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TDS RULEMAKING ADVANCES; PA CHAMBER OF BUSINESS AND INDUSTRY COMMENTS RESULT IN CHANGES

The Pennsylvania Environmental Quality Board approved revisions to the proposed regulation of Total Dissolved Solids in wastewater discharges.

Key provisions include:

- The establishment of new treatment requirements for new and expanding mass loadings of Total Dissolved Solids (TDS).
- This final form rulemaking protects our water resources from new and expanded sources of TDS. Most importantly, the rulemaking guarantees that waters of the Commonwealth will not exceed a threshold of 500 mg/l.

This final form rulemaking differs from the proposed rulemaking in several important respects:

- The changes to the final form rulemaking are protective of our water resources and are appropriately applied by industrial sector, **based on the potential impact of the specific sectors to our receiving streams. While many existing industries throughout the Commonwealth are of concern, the lower concentration and total loading of most of those industries does not necessitate treatment below a 2,000 mg/l threshold.** A higher standard of 500 mg/l is being applied specifically to the natural gas sector.
- DEP believes that the potential for growth for Marcellus Shale gas drilling within this sector is enormous and should that growth be realized, the potential impacts are just as enormous.
- While the intent of both the proposed and final rules is to address new, larger sources of TDS, the proposed rulemaking focused upon controlling new sources of "high-TDS" wastewater through defining these sources in terms of those that were to be regulated (exempting by default those that were not). **In order to provide greater clarity to the scope of the regulation, the final rulemaking takes the approach of specifically exempting certain classes of TDS discharges from the application of this rule.** This approach is designed to clearly exclude from the scope of this regulation all existing loadings of TDS authorized by the Department prior to the effective date of this regulation, as well as new and expanding TDS sources, which the Department has determined are insignificant from a loading perspective.
- In addition, based on Stakeholder comments received during an exhaustive public participation process, the final rulemaking adopts a combination of recommended approaches for addressing these larger loadings of TDS. **This combination of approaches includes an industrial sector-based regulation along with a watershed-based analysis. The sector-based piece focuses on the Oil and Gas**

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Industry, mandating the reuse of natural gas well flow back and the treatment of wastewater. Treatment for wastewater that is not recycled or disposed in an approved underground injection well must be performed at a Centralized Wastewater Treatment facility (CWT) to the standards contained in the proposed regulation. This approach sets treatment requirements for natural gas well wastewaters based on available, proven treatment technologies for this industry and takes cost into consideration. These requirements will assure that any threat of water pollution from this rapidly growing industry is prevented in accordance with the mandate of the Clean Streams Law.

Further details on the watershed-based approach adopted by the final regulation can be found at:

<http://files.dep.state.pa.us/PublicParticipation/Advisory%20Committees/AdvCommPortalFiles/WRAC/Preamble%20TDS%20Final%20Rulemaking%20to%20WRAC.pdf>.

Pennsylvania Chamber of Business and Industry (Chamber) Comments:

After considerable review of the comments from the Chamber, the Environmental Board agree that a different path forward is warranted. The Chamber has accurately pointed out that the rule as proposed captures a very broad and varied spectrum of industries across Pennsylvania. As noted by the Chamber, these industries produce a wide array of different wastewaters containing TDS, and that a sector-by-sector approach to controlling TDS is likely the best option. The Department has heeded that recommendation and the final rule reflects such a change in approach.

In addition, the Chamber also noted that **TDS cannot simply be ignored, recognizing that if not addressed or controlled in some manner, certain watersheds could exceed water quality standards, adversely affecting drinking water supplies and aquatic life.** The Chamber recommends a watershed-by-watershed approach be pursued by the Board to avoid this potential problem.

The Chamber provided comments similar to the Allegheny Conference, Pennsylvania Coal Association and the Marcellus Shale Coalition regarding the degree to which our watersheds are in jeopardy from TDS. In addition, the Chamber recommends a form of flow management as a potential solution for controlling TDS. **Analyses by the Department, addressed in this order, are real, accurate and based on compliance with state and federal standards. These analyses document that in many watersheds we are much closer to exceeding assimilative capacity, at design stream flow conditions, than is evidenced by a simplistic plot of monthly sample results and spikes over time.** Further, at the initial meeting of the TDS Stakeholders Subcommittee, the Department presented statistical and scientific reasoning rejecting flow management as an option.

In this final rulemaking the Department has restructured the proposed rule to include a subsection, §95.10(a), intended to more clearly define those existing sources of TDS that are not subject to the rule. **Specific**

concerns identified by the PCA are addressed in § 95.10(a)(1) - (4). In addition, the Board has recognized that different industries have different wastewaters. However, as described in the discussion below related to § 95.10(c), not establishing some level of performance for addressing TDS from these industries (other than oil and gas) results in significant economic inequities between industrial sectors. The final rule proposes a statewide standard of 2,000 mg/l for these industries, with a variance provision that is based on a watershed assimilative capacity analysis. Further details on the intent of these sections are described in the full order.

Response: The Department agrees, and these facts are what drive the need for this regulation.

Mining-Related Comments

Mining-related comments are those comments that were from the mining industry, or were in support of the mining industry. This rulemaking is primarily to establish wastewater treatment requirements for wastewaters containing TDS, many believed that it could affect mining operations. The rule has been revised to make it clear that it does not apply to most mining operations.

Comment: The lack of regulation and insufficient bonding in the early years of coal mining have caused major environmental damage, requiring years and much money to clean up. Over 3,000 miles of streams are still impaired from that irresponsible behavior. We need to prevent this from happening in the future by regulating discharges of high TDS wastewater.

Response: The Department agrees, and this final rule takes a proactive approach to controlling TDS from the natural gas industry.

Comment: The proposed standards are not based on sound science, are costly, burdensome, unworkable and therefore, threaten the vitality of the mining industry. Placing obstacles such as this does nothing to retain the jobs we have.

Response: The final rule makes it clear that the mining industry and its existing operations are for the most part exempt. From the inception of the rule, the intent of the Department was to exempt existing discharges, and insignificant discharges, from the effluent standards aimed at controlling the new, larger source of TDS. **The provisions specifically allow for continued discharges of TDS wastewaters at current loads and are designed to lessen the effects on existing and small discharges of TDS in Pennsylvania through the exemption and variance provisions.** This new regulation will not impact reclamation activities at abandoned mines frequently operated by local watershed groups.

The rulemaking, as a next step, goes to Senate and House panels and the Independent Regulatory Review Commission.

For more information on the TDS rulemaking, **Call Gary Brown at 800-725-0593 Ext. 234 or by email at gbrown@rtenv.com.**