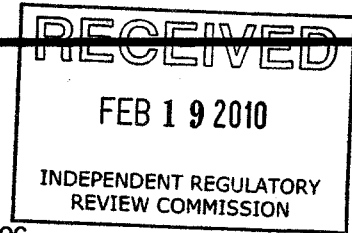


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From: Trulear.Brian@epamail.epa.gov
Sent: Friday, February 12, 2010 9:59 AM
To: EP, RegComments
Cc: Furlan, Ronald; Wetherell, John
Subject: Proposed Rulemaking 25 PA. CODE CH. 95
Attachments: EPA Comments on PA Chapter 95 Proposed Revisions.doc



Please find attached comments from EPA Region 3 on the proposed 25 Pa. Code Chapter 95 rulemaking which was public noticed in the PA Bulletin on November 7, 2009 (correction on November 14, 2009).

Thank You!

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The Mid-Atlantic Office of the Environmental Protection Agency (EPA Region 3) offers the following comments pertaining to the proposed rulemaking to amend 25 Pa. Code Chapter 95.

1. EPA Region 3 supports the efforts by the Pennsylvania Department of Environmental Protection (PADEP) to control discharges into receiving waters of the Commonwealth wastewaters containing high Total Dissolved Solids (TDS) concentrations. Elevated levels of TDS can adversely impact aquatic life and provide a hospitable environment for *Prymnesium Parvum*, an invasive algae, as well as other taxa not normally found in freshwaters. Further, elevated levels of TDS can adversely impact surface drinking water intakes, resulting in consumption of water that exceeds Pennsylvania's Maximum Contaminant Level (MCL) of 500 mg/l for TDS. While this MCL is a secondary standard and not based on health effects, consumption of water containing high levels of sulfate (a component ion of TDS) may be associated with diarrhea in at-risk groups within the general population.
2. EPA Region 3 wishes to emphasize that promulgation of the proposed requirements must be concurrent with (not in substitute of) required implementation of authorized Clean Water Act (CWA) programs, including promulgation of appropriate water quality criteria for protecting aquatic life, receiving water designated uses, enforcement of the general prohibition in National Pollutant Discharge Elimination System (NPDES) permits against discharges that impair designated uses, and reasonable potential analyses for TDS and other pollutants of concern during NPDES permit development.

It is our understanding that the effluent standards being proposed at section 95.10 are not being promulgated as water quality or technology standards, but rather as requirements which the Department has authority to impose under the Commonwealth's Clean Streams Law (CSL). Therefore, it should be clearly understood that the proposed effluent standards in section 95.10 would be requirements in addition to: a) water quality standards (WQS) as found in 25 Pa. Code Chapter 93, including water quality narrative standards at Chapter 93 Section 93.6.; and b) technology standards as established under Section 301 and 306 of the CWA and technology standards established by the Commonwealth of Pennsylvania. The proposed standards in Section 95.10 do not preclude PADEP from developing the necessary WQS to protect the waters of the Commonwealth.

3. Ambient water quality monitoring data indicate that assimilative capacity in many Commonwealth waters is insufficient for receiving existing discharges of TDS, let alone receiving new sources of TDS discharges. Elevated levels of TDS above the 500 mg/l MCL are found in Pennsylvania waters and PADEP should require TDS controls for existing facilities, not just new discharges that did not exist on April 1, 2009. When Federal Effluent Limitation Guidelines are developed, standards for new sources as well as standards for existing sources are identified. Depending on the industry, the standards for existing sources would be equal to or less stringent than the standards for new sources. However, for equity purposes, all facilities within an industrial classification would be subject to a set of

standards. PADEP should consider developing standards for existing facilities rather than allowing them to be “grandfathered” with no additional requirements or standards.

4. PADEP should consider application of the proposed standards in Section 95.10 also to facilities discharging less than 2,000 mg/l or 100,000 pounds/day TDS. EPA Region 3 does not see a basis for using these numbers as a cut-off for applying Section 95.10 requirements. Facilities discharging less than these values could still be contributing high levels of TDS, chlorides, and/or sulfates. PADEP should conduct an analysis to determine what concentration of TDS in a discharge would cause Pennsylvania’s existing osmotic pressure water quality criterion to be exceeded.
5. The proposed requirement of Section 95.10(c)(6)(i) for a Publically Owned Treatment Works (POTW) to apply 40 CFR 437.36 is not a requirement under the Federal rules for wastewaters from oil & gas extraction activities being sent through a POTW. The Federal pretreatment standards in 40 CFR Part 437 would only apply if the wastewater was sent to and treated by a Centralized Waste Treatment (CWT) facility and then, instead of the direct discharge by the CWT, the treated effluent was sent to the POTW for additional treatment and discharge. 40 CFR Part 435 Subpart C (Onshore Oil & Gas Extraction Subcategory) does not contain pretreatment standards and there is no prohibition for transporting oil and gas wastewaters to a POTW. In these instances, industrial pretreatment programs must still comply with the general pretreatment standards in 40 CFR Part 403. All non-domestic discharges to POTWs, even those not subject to categorical pretreatment standards, are subject to general pretreatment standards, including a prohibition on discharges causing “pass through” or “interference.”

EPA understands that this proposed regulation would prohibit a POTW from accepting oil and gas extraction wastewater if the wastewater contains excessive amounts of the three (3) pollutants specified in 40 CFR 437.36. PADEP should consider revising Section 95.10(c)(6)(i) to condition the POTW's acceptance of these wastewaters on the POTW ensuring that the waste is treated to the same extent that it would be if discharged directly from a CWT by having the wastewaters pretreated to levels consistent with the guidelines found in 40 CFR 437.33 or 437.34. Because a majority of the pollutants in these wastewaters are not provided further reduction through the POTW, this requirement would provide consistency of the treated waste with the wastewater being directly discharged by CWTs.

6. A POTW cannot be classified as a CWT [see 40 CFR 437.1(b)(4)]. Therefore, 40 CFR Part 437 technology standards do not apply to the effluent of a POTW. As the permitting authority, the Department may be able to propose effluent requirements for a POTW based on values established in 40 CFR Part 437. It should be noted that 437.36 only regulates three (3) parameters, o-cresol, p-cresol, and 2,4,6 – trichlorophenol. As stated in comment #5 above, PADEP could consider establishing standards based on 40 CFR 437.33 or 437.34. However, it is unclear how limitations of these parameters would help control high TDS discharges.

7. PADEP does not have authorization to implement the Federal Pretreatment Program and therefore cannot make the determination under 40 CFR 403.8(a) that a POTW must develop a Federally required pretreatment program. Instead the requirement at Section 95.10(c)(6)(ii) should read that the POTW must develop a local pretreatment program that would meet the requirements of 40 CFR Part 403. This local pretreatment program would not be a Federal Pretreatment Program unless EPA Region 3 makes the determination that a Federal program is required for the POTW and that the elements of the local program meet the requirements for Federal Program approval.
8. Conventional wastewater treatment does not remove TDS but TDS can be removed from wastewater through evaporation and crystallization. At least one wastewater treatment facility within the area served by the EPA Region 3 office provides full separation of TDS from wastewater. This type of technology should be considered when developing effluent standards for high TDS discharges.

Thank you for the opportunity to review and comment on the Commonwealth's proposed rulemaking for amendments to Chapter 95.