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ARIPPA COMMENTS: PADEP: National Pollutant Discharge Elimination System (NPDES) Permitting, Monitoring and Compliance as published [40 Pa.B. 847] [Saturday, February 13, 2010]

Environmental Quality Board
P. O. Box 8477, Harrisburg, PA 17105-8477
16th Floor Rachael Carson State Office Bldg
400 Market Street
Harrisburg PA 17101-2301

Re: "National Pollutant Discharge Elimination System (NPDES) Permitting, Monitoring and Compliance"
DATE: March 15, 2010
Submitted via e-mail to: RegComments@state.pa.us;

ARIPPA's comments represent 13 environmentally beneficial, waste coal to alternative energy generating plants, approximately 5000 Commonwealth citizens directly or indirectly employed by the industry, and 10% of the total electricity generated in PA (PA total 1449 MW's or an average of 97MGW per plant)

ARIPPA, on behalf of its member companies, hereby provides comments on the **National Pollutant Discharge Elimination System (NPDES) Permitting, Monitoring and Compliance regulations as proposed by PADEP.** ARIPPA appreciates this opportunity to comment.

I. Historical significance and background:

For nearly two centuries coal has been mined in Pennsylvania. Coal mining operations continue today and will likely continue for at least another century in Pennsylvania. In the past, coal that was very low in heat content (BTU's) and accordingly undesirable in the marketplace was randomly discarded all across Pennsylvania's landscape. This "waste coal" accumulated and lay idle on thousands of acres of land…land that possessed a variety of aesthetic, useful, and beneficial qualities. Over time wind, rain, and other naturally occurring environmental conditions caused the piles of "waste coal" to alter and/or expand their negative "environmental footprint" on the Commonwealth's limited land resources.

A few decades ago a beneficial use of waste coal was developed with the aid of technological advancements and support from governmental agencies and private investors. This beneficial use was designed to convert large quantities of "waste coal" into alternative electricity …electricity to meet the energy needs of hundreds of thousands of households and businesses. Removing waste coal discarded from past mining activities cleared thousands of acres of land, formerly hidden under tons of this "idle waste". Converting the waste coal into energy and utilizing the by-product ash residue to reclaim vacant and damaged abandoned mine lands and streams (back to their natural environmental state and usefulness) are some of the positive effects realized by the development of this new industry.

The waste coal to alternative energy Industry is truly unique...being one of the few environmentally beneficial alternative energy industries. Understanding the unique environmental advantages of the continued beneficial use of waste coal is not only pivotal to understanding the motives behind our comments listed below but also the true partnership our industry shares with the goals and ideals of various watershed groups and PADEP. Accordingly we ask and appreciate your special attention to our industry, its comments, and concerns for the future of Pennsylvania.

II. Description of ARIPPA Member Facilities:

ARIPPA is a trade association comprised of thirteen (13) waste coal-fired electric generating plants located in both the anthracite and bituminous regions of Pennsylvania. ARIPPA's member facilities constitute the overwhelming majority of the waste coal power production industry in the world and generate 10% of the total electricity generated in PA. Approximately 5000 Commonwealth citizens are directly or indirectly employed by the industry. Each of the ARIPPA member facilities uses a stationary circulating fluidized bed ("CFB") waste coal-fired boiler that generates electricity for sale at a minimum capacity of more than 25 MWe. More than half of the member plants operate under a long term "Power Purchase Agreement", supplying alternative energy to utility companies at a fixed price with no ability to "pass on" increased operational or environmental compliance costs on to rate payers or consumers.

The ARIPPA facilities provide a unique environmental benefit by converting waste coal as fuel and utilizing state-of-the-art circulating fluidized bed ("CFB") technology. ARIPPA facilities utilize coal refuse (waste) from both past and current mining activities, and thereby reclaim abandoned strip mines and abate acid mine drainage from waste coal piles at no cost to Pennsylvania taxpayers. By converting waste coal into alternative energy, ARIPPA members are removing one of the principal sources of contamination to surface water and groundwater in Pennsylvania.

The industry provides a zero cost option for removing waste coal piles from the environment. Should that option discontinue the entire responsibility for removal and clean up would fall on the tax payers and government , a task the PADEP has testified would cost billions of dollars and take over 500 years to accomplish. ARIPPA plants work closely with various local watershed groups such as EPCAMR and WPCAMR as well as Earth Conservancy to reclaim abandoned mine lands and convert polluted streams to clean and usable.

In addition to the environmental benefits resulting from the removal and conversion of waste coal, ARIPPA facilities have minimized potential emission pollutants traditionally associated with using a fossil fuel by incorporating state-of-the-art technology...true CLEAN COAL technology utilizing CFB boilers.

ARIPPA requests that EQB, PADEP (Bureau of Mining and Reclamation) consider the following factors as they review our comments on the proposed regulations:

- The unique nature of the CFB CLEAN COAL technology employed by the ARIPPA member plants
- The direct and indirect employment of thousands of citizens
- The generation of alternative energy collectively exceeding 10% of the Commonwealths generation
- The conversion of one of the principal sources of environmental contamination in the Commonwealth into a needed alternative energy... at no cost to Pennsylvania taxpayers.
- The environmental benefits provided to the Commonwealth...reclaiming abandoned strip mines (through the beneficial use of ash) and minimizing acid mine drainage from waste coal piles

III. GENERAL COMMENTS:

On February 13, 2010, the Pennsylvania Environmental Quality Board ("EQB") published for public comment a proposed rulemaking to completely overhaul the existing regulations governing the National Pollutant Discharge Elimination System ("NPDES") permitting program in Pennsylvania. The proposal scraps entirely the current regulations at 25 Pa. Code Chapter 92 and replaces them with a new Chapter 92a, with the stated intent of more closely aligning them with the federal program regulations. However, in addition to reorganizing the regulations, the proposal includes several new provisions, including a fee structure that would substantially increase NPDES permitting fees collected by the Pennsylvania Department of Environmental Protection ("PADEP").

The proposed new fee structure is designed to increase the funds collected from permittees in order to cover the full cost to the Commonwealth of running the program. The proposal states that the Commonwealth currently collects approximately $750,000 in fees and the new system would increase that amount to

approximately $5 million. Pennsylvania proposes to replace the existing $500 permit application fee, paid every 5 years, with a framework of generally higher initial application fees as well as new annual fees. The annual fees will vary with the type of discharge (sewage, industrial waste, etc.) and the design flow of the facility. For example, the annual fee for a major industrial facility with a design flow of less than 250 million gallons per day ("MGD") would be $5,000 and would jump to $25,000 for larger design flows. Application fees for those types of facilities would be $10,000 and $50,000, respectively. Stormwater permits would carry a $2,000 application fee and a $1,000 annual fee.

In addition to reorganizing the regulation and incorporating federal requirements by reference, the proposal includes several new provisions. These include, among others, provisions addressing cooling water intake structures and federal Clean Water Act Section 316(b) compliance, notification of new or increased discharges, stormwater discharges, new permits-by-rule for pesticide application and for single-residence sewage treatment plants, new treatment requirements for sewage (including a tertiary treatment standard for certain discharges) and for industrial wastewaters ($CBOD_5$ and TSS), consideration of local planning and zoning ordinances in permit application review, concentrated aquatic animal production, reissuance of expiring permits, and more

- **These proposed regulations apply to NPDES permits relating to mining activities, annual fees for discharges from power plants, and discharges from the mining operations.**

Even though PADEP essentially does little more than review the testing data secured and paid for by ARIPPA plants these proposed regulations represent a massive expansion of expense for all ARIPPA plants. 'Sliding scale' of increased fees and the 'increased' periodicity of review will increase costs to operate. PADEP personal commonly combine one on-site plant visit to accomplish both the 'Title V annual visit and NPDES review'. The visit normally consists of a cursory comparison of the submitted reports with local records and a quick 'look-see' at the installation. Most of the 'big picture' reviews of data have been paid for by industry and submitted accordingly.

- **More than half of the ARIPPA member plants operate under a long term "Power Purchase Agreement", supplying alternative energy to utility companies at a fixed price.**

Power Purchase Agreements do not contain a "regulatory fees or environmental compliance" price escalator clause. Accordingly ARIPPA member plants are, once again, being asked to meet or exceed the expansion of environmental compliance fees/mandates/costs (since 1987) by directly absorbing the compliance costs without any ability to increase the price or fees paid by electric utility companies or rate payers. Accordingly such drastic increases in PADEP fees without any increase in services are especially troubling.

- **These proposed regulations appear to drastically increase expenses with virtually no change or increase in regulatory review performance.**

It is improper to term these staged charges as 'fees' rather they are specific industry 'taxes' to allow alternate energy plants to exist and continue operation! As an example "fees" will be stacked; stage one, pay for your sewage plant, stage two, pay again for the 'series flow' into your retention and collection system, stage three, pay again from your retention system into where ever it discharges all based on a 'sliding scale' that exceeds current 'fees' up to 500%, on a 3 year vs. 5 year time period basis.

- **The increased 'changes' contained in the proposed regulations have little or nothing to do with 'environmental impact' but rather much to do with increasing the income stream to the Department.**

These fees serve as an economic disincentive to the fossil fuel alternative energy industry and likely utilized to meet state budget shortfalls in the minds of some of the Department. Like all new income streams, hard definition of where any new funds are to be applied needs to be presented prior to their development; they often have nothing to do with the source of same. These regulations do not appear to represent anything

positive for industry or the population in general rather they seem to simply represent more income to expand government agencies.

- **The Commonwealth Budget and correlating taxes paid by all citizens and businesses should properly pay for basic PADEP overhead and services as determined by the legislative process**

PADEP as a government department is funded through the state budget process…accordingly ARIPPA is very concerned when additional fees are being proposed to administer programs and services designed to be directly handled by such department. While ARIPPA can accept and understand the charging of fees for services that are truly unique or having time/labor excessiveness or stand outside the normal duties and services of PADEP…certainly the basic general overhead of offices/manpower/supplies should be part of the general Commonwealth budget and taken into consideration (serve as a base) before any fees charged in addition to those monies provided by the Commonwealth budget

- **Fees should be based on transparent independent time/labor studies and reviews.**

ARIPPA suggests that the Department should be required to submit any fees or increases to fees (including those currently proposed) to an independent time/labor review body that would equitably and openly determine the fairness of such charges.

- **Fees should be based on transparent published independent CPI or COLA indexes specifically for the Commonwealth of PA geographic area**

The entire 'structure' of proposed fee increase for review seems to have no rational basis and appears to be just a new 'tax' on electric generating/current operating facilities. Cost of living adjustments might justify existing fee increases, but there is no connection to same for any increases noted. These proposed fees accordingly far exceed recent COLA figures for the Commonwealth.

IV Suggested Amendments/Specific Comments: (KEY/FORMAT):

- Black and underlined represents current proposed regulatory language.
- ~~Red bold strike-through~~ indicates current proposed language that ARIPPA feels should be omitted.
- **Blue bold and underlined** indicates current proposed language that ARIPPA feels should be added.
- Blue and not bold or underlined indicates ARIPPA's reasoning or reasoning for such changes.

Background and Purpose This proposed rulemaking rescinds Chapter 92 and creates a new Chapter 92a of the same name. The NPDES is the primary means by which pollution from point sources is controlled to protect the water quality of this Commonwealth's rivers and streams, to achieve the requirements of the Federal Clean Water Act and the Clean Streams Law. The primary goal of the proposed rulemaking is to reorganize the existing NPDES regulations outlined in Chapter 92 so that the organization of the regulations is consistent with the organization of the companion Federal regulations in 40 CFR Part 122.

It appears that the primary purpose is to supplement PADEP's reduced budget through another new set of expanded fee's vice via the general taxation method used to support government agencies within the state. ARIPPA facilities under fixed contractual income approved by the state will be required once again to absorb the expanded cost into overhead with virtually no pass through to consumers, yet this changes nothing on any 'environmental impact' that current NPDES permits allow. The change may make it easier for PADEP to identify 'federal' and 'state' requirement differences administratively, but has no real impact on anything but creating more funds for PADEP. Application of same funds is difficult to discern on true environmental improvement and are often distributed with little or no legislative control. "The new provisions generally are designed to achieve the Federal Requirements without any more stringent requirements" but at much greater expense to the regulated community.

Chapter 92 Preamble: The appropriate action of a permittee whose wastewater or process change will result in a change in the pollution profile of the treated effluent is clarified. Increases in discharges of permitted pollutants that have no potential to exceed effluent limitations may be initiated without prior approval of the Department, but must be reported within 60 days. Any change in the pollution profile of the effluent that may exceed effluent limitations, or require new effluent limitations, requires prior notification of the Department. The Department determines whether to require a new application from the permittee, depending on the nature of the process change. Under the existing regulation, a new application is required automatically under some conditions. The revised language in proposed subsection (a) allows more flexibility, and limits the burden on both the permittee and the Department by requiring a new application only for the reasons specified in this section.

§ 92a.26 New or increased discharges, or change of waste streams

(a) Sewage discharges and industrial waste discharges. Facility expansions or process modifications, which may result in increases of permitted pollutants that do not have the potential to exceed ELGs or violate effluent limitations specified in the permit, may be initiated by the permittee without the approval of the Department, but shall be reported by submission to the Department of notice of the increased discharges within 60 days. Facility expansions or process modifications, which may result in increases of pollutants that have the potential to exceed ELGs or violate effluent limitations specified in the permit, or which may result in a new discharge, or a discharge of new or increased pollutants for which no effluent limitation has been issued, must be approved in writing by the Department before commencing the new or increased discharge, or change of waste stream. The Department will determine if a permittee will be required to submit a new permit application and obtain a new or amended permit before commencing the new or increased discharge, or change of waste stream

The term "new or increased discharges" as defined in terms of "Facility Expansions" or "Process Modifications" has the potential to lead to more uncertainty and potential enforcement actions.

Example:

A Permittee:

1. makes an analysis and implements facility expansion or process modifications
2. notifies the Department

The Department upon review makes a determination based on their analysis that:

1. the increased volume of discharge meets effluent limitations guidelines (ELG)
2. the volume increases the loading on the receiving stream

ARIPPA questions if these factors result in a violation or a potential violation of an "in-stream quality standard"? If yes:

- The Permittee, recognizing this potential violation of ELGs or effluent limitations specified in the permit, (or for which no effluent limitation has been issued) must seek approval from the Department in writing. What is the time frame related in obtaining such an approval?
- The proposed regulations as currently written will potentially lead to needed increased enforcement action by the Department. This potential currently exists in the mining and mineral extraction industries as they develop, mine, and reclaim.
- The proposed regulations do not clearly indicate how the Department plans to handle pollutants that exist in the permitted discharge which currently lack effluent limits, but are now identified again as a result of the proposed facility expansion or process change.

The proposed regulations do not clearly indicate how the proposed language in section §95.10(a) regarding the definition of new or expanded discharges (for which the comment period closed) relate to the language being proposed in §92.a26 (a). It is suggested that the proposed rule (§95.10(a)) clarify how it will be implemented regarding mining, remining, and legacy discharges.

Table 2 Summary of NPDES Annual Fees

Annual fees for individual NPDES permits for discharges of domestic sewage are:

SRSTP	$0
Small flow treatment facility	$0
Minor facility < 50,000 GPD	$250
Minor facility >= 50,000 GPD < 1 MGD	$500

The proposed regulations offer increased 'fees' or 'taxes' without offering any new "environmental protection or Department services". Current services include a review of data paid for and provided by the ARIPPA plant-facility. ARIPPA questions the need for such massive increases.

ARIPPA would like to point out that Preamble-Table 2, which outlines "annual" fees for individual NPDES permits, does not relate to the language found in proposed section 92a.28 (d) which outlines "application and/or reissuance" fees. The current format may confuse most readers.

ARIPPA suggests that the proposed regulations and/or preamble clearly confirm that Application-Reissuance fees are paid only at time of initial application and every five years thereafter. ARIPPA is opposed to any proposal that would require such fees to be paid annually.

Chapter 92: §92a.28 and 92a.62 Application fees and annual fees:

The existing $500 application fee for individual NPDES permits which is payable once every 5 years at the time an application for a new or reissued permit is submitted is proposed to be replaced by a sliding scale of both application and annual fees based primarily on the size of the point source discharge (see Table 1 and Table 2). The maximum allowable application fee for the 5-year term of a general permit is proposed to be raised from $500 to $2,500. Any increase in the fee for a general permit, however, would require a revision to the general permit, and would be subject to public notice and comment separate from this rulemaking.

The Commonwealth has long subsidized the costs of administering the NPDES program and the associated regulation of point source discharges of treated wastewater, but this is no longer financially feasible or environmentally appropriate. The proposed fee structure will cover only the Commonwealth's share of the cost of administering the NPDES permit program (about 40% of the total cost, with the other 60% covered by Federal grant). The proposed fees are still only a minor cost element compared to the cost of operating a sewage or industrial wastewater treatment facility. The artificially low fees that have been charged have been increasingly at odds with the Department's emphasis on Pollution Prevention and nondischarge alternatives. The proposed fee structure will better align the revenue stream with the true cost of point source discharges to surface waters, from both management and environmental standpoints. The sliding-scale fee structure assures that smaller facilities, which may be more financially constrained and also have a lower potential environmental impact, are assessed the lowest fees. The Department's proposal to provide for a permit-by-rule for discharges from SRSTPs, and the application of pesticides under §§ 92a.24 and 92a.25 relieves some permittees of any fee.

The Department has long been subsidized as a part of the administration cost burden, paid through normal budgetary channels for the 'administration' of this program. Exactly what are PADEP staffs supposed to do with the 'normal' salary they are paid daily other then monitor or administer the programs they were hired to monitor and administrate?

The public can't be expected to make rational decisions on environmental activity if the expense is diverted away from the cost of same. These proposed regulations appear therefore to be "a sleight of hand" effort to disguise the true cost of questionable regulatory administrative/ bureaucratic activity though hiding it's economic impact from the normal budgeting process external to the legislature decision making, whereby the public will be 'given' what is good for them even if it has no impact what so ever on their lives other then expanded expense.

In the scenario where the Department determines that a permittee will be required to submit a new permit application and obtain a new or amended permit before commencing the new or increased discharge, or change of waste stream:

- The proposed regulations do not clearly indicate whether this scenario will be considered a "NEW NPDES PERMIT APPLICATION" or a "REISSUANCE OF AN EXISTING PERMIT" as it relates to fees.

§92a.28(c)

"(c) Applications fees for individual NPDES permits for discharges of industrial waste are:

Minor facility not covered by an ELG	*$1,000 for new; $500 for reissuance*
Minor facility covered by an ELG	*$3,000 for new; $1,500 for reissuance*
Major facility ~~< 250 MGD~~	*$10,000 for new; $5,000 for reissuance*
~~*Major facility >= 250 MGD*~~	~~*$50,000 for new; $25,000 for reissuance*~~
Stormwater	*$2,000 for new; $1,000 for reissuance"*

The term "*Major facility*" is defined in the proposed regulations to mean:

- "a POTW with a design flow of 1.0 MGD or more and any other facility classified as such by the Department in conjunction with the Administrator"

ARIPPA suggests that language be added to this section that clearly and specifically exempts "mining activities".

ARIPPA suggests that the reference to a major facility <250 MGD be modified to be **>1 MGD or >250 MGD**...this would make the criteria consistent with the definition of "*Major facility*" as proposed in the regulations.

§92a.28 (d)

Application fees for individual NPDES permits for other facilities or activities are:

CAFO	$1,500 for new; $750 for reissuance
CAAP	$1,500 for new; $750 for reissuance
MS4	$5,000 for new; $2,500 for reissuance
Mining Activity	$1,000 for new; $500 for reissuance

The proposed regulations do not clearly indicate whether "Mining activity" includes discharges associated with any coal or non-coal mining activity. ARIPPA would like the proposed regulations to clarify that "Mining activity" under individual NPDES Permits does not require any or, any additional, fee (there is no annual NPDES fee for mining activity).

ARIPPA would like to point out that Preamble-Table 2, which outlines "annual" fees for individual NPDES permits, does not relate to the language found in proposed section 92a.28 (d) which outlines "application and/or reissuance" fees. The current format may confuse most readers.

ARIPPA suggests that the proposed regulations and/or preamble clearly confirm that Application-Reissuance fees are paid only at time of initial application and every five years thereafter. ARIPPA is opposed to any proposal that would require such fees to be paid annually.

Section 92a.47 Sewage permit

Subsection (a) outlines a process requiring that sewage, except that discharged from a CSO, be given a minimum of secondary treatment. By streamlining the technology-based secondary treatment standard (STS) for discharges of treated sewage, and inserting the STS into Chapter 92a, permitting requirements for these facilities would be clarified and standardized. Both 40 CFR Part 133 (relating to secondary treatment regulations) and this proposed subsection define the STS as treatment that will achieve a 30-day average discharge concentration of 25 mg/L Carbonaceous Biochemical Oxygen Demand, 5-day ($CBOD_5$) and 30 mg/L Total Suspended Solids (TSS), so the basic requirements of the STS would be unchanged and consistent between the Federal and State requirements. Certain exemptions and adjustments provided for in 40 CFR Part 133 would no longer be applicable, because these exemptions and adjustments are outdated and have been misinterpreted in some cases. The STS is 40 years old, and represents a bare bones standard of treatment for sewage treatment facilities. Any competent sewage treatment operation can readily achieve the STS. Under the proposed rulemaking, all discharges of treated sewage would be required to meet the STS.

Two other recurring issues are resolved with the proposed STS:

1. Permit conditions that assure effective disinfection of treated sewage, and implement the water quality criteria for fecal coliform bacteria in Chapter 93 (relating to water quality standards), are standardized.
2. Only facilities that are defined as Publicly-owned Treatment Works (POTWs) are required to meet the 85% pollutant removal efficiency for $CBOD_5$ and TSS. Certain industrial facilities have very weak influent and, in these cases, removal efficiency is not a valid measure of treatment effectiveness.

Some ARIPPA plants have sewage treatment facilities associated with them. Others have the ability to discharge to their POTWs. NPDES permits now require a weekly sample currently formerly biweekly and monthly obviously this proposal represents a doubling of sampling/analysis/ administration/ reporting with virtually no new benefits. Also current TSS maximum for any 'instantaneous' sample is 50 mg/L, not 45mg/L.

The proposed STS require:

1. Monthly average discharge limitation for $CBOD_5$ may not exceed 25 mg/L and TSS may not exceed 30 mg/L.
2. Weekly average discharge limitation for $CBOD_5$ may not exceed 40 mg/L and TSS may not exceed 45 mg/L.
3. On a concentration basis, the monthly average percent removal of $CBOD_5$ and TSS must be at least 85% for POTW facilities.

POTW may be due to availability of water and restroom facilities to >45 people per day during outage periods. This designation is not in current NPDES permit, but this '% removal' requirement is new. The regulations do not clearly indicate if it will be applicable to facilities with daily staffing <45 people, but 'outage' potential greater then same.

4. From May through September, a monthly average discharge limitation for fecal coliform of 200/100 mL as a geometric mean and an instantaneous maximum effluent limitation not greater than 1,000/100 mL
5. From October through April, a monthly average discharge limitation for fecal coliform of 2000/100 mL as a geometric mean and an instantaneous maximum effluent limitation not greater than 10,000/100 mL.
6. Provision for the disposal or beneficial use of sludge.
7. pH: 6 to 9 standard units.
8. Total residual chlorine: 0.5 mg/L.

• The relationship between the source and impairment may be reliable, but it may not be effectively tied to any one or more pollutants. An impairment initially attributed to nutrient enrichment may, upon further study or with more data, subsequently be attributed to organic enrichment. Or an impairment that really is due to nutrient enrichment, and that is mitigated with effective nutrient controls, may simply be replaced by an impairment that is attributable to organic enrichment. By assuring a balanced approach to all likely pollutants of concern, vulnerabilities in the WQBEL process can be minimized without undue burden on the permittee.

In addition to all the requirements of the STS, the proposed TTS provides that:

1. Monthly average $CBOD_5$ and TSS may not exceed 10 mg/L.
2. Monthly average total nitrogen may not exceed 8 mg/L.
3. Monthly average ammonia nitrogen may not exceed 3 mg/L.
4. Monthly average total phosphorus may not exceed 1 mg/L.
5. Dissolved oxygen must be 6 mg/L or greater at all times.
6. Seasonal modifiers may not be applied for tertiary treatment.

These effluent treatment requirements are sufficiently stringent to require advanced treatment as compared to secondary treatment for sewage, but are not state-of-the-art. In impaired or anti-degradation waters, treatment at least this stringent will be required.

None of these analyses are currently required under many NPDES permits, including sewage treatment plants. Since it is 'combined' with other discharges at a lined retention pond and potentially released to a stream or creek (which may be currently 'dead' due to other inflows) on a periodic basis, which feeds to a river which may have some areas of HQW designations. The regulations do not clearly indicate if new requirements will be applied to such discharges…and if so intended this will represent another example of expanded sampling/ analysis/ administration/ reporting with virtually no new benefits. ARIPPA is confused as to how the proposed language in this section affects existing permits….and accordingly suggests clarification language be added.

§ 92a.48 Industrial waste permit

This section outlines requirements for industrial waste permits. Much of existing § 92.2d (relating to technology-based standards) would be transferred to this section. A new proposed provision would require that industrial discharges of conventional pollutants be assigned technology-based limits of no greater than 50 mg/L $CBOD_5$ and 60 mg/L TSS. This provision is intended to address situations where the application of certain outdated technology-based requirements for industrial sources may result in inappropriately permissive technology-based effluent limits. For industrial sources, the Federal Effluent Limitation Guideline (ELG) often is the applicable technology-based requirement. In some cases, the Federal ELG is based on units of mass pollutant loading per unit of production, such that a production operation might be assigned a permissible

number of pounds of $CBOD_5$ that may be discharged per unit of production. When converted into concentration units, the effluent limits may be inappropriately permissive (over 100 mg/L $CBOD_5$). Consequently, proposed subsection (a)(4) would require that all discharges of conventional pollutants from industrial discharges achieve 50 mg/L $CBOD_5$ and 60 mg/L TSS. Since the great majority of industrial sources of conventional pollutants already meet these treatment requirements, this requirement will affect few industrial facilities. The Board is especially interested in public comment on this issue, and expects to address any concerns from individual facilities in the public notice process.

Although this section doesn't appear to affect many ARIPPA plants, ELG seems to be another requirement based more on what is possible, rather then what is needed.

§95.10(a)

The proposed regulations do not clearly indicate how the proposed language in section §95.10(a) regarding the definition of new or expanded discharges (for which the comment period closed) relates to the language being proposed in §92.a26 (a). It is suggested that the proposed rule (§95.10(a)) clarify how it will be implemented regarding mining, remining, and legacy discharges.

F. Benefits, Costs and Compliance

Benefits

Chapter 92a will help protect the environment, ensure the public's health and safety, and promote the long-term sustainability of this Commonwealth's natural resources by ensuring that the water quality of the rivers and streams is protected and enhanced. Chapter 92a implements the requirements of the Federal Clean Water Act and The Clean Streams Law for point source discharges of treated wastewater to the rivers and streams of this Commonwealth.

The proposed revision primarily is designed to improve the effectiveness and efficiency of the NPDES permits program. The major problem with the existing Chapter 92 is that it often uses different language than the companion Federal regulation 40 CFR Part 122 to describe requirements, and it is not often clear if Chapter 92 requirements are more stringent than Federal requirements or not. The primary goal of the proposed rulemaking was to rebuild the regulation from scratch, starting with the Federal program requirements, incorporating additional or more stringent requirements only where there was clearly a basis for them. Where feasible, Chapter 92a reverts to Federal terminology and definitions to minimize possible distortions or ambiguity. Superficially, Chapter 92a is not substantially different from Chapter 92 in most areas, but the Board expects that the reorganization of the NPDES regulation will have a substantive positive effect on Pennsylvania's NPDES program. Permittees and other members of the regulated community will find it easier to determine if Pennsylvania has additional requirements compared to Federal requirements. A supplemental benefit is that turnover in permit engineers and writers should be less disruptive, since new staff should find it easier to understand the streamlined regulatory requirements.

As listed previously, this change does little to accomplish the quoted purpose, but does enhance cash flow to continue a process that seems to be working. Not all 'Change' is actually needed. ARIPPA fails to see how 'correcting' language between state and federal regulations actually will 'cost' more to administrate when the primary sampling, review and correction is occurring at the facility, not at PADEP. Reporting is 'standardized' so that it is input into data banks for a 'computer routine' to analyze, with actual people only looking at data that fails the electronic screening. What is the need to require more funds acquired through administrative fiat vice legislative action when the follow on 'Compliance Costs' require no new personnel, skills, or certification? ARIPPA must question exactly where $5 million is spent by PADEP currently monitoring this program (as per PADEP comments)

G. Pollution Prevention

The Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. ~~The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally-friendly materials, more efficient use of raw materials, and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance.~~

The first sentence in this section represents factual information supported by statute, the remaining language in the section is untrue, offensive to industry, and appears to outline a perceived management license the Department does not posses. Accordingly ARIPPA suggests this language be struck.

The alternative energy industry is constantly seeking to operate in a manner that reduces expenses, and efficiently utilizes raw materials. However, its abilities to implement changes necessary to meet these proposed requirements could result in changes to our various air, water, and waste management permits. These changes would trigger potential additional costs for new environmental controls to be installed. While on the surface there may appear to be a reduction to costs associated with this section, the reality is that increased costs will need to be absorbed to insure compliance with other sections. The net result is an actual increase in overall operating costs.

The proposed language in this section indicates that the Department has little understanding or faith in the fact that ARIPPA member plant facilities, as ongoing for profit-tax generating entities, have an inherent mandate and desire to efficiently and legally operate while minimizing expenses as part of normal business practices. This is particularly true for those facilities that operate under a fixed Purchase Power Agreement and have no ability to "pass on" any operational excess or inefficient waste-expense. (As was outlined earlier in these comments)

The proposed language in this section also appears to indicate that PADEP believes that the Department's regulatory-enforcement efforts should and will exceed the facilities efforts in managing or reducing overall costs and waste. It appears that the proposed language would give DEP control over the basic operations of a facility. These indication interpretations reveal the Departments lack of understanding of the inherent economic incentives-philosophy of daily practices involved in operating an alternative energy plant. Accordingly ARIPPA makes itself and our alternative energy member facilities available to demonstrate and or clarify the intrinsic mandate to efficiently and legally operate while minimizing expenses.

END OF SPECIFIC COMMENTS

ARIPPA wishes to thank the EQB/PADEP for allowing our industry to offer comments and suggested changes to the proposed packet of regulations and we hope our comments will be accepted in a constructive and cooperative spirit.

The unique nature of the CFB CLEAN COAL technology employed by the ARIPPA member plants and the environmental benefits provided to the Commonwealth…reclaiming abandoned strip and deep mines (through the beneficial use of a unique ash) while minimizing acid mine drainage from waste coal piles… **and** the conversion of one of the principal sources of environmental contamination in the NE USA into a needed alternative energy… at no cost to taxpayers… symbolizes our ongoing effort to continually improve the environmental landscape of the Commonwealth and the USA.

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