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Via Email: irrc@irrc.state.pa.us

Pennsylvania Independent Regulatory Review Commission
 333 Market Street
 14th Floor
 Harrisburg, PA 17010

RE: EQB Proposed Final Rule Making for Water Quality Standard for Manganese (Mn)

Dear Members of the Independent Regulatory Review Commission:

Reading Anthracite Company (“RAC”) appreciates the opportunity to submit comments regarding the EQB Proposed Final Rule Making for Water Quality Standard for Manganese (“Proposed Final Manganese Rule”). As set forth herein, this Honorable Commission must disapprove the Proposed Final Manganese Rule and find as follows:

1. The Proposed Final Manganese Rule does not comply with Pennsylvania Act 40 of 2017 (“Act 40”) and other laws of the Commonwealth of Pennsylvania and therefore, the Pennsylvania Department of Environmental Protection (“PaDEP”) did not have the statutory authority to promulgate the Proposed Final Manganese Rule and the Proposed Final Manganese Rule does not conform to the clear intent of the Pennsylvania General Assembly as set forth in Act 40.
2. The economic and fiscal impact of the Proposed Final Manganese Rule will have a significant adverse impact on various stakeholders.
3. The Proposed Final Manganese Rule does not accomplish its so-called intent of protecting the public health, safety and welfare.
4. The feasibility of implementing the Proposed Final Manganese Rule is cost prohibitive and would result on vital industries in the United States relying upon anthracite from foreign countries.
5. Given the national security issues and other pertinent issues, the Proposed Final Manganese Rule is of such a substantial nature that it requires legislative review.
6. The Proposed Final Manganese Rule is not supported by acceptable data.

RAC supports and agrees with the comments of the Pennsylvania Anthracite Council. Rather than reiterate the comments of the Pennsylvania Anthracite Council, the purpose of these comments is to highlight the impact of the Proposed Final Manganese Rule on anthracite operators and the Pennsylvania Anthracite Region.



Background:

Reading Anthracite Company:

RAC is an anthracite mining company located in Pottsville, Schuylkill County, Pennsylvania. RAC operates multiple anthracite mining sites, which are located in economically distressed areas in Schuylkill and Northumberland Counties. RAC provides steady employment with great benefits to its employees. In addition, RAC supports other entities that depend on RAC such as trucking companies, mechanics, welders, and other entities providing services to RAC and its mining operations.

RAC supplies anthracite to entities and people both domestically and internationally and is a leader in the Pennsylvania Anthracite Industry. RAC supplies anthracite to manufacturing industries such as the steel industry, commercial and municipal water treatment and water filtration facilities, and as a heating solution to fulfill residential, commercial and institutional needs.

United States Anthracite and National Security:

The United States anthracite reserves are located in northeastern Pennsylvania. Roughly, the United States anthracite industry produces 2 – 3 million tons of anthracite a year. Anthracite is an important commodity to essential industries. Anthracite is a core energy, carbon and media solution to regional and national manufacturing industries, necessary for the United States Steel Industry and other industries vital to our country.

The United States Anthracite Industry was, and remains, an integral part of the United States economy and manufacturing industry. During World War I, anthracite fueled the war effort and the industries that supplied the Allies during the war. Since then, anthracite has been a vital and essential part of the United States Steel Industry and other manufacturing industries.

Today with the current conflict in Ukraine, the United States Anthracite Industry is supplying both domestic and international demands from industries that require anthracite. Countries around the world, including the United States, have placed sanctions on Russia which includes bans on imports of anthracite from Russia. The United States Anthracite Industry is now filling the void of these sanctions. However, the Proposed Final Manganese Rule would create substantial hardship and impose a standard that is cost-prohibitive to meet. Even if able to be met, the impact of the Proposed Final Manganese Rule would be detrimental to the United States Anthracite Industry while putting it at a serious competitive disadvantage against its foreign competitors, which are typically heavily subsidized by their government and less regulated. This would result in the United States Anthracite Industry being unable to compete and meet both the domestic and international demand for anthracite; thus, vital United States industries, like the steel industry, would have to rely upon foreign anthracite. We cannot permit ourselves to be dependent



on foreign anthracite. The Proposed Final Manganese Rule would have significant negative and adverse impact on our national security.

United States Anthracite Region:

As set forth above, the United States anthracite reserves are located in northeastern Pennsylvania, including but not limited to Schuylkill, Northumberland, Luzerne, Lackawanna and Columbia Counties. The height of the anthracite mining occurred prior to 1977 and the implementation of the Pennsylvania Surface Mining Control and Reclamation Act (collectively “SMCRA”). As a result, this region has 1,000s of acres that are covered with culm disregarded from mining prior to 1977. Pennsylvania has classified culm as a Tier II alternative energy source in the Pennsylvania Alternative Energy Portfolio Standards Act. However, the Proposed Final Manganese Rule has the strong potential to force entities out of business that are part of the culm to energy power generation business. If that were to occur, the Commonwealth would have the burden to clean up these culm piles from legacy anthracite mining.

The Pennsylvania anthracite region is an economically distressed area, which said communities rely upon the anthracite mining industry to provide jobs and other community services such as cleaning up of blighted property. If the Proposed Final Manganese Rule is implemented, this would result in lost jobs, more poverty and other adverse effects in the Pennsylvania anthracite region.

The Department of Environmental Protection did not have the statutory authority to implement the Proposed Final Manganese Rule.

The Proposed Final Manganese Rule does not comply with express language and intent of the General Assembly and Governor Wolf as set forth in Act 40. RAC supports and agrees with the analysis of the Pennsylvania Anthracite Council (“PAC”). Therefore, this Commission must find that PaDEP did not have the statutory authority to adopt the Proposed Final Manganese Rule.

The Economic and Fiscal Impact would be devastating to Pennsylvania, particularly the anthracite regions of Pennsylvania.

RAC together with other anthracite mining operators required to treat their mining discharges will be unable to comply with the new .3mg/L treatment standard. The systems that would have to be implemented would be cost prohibitive, if even feasible, due to mines being landlocked, the exorbitant upfront and ongoing costs, and other factors. Moreover, RAC has multiple mining sites, which each would potentially be subject to the Proposed Final Manganese Rule. The economic and fiscal impact would immediately be felt by all stakeholders.



Anthracite Mining Companies

The costs to comply with the Proposed Final Manganese Rule would be cost prohibitive and/or place entities at a severe competitive disadvantage to foreign competitors and other competitors. In order to comply with the Proposed Final Manganese Rule, RAC would have to install costly water treatment facilities, drying beds and/or treatment pond systems at each of its mining sites. In addition to the significant upfront costs, RAC would incur ongoing maintenance and upkeep expenses. Further, treatment pond systems and/or drying beds would require additional and substantial acreage, which mines that are landlocked would not have sufficient land to even install the treatment system required. In some instances, this would require anthracite operators to purchase land from adjacent landowners, which may be impossible.

In the event that an anthracite company is able to afford such a treatment system, it would place the complying domestic anthracite company at a significant competitive disadvantage to its competitors, especially its foreign competitors.

Consumers of Anthracite

In the event that an anthracite operator is able to comply with the Proposed Final Manganese Rule, such anthracite companies will incur additional upfront and ongoing costs which in turn will raise prices to consumers including but not limited to the United States Steel Industry. Further, if the Proposed Final Manganese Rule puts anthracite companies out of business, it will reduce available supply despite high demand for United States anthracite. This is especially true with certain sanctions and bans on the imports of Russian anthracite throughout the world. The higher prices to consumers will impact downstream consumers. Further, if anthracite operators shut down operations due to the prohibitive compliance costs, then there would be a supply shortage of anthracite.

Additionally, it has the strong potential of forcing domestic companies to rely upon foreign anthracite. As with the current conflict overseas, countries in Europe have seen energy shocks and shutdowns due to countries relying upon, and dependent on, natural gas from Russia.

Communities and Local Subdivisions in the Pennsylvania Anthracite Region

The residents, communities and municipalities in the Pennsylvania Anthracite Region are dependent on the Pennsylvania anthracite mining companies for jobs (direct and indirect through companies that provide services to the anthracite companies such as hauling companies, welders, maintenance workers, and other individuals and entities that provide services to anthracite companies), tax revenue, reclamation, and other community benefits.

With the downturn of the anthracite mining industry over the past few decades, this region has seen an economic and employment decline. Many communities in the anthracite region are located near or centered around anthracite mining facilities. Unfortunately, as seen in many



communities in the United States, when the local factory closes, many people are out of work without other suitable work available. The Proposed Final Manganese Rule has the strong likelihood to cause anthracite companies to shut down and/or to significantly curtail operations. If this were to occur, it would have the following effect:

- a. Jobs would be lost, which would place a greater burden on our government to provide services and compensation;
- b. Local municipalities, counties and school districts would lose tax revenue;
- c. Abandoned and blighted properties as people vacate the Pennsylvania anthracite region causing additional strain on already distressed communities; and
- d. Other impacts that taxpayers and communities face when mining companies go out of business.

The Proposed Final Manganese Rule would place United States domestic anthracite companies at a severe competitive disadvantage.

Domestic anthracite companies are already at a competitive disadvantage with their foreign competitors. Typically, foreign anthracite companies are heavily subsidized by their government and do not have to comply with the same rigid environmental and labor standards as domestic anthracite companies. As set forth above, the cost of complying with the Proposed Final Manganese Rule is most likely prohibitive and if not prohibitive, the upfront and ongoing maintenance and upkeep costs would raise the cost to produce domestic anthracite; thus, raising the price of domestic anthracite. The Proposed Final Manganese Rule would place domestic anthracite companies at a significant competitive disadvantage with foreign competitors that do not have to comply with the same standards. This is especially true for when domestic anthracite companies are competing overseas.

The Proposed Final Manganese Rule does not accomplish its alleged intent of protecting the public health, safety and welfare.

Manganese is naturally occurring and is exposed when rock breaks. Stormwater and other water that drains through the underground geology in the Pennsylvania Anthracite Region would violate the new .3mg/L treatment standard. Water discharges from areas not being mined, but simply because of their geology, would not comply with the new standard. There is no evidence that anthracite mining contributes to manganese levels, but rather the manganese in water is simply the result of local geology. Anthracite mining companies would be required to comply with a standard that does not result from its operations but rather from the local geology of the area.

In fact, manganese naturally occurs in many foods, which we consume on a daily basis. I am not aware of any other state in the United States that has established a toxicity standard for manganese and certainly, not at the unreasonably low .3mg/L toxicity standard applied at the point of discharge. At the federal level, manganese is not considered toxic at any level.



When considering that manganese is naturally occurring, it is evident that the requirements as set forth in the Proposed Final Manganese Rule are not intended to protect the public health, safety and welfare.

It is not feasible to implement the treatment facilities necessary to comply with the Proposed Final Manganese Rule.

As set forth above, the Proposed Final Manganese Rule requires anthracite operators to comply with a standard that is (i) not caused by mining operations; and (ii) violated by naturally occurring factors and geology. In order to comply with the Proposed Final Manganese Rule, anthracite operators, for each mining site, would have to implement the following:

1. Active treatment facilities, drying beds and/or a series of treatment detention ponds, which would require substantial acreage (if even available);
2. Hire additional employees;
3. Incur additional maintenance, upkeep and treatment costs; and
4. Acquire additional land as these treatment facilities and treatment detention ponds would require significant acreage.

Given the nature of the anthracite industry, the above would be cost prohibitive at worst and at best, it would substantially increase the price of domestic anthracite and place domestic companies at a significant competitive disadvantage against their foreign competitors.

The Proposed Final Manganese Rule is of a substantial nature that it requires legislative review and its impact could be a national security threat.

The Proposed Final Manganese Rule has the strong potential to put anthracite operators out of business, which would have a devastating impact on communities, local governments, consumers of anthracite, and other stakeholders. The economic and fiscal impact is significant in nature and, by itself, warrants legislative review.

Further, if compliance with the Proposed Final Manganese Rule is cost prohibitive and/or significantly curtails production of domestic anthracite, then consumers of anthracite including the United States Steel Industry would be dependent on anthracite from foreign countries. Currently, there are sanctions and bans on anthracite from Russia. However, if the domestic anthracite industry is unable to meet the demand of consumers of anthracite, these consumers would be required to purchase anthracite from foreign anthracite producers.

As previously stated, the United States anthracite reserves are located in northeastern Pennsylvania. As a result, the PaDEP, through the Proposed Final Manganese Rule, could effectively shut down the entire, or a significant portion of the, domestic anthracite supply. Thus, our nation's vital industries, such as the steel industry, which depend on anthracite will now be required to depend on anthracite from foreign countries. Today, domestic anthracite supply to the



steel industry is more vital than ever and lack thereof as result of the Proposed Final Manganese Rule would be a substantial national security threat. Without the anthracite industry, the steel industry would face a huge shortage of carbon and would have no choice but to shutdown and/or curtail production and/or ask for exemptions to bring in Russian anthracite. Moreover, the effects of the Proposed Final Manganese Rule has the strong potential to be a national security threat, as vital industries could be shut down and/or severely impacted if there is a conflict and foreign anthracite is no longer being imported and/or shipped to the United States or if a foreign country decides to use our dependence on foreign anthracite as leverage.

Given the state of global affairs, the Commission must be cognizant of the potential impact the Proposed Final Manganese Rule may have now, but also the potential future impact if our nation were to be dependent on anthracite from foreign countries. Once domestic anthracite companies shut down, the high cost of entry, a finite area of anthracite reserves, and/or high costs to restart operations is cost prohibitive and bars new entrants into the market. When viewing the Proposed Final Manganese Rule, the Commission must consider the potential short term and long-term effects of the Proposed Final Manganese Rule on the anthracite industry and determine that legislative review is necessary.

The Proposed Final Manganese Rule is not supported by acceptable data.

RAC agrees with the analysis of the Pennsylvania Anthracite Council, which outlines how PaDEP relied upon outdated information from international sources and the lack of analysis to justify the Proposed Final Manganese Rule.

Conclusion.

For the reasons set forth above, the Commission must disapprove the Proposed Final Manganese Rule, or in the alternative, the Commission must determine that legislative review and approval of the Proposed Final Manganese Rule is required.

Thank you again for the opportunity to provide written comments to the Proposed Final Manganese Rule.

Very truly yours,

READING ANTHRACITE COMPANY

/s/ Jason E. Kelso

Jason E. Kelso
General Counsel