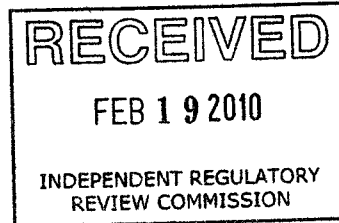


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**PENNSYLVANIA SERVICES CORPORATION**

158 Portal Road, P.O. Box 1020  
Waynesburg, Pennsylvania 15370



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 responds to the Notice of Proposed Rulemaking ("NOPR") published by the Pennsylvania Department of Environmental Protection ("Department") in the November 14, 2009 volume of the PA Bulletin. The NOPR proposes an amendment that would establish new effluent standards for new sources of wastewater containing high concentrations of Total Dissolved Solids ("TDS"). These comments are provided by Pennsylvania Services Corporation ("PA Services") for Cumberland Coal Resources, LP ("Cumberland") and Emerald Coal Resources, LP ("Emerald"). Cumberland and Emerald are two large coal mines that operate in Greene County and collectively employ over 1,500 people. PA Services is the general partner of, and provides administrative services to, Cumberland and Emerald. PA Services, Cumberland, Emerald and numerous other companies operating in Pennsylvania are affiliates of Alpha Natural Resources, Inc., the third largest coal producer in the United States. We appreciate the opportunity to offer input on this very important issue and sincerely hope the Department will consider these comments as this process proceeds.

PA Services, Cumberland and Emerald write in opposition to the proposed rulemaking because: (i) the Department has not clearly and reasonably demonstrated the need for stricter, state-wide effluent standards; (ii) the proposed rule will impose an unreasonable hardship on the regulated companies; and (iii) the compliance deadline is unreasonable. 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 proposed regulation.**

The Department does not demonstrate a need for the regulation proposed in the NOPR, for at least the following four reasons. First, the data used to justify the proposed rulemaking is unreasonably inadequate. Second, government studies referenced by the Department in the NOPR have not been made available to the public and thus have not been subjected to independent analysis. Third, the Department's sampling data was analyzed by using an inadequate testing

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methodology that the Department itself would not accept for purposes of regulatory compliance. Fourth, the testing methodology used for purposes of the NOPR most likely overstates the TDS levels in the Department's limited sampling. Each of these four points is discussed in more detail, below.

1. The data used to justify the proposed rulemaking is unreasonably inadequate.

The only testing data used to justify the NOPR is very limited sampling that the Department gathered from one source: the Monongahela River between October and December 2008. During this time frame, and by the Department's own admission, river levels were at historic lows and high concentrations of dissolved solids entered the Commonwealth from West Virginia. Again by the Department's own admission, TDS levels later dropped because the prolonged dry weather moderated and rainfall conditions returned to normal. The Department is basing the proposed state-wide effluent limits for all point sources premised on a temporary, non-representative condition in the main-stem of the Monongahela River. If the Department proposes to enact stricter, state-wide regulations, the data supporting such regulation should be sampled over a period of time long enough to level out seasonal and cyclical anomalies, and the data should be taken from several sources and not just one. Since the NOPR relies on data collected at just one waterway over a limited period of time when TDS levels were unusually high, the amount and scope of this testing data is too limited to reasonably justify a stricter, state-wide regulation.

2. Government studies referenced by the Department in the NOPR have not been made available to the public and thus have not been subjected to independent analysis.

The NOPR states 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 the Department numerous times for copies of these studies; however, as of the date of these comments, the Department has not provided them. This failure to submit these studies to the light of public scrutiny means the data underlying the NOPR has not been subjected to independent analysis. Therefore, the need for the proposed rule has not been clearly established because the studies referenced in the NOPR have not been made available to the public and thus have not been independently analyzed.

3. The Department's sampling data was analyzed by the Department using an inadequate testing methodology that the Department itself would not accept for purposes of regulatory compliance.

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The testing methodology applied to the sampling is not a testing method that is approved by either the Department or the United States Environmental Protection Agency ("EPA") for purposes of regulatory compliance. According to a letter sent by the Department to the Pennsylvania Coal Association, dated September 3, 2009, the testing methodology used by the Department for purposes of the NOPR was USGS-I-749 (the "NOPR Method"). In comparison, the testing methodology approved by both the Department and the EPA for purposes of regulatory compliance, which method must be applied by a certified laboratory, is Standard Method 2540C (the "Approved Method"). It is unreasonable and unsound for the Department to rely upon a testing methodology for rulemaking purposes that neither the Department nor the EPA would find acceptable for purposes of regulatory compliance. Therefore, the need for the proposed rule has not been clearly and reasonably established because the NOPR Method is unreasonably inadequate.

4. The testing methodology used for purposes of the NOPR most likely overstates the TDS levels in the Department's limited sampling.

One key difference between the NOPR Method and the Approved Method is that the Approved Method requires that the sample be dried at a higher temperature than the NOPR Method (i.e., 180 degrees Celsius versus 105 degrees Celsius). This difference most likely causes the TDS results from applying the NOPR Method to be overstated in comparison to what would be revealed by using the Approved Method. Therefore, the need for the proposed rule has not been clearly and reasonably established because the NOPR Method most likely overstates the TDS levels in the Department's limited sampling.

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 proposed rule should not be adopted because it would pose an undue hardship on the regulated companies, and the Department fails to recognize the economic realities of the proposed rule. The Department makes contradictory statements in the NOPR by initially stating that "currently no treatment exists for TDS, sulfates and chlorides, other than dilution," then later stating that "treatment costs could be in the order of \$0.25 per gallon". While we appreciate the Department's effort to project the economic consequences of this action, the Department's analysis of the economic impact is woefully inadequate. The proposed rule is far reaching and will adversely impact many sectors of the economy, especially those with high volume discharges. Consequent to an analysis of a majority portion of the coal industry, and as we have already indicated to the

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Department 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 the proposed 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 \$1,300,000,000 in capital expenditures and operating costs are estimated at \$133,000,000 million annually. Furthermore, this does not even include the solid waste stream that will result from this treatment process. This solid waste would need to be land-filled somewhere, and the Department's cost estimate does not address this issue at all. Similarly, the Department has not considered the implications of the enormous electricity consumption that would be needed to run these large treatment facilities. In summary, these projected costs are far from the estimated \$0.25 per gallon cost suggested by the Department, and the proposed rule will be unduly burdensome on the regulated companies.

In addition, the Department has not fully evaluated the widespread economic impact of the proposed rule. To be sure, this proposed rule, if adopted, will have significant impact state-wide, as it will impose additional water treatment costs on any new dischargers 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 proposed rule, and the costs of complying with the proposed rule will likely be borne by the rate payer. Privately-held sewage treatment sites serving residential developments, commercial facilities, industrial and mining companies that wish to expand and add new business will also be affected by the proposed rule, wherever they might be located in the Commonwealth. This approach ignores local conditions and stifles economic development throughout the Commonwealth when we need it most. Clearly, the Department has not completely investigated the costs and the correlative benefits of this proposed 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. Therefore, the proposed rule should not be adopted because the Department's NOPR does not clearly and reasonably evaluate the economic burdens associated with the proposed rule, and the proposed rule will clearly impose an undue burden on regulated companies.

**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 January 2011 deadline for compliance is unreasonably short. If the proposed rule is adopted as drafted, we estimate that it would take 2.5 to 3 years to

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conduct feasibility studies, design a treatment plant, prepare a permit application for a treatment plant and receive a permit for this plant. Furthermore, the 2.5 to 3 years estimated above may be too liberal, given the Department's recent budget losses and reduction in ranks. The Department is presently ill-positioned to handle the additional permitting load required to meet these requirements. Therefore, it is unreasonable for the Department to propose a compliance deadline of January 2011.

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

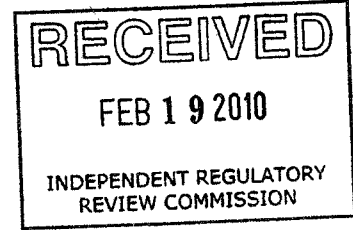
Again, thank you for the opportunity to comment.

Sincerely,



Jeffery Kukura  
President  
Pennsylvania Services Corporation  
Waynesburg, PA

**From:** Kukura, Jeff (PS) 2289 [JKukura@alphanr.com]  
**Sent:** Thursday, February 11, 2010 12:47 PM  
**To:** EP, RegComments  
**Subject:** Amendments to 25 PA Code, Ch. 95  
**Attachments:** 25 PA Code-Chapter 95-Comment Letter.pdf



Mr. Chairman,

Attached is a letter in response to the proposed Amendments to 25 PA Code, Ch. 95 Effluent Standards for TDS for your consideration.

Thank you for your attention,

Jeffrey Kukura

**Jeffrey M. Kukura** | President | Pennsylvania Services Corporation | P.O. Box 1020 | Waynesburg, PA 15370 | p. 724-627-2289 | f. 724-627-2281 | [jkukura@alphanr.com](mailto:jkukura@alphanr.com)

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