



General Assembly of Pennsylvania

September 12, 2022

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

RE: Regulation #7-553: Water Quality Standard for Manganese and Implementation

Dear Commissioners:

Pursuant to the Regulatory Review Act (RRA), as members of the General Assembly, we write to express our disapproval of the Environmental Quality Board's (EQB) Water Quality Standard for Manganese and Implementation Regulation #7-553 (IRRC #3260) and urge the Independent Regulatory Review Commission (IRRC) to reject the final-form rulemaking.

As you know, in determining whether a regulation is in the public interest, the Commission must determine whether the agency has the statutory authority to promulgate the regulation, whether the regulation conforms to the intention of the General Assembly, the reasonableness and need for the regulation, and whether the regulation complies with the RRA. In this instance, the Manganese Regulation presented to IRRC by EQB fails on all accounts.

In 2017, the General Assembly passed, and Governor Wolf signed, Act 40 of 2017 which amended the Administrative Code of 1929 and included language directing the EQB to promulgate regulations requiring the water quality criterion for manganese to be met "consistent with the exceptions in 25 Pa. Code §96.3(d)". This section (i.e., § 96.3(d)) requires the water quality criteria for certain parameters to be met at the point of intake of all existing or planned surface potable water supply withdrawals. The regulation being offered by the Pennsylvania Department of Environmental Protection (PA DEP) and the EQB does not comply with Act 40 as it does not promulgate a regulation requiring the water quality criteria for manganese to be met at surface potable water supply intake, i.e., "consistent with the exceptions in 25 Pa. Code §96.3(d)."

Specifically, Act 40 of 2017 included the following language:

Section 1920-A. Environmental Quality Board.--* * *

(j) The board shall promulgate regulations under the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law," or other laws of this Commonwealth that require that the water quality criteria for manganese established under 25 Pa. Code Ch. 93 (relating to water quality standards) shall be met, consistent with the exception in 25 Pa. Code § 96.3(d) (relating to water quality protection requirements). Within ninety days of the effective date of this subsection, the board shall promulgate proposed regulations.

Further, 25 Pa. Code § 96.3(d) reads as follows:

§ 96.3. Water quality protection requirements.

(d) As an exception to subsection (c), the water quality criteria for total dissolved solids, nitrite-nitrate nitrogen, phenolics, chloride, sulfate and fluoride established for the protection of potable water supply shall be met at least 99% of the time *at the point of all existing or planned surface potable water supply withdrawals* unless otherwise specified in this title.

PA DEP and EQB have made several fundamental errors in promulgating this regulation. First, to comply with Act 40, PA DEP and the EQB must include manganese in the list of exceptions under 25 Pa. Code § 96.3(d) in the regulatory package as well as make the point of compliance at the water supply withdrawal. The unambiguous language of Act 40 was the clear intent of the General Assembly, compelling this conclusion. However, PA DEP and the EQB chose to ignore Act 40 entirely and are advancing a final regulation that does not conform with the letter of the law or the intent of the General Assembly.

Further, the Water Quality Standard for Manganese and Implementation regulation is patently unreasonable. The regulation far exceeds treatment requirements established under federal law. It would also make Pennsylvania the only state in the country that imposes an in-stream human health toxicity standard for manganese. PA DEP does not have the internal professional expertise in toxicology to establish such a standard nor did it share supporting documents intended to justify the new standard until the regulation was considered as final at the EQB just weeks ago. Rather than employ a scientific methodology to review the toxicity standard, it is apparent that PA DEP arrived at a toxicity standard in the proposed stage of the regulation, and then used an unbalanced approach to rationalize its attempt to establish the most stringent in-stream manganese standard in the nation.

Compounding the unreasonableness of the regulation are the procedures for compliance by the public and private sector, which are contradictory. PA DEP, supported by both federal and state money, does not treat for manganese to the water quality standards found in 25 Pa. Code at any of their acid mine drainage discharges for which it is responsible, nor does PA DEP require compliance by conservation groups, watershed groups, or businesses with general permits. Manganese, which is naturally occurring in the earth's crust and is readily discharged to stormwater by the breaking of rock during routine earthmoving activities, can come from a number of sources, yet the regulation sets one standard of compliance for those in the private sector that are issued a National Pollutant Discharge Elimination System (NPDES) permit, and no standard for the public sector and everyone else.

Lastly, the regulation violates the RRA and the Commonwealth Documents Law. Specifically, the RRA defines a proposed regulation as follows: “A document intended for promulgation as a regulation which an agency submits to the commission and the committees and for which the agency gives notice of proposed rulemaking and holds a public comment period pursuant to the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law.” During the proposed stage for the Water Quality Standard for Manganese and Implementation regulation, PA DEP presented to the EQB, and the EQB advanced, two separate and conflicting regulatory schemes in the proposed rulemaking package. We are unaware of any state agency that has proposed a regulation by offering the regulated community what was essentially a multiple choice, especially here where it would be an impossibility to implement both conflicting proposed regulatory schemes. Accordingly, the PA DEP’s rulemaking package is an egregious violation of the clear definition of a proposed regulation.

Based upon PA DEP and the EQB’s failure to comply with Act 40, and the many outlined errors above, we urge the IRRC to reject this proposed final regulation and encourage PA DEP and the EQB to engage in a more constructive dialogue resulting in a less intrusive and more balanced approach to addressing the water quality standard for manganese.

Sincerely,



Jake Corman
President Pro Tempore
Pennsylvania Senate



Bryan Cutler
Speaker
Pennsylvania House of Representatives



Kim Ward
Majority Leader
Pennsylvania Senate



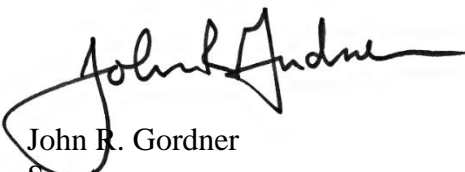
Kerry Benninghoff
Majority Leader
Pennsylvania House of Representatives



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Senator
23rd Senate District



Joe Pittman
Senator
41st Senate District



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Senator
27th Senate District



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Michele Brooks
Senator
50th Senate District

Camera Bartolotta
Senator
46th Senate District

Devlin Robinson
Senator
37th Senate District



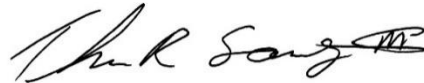
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Senator
15th Senate District



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Senator
30th Senate District



Pam Snyder
State Representative
50th Legislative District



Tommy Sankey
State Representative
73rd Legislative District



Donna Oberlander
State Representative
63rd Legislative District



David Rowe
State Representative
85th Legislative District



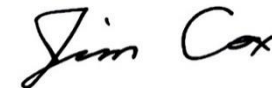
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State Representative
51st Legislative District



Marci Mustello
State Representative
11th Legislative District



Bud Cook
State Representative
49th Legislative District



Jim Cox
State Representative
129th Legislative District



James Gregory
State Representative
80th Legislative District



Paul Schemel
State Representative
90th Legislative District



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State Representative
9th Legislative District



Frank Burns
State Representative
72nd Legislative District



Eric Davanzo
State Representative
58th Legislative District



Abby Major
State Representative
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Aaron Bernstine
State Representative
10th Legislative District



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State Representative
94th Legislative District



Ryan Warner
State Representative
52nd Legislative District



Joshua Kail
State Representative
15th Legislative District



Eric Nelson
State Representative
57th Legislative District



Carrie Lewis DelRosso
State Representative
33rd Legislative District



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State Representative
84th Legislative District



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State Representative
64th Legislative District



Kathy Rapp
State Representative
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George Dunbar
State Representative
56th Legislative District



Jim Struzzi
State Representative
62nd Legislative District



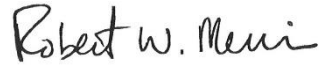
Brian Smith
State Representative
66th Legislative District



Carl Walker-Metzgar
State Representative
69th Legislative District



Timothy O'Neal
State Representative
48th Legislative District



Robert Mercuri
State Representative
28th Legislative District



Leslie Rossi
State Representative
59th Legislative District