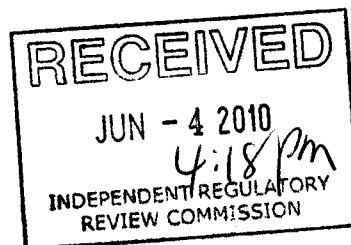




June 4, 2010

2806



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

Re: Pennsylvania Environmental Quality Board, Proposed Final Form Amendments to 25 PA Code Ch. 95, Wastewater Treatment Requirements, IRRC No. 2806, Reg. No. 7-446.

Dear Commissioners:

Chief Oil & Gas LLC (“Chief”) respectfully offers these comments on the above-referenced regulations (the Proposed Regulations) establishing effluent standard for Total Dissolved Solid (TDS). Chief is a member of both the Pennsylvania Chamber of Business and Industry (Chamber) and the Marcellus Shale Coalition (MSC) and hereby incorporates by reference the comments filed by each of those entities. Chief has acquired significant leasehold interests throughout Pennsylvania for the purpose of the exploration for and production of natural gas from the Marcellus Shale formation. We have an active and ongoing drilling and completion program which thereby generates waste waters that would become subject to the proposed regulations.

Chief supports the Department’s efforts to control levels of TDS in the Commonwealth’s waters to the extent necessary through reasonable and rational regulations. Chief is doing its part by increasing the reuse of flowback water and has recently used acid mine drainage-impacted waters for hydraulic fracturing. Unfortunately, the proposed regulations impose an unduly harsh and discriminatory standard on the natural gas industry without any scientific justification. As noted in the comments of the Chamber, a one-size-fits-all approach imposing a 2000 mg/l end-of-pipe effluent limit is not necessary in order to protect the Commonwealth’s streams. The problem is amplified fourfold for the natural gas industry, which will be subject to a 500 mg/l limit. The EQB fails to justify either of those limits and, in particular, fails to justify disparate treatment for the natural gas industry.

The EQB Has Not Properly Developed a Technology Based Effluent Limit.

The Board suggests that the 500 mg/l effluent limit is similar to EPA’s technology based sector specific effluent standards. However, that comparison is not apt. First, EPA has a specific statutory direction in the Clean Water Act to develop such standards and Congress specified how those effluent standards were to be established. See for example, CWA §304(b)(4)(B), 33

USCA §1314(b)(4)(B). There is no provision in the Pennsylvania Clean Streams Law either directing or authorizing the EQB to adopt technology-based effluent limits. Secondly, when EPA establishes a technology based effluent limit it engages in a detail data gathering process and a thorough analysis of that data. See for example, "Development Document for Final Effluent Guidelines and Standards for the Construction and Development Category, November 2009" www.epa.gov/waterscience/guide/construction/files/chapters.pdf. EPA does not simply rely on anecdotal statements by vendors seeking to obtain customers. If the EQB intended to adopt a technology based effluent standard it should have followed the same process that EPA follows and should have conducted an appropriate data analysis. DEP's regulations regarding technology based effluent limits clearly require the EPA process to be followed. See, 25 PA Code §92.2d.

Importantly, one of the criteria EPA is required to evaluate is "non-water quality environmental impact (including energy requirements)" (33USCA §1314(b)(2)(B) and §1314(b)(4)(B)). The EQB undertook no such analysis. While acknowledging that the relevant technology is evaporation/distillation (Order p.11), the Board failed to evaluate the environmental impacts from the vast amount of energy necessary to operate this technology and failed to even discuss the potential environmental impacts from handling and disposing of the residues generated by this process. Accordingly, the 500 mg/l effluent limit for natural gas wastewaters cannot be considered a valid technology based limit. The regulation should be disapproved and returned to the EQB to allow it to conduct a proper analysis if it wishes to establish an industry specific technology based effluent limit.

There Is No Rational Basis for Establishing a Different Effluent for the Natural Gas Industry.

The proposed regulation fails the test of reasonableness and need for the regulation (71 P.S. §745.5b (b)(3)). Although the Board attempts to rationalize its reasons for requiring waste from the natural gas industry to be treated to 500 mg/l, while all other waste water can be discharged at 2000 mg/l, its own Order negates this attempt. At page 14 of the Order, the EQB concludes that based on the Department's Best Professional Judgment an effluent limit of 2000 mg/l "assures that adequate instream dilution will be available to prevent exceeding the water quality standard." Id. If this conclusion is correct there can be no rational basis for requiring greater treatment from a single industry. In fact, waste water with a TDS concentration of up to 2000 mg/l is not even subject to regulation under the Proposed Regulation and can be discharged without any treatment at all for TDS. (Order p.13) Therefore, an unknown universe of dischargers may discharge up to 1999 mg/l of TDS without any controls and are considered "insignificant" by the EQB (Order p.17) but waste water from the natural gas industry is allegedly a problem at concentrations above 500 mg/l. There is simply no logical or scientific basis for such a distinction.

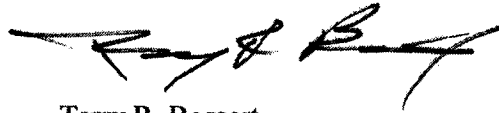
Moreover, while admitting there is remaining assimilative capacity and merely asserting that new loads of TDS from the Marcellus Shale industry threaten that capacity (Order p.18) the EQB fails to put the volume of discharges from natural gas industry into perspective. The Department estimated, when calculating treatment costs, that the volume of waste water to be treated and discharged was 4 million gallons per day (MGD). (Order p.12) Four MGD represents a tiny fraction of all the waste water containing TDS discharged in the

Commonwealth on any given day. As the Chamber notes in its comments, hundreds of millions of gallons of TDS-containing waste water is discharged each day. The EQB offers no explanation why it is acceptable for hundreds on million gallons of TDS-containing waste water to be discharged without any specific treatment for TDS (with concentrations up to 1999 mg/l) or with treatment to 2000 mg/l, but it is unacceptable for a mere four MGD to be discharged unless it is treated to 500 mg/l simply because the water comes from the natural gas industry.

The EQB has failed to demonstrate any need for a more stringent TDS standard for the natural gas industry. The proposed regulation should be disapproved and returned to the EQB to allow for a more thoughtful approach to controlling TDS levels in the Commonwealth's streams.

Thank you for your attention to our comments. If you or your staff has any questions, please do not hesitate to contact the undersigned at 717-230-8121.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry R. Bossert", written over a horizontal line.

Terry R. Bossert
Vice President – Government Affairs
Chief Oil & Gas LLC
200 North 3rd Street, Suite 4B
Harrisburg, PA 17101

2806

From: Terry Bossert [tbossert@chiefog.com]
Sent: Friday, June 04, 2010 3:53 PM
To: IRRRC
Cc: Jewett, John H.; Kaufman, Kim
Subject: EQB Final Form Amendments to 25 PA Code Ch. 95, IRRRC No. 2806, Reg. No. 7-446
Attachments: IRRRC TDS ltr Scan_Doc0001.pdf

Enclosed please find comments relative to the above referenced proposed regulations submitted on behalf of Chief Oil & Gas LLC.
Thank you.

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