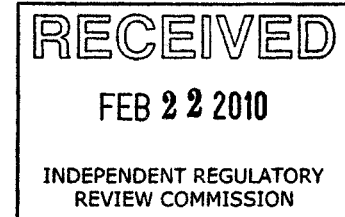


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**COMMENTS TO ENVIRONMENTAL QUALITY BOARD'S PROPOSED
REGULATION - WASTEWATER TREATMENT REQUIREMENTS - DATED
NOVEMBER 7, 2009 (39 Pa.B. 6467)**

**SUBMITTED BY: STEVEN A. HANN, ESQUIRE
HAMBURG, RUBIN, MULLIN, MAXWELL & LUPIN
375 Morris Road, Lansdale, PA 19446
(215) 661-0400
shann@hrmml.com**

**SUBMITTED TO: Environmental Quality Board
RegComments@dep.state.pa.us**



Please accept the following comments in response to the Proposed Rulemaking – Wastewater Treatment Requirements – that appeared in the Pennsylvania Bulletin on Saturday, November 7, 2009 (39 Pa.B. 6467), which proposes, among other things, the establishment of new effluent standards for new sources of wastewaters containing high Total Dissolved Solids (“TDS”) concentrations.

1. The proposed TDS regulation appears to have been primarily developed in response to natural gas exploration related to the Marcellus Shale. Thus, any regulatory initiative should focus on the gas development industry, without further regulatory requirements being imposed on municipal treatment plants (and their ratepayers), particularly when many municipal treatment plants are in the process of addressing, or will soon be addressing, the impact of Total Maximum Daily Loads (“TMDLs”), Chesapeake Bay nutrient loading reduction requirements and, perhaps, the Chesapeake Bay TMDL.

2. The Department should withdraw the proposed TDS regulation and refocus any new TDS regulatory package on the natural gas development industry within the Marcellus Shale region, and require that any wastewater from such operations be treated to a specific limit or standard (as developed by the Department), prior to being discharged to a municipal owned or operated treatment plant or to the waters of the Commonwealth.

3. The proposed TDS regulation appears to have been primarily developed in response to natural gas exploration related to the Marcellus Shale. Accordingly, the Department could propose specific regulations on Centralized Waste Treatment (“CWT”) facilities that handle wastewater from gas development operations, which regulations could require that all Marcellus Shale gas development wastewater be discharged to a municipal owned or operated treatment plant or to the waters of the Commonwealth only if such wastewater is first treated by these facilities to a specific standard or limit.

4. The preamble to the proposed TDS regulation indicates that water quality analyses for certain major watersheds in the Commonwealth show that many streams have a very limited ability to assimilate additional TDS, sulfates and chlorides. However, the preamble cites

primarily to a study involving the Monongahela River basin, with passing reference to other studies in western Pennsylvania. Thus, it does not appear that any related studies have been performed in other areas of Pennsylvania and, therefore, any proposal to impose a TDS standard in other areas of the Commonwealth is arbitrary and without any scientific basis or support.

5. The preamble to the proposed TDS regulation references the outreach sessions conducted by the Department to educate stakeholders about the proposed TDS regulation, but further notes that these outreach efforts were conducted “at least as they apply to Marcellus Shale activities.” Similarly, the Department notes in the same preamble that a work group has been formed in the Monongahela River Watershed to review possible alternative approaches to protecting the waters of the Commonwealth. The limited outreach efforts, at least geographically, and the narrow geographic region of the workgroup, indicates an intent to only apply the proposed TDS regulation to certain regions of the Commonwealth and not to impose a new statewide TDS standard on municipal treatment plants.

6. As noted above, the proposed TDS regulation provides no basis to support a statewide TDS standard on municipal treatment plants. The Department has Chapter 93 water quality standards and criteria in place for TDS constituents. The Department has not reported any TDS-related water quality issues that are attributable to such treatment plant discharges. Thus, the 500 mg/l proposed regulatory limit is arbitrary, not supported by any reliable data, and would needlessly impose severe economic consequences on municipal treatment plants and their ratepayers, particularly at a time when many of these plants are or will be dealing with TMDLs or Chesapeake Bay requirements.

7. The Department’s existing Chapter 93 regulations regarding water quality standards address TDS constituents. Many treatment plants are not required to monitor for TDS related constituents and likely cannot meet the proposed TDS, sulfates or chloride limits, even if they treat only domestic and/or commercial wastewater. To now require these same plants to provide treatment for TDS constituents, without any data to support the implementation of such treatment requirements, would be a costly and unjustified exercise.

8. Many wastewater treatment plants will not be able to meet the proposed TDS limits. Moreover, the Department recognizes that “no treatment exists for TDS, sulfates and chlorides, other than dilution.” Therefore, the Department is attempting to adopt technology-based limitations that municipal treatment plants cannot meet with existing technology. Here, it is apparent that the Department has proposed, and intends to adopt, effluent limitations without any data or analysis to support either the proposed limitations and the basis for the selection of these limitations. Therefore, municipal treatment plants in the Commonwealth will be subject to arbitrary and unsupported discharge limitations if the proposed regulation is adopted as written.

9. The proposed TDS regulation essentially sets forth technology-based effluent limitations, even though the preamble to the proposal acknowledges that, “currently no treatment exists for TDS, sulfates and chlorides, other than dilution.” In any event, technology-based effluent limitations are to be developed by evaluating certain criteria, including cost and the benefits derived by application of the chosen technology. Nevertheless, it is evident from the proposed TDS regulation that the Department did not consider the required statutory and

regulatory requirements in setting the proposed limits (see 40 CFR §125.3). Therefore, the proposed limitations are arbitrarily developed and are being proposed without consideration of the requisite regulatory criteria.

10. The Department is also proposing specific effluent limitations for barium and strontium, without any data or analysis presented to evaluate the propriety of the selected limitation (10 mg/l). In addition, it would be beneficial for the Department to identify the technology or technologies to be implemented to meet these proposed limits.

11. Even if the Department intends that the proposed TDS regulation should be imposed on a statewide basis, the proposal as written is vague, which may cause needless interpretation issues in its implementation. For example, it is unclear what constitutes a “new discharge,” specifically because the proposal fails to clarify the phrase “an additional discharge, an expanded discharge, or an increased discharge” in proposed Section 95.10. Is it the Department’s position that an existing TDS discharge, even if above the 500 mg/l threshold, does not trigger an NPDES permit requirement unless and until the discharge is classified as “additional, expanded or increased?” Would any “increase” in flow from a treatment plant in year 2011 as opposed to year 2010 trigger the regulatory requirement? For example, if an existing discharge is 750 mg/l, but the treatment plant’s flow increases in year 2 (2011), does that mean that the regulatory requirement and associated effluent standards apply? What if the year 2 TDS level is 650 mg/l, even with an increase in flow? Does the proposed TDS regulation nonetheless envision that the treatment plant must subsequently reduce its TDS level to 500 mg/l and, if so, what is the proposed timeframe for compliance? With respect to the latter statement, the proposal fails to address compliance issues, such as how compliance is measured and the timeframe to attain compliance.

12. If the Department intends to proceed with this TDS regulation, it should specifically amend proposed Section 95.10(a) to exempt municipal owned and/or operated treatment plants from the regulation.

13. If the Department intends to proceed with this TDS regulation, it should specifically amend proposed Section 95.00(b) to exempt municipal owned and/or operated treatment plants from any requirement that they meet the effluent standards set forth therein.

14. In developing the proposed TDS regulation, did the Department consider the various treatment technologies used by municipal treatment plants, such as ferric chloride, which may contain TDS constituents that would contribute to total TDS levels and which would be difficult, if not impossible, to replace?