

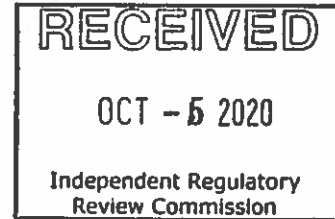
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

* * * * *

IN RE: PUBLIC HEARING ON WATER QUALITY STANDARDS FOR
MANGANESE & IMPLEMENTATION

* * * * *

BEFORE: BRIAN CHALFANT, Chair
Darek Jagiela, Member
Jennifer Swan, Member
Laura Griffin, Member



HEARING: Wednesday, September 9, 2020
6:00 p.m.

LOCATION: WebEx Meeting

WITNESSES: Terry Schmidt, Mike Clark, Charlie Carlson

Reporter: Derek Richmond

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NONE OFFERED

P R O C E E D I N G S

MR. CHALFANT: Good evening,
everybody. I would like to welcome you to the
Environmental Quality Board's public hearing on the
proposed rulemaking for Water Quality Standard for
Manganese and the implementation of that standard.

My name is Brian Chalfant, Deputy
Policy Director for the Department of Environmental
Protection. And representing the Environmental
Quality Board, EQB, at today's hearing assisting me
is Laura Griffin and Darek Jagiela. I officially
call this hearing to order at 6:00 p.m. and this
public hearing will be recorded in its entirety.

The purpose of this hearing is to
formally accept testimony on the proposed rulemaking.
I am going to read a summary of the rulemaking and
then go through some logistics of the hearing and
then we'll get to the testimony.

So this proposed rulemaking was
adopted by the EQB at its meeting on December 17,
2019. The proposed rulemaking includes amendments to
two chapters of Title 25 of the Pennsylvania Code;
Chapter 93 relating to water quality standards and
Chapter 96 relating to water quality standards

1 implementation. Water quality standards are instream
2 water quality targets that are implemented by
3 imposing specific regulatory requirements and permit
4 conditions such as treatment requirements, effluent
5 limitations, and best management practices on
6 individual sources of water pollution. Water quality
7 standards include the existing and designated uses of
8 the surface waters of the Commonwealth, along with
9 the specific numeric and narrative criteria necessary
10 to achieve and maintain those uses, as well as anti-
11 degradation requirements.

12 The purpose and goals of this proposed
13 rulemaking are, first, to comply with Act 40 of 2017;
14 second, to delete the existing manganese numeric
15 water quality criteria of 1.0 milligrams per liter
16 from Table 3 and Section 93.7, which was established
17 for the protection of the potable water supply use;
18 third, to add manganese - to add a manganese
19 criterion of 0.3 milligrams per liter to Table 5 and
20 Section 93.8(c), designed to protect human health
21 from the neurotoxicological effects of manganese
22 which will also ensure adequate protection of all
23 water uses; and fourth, to identify the point of
24 compliance for the criterion.

25 The amendments propose two

1 alternatives for a point of compliance with the
2 manganese water quality standard; first, the point of
3 compliance for the point of all existing or planned
4 surface water - surface potable water supply
5 withdrawals; or second, all surface waters, meaning
6 at or near the point of discharge.

7 Act 40 of 2017 added subsection (j) to
8 Section 1920-A of the Administrative Code of 1929,
9 which directed the EQB to propose regulations
10 requiring that the water quality criteria for
11 manganese established under Chapter 93 be met
12 consistent with the exceptions in Section 96.3(b).

13 In other words, Act 40 directed the
14 Board to propose regulations that moved the point of
15 compliance for manganese drinking water quality
16 criterion from the point of discharge to the point of
17 any downstream public drinking water intake. The
18 proposed regulation considers the provisions of Act
19 40 in addition to several other statutory obligations
20 the Department and the EQB must consider when
21 evaluating water quality criteria and points of
22 compliance for the criteria, including Pennsylvania's
23 Clean Streams Law, Safe Drinking Water Act and the
24 Federal Clean Water Act.

25 The proposed changes will affect all

1 persons, groups or entities with proposed or existing
2 point source discharges of manganese into surface
3 waters of the Commonwealth who must comply with the
4 regulation. Persons who discharge wastewater
5 containing manganese from mining will be affected by
6 the change in the proposed criteria and by its
7 implementation at the proposed second alternative
8 point of compliance near the point of discharge. The
9 mining industry will likely need to add treatment to
10 meet the new limit if the point of compliance is at
11 the discharge location.

12 Additionally, other sectors that
13 currently have water quality based effluent limits
14 for manganese and their discharge permits may be
15 affected by the regulation. Such facilities include
16 landfills, wastewater treatment plants and power
17 plants.

18 Besides dischargers, public water
19 suppliers of drinking water and other water supply
20 users of surface water for production activities
21 could be affected if the proposed first point of
22 alternative compliance is - the first alternative
23 point of compliance is applied to the proposed
24 manganese criterion. These other wastewater supply
25 uses may include food and beverage production or

1 preparation, paper and textile manufacturing, aqua
2 culture and irrigation. Under this alternative, the
3 point of compliance for the manganese criteria will
4 be at the point of any planned or existing potable
5 water supply withdrawal.

6 Water suppliers will likely need to
7 conduct additional source water monitoring at their
8 facilities to determine the effects of increased
9 source water manganese levels on their operations.

10 Additionally, as the levels of
11 manganese change in surface water based on
12 discharges, public water suppliers of drinking water
13 may require facility upgrades or additional chemical
14 usage to continue achieving the secondary maximum
15 contaminant level for manganese, 0.05 milligrams per
16 liter. Any upgrades to drinking water treatment will
17 likely result in water fee increases for the water
18 supply ratepayers.

19 This concludes the summary of the
20 rulemaking. If you would like to access a more
21 detailed explanation of the regulatory amendments in
22 this rulemaking, you can visit the Department's
23 e-comment system on DEP's webpage. Just select
24 regulations from the main DEP homepage.

25 Now I would like to go through some

1 logistics and ground rules for the hearing. In order
2 to give everyone an equal opportunity to comment on
3 this proposal, I would like to establish the
4 following ground rules. I will call on the witnesses
5 who have registered to testify at the hearing. All
6 who have registered were assigned a number indicating
7 the order in which witnesses will be called to speak.

8 Only those who registered as indicated
9 on the EQB webpage will be called upon to provide
10 testimony. Testimony is limited to five minutes for
11 each witness. Please note that written and spoken
12 testimony carry the same weight. If you should run
13 out of time for your spoken testimony, we will - we
14 will read the rest of your comments from your written
15 testimony.

16 As advised in registration
17 correspondence, please provide a copy of your written
18 testimony to REGcomments@pa.gov. I put that e-mail
19 address in the chat box as well. Your e-mail must
20 note that you are submitting testimony for proposed
21 rule - for proposed rulemaking Water Quality Standard
22 for Manganese and Implementation, along with your
23 first and last name, mailing address, e-mail address
24 and if you are commenting on behalf of an
25 organization.

1 Testimony is not required to be five
2 minutes long. If others who provide testimony before
3 you are making similar statements to yours, feel free
4 to abbreviate or summarize your verbal testimony and
5 still provide the full testimony via e-mail. This
6 will help us hear from more commenters at the
7 hearing. You do not have to provide verbal testimony
8 in order to be included in the public record. All
9 written testimony submitted to REGcomments@pa.gov
10 will also be reviewed by the EQB and the Department
11 and included in the public record.

12 The public comment period on this
13 proposed rulemaking closes on September 25th. Public
14 comments will not be accepted for the public record
15 on this proposed rulemaking after that date. Through
16 the registration process, prospective commenters were
17 requested to designate one witness to present
18 testimony of behalf of an organization. Please state
19 your name, address and affiliation, if applicable,
20 for the record prior to presenting your testimony.

21 The EQB would appreciate your help by
22 spelling out your name and terms that may not be
23 generally familiar so the transcript can be as
24 accurate as possible. Because the purpose of a
25 hearing is to receive comments on the proposal, EQB

1 members and department staff cannot address questions
2 about the proposed rulemaking during the hearing. In
3 addition to or in place of verbal testimony presented
4 at today's hearing, interested persons may also
5 submit written comments on the proposal. Again,
6 written and verbal comments hold the same weight when
7 considered in finalization of this proposed
8 rulemaking.

9 All testimony and written comments
10 provided become a part of the official public record.
11 All comments must be received by the EQB on or before
12 September 25th, 2020. There are a few different ways
13 to submit written comments which are separate from
14 testimony.

15 Comments can be submitted through the
16 e-comment system that the Department has. Again, if
17 you go to the Department's website and click on the
18 e-comment link, it will take you right to that
19 system, or comments may be submitted by e-mail at the
20 previously mentioned e-mail address
21 REGcomments@pa.gov. The subject heading of the
22 proposed rulemaking and a return name and address
23 must be included in each e-mail with comments.

24 Comments may also be sent through US
25 Postal mail to the Environmental Quality Board, P.O.

1 Box 8477, Harrisburg, Pennsylvania 17105-8477.

2 All testimony received at this
3 hearing, as well as written comments received by
4 September 25th, 2020, will be considered by the EQB
5 and will be included in the comment response document
6 which will be prepared by DEP and reviewed by the EQB
7 prior to the EQB taking its final action on this
8 regulation.

9 Now I would like to call the first
10 commenter which we - there were two individuals who
11 pre-registered to provide testimony. First, Terry
12 Schmidt and second, Mike Clark, I believe both who
13 are online and made successful unmuting tests. So
14 Terry, if you are available you may begin your
15 comments, your testimony.

16 MR. SCHMIDT: Sure. My name is Terry
17 Schmidt. I am with EARTHRES, P.O. Box 468,
18 Pipersville, PA 18947. Again my name is Terry
19 Schmidt. I work at EARTHRES where we employ nearly
20 100 people. I am a lifelong resident of Pennsylvania
21 and grew up in southwestern Pennsylvania enjoying the
22 outdoors including fishing in areas where some local
23 streams were impacted by pre-law pollution.

24 One personal goal of my 35-plus year
25 career was to help achieve improvements that can turn

1 lifeless streams into thriving reproducing trout
2 streams which had been achieved at several locations.
3 I became familiar with manganese and manganese
4 treatment in the late 1970s and early 1980s while
5 working in the coal mining industry. Through to my
6 graduate assistantship at Penn State in the late
7 1980s, I worked with the Pennsylvania Department of
8 Environmental Protection, Environmental Protection
9 Agency and others to develop Greenmine, a computer
10 program used to estimate treatment costs for mining
11 sites in an effort to encourage mining which would
12 result in environmental improvement.

13 During my engineering consulting
14 career, I designed over 100 treatment systems. Many
15 of these systems were designed using government
16 funding mechanisms to treat pre-law discharges and
17 improve stream quality.

18 Additionally, I have designed
19 treatment systems for NPDES discharges where the
20 primary design challenge was to meet existing
21 manganese discharge limits. Manganese is a very
22 common element on earth, and there are locations in
23 Pennsylvania where ambient background levels of
24 manganese in the streams are greater than the
25 proposed limits. Manganese is generally not

1 considered toxic to aquatic organisms below two
2 milligram per liter.

3 I have worked on treatability studies
4 where conventional treatment was used to treat
5 manganese to predetermined levels and then
6 subsequently subjected to whole effluent toxicity
7 tests where neither acute nor chronic toxicity was
8 observed at levels much higher than two milligrams
9 per liter.

10 Based on everything I've learned
11 throughout my career, there is no risk or benefit to
12 the receiving streams by lowering manganese discharge
13 limits. Regulation of manganese in surface waters
14 initially followed the Environmental Protection
15 Agency's 1972 and 1977 Clean Water Acts, where
16 resulting manganese concentrations were limited in
17 range of two to four milligrams per liter.

18 The Environmental Protection Agency's
19 mid-1970s report of coal mining effluent guidelines
20 indicated treating waters to these limits also
21 ensured other trace elements were controlled as
22 manganese acted as a surrogate for other elements.
23 Manganese was selected because when manganese was
24 present, other priority pollutants were also present.
25 And when manganese was removed during conventional

1 treatment to two milligrams per liter, other priority
2 pollutants were also removed.

3 Conventional treatment typically
4 involves adding alkalinity to raise pH and
5 precipitating the metals in the settling area.
6 However, this technology may require the Ph to be
7 raised to over ten standard units to precipitate
8 manganese, followed by a chemical re-acidification of
9 the water in order to discharge the water at a pH
10 below nine.

11 Manganese treatment involves a careful
12 balance between chemical dosage to control pH while
13 carefully managing the total suspended solids and
14 aluminum levels to ensure a compliant discharge.
15 This regulation would have significant economic
16 impacts and create a domino effect. I have designed
17 treatment systems that consistently reduce manganese
18 to less than two or one milligram per liter.
19 However, these systems simply cannot - are not
20 capable of treating manganese to a level below 0.3
21 milligrams per liter on a consistent basis.

22 There are many challenges to meeting a
23 limit of 0.3 milligram per liter at the NPDES
24 discharge point. This limit may cause bankruptcies
25 and bond forfeitures resulting in the discharges

1 becoming the responsibilities of the state. Many of
2 these discharges are perpetual and will not stop once
3 the industrial activity has ceased. The regulation
4 would also limit new investment and cost Pennsylvania
5 jobs.

6 The additional costs to meet proposed
7 limits can be more like doubling or tripling the
8 costs, not just a small increase in percent of that
9 cost. This is particularly the case when large
10 discharges are being treated. In addition, lowering
11 manganese limits would put an additional financial
12 burden on Pennsylvania as the state is already
13 responsible for treating water from all previous bond
14 forfeited sites.

15 In summary, this regulation will come
16 at both a high cost to industry and an increased cost
17 to the State of Pennsylvania. The substantial cost
18 is just not justified by an environmental backset. I
19 oppose changing the current limit and support the
20 point of compliance as being at the intake to the
21 first downstream public water supply per Act 40 of
22 2017. Thank you for the opportunity to present this
23 testimony.

24 MR. CHALFANT: Thank you for your
25 testimony, Terry. Next up is Mike Clark, and Mike,

1 before you get going, I just wanted to mention that
2 if there is anybody else on the line who did not
3 pre-register to testify who would like to offer
4 testimony after Mike, if you could indicate that in
5 the chat box, that you would like to testify, that
6 would be the way to do that.

7 So we will go ahead and get to Mike
8 here and again, if anybody else after Mike would like
9 to provide testimony and didn't preregister, go ahead
10 and indicate that in the chat box.

11 Mike, are you with us?

12 MR. CLARK: Yes, I am.

13 MR. CHALFANT: Okay.

14 Go ahead.

15 MR. CLARK: Okay.

16 Good evening. My name is Mike Clark,
17 I'm vice president for production services for New
18 Enterprise Stone and Lime Company. New Enterprise is
19 headquartered at 3912 Brumbaugh Road, New Enterprise,
20 Pennsylvania. New Enterprise is a fifth generation
21 family owned company and has been helping to build a
22 stronger infrastructure system across Pennsylvania
23 for more than 90 years.

24 We are a vertically integrated
25 construction material supplier and heavy highway

1 construction contractor headquartered in Bedford
2 County. We have operations across the entire
3 Commonwealth and employ over 2,500 local people, and
4 pay state, local and federal taxes. We are a strong
5 supporting member in the communities we serve. NESL
6 expends considerable resources to preserve and
7 improve our environment every day. Our capacity to
8 do this is limited by our business economy and our
9 market conditions. Given these circumstances, we
10 like to spend our resources as effectively as
11 possible.

12 In reducing the NPDES manganese
13 discharge limits, we don't believe that the DEP has
14 chosen an appropriate goal. The benefit to the
15 environment and the public is not demonstrated with
16 the proposed rulemaking package making the
17 substantial cost and effort to achieve compliance
18 inappropriate.

19 NESL has 51 NPDES permits at various
20 locations across the State of Pennsylvania. Of these
21 permits, eight of them currently have conditions
22 limiting discharge of manganese. We have done
23 significant monitoring and sampling around our sites.
24 Background sampling of monitoring wells upstream and
25 downstream locations and various surface points of

1 these eight locations demonstrates elevated manganese
2 levels commonly exceeding our discharge levels. With
3 the current one milligram per liter DEP regulations,
4 we can keep these eight permits in compliance with
5 treatment costing approximately \$150,000 per year for
6 all the sites combined.

7 The proposed change in the limit from
8 1 to .3 milligrams per liter will mean that six of
9 the eight sites will no longer be able to comply
10 without additional treatment. Unfortunately, many of
11 these sites also have low pH and elevated aluminum.

12 Treatment for manganese removal is
13 complicated by these factors, making it a much more
14 complex and expensive process to achieve compliance
15 for manganese, aluminum and pH together.

16 Additionally, to ensure no violations
17 we will need to reach the target below .3 and
18 possibly down to .15 milligrams per liter. We
19 anticipate capital costs of \$320,000 to expand the
20 treatment footprint of some of the sites and to
21 install necessary treatment equipment to all our
22 sites.

23 Additional operating costs for all
24 sites combined is expected to rise to about \$450,000
25 per year. Two of the sites have serious footprint

1 issues, and by that I mean we may not have the space
2 to expand. The other four sites will need on - size
3 expanded to ensure that we meet the target reliably.
4 And they will need to increase the treatment or new
5 chemical systems.

6 The projected costs are comprised of
7 engineering, construction, treatment systems, power
8 systems and automation systems as necessary for each
9 site. It is possible we will need additional
10 personnel to manage the additional treatment systems
11 as well. We do not expect to be able to recoup-erate
12 (sic) these costs by increasing our prices at these
13 locations. As mentioned earlier, for our sites, the
14 background manganese levels are typically higher than
15 our current discharge levels.

16 It is also common to find upstream
17 manganese levels that are higher than our discharge,
18 while our discharge is higher than the downstream
19 manganese levels. This data supports the idea that
20 manganese may be dropping out naturally. None of our
21 sites have a public drinking water supply that is
22 sourced within five miles of our discharge points.

23 Manganese is a very common mineral in
24 the earth. It is dropping out naturally long before
25 reaching the public water supply. We don't believe

1 that there is any point in consuming resources to
2 remove manganese when those same resources could
3 otherwise be used for projects with more return on
4 investment for the general public.

5 We oppose reducing the manganese
6 limits and believe the point of compliance should be
7 at the point of intake of the downstream water
8 supplier. Thank you for the opportunity to be heard.
9 I can take any questions if you have them.

10 MR. CHALFANT: All right. Thank you
11 for your testimony, Mike. I am not seeing anybody
12 else has indicated they would like to provide
13 testimony in that chat. Darek, are you seeing
14 anything on your end?

15 MR. JAGIELA: Yes, I did. I got a
16 request from a Charlie Carlson.

17 MR. CHALFANT: Okay.

18 Charlie, are you unmuted?

19 MR. CARLSON: Can you hear me?

20 MR. CHALFANT: Yes, we can.

21 MR. CARLSON: Okay.

22 So I have a brief question about - you
23 know, if point of compliance is moved to the -. I'm
24 sorry. I'll introduce myself. I'm Charlie Carlson.
25 I am a student at Duquesne University. I am

1 currently a senior majoring in biology and minoring
2 in chemistry, and I work with the Ecology Club and I
3 work with some of the streams out in Pittsburgh. So
4 I was kind of curiously interested about this whole
5 proposed change of the rule. And I have a quick
6 question about - if point of compliance is moved to
7 these water intakes, what happens to the price of
8 water for Pittsburghers? I mean, you guys talk about
9 economic - you know, the economic impacts if point of
10 compliance is moved to the sites of discharge, but
11 what happens if we move that into these water
12 intakes?

13 And also, what happens to the greater
14 ecological environment? I remember I heard Terry say
15 that, you know, there is not many known toxic effects
16 of manganese, if heard that correctly. I don't want
17 to misquote you there, but just for reading the
18 proposed rule change on the Bulletin, you know, they
19 seemed to mention that there were toxic effects for,
20 you know, specifically humans and the cognitive
21 impacts on development.

22 So I wonder what's going to happen if
23 people are in the water, you know, on the Monongahela
24 or the Allegheny? What's going to happen to them if
25 they swallow some water?

1 And also, are we so sure about there
2 not being toxic effects to other organisms, not just
3 humans but beyond? Thank you for your time. I know
4 I didn't give a preplanned testimony, but if you
5 could answer any of those questions, that would be
6 great.

7 MR. CHALFANT: So thank you for your
8 questions and your engagement, Charlie. Because this
9 is a public hearing, Department staff or
10 Environmental Quality Board members are not able to
11 respond to questions about the rulemaking. This is
12 just to receive testimony, but if you would like -
13 well, your testimony and your comments there will be
14 entered into the public record and responses will be
15 provided when - so as part of the rulemaking process,
16 there will be a comment response document put
17 together that will respond to all the testimony that
18 was provided during tonight's hearing, as well as the
19 two other public hearings that are being held on this
20 proposed rulemaking.

21 So we are not able to provide
22 responses to your questions tonight, but as part of
23 the public record and the testimony received on
24 these, responses will be provided after the public
25 comment period closes and when that comment response

1 document is put together and published.

2 MR. CARLSON: Okay.

3 Thank you, Brian.

4 MR. CHALFANT: Yep, thank you,
5 Charlie.

6 Darek, are we seeing anybody else
7 indicating they would like to provide testimony?

8 MR. JAGIELA: That was it.

9 MR. CHALFANT: Okay.

10 One last call. If there is anybody
11 else on the line who would like to provide testimony,
12 please indicate so in that chat box in the next, I
13 don't know, 30, 40 seconds. Otherwise, we'll call it
14 a hearing.

15 MS. GRIFFIN: Brian, it's Laura. I
16 forgot to - hopefully, Charlie is still on the line.
17 If he can just e-mail us his name? That way we have
18 his contact information, so he'll be notified then
19 when we do complete the - we do deliver the final
20 rulemaking.

21 MR. CHALFANT: Okay.

22 Yeah, so Charlie if you could e-mail
23 that e-mail address to REGcomments@pa.gov with your
24 e-mail address and any other contact information you
25 want to provide, yes, we can provide that

1 notification as Laura just mentioned.

2 MR. CARLSON: Great. What was the
3 e-mail again?

4 MR. CHALFANT: It's REGcomments, so
5 it's R-E-G, abbreviation for regulations.

6 MR. CARLSON: Got it.

7 MR. CHALFANT: REGcomments, all one,
8 you know, one string, @pa.gov.

9 MR. CARLSON: Awesome. Okay.
10 Thank you.

11 MS. GRIFFIN: If you can just give us
12 your name and address, please, that would be really
13 helpful, thank you.

14 MR. CARLSON: Sure. Yeah. My name is
15 Charlie Carlson as listed on Webex, and then my
16 address is 17 -.

17 MS. GRIFFIN: Oh, you can e-mail it to
18 us. You can e-mail it. You don't have to -

19 MR. CARLSON: Okay.
20 No problem.

21 MS. GRIFFIN: - give the public all
22 that information. Thank you, Charlie.

23 MR. CHALFANT: All right. So Darek,
24 are you seeing anybody else indicating in the chat
25 they would like to provide testimony?

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MR. JAGIELA: No.

MR. CHALFANT: All right. So I think that is it for the night. So at - with no other commenters present on behalf of the EQB, I hereby adjourn this hearing at 6:27 p.m.

* * * * *

HEARING CONCLUDED AT 6:27 P.M.

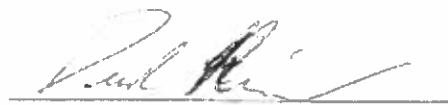
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CERTIFICATE

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I hereby certify that the foregoing proceeding was reported by me on 09/09/2020 and that I, Derek Richmond, read this transcript, and that I attest that this transcript is a true and accurate record of the proceeding.

Dated the 25th day of September, 2020



Derek Richmond,
Court Reporter