



A summary of comments to the Environmental Quality Board on the proposed revisions to Chapter 95 of the rules and regulations of the Department of Environmental Protection, 25 PA Code 95.1 et seq. pertaining to Wastewater Treatment Requirements.

1. The compliance costs analysis mentioned in paragraph F. of the preamble to the proposed regulatory revisions falls far short of a reasonable explanation. Some receiving streams have assimilative capacity for TDS well below a level considered to be pollution, even by DEP's current weak or unapplied standards under the current regulations. The proposed standard effectively prohibits certain discharges even though no water quality impacts may occur. For some dischargers this will pose a severe economic disincentive to establish or further develop a business that creates TDS, or worse, may force some businesses that would otherwise not have a water quality impact to close or move from the state. DEP is apparently proposing strict standards without a significant economic analysis.
2. The proposed revisions to Chapter 95 purport to decrease the level of sulfates in Pennsylvania's surface waters. The high sulfate concentrations mentioned in preamble paragraph F. are from anthracite and bituminous surface and deep coal mines and coal refuse disposal areas. Such discharges are exempt from more stringent requirements to control TDS. While the agency attempts to regulate wastewaters from Marcellus gas development and production within the Commonwealth, it quietly avoids addressing the high TDS discharged by the coal industry consistently over the last two centuries.
3. In previous testimony a commentator referenced an old (1988) EPA report recommending ambient water quality criteria for chlorides. If such criteria could be adopted under Chapter 93 (*Title 25 PA Code 93.1 et seq.*), and be protective of all water uses, why is the agency proposing unjustified statewide wastewater treatment standards now instead of utilizing specific water quality criteria to do so?
4. The definition for "new discharge" of high TDS wastewaters is vague. The terms *additional discharge*, *expanded discharge* and *increased discharge* are confusing. All three terms should be explicit.
5. What is the agency's position relative to the existing and sanctioned practice of spreading of oil and gas well brines on dirt and gravel roads for dust suppression, or the use of oil and gas well brines for antiskid purposes under general permit WMGR064?
6. While I completely agree that excessive TDS can be harmful to water quality uses, imposing the in-stream value to the effluent discharged with no consideration of in-stream background concentrations and no consideration of the stream's assimilative capacity is wrong, and does not advance environmental protection.
7. What is the existing list of dischargers that meet the standard of having a "TDS concentration that exceeds 2,000 mg/L or a TDS loading that exceeds 100,000 pounds per day"? The public needs to know the threat posed by these exempted dischargers.

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Comments to the Environmental Quality Board on the proposed revisions to Chapter 95 of the rules and regulations of the Department of Environmental Protection, *25 PA Code 95.1 et seq.* pertaining to Wastewater Treatment Requirements.

1. The compliance costs analysis mentioned in paragraph F. of the preamble to the proposed regulatory revisions falls far short of a reasonable explanation of the agency's investigation of the actual potential costs to existing dischargers within the Commonwealth. The inclusion of compliance costs is important to all dischargers. A discharger located on a receiving stream that has an assimilative capacity for TDS well below a level considered to be pollution, even by DEP's current weak or unapplied standards under the current regulations, has the ability to increase production or accept additional waste streams from other sources without the financial burden of adding additional treatment, and without causing any adverse impact on all water quality uses. A municipal discharger that presently receives high-strength wastes will, under the proposed revisions to chapter 95, force any source of high TDS waste that utilizes their POTW to pre-treat the wastes or remove their discharge from the municipal system. The loss of industrial waste streams may have a significant negative financial impact on that municipality. The standards proposed will be applied to all waters of the Commonwealth, regardless of an actual impairment caused by TDS. For some dischargers this will pose a severe economic disincentive to establish or further develop a business that creates TDS, or worse, may force some businesses that would otherwise not have a water quality impact to close or move from the state. This also represents an especially difficult situation for some small municipal dischargers that accept a variety of industrial wastes. Such municipalities generally have less control over influent wastewaters than larger municipalities. An industry that presently creates high TDS wastewaters, whether treating and discharging directly to waters of the Commonwealth or pre-treating and discharging to a POTW for additional waste treatment, will face significant costs associated with an expansion of business. DEP is apparently proposing strict standards without a significant economic analysis.

2. The proposed revisions to Chapter 95 purport to decrease the level of sulfates in Pennsylvania's surface waters. Although wastewaters from gas well development and production is clearly targeted, such wastewaters contain relatively low concentrations of sulfates. Rather, the high sulfate concentrations mentioned in preamble paragraph F. are usually associated with the treated or untreated discharges from anthracite and bituminous surface and deep coal mines and coal refuse disposal areas. Such discharges are exempt from more stringent requirements to control TDS under paragraph 95.10 (b)(6), in that BAT and BCT for all the coal mining industrial subcategories do not require any reduction of TDS. While the agency attempts to regulate wastewaters from Marcellus gas development and production within the Commonwealth, it quietly avoids addressing the high TDS discharged by the coal industry consistently over the last two centuries.

3. In their December 16 testimony in the DEP office in Williamsport, the Pennsylvania Fish and Boat Commission referenced an old (1988) EPA report recommending ambient water quality criteria for chlorides (the full report provided criteria for a number of parameters). Those EPA criteria could have been adopted by DER or DEP years ago. Why were these criteria not adopted? If criteria could be adopted under Chapter 93 (*Title 25 PA Code 93.1 et*

seq.), and be protective of all water uses, why is the agency proposing unjustified statewide wastewater treatment standards now instead of utilizing specific water quality criteria to do so?

4. Section 95.10 (a) provides a definition for "new discharge" of high TDS wastewaters that is vague, and reads, "*The term "new discharge" includes an additional discharge, an expanded discharge or an increased discharge from a facility in existence prior to April 1, 2009.*" It is not absolutely clear what is meant by the terms "additional", "expanded", or "increased". While "additional" likely means an increase in the number of discharge points from a given facility and "increased" likely refers to an increase in the volume of wastewater or the concentration or mass of pollutants within the discharge, the use of the term "expanded" is confusing. All three terms should be explicit.

5. The agency's attempt to reduce the levels of TDS in surface waters should not be limited to the Marcellus gas industry and whatever unfortunate Pennsylvania companies that currently discharge certain levels of TDS (whether or not there may be a water quality impact) or try to improve their business position by expanding or adding new product lines. What is the agency's position relative to the existing and sanctioned practice of spreading of oil and gas well brines on dirt and gravel roads for dust suppression, or the use of oil and gas well brines for antiskid purposes under general permit WMGR064?

6. While I completely agree that excessive TDS can be harmful to water quality uses, imposing the in-stream value to the effluent discharged (for **some** high-TDS sources), with no consideration of in-stream background concentrations and no consideration of the stream's assimilative capacity is wrong, and does not advance environmental protection.

7. Certainly some analysis went into the choice of April 1, 2009, cutoff date for the definition of "new" high-TDS discharges. What is the existing list of dischargers that meet the standard of having a "TDS concentration that exceeds 2,000 mg/L or a TDS loading that exceeds 100,000 pounds per day"? This list of dischargers needs to be made public so the public has some idea of the threat posed by these exempted dischargers.

Thank you for the opportunity to provide comment.

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INDEPENDENT REGULATORY
REVIEW COMMISSION

Attached are my comments and summary relative to the proposed revisions to Title 25 PA Code 95.1 et seq. The same comments will be sent via USPS. I am -

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