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ENVIRONMENTAL RESOURCES AND
ENERGY COMMITTEE
CHAIRMAN

September 30, 2020

Independent Regulatory Review Commission
333 Market St
Harrisburg, PA 17101



Dear Commissioners:

As members of the House Environmental Resources and Energy Committee, we write to you to express our disapproval of proposed Environmental Quality Board (EQB) Regulation 7-553.

The Committee voted today, September 30, in favor of sending you this letter to ensure that agencies are complying with the law as enacted by the General Assembly and signed by the Governor. As the standing House Committee with legislative oversight over the Department of Environmental Protection (DEP), it is our role to ensure that regulations proposed by DEP through the EQB are reasonable and consistent with the language and intent of the Acts on which they are based. This regulation fits neither criteria.

Act 40 of 2017 provided clear and explicit directions to DEP. DEP was instructed to promulgate proposed regulations within 90 days under the Clean Streams Law that the water quality criteria for manganese shall be met, consistent with the exception in 25 Pa. Code Section 96.3(d). This regulation would have resulted in moving the point of compliance to an existing or planned downstream potable water supply. Governor Wolf, whose appointee Secretary McDonnell is the head of DEP, signed Act 40 into law on October 30, 2017.

Not only did DEP fail to promulgate regulations within the 90 days required under Act 40, the Department waited well over two years before promulgating these regulations we are discussing in this letter. Even worse, these proposed regulations contradict the simple instructions contained in the Act. DEP's excuses about why the delay was necessary to fully analyze their obligations under various laws and the health implications of manganese are utter nonsense. The regulation that Act 40 contemplated and required was a straightforward change and would not have required any of the extensive review which DEP claims to have conducted. No federal or state laws would have been violated by complying with Act 40 and promulgating the required regulations. The only law being violated is Act 40 itself by DEP. Why did Governor Wolf sign Act 40 into law if he intended for DEP to violate these provisions so completely?

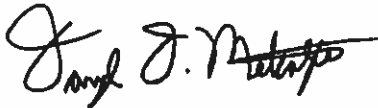
Turning to the proposed regulations themselves, which should hardly be necessary as their provisions so clearly and completely violate the law, DEP bizarrely proposes two alternative points of compliance within the same regulatory package. From our perspective, proposing two different alternatives within the same regulatory package is not the process that the Regulatory Review Act envisions or authorizes. Doing so makes it difficult for the interested public and industry to track, comment, and analyze the impact of the proposed regulation. No interested parties will have certainty about this regulation until DEP brings forward a final regulation to the Environmental Quality Board, after which the timeline before enactment is compressed and there is much less room for public participation than in the proposed stage. As your Commission has substantial expertise in reviewing regulations, we look forward to receiving your comments regarding this unusual, and likely illegitimate, process by which this regulation has been proposed.

DEP will attempt to argue that the science is with them and requires the adoption of their proposed more stringent human health criterion of 0.3 mg/L from the current standard of 1.0 mg/L, although Act 40 includes no such direction. As other commentators have noted, however, DEP is relying on hand-selected, outdated studies and methodology to propose this burdensome limit while ignoring much more current scientific research and directives. Neither the federal Environmental Protection Agency, nor DEP, has established a maximum contaminant level (MCL) for manganese to protect human health. This should be the first step that DEP would take if they actually believed that Pennsylvania's drinking water supply should be protected against manganese, as this would protect all of Pennsylvania's drinking water supply instead of the in-stream water quality criteria that DEP is proposing. That DEP and the federal government have chosen not to do so alludes to the obvious point that manganese is not generally considered a toxic substance and should not be regulated as such.

The clear language of Act 40 requires that the point of compliance for manganese be moved from the point of discharge and be applied at the potable water supply withdrawal point. DEP entirely ignores this statutory directive in one of its alternatives and proposes that the point of compliance be the point of discharge. Other coal mining states utilize the potable water supply point as the point of compliance for their manganese regulations. No evidence has been produced that residents of these states have had any negative health consequences as a result. Accordingly, DEP has no excuse for violating the law by proposing an alternative that contains the point of compliance as the point of discharge and this alternative should not be considered and must be withdrawn.

This proposed regulation is unacceptable, and if implemented would have serious negative effects on industry within our state. Most importantly, agencies must follow the law, particularly when the law is clear and unambiguous, as Act 40 is. To permit or endorse DEP's blatant refusal to comply with the statute would set an extremely dangerous precedent. We therefore ask IRRC to disapprove this regulation in its proposed form since the provisions of the regulation run contrary to the language and intent of the Act on which they are based and are patently unreasonable. We urge the EQB and DEP to withdraw this proposed regulation. We, the undersigned members of the House Environmental Resources and Energy Committee, write this letter to draw your attention to our concerns with this proposed regulation and respectfully ask for your consideration.

Sincerely,



Daryl D. Metcalfe, Chairman
Environmental Resources & Energy Committee



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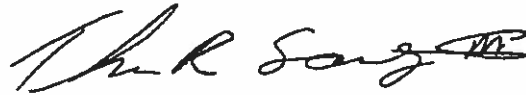
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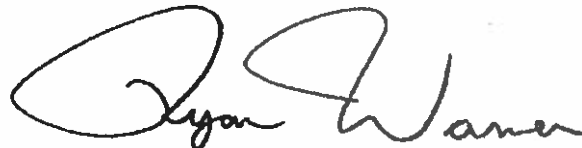
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DDM:pn

Cc: Environmental Quality Board
Department of Environmental Protection