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LIMERICK
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September 25, 2020

Comments Submitted Via Email at RegComments@pa.gov

Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

Re: Proposed Rulemaking: Water Quality Standards for Manganese and Implementation (#7-553)/Comments of the Pennsylvania Municipal Authorities Association

Dear Sir/Madam:

INTRODUCTION

The Pennsylvania Municipal Authorities Association (“PMAA”) appreciates the opportunity to provide comments, through undersigned counsel, on the proposed revisions to the Department of Environmental Protection’s (“DEP”) regulations regarding manganese, specifically 25 Pa. Code Chapter 93 and 25 Pa. Code Chapter 96, which proposal was published by the Environmental Quality Board (“EQB”) on July 25, 2020 in the *Pennsylvania Bulletin*. PMAA is an association that represents the interests of over 700 municipal authorities in Pennsylvania, which collectively provide water, sewer, waste management and other services to over five million Pennsylvania citizens. Founded in 1941, the mission of PMAA is to assist authorities in providing services that protect and enhance the environment, promote economic vitality, and further the general welfare of the Commonwealth and its citizens. PMAA and its members, who are stewards of the environment, strive to provide the highest water quality possible to their customers and rate payers.

PROPOSED RULEMAKING

The above-referenced proposed amendments to DEP’s regulations address two discrete, but nonetheless related issues: (1) a change to the water quality criterion for manganese; and (2) determining the point of compliance for the water quality criterion for manganese. With respect to the two aforementioned issues, the proposed amendments delete manganese from Table 3 in 25 Pa. Code § 93.7 (relating to specific water quality criteria) and add manganese to Table 5 in 25 Pa. Code § 93.8c (relating to human health and aquatic life criteria for toxic substances). In other words, the proposed amendments delete the current water quality standard for manganese (1.0 mg/L) in 25 Pa. Code § 93.7 (which was established for the protection of the potable water supply), and add manganese

to the list of toxic substances in 25 Pa. Code § 93.8c (with a 0.3 mg/L criterion). According to the proposed rulemaking, the 0.3 mg/L criterion is “designed to protect human health from the neurotoxicological effects of manganese which will also ensure adequate protection of all water uses”. 50 Pa. B. 3724 (July 25, 2020). The proposed amendments then seek comments on the point of compliance with the new manganese water quality criterion, being either: (1) at the point of all existing or planned surface potable water supply withdrawals (e.g., the intake to the public water supply), or (2) in all surface water (e.g., near the point of discharge).

ACT 40 of 2017

Prior to specifically commenting on the proposed rulemaking, PMAA would like to address Pennsylvania’s Act 40 of 2017 (“Act 40”) because of its nexus to the proposed rulemaking. Act 40 directed the EQB “to propose a regulation that moves the point of compliance for manganese from the point of discharge to any downstream public water supply intake.” 50 Pa. B. 3724 (July 25, 2020). This mandate represents a fundamental change to both Pennsylvania’s regulations and the landscape of environmental rulemaking, by relocating the point of compliance for the discharge of a pollutant from the point of discharge to the public water supply intake. This dramatic shift to the regulatory point of compliance from discharger to public water supplier will have a deleterious economic effect on public water suppliers, by imposing on them more stringent and costly treatment requirements, which costs will ultimately be borne by the residents of Pennsylvania. By letter dated August 21, 2017, PMAA, along with other local government associations, urged the General Assembly, Governor Wolf and DEP Secretary Patrick McDonnell to reconsider the impacts that adoption of this fundamental change to the point of compliance would have on the people and environment of the Commonwealth of Pennsylvania. Notwithstanding this request, the General Assembly moved forward with the aforementioned change in the point of compliance for manganese. It is axiomatic that the process to propose and adopt environmental regulations more often than not involves the extensive review of complex data, scientific literature, economic information and health-related studies by DEP and the public, including stakeholders such as PMAA. This proposed rulemaking is no different. In any event, any effort to fundamentally change a well-established environmental regulation, such as the point of compliance for the discharge of a pollutant, must proceed through a rigorous rulemaking process, and be subject to the same scientific, economic and health-based scrutiny as any other environmental regulation.

MANGANESE WATER QUALITY CRITERION

With these amendments, the EQB proposes the adoption of a numeric water quality criterion for manganese, which criterion is designed to be protective of human health. As discussed earlier, the newly proposed 0.3 mg/L criterion will be added to Table 5 in 25 Pa. Code § 93.8c. Although Table 5 does not identify specific water uses to be protected by the proposed manganese criterion, it does identify the organisms to be protected by such criterion (aquatic life or human health). Because the proposed numeric health criterion for manganese (0.3 mg/L) is more stringent than the existing criterion, the

proposed rulemaking maintains that the potable water supply in Pennsylvania will be afforded appropriate protection from elevated levels of manganese when the human health criterion is applied in accordance with DEP policy and regulations. Therefore, by adding the 0.3 mg/L manganese criterion to Table 5, PMAA understands that the new criterion will be applied to all discharges into surface water in the same way that the existing 1 mg/L water quality standard for manganese is being regulated. Therefore, based upon PMAA's understanding of the proposed rulemaking, PMAA supports the decision to delete manganese from 25 Pa. Code § 93.7 and add the 0.3 mg/L manganese criterion to 25 Pa. Code § 93.8c. PMAA's position with respect to the newly proposed 0.3 mg/L criterion for manganese is based, in part, upon the proposed rulemaking's discussion of both the health effects from manganese exposure and DEP's review of critical peer-reviewed scientific literature and health based information and documents, including numerous human health studies related to the toxic effects of manganese.

THE POINT OF COMPLIANCE

Notwithstanding the above, the issue of paramount concern to PMAA with respect to the proposed rulemaking is the alternative points of compliance presented with respect to the manganese criterion. To reiterate, comments are requested for two alternative points of compliance: (1) all surface waters (with the point of compliance being at the discharge point) or (2) the point of all existing or planned surface potable water supply withdrawals. PMAA supports the long-standing point of compliance for manganese to be at the point of discharge, which point of compliance has been and is required by 25 Pa. Code § 96.3(c). ("To protect existing and designated surface water uses, the water quality criteria described in Chapter 93 (relating to water quality standards), including the criteria in §§ 93.7 and 93.8a(b) (relating to specific water quality criteria; and toxic substances) shall be achieved in all surface waters at least 99% of the time. . .) To the contrary, setting the point of compliance at the intake to a water treatment plant would represent a fundamental change in Pennsylvania, because it shifts the point of compliance from discharger to public water supplier. Significantly, foisting the entire economic burden of meeting the proposed manganese criterion on public water suppliers will translate to a significant and substantial cost to customers and ratepayers of such entities. Not to be overlooked is the fact that public water suppliers must also meet a Secondary Maximum Contaminant Level for manganese of 0.05 mg/L in finished water (*see* 40 C.F.R. 143.3); therefore, public water suppliers will be required to meet a manganese criterion or standard at both their intake and their point of discharge.

Moreover, under Pennsylvania law, a pollutant such as manganese, if identified as a toxic substance, is required to be controlled in all surface waters, the effect of which is to protect all applicable water uses. Therefore, not only will the shift in the point of compliance away from the discharger have an adverse impact on public water suppliers (and their customers and ratepayers), but it will likely also have unintended water quality consequences. If the point of compliance is moved, the manganese criteria would not apply to the discharger and, as a result, there would be absolutely no protection of either Pennsylvania streams or the water uses therein between the point of discharge and the

point of the downstream public water supply intake. In addition, by allowing more manganese to be deposited into the Commonwealth's surface water sediments, the result may be that manganese will become a legacy pollutant in the Commonwealth's surface waters, likely to impact generations of future Commonwealth residents.

PMAA would once again like to take the opportunity to thank the EQB for the opportunity to submit comments on such a significant proposed environmental rulemaking.

Very truly yours,

HAMBURG, RUBIN, MULLIN,
MAXWELL & LUPIN

By: 

STEVEN A. HANN

SAH:ll