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VIA ELECTRONIC FILING

September 25, 2020

The Honorable Patrick McDonnell, Chairman
Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

RE: Water Quality Standard for Manganese and Implementation, 25 Pa. Code Chapters 93 and 96

Dear Chairman McDonnell,

On behalf of the diverse membership of the Pennsylvania Chamber of Business and Industry (PA Chamber), thank you for the opportunity to present our members' perspective on the proposed rulemaking, Water Quality Standard for Manganese and Implementation, as published in the July 25, 2020 Pennsylvania Bulletin. The PA Chamber is the largest, broad-based business advocacy organization in the Commonwealth.

As DEP and EQB are aware, the PA Chamber has for decades worked with a coalition of businesses, industries and associations to review and provide comments on proposed regulatory changes. As we have expressed in our past comment letters, our members recognize that the development, use and stewardship of the Pennsylvania's water resources are essential to the health, success and vitality of every community, industry and enterprise within state. With that recognition, we understand that stewardship of our water resources requires a delicate, but essential, balancing of environmental and economic considerations.

Statement of Policy

As a matter of policy, as established by our diverse board of directors, The PA Chamber advocates for environmental laws, regulations and policies that:

- are based on sound science and a careful assessment of environmental objectives, risks, alternatives, costs, and economic and other impacts;
- set environmental protection goals, while allowing and encouraging flexibility and creativity in their achievement;
- allow market-based approaches to seek attainment of environmental goals in the most cost-effective manner;
- measure success based on environmental health and quality metrics rather than fines and penalties;
- assess compliance based on clear, predictable and defined criteria established through stakeholder processes and with sound science;
- do not impose costs which are unjustified compared to actual benefits achieved;
- do not exceed federal requirements unless there is a clear, broadly accepted, scientifically-based need considering conditions particular to Pennsylvania;
- develop a private-public relationship which promotes working together to meet proper compliance; and

- ensure timely regulatory approvals and authorizations.

With specific respect to water, the PA Chamber advocates for water laws, regulations and policies that treat both water quality and quantity issues in a balanced and fair manner. We believe that water quality management should address both point and non-point sources equitably and proportional to their contribution to water quality challenges. The PA Chamber supports implementation of creative, well-structured and stable market-based approaches as part of a holistic water resources approach, including trading mechanisms that will result in an overall improvement in water quality while providing for innovation and flexibility among trading partners. The PA Chamber supports the improvement of Pennsylvania water use information and planning programs to provide an adequate basis for assessing current and potential future water resource challenges, and providing a sound basis for public and private decisions.

The Proposed In-Stream Water Quality Standard Conflicts with Act 40; the Point of Compliance Should Be Moved to the Point of Water Supply Intake, With Water Quality-Based Effluent Standards Applied at Point Sources of Manganese as Appropriate

The July 25 PA Bulletin notice states in the Background and Purpose section that “the purpose and goals of this propose rulemaking are: to comply with Act 40 of 2017” in addition to other changes to Chapter 93 standards and policy goals, and the notice further reads that “Act 40 directed the board to propose a regulation that moves the point of compliance for manganese from the point of discharge to any downstream public water intake.” However, the proposed rulemaking, which would establish an in-stream water quality standard of 0.3 mg/L statewide, would not in fact accomplish such a move of the point of compliance. As proposed, an in-stream standard would establishes the point of compliance at all facilities discharging into a stream, with a water quality standard of 0.3 mg/L resulting in significantly reduced allowable discharges from existing and future point source facilities, and possibly industrial sites with stormwater permits. Further, several PA Chamber members have noted that meeting an in-stream standard of 0.3 mg/L will require a treatment approach that will produce finished water with pH and aluminum levels that are themselves unacceptable for discharge. As proposed, an in-stream water quality standard of 0.3 mg/L will result in significant compliance challenges to many facilities in the state.

Further, it is notable that the federal Environmental Protection Agency has not established a primary maximum contaminant level (MCL) for manganese to protect public health. The Department’s expressed rationale in the proposed rulemaking is that an in-stream water quality standard is necessary to protect public health based on EPA methodologies and data available in the Integrated Risk Information System database. But if manganese is indeed a parameter that merits protection against drinking water ingestion, establishment of an MCL under either or both the federal and state Safe Drinking Water Act’s would appear to be a necessary step. As the Department is aware, an in-stream water quality standard would not apply to water withdrawals from groundwater sources, such as springs or subsurface aquifers accessed by a well. These, not streams, are the sources most likely to provide water for seasonal homes or water systems with 15 or fewer taps, and a primary MCL for manganese would protect drinking water for the public served by such systems in a way that an in-stream water quality standard would not. Where the Department has not chosen to protect the public generally from ingestion of manganese via water

supply systems, it seems arbitrary and inappropriate for the Department to promulgate a rulemaking on the grounds of protecting public health that would leave some portion of the public unprotected from manganese. But it also bears emphasizing that manganese is an element that EPA has not found to be dangerous to human health such that a nationwide primary MCL would be necessary. Therefore, the PA Chamber does not support establishing an in-stream water quality standard of 0.3 mg/L

There is, however, a secondary MCL for manganese in drinking water at 0.05 mg/L, which public water supply systems are required to meet. With this being the case, it is unlikely that moving the point of compliance to the point of public water supply intake will result in substantial additional costs that will be borne by the utilities and municipalities (and their ratepayers) withdrawing water for public water supply, who are already treating withdrawn water down to 0.05 mg/L for manganese. Sources of manganese, such as the power generation sector and the mining industry, will not be left unregulated – such sources will still have a technology-based effluent standard. For the mining industry, this technology-based standard is a 30-day average of 2.0 mg/L. The current in-stream water quality standard is 1.0 mg/L. Should the point of compliance for a standard of 0.3 mg/L move to the point of nearest water supply intake, increased treatment costs would only theoretically occur in situations where dilution does not reduce instream concentrations of manganese to at or below the current instream criterion of 1.0 mg/L. Further, the Department will still have the ability to impose a water quality-based effluent standard on any manganese point source if discharges from such sources results in water reaching the point of an intake having concentrations of manganese at or above 0.3 mg/L, or whatever level the Department establishes in its final rule.

DEP will have the ability, through modeling, to identify which points of water supply intake will be impacted by point sources of manganese and establish an enforceable water quality-based effluent standard on these sources. Such an approach would accord with a key tenet of our organization's policy on water quality management, which is that both point and non-point sources should be treated equitably and proportional to their contribution to water quality standard. Further, EQB and DEP are bound by the Regulatory Review Act to evaluate less-costly alternatives that achieve a similar end. If the department were to establish a new, in-stream water quality standard of 0.3 mg/L to protect public health, such a standard will be achieved in the most cost-effective manner by establishing the point of compliance at the point of intake, with upstream sources limited in their discharge based on a water quality-based effluent limits as necessary to protect water system users from ingestion of water containing concentrations above the risk-based value, as opposed to a situation where all sources of manganese discharge will be required to treat, at great expense, to achieve a level of 0.3 mg/L in the stream in immediate proximity to their discharge point even if there are no water supply intakes that require protection.¹

¹ PA Chamber members have reported cost estimates for new treatment works vary significantly depending on the total flow of discharged water, but costs to treat down a level of 0.3 mg/L in the receiving stream will nonetheless be substantial. These cost estimates range from \$1.3 million in equipment and construction costs for a facility with a flow of 50,000 gallon per day, which would then require \$65,000 in annual operations and maintenance costs, to more than \$11 million for a facility with 6 million gallons per day in flow and an accompanying expected annual o&m cost of nearly \$4 million.

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In closing, thank you for our consideration of the PA Chamber's comments on this matter. We welcome further discussion with EQB and Department staff on this matter, and stand willing to serve as a resource for further deliberations.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Sunday". The signature is written in a cursive style with a large initial "K" and "S".

Kevin Sunday
Director, Government Affairs