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

Submitted via email to: irrc@irrc.state.pa.us

RE: Environmental Quality Board Final Rulemaking on Water Quality Standard for Manganese and Implementation (#7-553)

Dear Sir or Madam:

As a top Pennsylvania bituminous coal producer based in Pennsylvania, CONSOL Energy, Inc. ("CONSOL") prides itself on supplying the Commonwealth, the nation, and the world with coal for use in industrial, metallurgical, and power generation applications. Our flagship Pennsylvania Mining Complex ("PAMC") is the largest producing underground mining operation in North America. In addition, CONSOL and its subsidiaries operate 22 water treatment facilities in the Commonwealth that would be impacted by the rule.

CONSOL urges your disapproval of the Final Rulemaking on Water Quality Standard for Manganese and Implementation (#7-553), which amends Chapters 93 and 96 of 25 Pa. Code. The final rule imposes manganese compliance requirements on CONSOL and Pennsylvania's industrial sector that: **(1)** do not comply with Pennsylvania's Act 40 of 2017 or the Regulatory Review Act, **(2)** are infeasible to achieve compliance, **(3)** are overly protective when applied at the point of discharge, and **(4)** will place Pennsylvania at an economic disadvantage, compared to neighboring states.

To begin, the final rulemaking does not comply with Pennsylvania's Act 40 of 2017 or the Regulatory Review Act ("RRA"). Act 40 of 2017 directed the Environmental Quality Board (EQB) to promulgate regulations listing manganese under 25 Pa. Code 96.3(d), to clarify that the water quality criteria found in Chapter 93 (1.0 mg/L) related to water bodies with the potable water supply ("PWS") designation apply at the point of existing or planned potable water supply withdrawals and not the point of discharge. Contrary to the direction and legislative intent of the General Assembly, the Pennsylvania Department of Environmental Protection ("PADEP") proposed a regulation that recategorized manganese as a toxic substance, modified the water quality standard, and moved the point of compliance to the point of discharge. The Independent Regulatory Review Commission ("Commission") is charged with determining whether a regulation is consistent with the intent of the General Assembly. The manganese rulemaking is wholly inconsistent with Act 40 of 2017, and therefore, is inconsistent with legislative intent.

Secondly, the rulemaking imposes compliance requirements that are technically infeasible to achieve, and treatment techniques could adversely affect water quality in certain circumstances. Furthermore, the 0.3 mg/L of manganese discharge is unreasonable, as the standard is not universally applied to all discharges, including those managed by the PADEP, conservation groups, watershed groups, or any other such organizations managing discharges of water from legacy mining operations. According to a review of data for 52 PADEP managed water treatment facilities, the average 5-year high concentration of manganese in discharges from these facilities was 10.79 mg/L. For comparison, the existing *technology based effluent limit* of 2.0 mg/L for the coal mining industry category is promulgated in the federal regulations at 40 CFR Part 434.

Under the Clean Water Act, *technology-based limits* are determined based on the *most cost-effective* set of available pollution prevention and control techniques. A 0.3 mg/L criterion is not technically feasible or cost effective.

The feasibility of a company like CONSOL complying with such an unreasonable standard is outlined below.

Infrastructure and site improvement tasks anticipated to achieve compliance with the proposed rule:

- Power installation to remote water treatment locations
- Access road development for chemical deliveries
- Developing appropriate onsite chemical storage
- Metering, logic control, water handling infrastructure and other necessary automation and fail safes to ensure adequate chemical dosage
- Pond infrastructure upgrades for water retainment and chemical application management
- Estimated Cost: \$1.5 million

Operation and Maintenance tasks associated with achieving compliance with the proposed rule:

- Additional sampling to ensure the effluent discharge will meet the proposed Manganese concentration
- Chemical usage
- Power consumption
- Estimated Annual Costs: \$2.6 million

These estimated cost projections were developed based upon consultations with chemical vendors, existing Manganese treatment implementation, known infrastructure requirements for such treatment methods, and existing operation and maintenance rates which would increase due to the additional oversight required. Costs do not include increase of existing bonds, subsequent bond premium increase, inflation, and other ancillary costs.

Moreover, Pennsylvania’s mining related discharge permits already incorporate an evaluation of a proposed or existing discharges impact compared to both the federal technology-based standards and the more stringent 1.0 mg/L in-stream potable water supply standard cited in 25 Pa. Code Chapter 93 and applying the 0.3 mg/L at the point of discharge is unnecessarily protective. As part of the existing NPDES permitting process, PADEP evaluates the proposed discharge and assigns effluent limits that are intended to not only protect the designated use of the receiving streams, but also to protect the nearest downstream potable water supply intake. Applying the new criterion at the point of discharge without analysis of the designated use and assimilative capacity of the receiving stream and the distance from the point of discharge to the nearest water supply intake is overprotective.

Finally, the rulemaking also will negatively impact Pennsylvania’s economy and will put the Commonwealth at a significant disadvantage compared to other states. A DEP-contracted report completed by Penn State University suggests that due to this rulemaking, if 75% of the mining permits are impacted, the coal mining industry will incur total capital costs in the range of \$137 to \$143 million, with total annual costs of between \$33.0 and \$46.2 million.¹ No other state has a 0.3 mg/L toxicity standard applied to discharges, and in no other state will industry incur such high costs as a direct consequence of a 0.3 mg/L toxicity standard.

As detailed above, the Final Rulemaking **(1)** does not comply with Pennsylvania’s Act 40 of 2017 or the Regulatory Review Act, **(2)** is infeasible to achieve compliance, **(3)** is overly protective when applied at the point of discharge, and **(4)** will place Pennsylvania at an economic disadvantage, compared to neighboring

¹ Burgos, William D. (2021). *Review of Manganese Removal Technologies from Coal Mining-Associated Waters and Evaluation of Corresponding Costs to the Coal Mining Industry*. Penn State University.
https://files.dep.state.pa.us/PublicParticipation/Public%20Participation%20Center/PubPartCenterPortalFiles/Environmental%20Quality%20Board/2022/August%209,%202022/02_7-553_Mn_Final/05c_7-553_Mn_Final_PSU%20report.pdf

states. Due to feasibility and economic concerns, CONSOL strongly encourages your disapproval of the final rulemaking.

Please contact me with any questions.

Sincerely,

Matthew Mackowiak
Manager, Government Affairs
CONSOL Energy, Inc.