

SUMMARY

A summary of comments to the Environmental Quality Board on the proposed revisions to Chapter 95 of the rules and regulations of the Department of Environmental Protection, 25 PA Code 95.1 et seq. pertaining to Wastewater Treatment Requirements.

1. The compliance costs analysis mentioned in paragraph F. of the preamble to the proposed regulatory revisions falls far short of a reasonable explanation. Some receiving streams have assimilative capacity for TDS well below a level considered to be pollution, even by DEP's current weak or unapplied standards under the current regulations. The proposed standard effectively prohibits certain discharges even though no water quality impacts may occur. For some dischargers this will pose a severe economic disincentive to establish or further develop a business that creates TDS, or worse, may force some businesses that would otherwise not have a water quality impact to close or move from the state. DEP is apparently proposing strict standards without a significant economic analysis.
2. The proposed revisions to Chapter 95 purport to decrease the level of sulfates in Pennsylvania's surface waters. The high sulfate concentrations mentioned in preamble paragraph F. are from anthracite and bituminous surface and deep coal mines and coal refuse disposal areas. Such discharges are exempt from more stringent requirements to control TDS. While the agency attempts to regulate wastewaters from Marcellus gas development and production within the Commonwealth, it quietly avoids addressing the high TDS discharged by the coal industry consistently over the last two centuries.
3. In previous testimony a commentator referenced an old (1988) EPA report recommending ambient water quality criteria for chlorides. If such criteria could be adopted under Chapter 93 (*Title 25 PA Code 93.1 et seq.*), and be protective of all water uses, why is the agency proposing unjustified statewide wastewater treatment standards now instead of utilizing specific water quality criteria to do so?
4. The definition for "new discharge" of high TDS wastewaters is vague. The terms *additional discharge*, *expanded discharge* and *increased discharge* are confusing. All three terms should be explicit.
5. What is the agency's position relative to the existing and sanctioned practice of spreading of oil and gas well brines on dirt and gravel roads for dust suppression, or the use of oil and gas well brines for antiskid purposes under general permit WMGR064?
6. While I completely agree that excessive TDS can be harmful to water quality uses, imposing the in-stream value to the effluent discharged with no consideration of in-stream background concentrations and no consideration of the stream's assimilative capacity is wrong, and does not advance environmental protection.
7. What is the existing list of dischargers that meet the standard of having a "TDS concentration that exceeds 2,000 mg/L or a TDS loading that exceeds 100,000 pounds per day"? The public needs to know the threat posed by these exempted dischargers.

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Environmental Quality Board
February 11, 2010
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Williamsport Sanitary Authority and Williamsport Municipal Water Authority

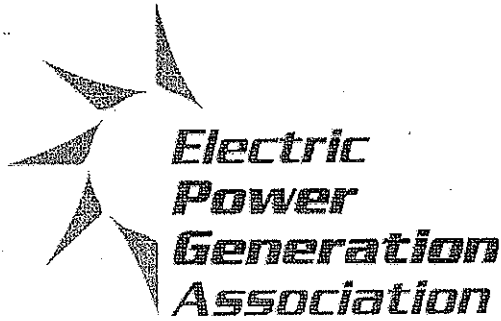
Summary of Comments on PA Code, Chapter 95 TDS proposed regulations which appeared in the PA Bulletin on November 7, 2009

The Williamsport Sanitary Authority and Williamsport Municipal Water Authority support the goals of the proposed regulation and need to develop a sound regulatory mechanism to protect the water quality and uses of Pennsylvania streams from potential problems associated with the emerging rapid development of the Marcellus shale for natural gas exploration and production.

Our authorities recommend focusing the new regulations solely on the specific natural gas development industrial wastewaters that are of concern, and not subjecting municipal publicly owned treatment plants (POTWs) and other industrial dischargers to statewide concentration effluent standards which could create onerous and costly treatment requirements where not needed to protect local receiving stream water quality. Municipal treatment plant customers such as ours are working on water quality solutions to such problems and are already dealing with staggering cost increases due to the Chesapeake Bay nutrient removal initiatives.

Our basic recommendation centers on the concept that Marcellus shale gas development wastewater leaving the wellpad should be required to be treated to a minimum standard as defined by the PA Department of Environmental Resources (Department) before it may be discharged to either directly to the waters of the Commonwealth or to a municipal publicly owned treatment plant (POTW). Any subsequent discharges should then be subject to the Department's existing legal authorities including its NPDES permitting protocols and use of Chapter 93 standards and criteria to protect local stream water quality and uses. A POTW receiving wastewater treated to the required standard would need to verify that the level of pretreatment was being met by the indirect discharger in conformance with the Department's standards, any subsequently promulgated federal pretreatment standards, and the federal pretreatment program requirements under 40 CFR 403.

We support the comments on this matter submitted by the Pennsylvania Municipal Authorities Association, recommend that the Department continue to work with the Water Resources Advisory Committee stakeholder subcommittee on this issue, and further recommend that the Department publish any revisions to the proposed regulations in the form of a draft for additional public comment prior to final adoption.



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February 9, 2010

**Subject: Proposed Rulemaking, Environmental Quality Board [25 PA. CODE 95],
Wastewater Treatment Requirements [39 Pa.B. 6467] [Saturday, November 7,
2009]**

Following is a one-page summary of the Electric Power Generating Association's comments to the Department of Environmental Protection (DEP) on the above referenced rulemaking:

The DEP has not provided an adequate basis for the new standards in the proposed rule. Simply adopting a secondary drinking water standard meant for aesthetics as an instream water quality criteria to protect aquatic life has no scientific basis and cannot be supported as a basis for the rulemaking. Any data used as a basis for a new standard must be properly evaluated as to its scientific validity.

It does not appear that DEP evaluated the available technologies for each different type of wastewater discharge that will potentially be affected. Part of the evaluation required by the DEP for a technology-based standard is the cost of the technology and whether or not the technology is commonly used for that purpose. More research should be conducted to determine if treatment methodologies are available and whether or not they can achieve effective treatment of TDS, sulfates and chlorides for all types of discharges including complex systems such as high-volume users and high-flow discharges. Available technologies capable of treating industrial and sanitary wastewater to the levels necessary to comply with the proposed standards are limited and are restricted to unique applications.

Existing treatment technologies capable of complying with the proposed limits will result in billions of dollars of construction and operating costs. These technologies will reduce the base flow of our waterways by a volume equivalent to 30% - 100% of the wastewater flows being treated, since the only options for treatment are highly water consumptive. Thousands of cubic yards of landfill space will be consumed. The DEP has not offered any justification for such extreme financial cost to consumers. The DEP has not offered any review or justification for the environmental costs these treatment technologies create. And the DEP has not presented any evaluation of why these controls are needed to protect water quality or aquatic life.

The DEP appears to have justified the new technology-based standards on the high TDS condition in the Monongahela River during the summer of 2008. However, a scientific study conducted on the Monongahela River during the high TDS event provided a mass balance of TDS loading to the river. The study showed industrial discharges contributed a relatively minor percentage of the total TDS loading to the river. Rather, the study showed the high TDS condition in the river was the result of extremely low river flow and pollution from AMD sources. The proposed standards on industrial sources along the Monongahela River would not have prevented the high TDS conditions in 2008 from occurring.

The Chapter 95 proposed effluent limitations should be developed to obtain successful and realistic cross-departmental permitting within the DEP and minimize conflict that may exist with federal standards. Efforts by a facility to meet requirements in one permitting program should not result in unintended negative permit implications in another program. As proposed, these regulations have the potential to impact many different industries and produce unintended consequences.

The DEP proposal should be tabled until all of these issues can be fully examined and re-proposed after all of the relevant facts have been considered through the WRAC stakeholder process, which EPGA supports.



CLEAN WATER ACTION

PENNSYLVANIA

4064

Proposed Rulemaking on 25 PA CODE Chapter 95, Wastewater Treatment Standards

Summary of Comments from Clean Water Action, joined by Earthjustice, Three Rivers Waterkeeper, and the Sierra Club.

Overall, we support the proposed effluent standards for high-TDS wastewater. We suggest several modifications to strengthen the proposed rule:

1. The DEP has the necessary statutory authority to set effluent limits for TDS, chlorides, sulfates, barium, and strontium, and should fully detail the basis of the proposal in the Preamble to the proposed regulation.
2. The Preamble to Chapter 95 should clarify the source of the statutory basis for "wastewater quality standards" under the Clean Streams Law, and clarify how the Chapter 95 effluent limitations differ from other state-level effluent limitation guidelines and water quality-based effluent limitations.
3. The proposed Chapter 95 standards should not replace pre-existing and possibly forthcoming Federal effluent limitation guidelines, best professional judgment, and water quality-based effluent limitations.
4. The DEP should clarify in the Preamble the process by which it arrived at the 500 mg/L limits for TDS and the 250 mg/L limits on total chlorides and sulfates.
5. The current state of treatment technology, including reuse and recycling processes, reverse osmosis with pretreatment, evaporation, crystallization, and mechanical distillation, is sufficiently advanced to meet the new effluent limits in Chapter 95. Several facilities in Pennsylvania and West Virginia are already capable of meeting these limits.
6. Chapter 95 should apply to existing dischargers upon their NPDES permit renewal.
7. The effluent limits should include a daily maximum in addition to a monthly average.
8. The DEP should promote additional water quality standards for chlorides and sulfates. DEP should additionally consider an effluent standard for bromides to address public drinking water safety.

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4065

February 12, 2010

**Comments to Pennsylvania DEP's Proposed
Revisions to Chapter 95 for:
Mepco, LLC
Dana Mining Company, LLC
Dana Mining Company of Pennsylvania, LLC
Coresco, LLC
Shannopin Materials, LLC**

1. Summary of Proposed Revisions to Chapter 95

In the November 7, 2009 *Pennsylvania Bulletin* (39 Pa. Bull. 6467), the Pennsylvania Department of Environmental Protection (the "Department") published proposed revisions to its water effluent standards for Total Dissolved Solids ("TDS"), sulfates, and chlorides in 25 PA. CODE § 95 that would require treatment of "new discharges" of "High-TDS wastewater" prior to release into Pennsylvania waters. These proposed revisions to 25 PA. CODE § 95 stem from the Department's *Permitting Strategy for High Total Dissolved Solids (TDS) Wastewater Discharges* (the "TDS Strategy"), notice of which was published in the *Pennsylvania Bulletin* on April 11, 2009 (39 Pa. Bull. 1926) and was followed by an announcement at a public meeting of the Marcellus Shale Wastewater Technology Partnership on April 16, 2009. According to the Department, the TDS Strategy was initiated by complaints in October 2008 of "unusually high levels" of TDS in the Monongahela River, levels that continued until the end of December 2008. These concentrations of TDS in the Monongahela River coincided with a period of very low flow in the river.

Pursuant to the proposed regulation, "High-TDS wastewater" is defined as any discharge with a TDS concentration that exceeds 2,000 mg/L or a TDS loading that exceeds 100,000 pounds per day that did not exist prior to April 1, 2009, while a "new discharge" is defined to include an additional discharge, an expanded discharge, or an increased discharge from a facility in existence prior to April 1, 2009. If enacted, these new discharges of High-TDS wastewater would be required to comply with new average monthly effluent limits of 500 mg/L for TDS, 250 mg/L for total chlorides, and 250 mg/L for total sulfates. These proposed limits for new discharges of High-TDS wastewater are not based on an express "technology-based" evaluation of the type customarily done to develop effluent limit guidelines. Rather, they appear to originate from Pennsylvania's secondary drinking water standards, adopted from the National Secondary Drinking Water Regulations, which are designed to protect public water supplies from aesthetic color, taste, and odor problems rather than guard against adverse human health risks.

**Summary of Comments
Of
Citizens for Pennsylvania's Future**

Proposed Amendments to 25 Pa. Code Chapter 95: "Wastewater Treatment Requirements"

- High-TDS wastewaters, largely from coal mines and gas drilling operations, threaten water quality across the Commonwealth.
- The proposed effluent standards for discharges of high-TDS wastewaters contained in 25 Pa. Code § 95.10(b) are an appropriate regulatory response to the threat of TDS pollution.
 - Existing, water-quality-based limitations on TDS do not protect against all effects of TDS pollution because they apply only at points of potable water supply withdrawal and do not consider industrial, aquatic life, and other water uses.
 - As a practical matter it is very difficult to perform modeling for point sources of TDS that is protective of all water uses because of the variety of uses and locations that must be considered, and because of uncertainties over the maximum instream levels necessary to ensure protection of each use, including uncertainties over how TDS interacts with other agents such as golden algae.
 - The proposed amendments' simple, bright-line, technology-based approach avoids the problems presented by a water-quality-based approach.
 - Control technologies that will allow dischargers to meet the proposed discharge limitations already exist and are in operation.
 - The proposed effluent standards will create incentives to develop new and less expensive treatment technologies.
- The proposed amendments at 25 Pa. Code §95.10(c)(1) and (2) make explicit an existing prohibition against discharging untreated gas drilling wastewater.
- The proposed limits on barium in treated gas drilling wastewater are adequate to protect public health and the environment.
- The proposed amendments should be extended in three ways:
 - The concept of "High-TDS Wastewater" and related applicability thresholds of TDS concentrations of 2,000 mg/L or a Loading of 100,000 pounds per day should be eliminated so that all sources of TDS are treated equally;
 - The proposed effluent standards should be applied to existing sources of TDS discharge when their NPDES permits are renewed or modified, so that existing, new, and expanded sources of TDS wastewaters are all treated equally; and
 - Because strontium seems to threaten the public health and environment only when it is present in radioactive form or in compound with chromium, the proposed effluent limitation for strontium in treated gas drilling wastewater is not necessarily protective of public health and the environment and should be replaced with effluent limitations on beta radiation and chromium.

4068

Summary

**COMMENTS OF
THE UTILITY WATER ACT GROUP (UWAG)
ON THE PENNSYLVANIA ENVIRONMENTAL QUALITY
BOARD'S PROPOSED RULE FOR NEW SOURCES OF WASTEWATERS
CONTAINING HIGH TOTAL DISSOLVED SOLIDS (TDS)**

Proposed Rulemaking
25 Pa. Code Ch. 95

Wastewater Treatment Requirements
39 Pa.B. 6467

Saturday, November 7, 2009

<http://www.pabulletin.com/secure/data/vol39/39-45/2065.html>

The Utility Water Act Group, a group of energy companies and their national trade associations, comments, first, that the proposed wastewater treatment requirements do not address the sources of wastewater that prompted the DEP to propose them in the first place. The DEP's concern is elevated levels of TDS in certain river segments during low flow, particularly in 2008, and wastewater from abandoned mines and natural gas production. But abandoned mine discharges are exempted, there is a separate "no-discharge" requirement for natural gas production, and the proposed requirements would not have prevented the high-TDS incidents of 2008.

Second, the proposed requirements are a conglomeration of drinking water standards, in-stream water quality concerns, and purported "treatment" (i.e., technology-based) requirements. But none of these three elements is consistent with clean water law. The drinking water standards are "welfare-based" standards for drinking water from the tap but are proposed as "treatment" requirements at the end-of-pipe. The proposal ignores water quality-based permit limits and the TMDL process. And the DEP has failed to analyze the cost, nonwater environmental impacts, and energy impacts of the requirements, as would be required for technology-based requirements.

For these reasons the proposed requirements appear to UWAG to be arbitrary and unreasonable. UWAG recommends using the Pennsylvania stakeholder process to develop a better approach to TDS pollution.

Allegheny Energy, Inc.
Comments to Proposed Rulemaking to Amend 25 Pa. Code Chapter 95
One Page Summary
February 11, 2010

The Proposed Rulemaking is flawed and lacks the support of a robust administrative record. It should be withdrawn for a number of reasons, including without limitation the following:

1. There Is No Rational Nexus between the Proposed Rulemaking and the Supposed Harm

The Department has not identified the sources of the TDS and related constituents in the Commonwealth's waters, and it therefore cannot know whether the controls on "new sources of high-TDS wastewaters" will address the perceived problem. Indeed, the Proposed Rulemaking ignores the thousands of existing municipal and industrial point source discharges and non-traditional point and non-point source discharges, many of which are known to discharge elevated levels of TDS, sulfate, and chlorides. DEP has made no effort to assess the contribution of these sources to the perceived harm. The sparse preamble to the Proposed Rulemaking lacks a meaningful factual or technical analysis. Given the enormous environmental and economic consequences of the Proposed Rulemaking, the DEP's analysis and technical support are inadequate.

2. The Department Failed to Follow Applicable Law and Its Own Guidance in Concluding that Waters Such as the Monongahela River Are Impaired for Total Dissolved Solids

The DEP has not attempted to conduct a meaningful statistical assessment of the watersheds or perform any type of "segment approach" for the watersheds. Rather, it has merely compared isolated samples to the water quality criteria and concluded that the waters are impaired based on occasional exceedances of the criteria. This overly simplistic approach is contrary to the applicable law and DEP's own decision rules for assessing potentially impaired water bodies.

3. The Environmental and Economic Costs of the Effluent Standards Will Exceed Any Possible Benefits Associated with Them

The DEP's estimate of the "order of \$0.25 per gallon" is misleading and itself potentially economically prohibitive. Submissions from various affected sectors estimate an economic cost that could be in the billions of dollars, and will have significant environmental costs in the forms of dramatically increased energy demand and solid waste generation. Clearly, the DEP failed to adequately consider the significant environmental and economic costs associated with the Proposed Rulemaking.

4. The Proposed Rulemaking Should Be Withdrawn for Further Consideration and, in the Interim, the Department Should Implement Remedies in Potential Problem Areas Using Existing, Well-Established Water Quality Controls

The DEP has a number of mechanisms to address TDS, sulfate, and chloride loadings in the Commonwealth's surface waters:

- a. Perform a TMDL on watersheds that the DEP appropriately demonstrates are impaired
- b. Implement a non-TMDL watershed-based approach
- c. Consider offsets or a trading program for TDS, chlorides, and sulfate

For these reasons, Allegheny Energy, Inc. strongly encourages the EQB to withdraw the Proposed Rulemaking and proceed under the existing regulatory framework designed to address such issues.

97.

Summary of Comments by Northeast Pa. Audubon Society to the Environmental Quality Board
Re: proposed amendments to Pa. Code 25 Chapter 95

Dear Sirs:

We are responding on behalf of our members of the Northeast PA Audubon Society, which has had a long record of supporting protection of the natural resources of the Commonwealth for the benefit of its residents and the environment.

We applaud your initiative in addressing the wastewater issues that will be exacerbated by the development of the Marcellus Shale by the gas industry, the vast quantities needed for drilling, and the treatment of the wastewater which can contain as many as 40,000 gallons of "fracing" chemicals. The DEP has already analyzed the high levels of Total Dissolved Solids in the rivers and streams of the state, identifying the toxics affecting aquatic life, as well as an increased risk of human bladder cancers. Because of this situation, strong action must be taken to curb any further increase of these compounds in our waterways. Thus, we support the proposed changes.

We are dismayed that the Water Resources Advisory Committee (WRAC) would consider further delaying of implementation of these rules by suggesting that a group of state-wide stakeholders develop appropriate solutions in lieu of rule-making. Past experience demonstrates that strong enforceable rules are the most effective way to cut pollution.

We believe that the DEP should, along with the new rules, tell the gas industry to adopt other better methods. These include:

- Using less toxic "fracing" chemicals by implementing best practices identified by researchers at Texas A&M University's Global Petroleum Research Institute, as a start.
- Using the methods of the offshore oil and gas drilling in European waters where chemicals must be non-toxic in case of spills into the waters.
- Mandating closed loop systems for managing wastewater, as well as steel tanks to contain the concentrated leftovers. The EPA is on record stating that closed loop systems can reduce the volume of drill fluids and chemicals by 90 percent.

The citizens and wildlife of this state must have a clean and reliable drinking water supply. Many of us in rural areas rely upon private wells for our water. We recognize the potential economic opportunities that the Marcellus Shale offers, but those opportunities should carry a responsibility by lessees and lessors and the government to ensure no harm to the surrounding environment they share with others. DEP has a responsibility to see that all necessary regulations are in place *and strictly enforced* for the best outcome. We are very concerned that without the very strongest regulation of the drilling process, our region and its people and wildlife will suffer irreversible harm, and that much of the environment of our state forests will be permanently disturbed, and that the wonderful diversity of wildlife will be changed forever.

Please take under consideration these comments and continue to develop the necessary rules that are allowed under The Clean Streams Law (35P.S. Paragraph 691.5)

This statement was approved by our board members for submission on December 24th, 2009.

Sincerely,



Katharine Dodge
President, Northeast Pa. Audubon Society

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DEC 28 2009

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ENVIRONMENTAL QUALITY BOARD

Proposed Amendments to 25 PA Code Part I, Subpart C, Article II, Chapter 95 -
Wastewater Treatment Requirements
39 Pa.B. 6467 – November 7, 2009
Doc. NO. 09-2065

- The Department has not demonstrated the need for the proposed amendments:
 - PADEP characterized the Fall, 2008 rise in TDS "historic", USGS data confirms that this is a recurring circumstance associated with drought conditions.
 - PADEP's laboratory data for TDS have been produced using an incorrect, unapproved test method which exaggerates results. EPA-approved methods specified at 40 CFR §136(a) and 40 CFR §143.4(b) must be followed in order to compare results to regulatory standards.
 - PADEP has incorrectly applied secondary drinking water MCL's to river water samples. 25 Pa. Code § 96.3(d) clearly instructs that standards for TDS, chloride and sulfate shall be met at least 99% of the time "at the point of existing or planned surface potable water supply withdrawals". Applicable surface water quality standards for river water samples exist at 25 Pa. Code §93.7.
 - Public health has not been threatened by TDS levels observed in the Mon River. PA's secondary drinking water standards incorporate non-enforceable federal guidelines, designed to protect aesthetic qualities of color, taste, and odor. According to EPA, health implications may exist at "considerably higher concentrations".
 - PaDEP has yet to publicly present documentation of a single sample, obtained at the correct location, tested using the correct method, demonstrating an exceedence of the secondary MCL or surface water quality standard for TDS in PA.
- PADEP has incorrectly associated the toxicity of disinfection byproducts with the broader category of TDS, which implies a human health threat and overstates the environmental threat from TDS. Yet the proposed amendments do not target (they don't even mention) DBP's.
- Cost effective treatment to remove TDS from wastewater does not exist. Energy intensive alternatives for evaporation or reverse osmosis would trade an aesthetic water quality condition for significant air emissions and residual waste disposal issues, at exorbitant cost.
- PADEP has not produced a meaningful economic analysis of implications of the proposed Chapter 95 amendments. Implications will not be limited to industrial dischargers, but would also affect publicly owned potable and sanitary treatment facilities. The term "new discharge" is sufficiently broad that existing discharges would soon be affected due to typical changes in water quality and treatment volume.
- The Chapter 95 amendments would impose over-restrictive rules, at great expense, and may cause further environmental harm. The amendments would have a chilling effect on projects to mitigate acid mine drainage from abandoned mines. AMDRI would have to cease operations.



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**Comments of
 The League of Women Voters of Pennsylvania
 Proposed Amendments to 25 Pa. Chapter 95 relating to Wastewater Treatment
 Requirements**

The League of Women Voters of Pennsylvania views the proposed regulations that would limit new, large, high-TDS (Total Dissolved Solids) dischargers, total chlorides and total sulfates as an important step in improving the water quality in the Commonwealth. High concentrations of TDS have caused problems for both industrial users and public water suppliers who draw from our rivers and streams.

Given the increasing amount of wastewater created by the growth in Marcellus Shale drilling and other sources, the LWVPA opposes the weakening of the proposed regulations and any extension of the implementation timeline.

The LWVPA has three recommendations to strengthen DEP's proposed standards.

- First, the TDS effluent standard should be changed ideally to a **daily maximum** or, at the least, a **maximum daily average**. A monthly average will not adequately protect drinking water and aquatic life against spikes of highly concentrated discharges. The best available technology should be used to monitor TDS effluent on a frequent basis. Dilution has proven to be an unreliable remedy for these multiple sources of pollution.
- Second, all TDS dischargers, both large and small, should be covered by the standard, particularly those that discharge any TDS concentration greater than 500 mg/L.
- Third, existing dischargers need to be covered as soon as possible or, at the least, when their permits are renewed. New sources and new discharges at existing sources should be covered immediately.

The LWVPA believes that the assimilative capacity, of our waters and streams should not be considered an appropriate treatment for industrial wastes. Strong standards can promote the development and implementation of the technology to treat high TDS wastes safely and economically.

We request that the Environmental Quality Board review its regulations for toxic wastes and support the development of a comprehensive monitoring system to identify contaminants, insure their proper treatment, and track water used, re-used, and discharged. Pennsylvania's history shows that failure to regulate in the present will cost taxpayers exponentially more for future cleanup and remediation. Furthermore, weak standards will encourage importation of waste water from other states, increasing the amount of TDS emissions in our waters.