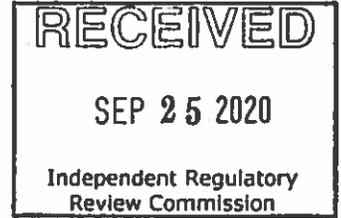


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FISHER MINING COMPANY
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September 24, 2020



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

Fisher Mining Company offers the following comments on the proposed water quality criterion for manganese in response to the public notice published in the Pennsylvania Bulletin on July 25, 2020. Fisher believes that adopting a numeric water quality criterion for manganese of 0.3 mg/L is unlawful, is unnecessary to protect human health and fish and aquatic life, will significantly increase treatment costs for our operation, the coal industry and other vital Pennsylvania industries, and will not significantly ease treatment processes for public water supply operators. Fisher urges EQB to retain the current manganese water quality criterion of 1 mg/L and to establish the point of compliance at the point of an existing or planned downstream potable water supply withdrawal as directed by Act 40.

Fisher has been operating surface coal mines in Lycoming County, Pennsylvania since January 1971. Our discharges are regulated at both the state and federal level. If adopted, this proposed rule will significantly adversely affect our mining operations. The additional cost to treat manganese to the proposed criterion of 0.3 mg/L will affect Fisher's ability to remain viable. It will also discourage Fisher and other coal operators from re-mining and reclaiming abandoned mine lands. The proposed rulemaking will also adversely affect other industries whose facilities have NPDES permits with manganese limits or monitoring requirements or will be newly subject to the proposed stringent manganese limits. For the reasons below, Fisher opposes the proposed rulemaking.

The Proposed Rulemaking is Unlawful

The proposed rulemaking does not comply with Section 1920-A of the Administrative Code of 1929 ("Act 40" - 71 P.S. § 510-20(j) (2017)), which required EQB to promulgate within 90 days regulations that move the point of compliance for manganese from the point of discharge to the point of an existing or planned downstream potable water supply ("PWS") withdrawal:

- The Governor signed Act 40 on October 30, 2017 yet EQB did not promulgate proposed regulations until July 25, 2020.
- Act 40 did not authorize EQB to propose a “Second Alternative Point of Compliance” for the manganese criterion at the point of discharge because it requires the point of compliance be at the PWS withdrawal. Act 40 directed EQB to place the compliance point for manganese at the same location as that for total dissolved solids, nitrite-nitrogen, phenolics, chloride, sulfate, and fluoride under 25 Pa. Code § 96.3(d).
- Act 40 did not authorize EQB to re-evaluate the current manganese criterion or propose a new criterion for manganese as a toxic substance.

We also believe the proposed regulation does not comply with the Regulatory Review Act (“RRA”) for several reasons:

- EQB did not properly present the “Second Alternative Point of Compliance” in Annex A as a proposed regulation.
- The Regulatory Analysis Form does not analyze the full economic impact of the proposed rule on the private sector, political subdivisions, and the Commonwealth. 71 P.S. §745.5(a)(4). It is especially concerning that the RAF stated it was impossible to estimate the costs to the private sector, when it is evident that the proposed rule will impose tremendous costs on the coal industry and specifically on our operations. The proposed rule will impose significant costs on public water suppliers that have NPDES permits to discharge filter backwash water and on publicly-owned or other sewage treatment works in Pennsylvania that have NPDES permits to discharge treated effluent.
- There is no need for the proposed rule. See 71 P.S. §745.5(a)(3). DEP overestimated the health effects of manganese, the treatment costs for PWS operations, and the benefit to residents of Pennsylvania and the environment. Revising the manganese criterion will harm Pennsylvania because it will likely force at least some coal companies and other companies to shut down, dramatically curtail operations, or forego opportunities.
- EQB has not provided acceptable data to support the regulation, contrary to Section 5(a)(14) of the RRA, because it relied on scientific data which is over 17 years old to establish a proposed criterion of 0.3 mg/L.
- The “Second Alternative Point of Compliance” should not have been proposed because it is not the least burdensome alternative as required by the RRA. 71 P.S. §745.5(a)(12). The First Alternative is less burdensome based on the costs imposed on industry as described in this letter.

The proposed manganese water quality criterion of 0.3 mg/L does not meet the requirements of the federal Clean Water Act:

- EPA cannot approve the proposed criterion because it is not based on sound scientific rationale. 40 CFR 131.5(a)(2). The report that Gradient Corporation prepared for the Pennsylvania Coal Alliance confirms there is no conclusive evidence to suggest that exposure to manganese in drinking water at 2 mg/L will lead to adverse health effects.

- EPA chose not to regulate manganese with a National Primary Drinking Water Regulation because manganese is generally not considered to be toxic and instead chose to regulate manganese as a secondary maximum contaminant level, which is not based on toxic effects. 68 Fed. Reg. 42898, 42903-04 (July 18, 2003).

The proposed rulemaking would regulate manganese unlike any other surrounding coal mining state

If either Alternative is adopted, Pennsylvania would be regulating manganese in a manner inconsistent with the Appalachian coal mining states of West Virginia, Kentucky, Indiana, Illinois, and Ohio, all of which have adopted less restrictive manganese standards. For example, in West Virginia, *“the manganese human health criterion shall only apply within the five-mile zone immediately upstream above a known public or private water supply used for human consumption.”* W. Va. Code § 47-2-6.2.d. If EQB adopts the proposed rulemaking, Pennsylvania’s regulation of manganese will be at odds with and more stringent than every Appalachian coal mining state with which Pennsylvania competes on the market.

Manganese does not pose a threat to human health

The Gradient report prepared for the Pennsylvania Coal Alliance concludes that the Human Health Rationale, which is cited as the basis for the proposed manganese criterion of 0.3 mg/L, is overly conservative and is based on outdated science which has several limitations. A deficiency of manganese, a naturally occurring essential nutrient, is harmful to humans. As the Gradient report concludes, DEP derived the proposed criterion of 0.3 mg/L by relying on scientific studies predating 2002 even though the current literature indicates that the current manganese criterion of 1 mg/L is protective for human consumption. And because DEP has adopted EPA’s secondary maximum contaminant level of 0.05 mg/L for manganese in finished drinking water, the likelihood that anyone would regularly drink water exceeding 1 mg/L is extremely low.

The Gradient report also explains that the Human Health Rationale on which the 0.3 mg/L criterion is based relied on several community studies with serious limitations that make it impossible to attribute reported adverse health effects to manganese. When considering the most current science, establishing a manganese criterion of 1 mg/L at the point of intake for an existing or planned potable water supply is protective for human consumption.

The proposed rulemaking would impose significant, unnecessary costs to Fisher, the coal mining industry and other vital industries in Pennsylvania

A manganese criterion of 0.3 mg/L would impose significant, unnecessary costs on Fisher and the coal industry, especially if imposed at the discharge location. Fisher is presently working cooperatively with DEP to meet TMDL limits through an innovative passive treatment system that removes manganese by limestone pH adjustment and microbiological reduction in a reconstructed stream channel. This system can be a model for similar mine sites in

Pennsylvania, including abandoned sites where nonprofit watershed organizations or DEP's Bureau of Abandoned Mine Reclamation treat a discharge. However, changing the manganese criterion to 0.3 mg/L threatens the project and may prevent its implementation at our mine and elsewhere in the state.

The Tetra Tech report prepared for the Pennsylvania Coal Alliance estimates that a 0.3 mg/L criterion would increase annual conventional treatment costs for the coal industry by \$44 to \$98 million. Tetra Tech also estimated that treating for manganese and aluminum could cost the coal industry upwards of \$200 million. We understand the proposed new criterion would also impose additional unnecessary costs on public and private permittees in several industries other than coal mining, especially if the criterion is set at the discharge point, with no measurable benefit to the environment.

In contrast, manganese is already easily treated by public water supply operators because manganese, which is predominantly present in suspended solids at a PWS intake, does not require additional treatment. Current conventional treatment systems already have filtration and related processes to remove suspended solids from surface water. Process modifications and new equipment are unlikely to be necessary.

Manganese is not a threat to aquatic life

The proposed 0.3 mg/L criterion is unnecessary to protect fish and aquatic life because manganese is not toxic to aquatic life at concentrations expected to be encountered in Pennsylvania. EPA has not developed criteria to prevent acute or chronic toxicity to aquatic life in surface water. The Tetra Tech report summarizes data indicating that the federal coal industry BAT limits of 2 mg/L (monthly average) and 4 mg/L (daily maximum) protect fish and aquatic life, including the most sensitive aquatic species.

At our mine site, we re-mined a previously abandoned site under a Sub-Chapter F permit using the manganese exemption in 25 Pa. Code § 87.102(c)(2). Even without manganese treatment, the instream manganese concentration at our downstream monitoring point has not exceeded 1 mg/L since 1990. Our operations have contributed much-needed alkalinity to the watershed, the receiving streams are no longer impaired, and aquatic life is thriving as evidenced by regular macroinvertebrate sample data. Our experience confirms manganese does not threaten aquatic life at concentrations encountered in Pennsylvania.

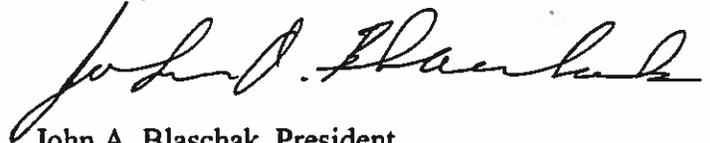
Other consequences

If finalized, the rule will result in significant negative unintended consequences. It will discourage coal operators, including my company, from re-mining and reclaiming abandoned mines if operators must incur significant additional treatment costs to treat non-Subchapter F and non-Subchapter-G discharges. Watershed organizations do not have the money to treat to the new criterion, which means they likely will stop their Good Samaritan work. A final rule could result in more abandoned mine sites if operators forfeit bonds for post-mining discharges they

cannot afford to treat. Post-mining discharge treatment trust funds are already underfunded in many cases. A final rule also will discourage the building and transportation industries from projects requiring a stormwater construction permit. Earthmoving releases manganese, ubiquitous in Pennsylvania soils, to stormwater. Building retention ponds and treating large volumes of runoff to meet 0.3 mg/L manganese (if even possible) may be too costly to justify a project. Pennsylvania's economy has been hit hard enough already this year without this additional burden.

In conclusion, Fisher Mining Company urges EQB to withdraw the proposed rulemaking and apply the current manganese water quality criterion of 1 mg/L at the point of intake of existing and planned public water supplies pursuant to Act 40.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Blaschak", written in a cursive style.

John A. Blaschak, President
Fisher Mining Company