

# EMBARGOED MATERIAL

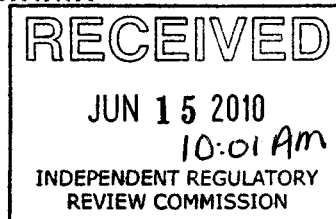


**CLEAN WATER ACTION**

PENNSYLVANIA

2806

June 14, 2010



Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17101

RE: IRRC #2806, 25 Pa. Code, Chapter 95

Dear Members of the Independent Regulatory Review Commission,

On behalf of Clean Water Action's 185,000 members in Pennsylvania, I would like to submit these comments on the proposed Chapter 95, Wastewater Treatment Requirements. Clean Water Action supports the adoption of the final form of the Chapter 95 rules as approved by the Environmental Quality Board on May 17, 2009.

As a member of the DEP's Total Dissolved Solids Workgroup, I participated in the stakeholder process which was requested by both the House and Senate Environmental Resources Committees. While Clean Water Action supported additional measures to what was incorporated in the final form regulation, we acknowledge that the DEP was balancing many conflicting interests that we experience through the stakeholder process. In many ways, the final form of Chapter 95 represents a balancing of these interests.

Some of the recent objections that have been raised to the Chapter 95 rule relate to both feasibility and cost. With regard to feasibility, during the many presentations from industry sectors during TDS Workgroup meetings I attended most of the objections I heard regarding treatment options to meet the proposed limits related to costs. Companies were able

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to identify treatment options and some were able to get quotes from vendors on possible treatment systems for their plants. This indicates that there is off the shelf technology available to meet the rule, that in fact it is feasible.

Beyond the hypothetical exercises of the Workgroup, several facilities in Pennsylvania and West Virginia are already able to satisfy the effluent limitations in Chapter 95, proving that the technologies are effective, reliable, and economically feasible. For example, AOP Clearwater, LLC, has developed a reuse and recycling wastewater plant in Fairmont, West Virginia.<sup>1</sup> The AOP plant pretreats high-TDS wastewaters to remove solids and other pollutants, separates oil from the water, and then processes the wastewater to remove TDS to concentrations of less than 500 mg/L.<sup>2</sup> AOP Clearwater has estimated treatment costs at 14.3 cents per gallon if 80 percent of wastewater is available for reuse or 12 cents per gallon if the reused water is not available for reuse and discharged.<sup>3</sup> The facility can process up to 210,000 gallons of wastewater per day.<sup>4</sup>

Here in Pennsylvania, the DEP has recently issued a NPDES permit to TerraAqua Resource Management with TDS, sulfate, and chloride effluent limits identical to those proposed in Chapter 95. The company plans to satisfy these limits by using a thermal treatment process. Also, the

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<sup>1</sup> AOP Clearwater Water Recycling process description *available at* [http://aopclearwater.com/The\\_Clearwater\\_Process.html](http://aopclearwater.com/The_Clearwater_Process.html) (last checked February 10, 2010).

<sup>2</sup> *Id.*

<sup>3</sup> The State Journal, Pam Kasey, "AOP Clearwater to Use Evaporation for Gas Well Drilling Brine," published on February 20, 2009, *available at* <http://www.statejournal.com/story.cfm?func=viewstory&storyid=52674> (last checked February 10, 2010).

<sup>4</sup> *Id.*

recently-noticed Reserved Environmental Services (RES) draft permit demonstrates that the effluent standards in the Chapter 95 proposal can be met by a reuse and recycling wastewater facility.<sup>5</sup> The RES plant will include treatment in two phases: Phase I will consist of a chemical and physical treatment with a recycling program that will reuse all wastewater, including flowback, pit, and production fluids, for hydraulic fracturing, while Phase II will include installation an evaporator and crystallizer, which will provide physical, chemical and thermal treatment of the wastewater. RES proposes to provide all its effluent for reuse during Phase I, which will result in no discharge of wastewater. RES plans to either sell distillate from the evaporator for reuse to drillers or discharge the remaining effluent. In addition, condensate from the evaporator will be sent to a crystallizer from which salt and any remaining wastewaters will either be reused or properly disposed as residual waste. The RES plant is currently designed to handle up to 1 million gallons per day of produced wastewaters from Marcellus shale fracturing.

While we understand that there are concerns related to cost issues to dischargers, it is important to note that DEP's obligation under the Clean Streams Law is to determine the economic impacts *to the public*. In considering the Department's imposition of very stringent effluent limitations on an individual discharger, the Pennsylvania Supreme Court has stated that "[t]he economic impact which must be considered under The Clean Streams Law...relates to the impact on the community and public at large, not on the individual discharger."<sup>6</sup> We would encourage the IRRC to carefully consider comments that have already been received by public water suppliers concerning how the failure to implement these

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<sup>5</sup> 40 Pa. B. 33 (January 2, 2010) (NPDES Draft Permit No. PA0254185).

<sup>6</sup> *Mathies Coal Co. v. DER*, 559 A.2d 506, 511 (1989). 35 P.S. § 691.501 (2009).



protections could affect the public.

In terms of what the future costs to discharges could be, it is worth noting that the AOP Clearwater plant in West Virginia is meeting limits in the rule for a cost similar to what DEP has projected. In addition, DEP's final form of the rule by setting TDS limits at a higher level for most sectors is additionally responsive to concerns over state-wide costs.

We appreciate the opportunity to comment on these important rules to protect Pennsylvania's rivers and drinking water supplies. We look forward to the IRRC's promulgation of these rules as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Myron Arnowitt".

Myron Arnowitt  
PA State Director

2806

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**From:** Myron Arnowitt [marnowitt@cleanwater.org]  
**Sent:** Tuesday, June 15, 2010 10:01 AM  
**To:** IRRC  
**Subject:** docket #2806  
**Attachments:** Chapter 95 IRRC comments CWA 6-10.doc

Please find attached comments from Clean Water Action in support of the Chapter 95 Wastewater Treatment Requirements.

Myron Arnowitt  
PA State Director  
Clean Water Action

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