

# ADMINISTRATIVE WATCH

## ADDRESSING ENVIRONMENTAL, ENERGY AND NATURAL RESOURCE ISSUES



### Proposed Designation of Monongahela River as “Impaired” Would Affect Industries in Southwestern Pennsylvania

On April 3, 2010, the Pennsylvania Department of Environmental Protection (“Department”) published its draft 2010 Integrated Water Quality Monitoring and Assessment Report (“Draft Integrated Report”) for public comment. In this Draft Integrated Report, the Department proposed to designate the majority of the Monongahela River in Pennsylvania as “impaired” for TDS, salinity, chlorides, and other inorganics (e.g., sulfates). Impairment status would significantly affect regulated entities that discharge concentrations of these pollutants into the Monongahela River.

Section 303(d) of the Federal Clean Water Act requires states to complete and submit a biennial Integrated Water Quality Monitoring and Assessment Report to the United States Environmental Protection Agency (“USEPA”) that lists all impaired surface waters in the state not able to support the specific uses of that water body (e.g., potable water supply uses), even after implementation of pollution control technologies and practices. Category 5 of this Draft Integrated Report includes surface waters that the state has proposed to designate as “impaired” for one or more pollutants. As impaired, these state surface waters will require the development of a Total Maximum Daily Load (“TMDL”) to attain applicable water quality standards. A TMDL accounts for all point and non-point sources of the specified pollutant and it sets a cumulative pollutant load limit that applies to all dischargers, so as to prevent a violation of water quality standards. The USEPA and state agencies use TMDLs to compel best management practices and set discharge limits in National Pollutant Discharge Elimination System (“NPDES”) permits.

The Pennsylvania section of the Monongahela River is approximately 90 miles long and consists of a series of locks and dams that divide the river into six unique “pools” of varying length. In the Draft Integrated Report, the Department has proposed to designate five of these pools as “impaired,” not including the pool closest to Pittsburgh. If the Department finalizes the Draft Integrated Report, thereby finalizing the impairment designation of the Monongahela River, a TMDL would be developed for TDS, salinity, chlorides, and other inorganics (collectively, “TDS”) in these five pools. The Draft Integrated Report does not reveal how the Department reached the decision to designate the Monongahela River as impaired, nor does the Department provide any supporting data for its designation. Moreover, the Department has not clarified its decision to assess the Monongahela River’s water quality across “pools,” rather than at the river’s 13 potable water supply withdrawal points, *i.e.*, the point of compliance for the TDS, chloride, and sulfate water quality criteria at 25 PA. CODE § 96.3.

Additionally, on May 1, 2010 the Department proposed a draft NPDES permitting guidance entitled “Coordinating National Pollutant Discharge Elimination Systems (NPDES) Permitting in the Monongahela River Watershed” that would apply to new dischargers, new sources, and expanding discharges that “contribute” a TDS or sulfate pollutant load to the watershed. In this guidance document, the Department has proposed to define “contribute” as “playing a significant part in bringing about a violation of a water quality standard.” If broadly applied by the Department, the proposed impact of this guidance on NPDES permitting in the Monongahela River Watershed would be immediate and widespread to operators discharging wastewater with TDS or sulfate concentrations.



BABST | CALLAND | CLEMENTS | ZOMNIR  
A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

[www.bccz.com](http://www.bccz.com)

#### Pittsburgh, PA

Two Gateway Center  
603 Stanwix Street  
6th Floor  
Pittsburgh PA 15222  
(412) 394-5400  
1-800-829-5695  
FAX (412) 394-6576

#### State College, PA

Suite 302  
330 Innovation Blvd.  
State College, PA 16803  
(814) 867-8055  
FAX (814) 867-8051

#### Sewell, NJ

380-A Tylers Mill Road  
Sewell, NJ 08080  
(856) 256-2495  
FAX (412) 586-1082

The public comment period for the Draft Integrated Report closed on May 17, 2010. In the next couple months, the Department will submit a Final Integrated Report to the USEPA for its review and comment. Copies of the Final Integrated Report and the Comment and Response Document will be made available to the public on the Department's website. The USEPA will then approve or disapprove the Final Integrated Report within 30 days of submission. USEPA has rarely disapproved an entire list submitted by a state, but it does often identify specific surface waters that should be added or removed from the state's Category 5 list.

For more information regarding this and other water discharge issues, contact Joseph K. Reinhart at (412) 394-5452 or [jreinhart@bccz.com](mailto:jreinhart@bccz.com).