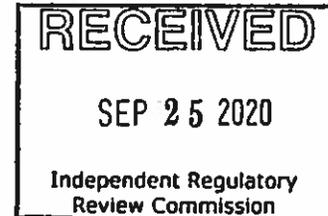


September 24, 2020

Environmental Quality Board  
P.O. Box 8477  
Harrisburg, PA 17105-8477  
Submitted by eComment



**RE: Water Quality Standard for Manganese and Implementation (25 Pa. Code Chapters 93 and 96);  
Notice of Proposed Rulemaking  
50 Pa.B. 3724, July 25, 2020**

Pursuant to the public notice published in the Pennsylvania Bulletin on July 25, 2020, Alliance Coal, LLC & Tunnel Ridge, LLC offer the following comments on the proposed Water Quality Standard for Manganese and Implementation; Notice of Proposed Rulemaking [50 Pa.B. 3724].

Alliance Coal, LLC and Tunnel Ridge, LLC ("ATR"), operate the Tunnel Ridge Mine complex supporting over 400 local direct mining jobs, in both Ohio County, West Virginia and Washington County, Pennsylvania. ATR owns or controls over 40,000 acres of high quality bituminous coal within the Commonwealth of Pennsylvania. This active coal operation supports direct and indirect employment and contributes substantially to community property taxes within the Commonwealth. The economic benefits generated by permitted coal operators are essential to the operating budgets of counties, townships and school districts within active mining areas.

With this background, it is our belief based on exposures to federal regulations and surrounding state regulations on similar issues that the proposed rulemaking is not only unnecessary but invalid in its approach for reasons discussed below. Additionally, it is clear that the proposed rule is not in the best interest of Pennsylvania businesses nor the citizens of Pennsylvania as its economic consequences will harm not only the industry ATR operates in but also significant swaths of other industries and groups with NPDES discharge permits throughout Pennsylvania. The economic costs will hamper the ability of both vital industries and non-profit groups from operating in the state of Pennsylvania and will ultimately make Pennsylvania less competitive with surrounding states for future economic development and growth having negative impacts on the residence of Pennsylvania. Such burdensome rulemaking appears unnecessary based on current science and will not result significant protections of human health or aquatic life within the state of Pennsylvania as manganese is generally not considered toxic at concentrations routinely encountered in the state.

With regard to the proposed rulemaking itself, it is clear that what is proposed does not align with legislative intent of Act 40 and the proposed rulemaking was not promulgate within the timeline dictated

by Act 40. For the following reasons, the proposed rulemaking to water quality criteria for manganese is not justified or valid based on Act 40 itself:

- 1) Proposed rule making does not match the Law based on Act 40 language. Specifically, the General Assembly through Act 40 clearly intended to place the compliance point at the PWS withdrawal, the same location as other parameters under 25 PA Code § 96.3(d). There should be no discussion of a "Secondary Alternative Point of Compliance.";
- 2) There was no legislative directive to review the manganese water quality criterion itself (i.e., to remove manganese from coverage under 25 PA Code § 93.7 for specific water quality criteria at 1 mg/L and change its designation to a toxic substance covered under 25 PA Code § 93.8(c) with a new criterion of 0.3 mg/L). Any water quality criterion review should be done as part of the regular triennial review and not part of implementing a direct legislative requirement.; and
- 3) Regulations were not promulgated within 90 days of the effective date of Act 40. Act 40 was signed on October 30, 2017.

Beyond the proposed rulemaking not aligning with legislative intent and overstepping the directive of Act 40, the proposed rulemaking aims to designate manganese as a toxic substance despite federal regulation through EPA choosing not to regulate manganese with a National Primary Drinking Water Regulation. EPA has chosen to instead regulate manganese as a secondary maximum contaminant level (SMCL), because manganese is not generally thought to be toxic and instead intended to minimize aesthetic considerations. This federal determination not to regulate manganese as a primary drinking water standard was made because it determined that a federal regulation with a primary drinking water standard would not present meaningful opportunity for health risk reductions for persons served by a PWS. This proposed rulemaking being addressed ignores this federal determination of national drinking water standards associated with human health and seeks to regulate manganese as a toxic substance similar to parameters covered by primary drinking water standards, such as volatile Organic Chemicals (VOCs), Synthetic Organic Chemicals (SOCs), Disinfection Byproducts, Disinfectants (MRDLs), Inorganic Chemicals (IOCs), and Radionuclides. At a fundamental level, the proposed rulemaking aligns the manganese standard with parameters that are more volatile and synthetic in nature and have more documented toxicity and acute impact to human health and aquatic life. This move is a move that neither surrounding states of West Virginia or Ohio nor the federal regulatory community through the EPA have pursued and is out of line with regulatory approaches and scientific data readily utilized for manganese regulation.

At a technical level, the approach being presented and discussed by the proposed rulemaking appears overly conservative. ATR would encourage that the proposed rulemaking not be adopted at a 0.3 mg/L criterion but rather that the existing 1 mg/L criterion be maintained. Additionally, any adoption should at the very least be limited to the legislative point of compliance (i.e., at the point of all existing or planned surface potable water supply withdrawals). ATR would further encourage that, if deemed necessary, any future rulemaking or considerations include review of updated science that is readily available and utilized by other regulatory communities. Such an approach will show that toxicology information for manganese to aquatic life is significantly higher than either the proposed criterion of 0.3 mg/L and the existing criterion of 1 mg/L. Additionally, updated studies regarding manganese suggest that human health risks from manganese through exposure to drinking water or surface water is limited, which is supported by the regulatory communities not adopting primary standards for manganese with regard to human health at typical levels.

Finally, not only is the proposed rulemaking out of line with legislative intent and/or directive and overly conservative and inconsistent with recent science with regard to toxicity, the propose rulemaking will also have incidental consequences without providing significant benefit to either the public or environment. It would pose significant costs on not only the coal industry, but any vital industry, within the state of Pennsylvania if imposed at the discharge location at unnecessary low criterion of 0.3 mg/L. It has the potential to double or triple the amount of chemical use and require the introduction of new treatment technologies to existing NPDES sites, create conflicting treatment approaches (particularly with Aluminum), and result in increased the handling and disposal of sludge volumes. The increased costs associated with attempting to meet the overly conservative criterion if imposed at the discussed secondary alternative point of compliance has the potential to put numerous industries in a position where they are potential no longer economically viable due to increased costs. The negatively affected parties would likely include not only private industry but also publicly owned sewage treatment facilities and potentially limit the ability of non-profit groups and watershed associations conducting and operation reclamation and treatment pre-law environmental discharges. It would also remove the incentive of private groups to conduct remining and reclamation of abandoned mine lands and/or the potential re-development of abandoned mine lands for any future use and ensure that these locations remain dormant. These impacts undoubtably result in negative consequences to the residence of Pennsylvania.

In closing, ATR encourages the reviewing body to withdraw the proposed rule and promulgate the rule only as directed by Act 40 at this time.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'E. Midler', with a stylized flourish at the end.

Evan Midler

Alliance Coal, LLC & Tunnel Ridge, LLC