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Senate of Pennsylvania

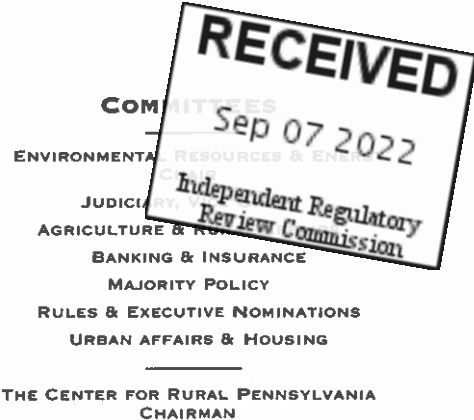
September 7, 2022

Independent Regulatory Review Commission
 333 Market Street, 14th Floor
 Harrisburg, PA 17101
 [via email to irrc@irrc.state.pa.us]

Dear Commissioners:

Pursuant to Section 5.1(j) of the Regulatory Review Act (RRA), the Senate Environmental Resources & Energy Committee voted to reject the Environmental Quality Board's ("EQB") proposed Regulation #7-553 entitled, "Water Quality Standards for Manganese and Implementation." We submit this letter to convey the Committee's serious legal and policy concerns with the proposed rulemaking, which would remove the current potable water supply for manganese water quality criterion of 1.0 mg/L from Table 3 in 25 Pa. Code Section 93.7 and add manganese to the list of toxic substances in 25 PA Code §93.8c, Table 5 at 0.3 mg/L, applying the standard to the discharge.

At the August 9, 2022 meeting of the EQB, the Pennsylvania Department of Environmental (DEP) claimed this rulemaking was drafted in response to Act 40 of 2017. However, Act 40 of 2017 directed the EQB to promulgate regulations listing manganese as an **exception** in 25 Pa Code 96.3(d), with the legislative intent to move the water quality criteria found in Chapter 93 (currently PWS 1 mg/L) to the water intake instead of the point of discharge. DEP has resisted compliance with Act 40 and does not have the statutory authority to promulgate the regulation being considered for approval by the Independent Regulatory Review Commission (IRRC). Further, the rulemaking appears to be the first proposed state agency regulation directing stakeholders to opine on two separate and conflicting policy alternatives. In this instance, DEP effectively provided itself a multiple-choice scenario and ultimately advanced its preferred choice for a vote by the EQB and IRRC. We believe this is a violation of the RRA, as the proposed regulation could never be promulgated as a final-form regulation, nor is this the sort of regulatory process contemplated by the General Assembly within the RRA and certainly not the sort of regulatory process that IRRC should encourage state agencies to follow.



By way of background, in addition to DEP and the EQB not having the statutory authority to promulgate the final-form rulemaking, and the rulemaking being in violation of the RRA, as members of the Senate Environmental Resources and Energy Committee we felt this rulemaking was of such importance that it warranted further discussion during the proposed stage. Nearly two years ago, the Senate Environmental Resources and Energy Committee held a hearing on September 9, 2020. During the hearing we heard from several testifiers that included experts in the field of toxicology and professionals with direct experience in treating for manganese.

Testimony by Gradient noted that a 0.3 mg/L manganese value is overly conservative and is not consistent with current science related to manganese, which indicates that 1 mg/L manganese in drinking water is not expected to lead to adverse health effects in people and the current 1 mg/L manganese ambient water quality criteria is protective for human consumption. DEP, in moving the rulemaking to a final regulation, has decided to ignore the most recent science, including what was offered by Gradient at our hearing. Instead, DEP chose which studies to accept, and contracted with a "Drexel Advisory Group" to write a report to support its chosen "alternative," a report which also did not conduct a thorough review of the most recent science. This methodology of picking and choosing which science fits DEP's narrative is not a comprehensive and balanced approach to rationalizing a 0.3 mg/L toxicity standard for manganese.

From an economic perspective, as testimony from several testifiers at our Senate hearing also revealed, the proposed final rulemaking the EQB chose to advance will impose significant compliance costs to small businesses spanning several industries. When asked if DEP consulted with businesses and industry in the development of the proposed regulatory schemes, it had not, and was still working to determine the economic impact. Two years later, at the August 9, 2022 meeting of the EQB, DEP included in their meeting materials a report they commissioned from Penn State University, which stated costs to the coal industry alone ranged from "...\$489 million in capital costs and from \$32.7 million to \$81.2 million in annual costs." While the Penn State paper supports the significant economic impact to small businesses in just one sector, it does not assess the impact to the non-coal industry, industrial facilities, or wastewater treatment facilities, rendering DEP's assessment incomplete, and suggesting the overall economic impact would be much more significant. Further, it is the Committee's understanding that DEP does not treat for manganese to the criteria found in 25 Pa. Code, and has not done an assessment of the cost to DEP, the Commonwealth, and taxpayers should DEP treat to the proposed 0.3 mg/L toxicity standard.

The statutory authority, economic impact, and implementation flaws associated with the final-form regulation bring to question what goal DEP and the EQB are aiming to achieve, and if adopting a new toxicity standard that will only be applied to industry will result in any measurable benefits to our Commonwealth or is merely a double standard that picks winners and losers. We urge IRRRC to consider our serious concerns with the regulation

as outlined above, disapprove the regulation, and encourage DEP and the EQB to develop an alternative that complies with Act 40.

Sincerely,



Sen. Gene Yaw
CHAIRMAN



Sen. Joe Pittman
VICE CHAIRMAN



Sen. Jake Corman
PRESIDENT PRO TEMPORE



Sen. Scott Hutchinson
MEMBER



Sen. Elder Vogel
MEMBER



Sen. Ryan Aument
MEMBER



Sen. Scott Martin
MEMBER

[Voting "No" on sending this letter to IRRC were Senator Carolyn Comitta, Senator Lisa Boscola, Senator Steve Santarsiero, Senator Katie Muth]

cc: Governor Tom Wolf
Hon. Ramez Ziadeh, DEP
Environmental Quality Board Members