not grounded in thorough scientific or economic analysis and will result in restraints on businesses and additional costs to taxpayers that have not been demonstrated to bring about a commensurate environmental or economic benefit. Instead, the rule as written will work against the rebound in Pennsylvania's economy. Furthermore, it is our hope the Department sees the wide range of impacts to all the industries that will be affected by this rule. Armed with this information, we urge the Department to re-evaluate their pursuit of any TDS limits at this time.

Again, thank you for the opportunity to comment.

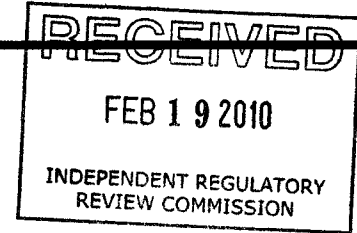
Sincerely,

A handwritten signature in black ink, appearing to read "Peter V. Merritts". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Peter V. Merritts
President
AMFIRE Mining Company, LLC
Latrobe, PA

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From: Pete Merritts [pmerritts@alphanr.com]
Sent: Thursday, February 11, 2010 12:25 PM
To: EP, RegComments
Subject: Comments on Proposed TDS Rulemaking
Attachments: TDS letter to EQB 2-11-10.pdf



Please consider my attached objections to the proposed TDS rulemaking. Thank you for th opportunity to comment.

Pete Merritts
President
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724-532-4811