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INDEPENDENT REGULATORY
REVIEW COMMISSION

Independent Regulatory Review Commission
333 Market Street
14th Floor
Harrisburg, PA 17101

March 10, 2010

RE: Comments on Proposed Permitting Strategy for Total Dissolved Solids (TDS) Wastewater Discharges

On behalf of the Pennsylvania Economy League of Southwestern Pennsylvania, thank you for the opportunity to comment on the proposed rule that was released in the Pennsylvania Bulletin, Volume 39, Number 45 on November 7, 2009 (with a technical update in Volume 39, Number 46 on November 14, 2009), which proposes to amend 25 Pa. Code Chapter 95 (39 Pa.B. 6467), relating to total dissolved solids wastewater treatment requirements, and to establish new standards.

The Pennsylvania Economy League of Southwestern Pennsylvania, the research affiliate of the Allegheny Conference on Community Development, provides research and analysis on select public policy priorities. The information it provides serves the business, civic, and governmental leadership of southwestern Pennsylvania in support of improvements to the economy and quality of life in the 10-county Pittsburgh region. The Economy League appreciates the Department's desire to maintain water quality in the Commonwealth, but we have procedural concerns about this specific proposal.

Of major concern to us are the process steps that seemingly have been skipped in developing this particular regulation. We would like to particularly address:

1. The DEP's Water Resources Advisory Committee (WRAC) rejection of the proposed rule and the fact that the existing schedule does not afford a reasonable time in which to implement the WRAC's recommendations; and
2. The lack of transparency and the insufficient data – both scientific and economic – that the Department of Environmental Protection (DEP) has offered to support the regulation.

1. Consideration of the Water Resources Advisory Committee Recommendations

The Economy League is disappointed that the proposed rule was published before the TDS stakeholder committee, formed by WRAC, had a chance to review necessary data and provide input on the most effective way to regulate TDS in the Commonwealth.

On July 15, 2009, the WRAC, composed of environmental interest group representatives, academics, industry representatives and others, considered the proposed TDS standard and recommended to DEP that it *NOT* proceed with the rule as proposed, citing:

- “WRAC believes the ramifications of the draft...regulations are wide ranging and have not been adequately analyzed by the Department.”
- “WRAC believes that the draft regulation needs to be supported by science.”
- “WRAC recommends that the Department ...form a statewide stakeholders group to analyze the issues and develop appropriate solutions.”

That recommended TDS stakeholders group has been formed and has been working to understand the rationale for the proposed regulation, to describe the impact it would have on jobs and investment in the Commonwealth, and to develop alternatives to the Department’s proposed rule. However, to collect sufficient data to understand the issue and develop an appropriate regulation – if it is necessary – will take far longer than the time allotted for the public comment on this proposed rule.

2. Lack of Transparency and Insufficient Data

The need to allow the TDS stakeholder group to complete its work is particularly keen because the DEP apparently has failed to generate sufficient data of its own.

A. *Lack of Scientific Data*

DEP is moving forward to implement regulations on TDS without sufficient scientific data to support their proposals. The preamble of the regulation recites that the Department is relying on studies and analyses of six rivers across the state, yet it fails to list specific citations. Nor has the Department provided to interested parties the studies cited for the Monongahela River, the Beaver River, the Shenango River, the Neshannock River, the West Branch of the Susquehanna River, and the Moshannon River. In order to pass a regulation of such potentially far-reaching consequences, it is imperative that the DEP have – and make available for public inspection – the scientific data that supports such action. As we all have seen recently in the public press, *pronouncements about* data are no substitute for *access to* data.

B. *Lack of Economic and Technological Data*

The Department likewise has not produced sufficient economic or technical data to support claims of economic impact made in connection with the proposed rule. DEP suggests that TDS treatment costs “could be on the order of \$0.25/gallon” and implies that such treatment technology could be in place by Jan. 1, 2011. These numbers are cited without any background data or explanation of how these numbers were derived, nor is there any indication of actual assessment of technological capacity to meet the 1/1/11 date. This is of particular concern to us because our own research, to date, has produced compliance cost estimates that are exponentially greater than DEP’s, reflecting potentially significant negative impacts on a broad range of operations and industries throughout the Commonwealth. Industries participating in the WRAC TDS stakeholder group process have reported that expenditures for treatment options could reach billions of dollars in capital costs and hundreds of millions of dollars in annual operating costs. In fact, there is some evidence that this regulation could divert resources from other environmental projects of greater importance, therefore making reliable cost and scientific impact data vital for DEP as well as affected permit holders.

3. Conclusion

The Economy League strongly encourages the Department to follow its own Advisory Committee’s recommendations and not move forward with any rule until sufficient scientific, economic and technical data have been gathered to enable a principled policy decision. We further encourage that those data be made publicly available through a transparent process that would facilitate constructive public input from all impacted sectors of the Commonwealth.

We respectfully suggest that this process could be completed within a reasonable time and would result in an outcome that would be more effective and efficient for the Commonwealth.

Thank you for the opportunity to comment on the proposed permitting strategies regarding the TDS wastewater discharges. If you have any questions, please feel free to contact me at lellsworth@JonesDay.com.

Sincerely,

A handwritten signature in cursive script that reads "Laura E. Ellsworth". The signature is fluid and includes a large, sweeping flourish at the end.

Laura E. Ellsworth, Jones Day
Chair, Pennsylvania Economy League of Southwestern Pennsylvania