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CHAIRMAN

October 15, 2020

Honorable Patrick McDonnell
Chairman, Environmental Quality Board
Rachel Carson Building, 16th Floor
P.O. Box 2063
Harrisburg, PA 17105-2063

Re: **Proposed Rulemaking: Water Quality Standards for Manganese and Implementation (#7-553)**

Dear Chairman McDonnell:

We are writing to you today with concern over the proposed rulemaking, "Water Quality Standards for Manganese and Implementation (#7-553)," which proposes to remove the current 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. In addition, DEP is requesting comments on two "alternatives" for a point of compliance with the manganese water quality standard: at the point of discharge and at the point of all existing or planned potable water supply withdrawals.

This rulemaking, adopted 14-5 by the Environmental Quality Board (EQB) on December 17, 2019, was drafted in response to Act 40 of 2017. However, Act 40 of 2017 directed the Pennsylvania Department of Environmental Protection (DEP) to present to the EQB regulations listing manganese as an exception in 25 Pa Code 96.3(d), with the intent to move the water quality criteria found in Chapter 93 (currently 1 mg/L) to the water intake instead of the facility's point of discharge. DEP has resisted compliance with Act 40 and instead proposes to classify manganese as a toxic substance.

As members of the Senate Environmental Resources and Energy Committee, we felt this proposed rulemaking warranted further discussion and therefore held a hearing on September 9th, 2020 at the State Capitol. The rulemaking is the first we have seen that has more than one "alternative" in it, and one that may or may not be voted on at some point. How do we determine what the final regulation is going to be? During the hearing, it was asked of DEP whether this type of alternative rulemaking has been done in other

regulatory settings and the Committee is still waiting on a reply. Usually regulations seem to be focused on a single issue or point.

The Department has acknowledged that this particular instance is "unique," and the final rulemaking will be one recommendation based on comments received from the draft regulation. That being said, will this proposed draft regulation need to go back through the whole regulatory process again?

Presently, it's our understanding that DEP has adopted a secondary maximum contaminant limit for drinking water of 0.05 mg/L manganese in 2006. Therefore, regardless of whether the point of compliance for manganese is at the point of discharge or at the point of all existing or planned potable water supply withdrawals, a public water system must supply drinking water that meets the secondary MCL of 0.05 mg/L manganese (25 Pa. Code § 109.202(b)(1)).

A recent study by Gradient Corp. 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. As was explained during our September 9th public hearing, not only is the proposed criterion overly protective regardless of where in the surface water body it is applied, the proposed criterion is based on a hypothetical scenario that will almost never occur, providing support that application of the criterion at the point of intake is health protective.

While DEP has discussed several community studies that reported possible associations between manganese in drinking water and intellectual impairment, the fact remains that our bodies need manganese. It is naturally present in many foods and is a co-factor for many enzymes, including manganese superoxide dismutase, arginase, and pyruvate carboxylase. The studies cited by DEP have many limitations that make it impossible to attribute the reported effects to manganese, including: a cross – sectional study design that only evaluates one point in time and not exposure over a period of time; studies included limited (or sometimes no) individual exposure evaluations; and potential in all of the studies for other unmeasured factors to influence the study outcome (such as exposure to other possible contaminants in the drinking water, caregiver IQ, and quality of the home environment).

From an economic perspective, as testimony from our Senate hearing also revealed, the proposed rulemaking will impose significant compliance costs not only on the coal mining industry, but potentially on numerous other industries that may not currently be treating for manganese. Our question - did DEP consult with industry prior to presenting the proposed regulation to the EQB? Some other questions we have are: when DEP

addresses legacy acid mine drainage sites in Pennsylvania, what level of manganese does DEP treat to? When DEP addresses bond forfeiture sites in Pennsylvania, what level of manganese does DEP treat to? The precipitation of manganese comes from the breaking of rock and disturbance of soil. This is the case no matter if you are mining coal, limestone or conducting land development projects including public highway road cuts. How will this proposed rulemaking increase costs for PennDOT and other state agencies?

The proposed rulemaking is a step backwards. It fails to comply with Act 40. It imposes unnecessary treatment costs on several industries across Pennsylvania and could have significant consequences for our state agencies. We encourage the EQB to immediately withdraw the proposed rulemaking.

Thank you for your consideration of these comments.

Sincerely,



HON. GENE YAW
CHAIRMAN



HON. JOE PITTMAN
VICE CHAIRMAN



HON. JOSEPH SCARNATI
PRESIDENT PRO TEMPORE



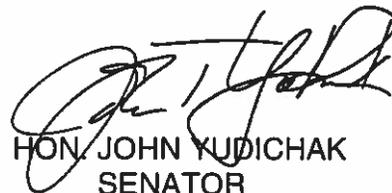
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