

Rulemaking Review Committees Disapprove Proposed Water Quality Standard for Manganese

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As reported in Vol. 55, No. 3 (2022) of the *Water Law Newsletter*, the Pennsylvania House and Senate Environmental Resources and Energy standing committees (Standing Committees) and the Independent Regulatory Review Commission (IRRC) recently disapproved a proposed rulemaking to change the water quality criterion for manganese in Pennsylvania. The future of the rulemaking is now uncertain.

Proposed Changes to Manganese Water Quality Criterion

The proposed manganese rule would add a numeric water quality criterion for manganese of 0.3mg/L to Table 5 at 25 Pa. Code § 93.8c, which is intended to “protect human health from the neurotoxicological effects of manganese.” Executive Summary at 1, “Final-Form Rulemaking: Water Quality Standards and Implementation—Manganese” (Aug. 9, 2022). Section 93.8c establishes human health and aquatic life criteria for toxic substances, meaning the Pennsylvania Department of Environmental Protection (PADEP) would be regulating manganese as a toxic substance. The existing criterion of 1.0 mg/L, which was established in 25 Pa. Code § 93.7 as a water quality criterion, would be deleted. The 0.3 mg/L criterion would apply to all surface waters in the commonwealth. PADEP identified the parties affected by the manganese rule to be “[a]ll persons, groups, or entities with proposed or existing point source discharges of manganese into surface waters of the Commonwealth.” Executive Summary at 3.

PADEP also specifically identified “[p]ersons who discharge wastewater containing manganese from mining activities” as affected parties, and expects that mining operators would need to perform additional treatment to meet this criterion. *Id.* Final amendments to treatment systems would be implemented through PADEP’s permitting process and other approval actions. Consulting and engineering firm Tetra Tech estimated the overall cost to the mining industry to achieve compliance with the 0.3 mg/L standard “could range between \$44–\$88 million in annual costs (that is, for active treatment systems using chemical addition for manganese removal) and upwards of \$200 million in capital costs.” Comment and Response Document at 213, “Water Quality Standard for Manganese and Implementation” (Aug. 9, 2022).

Rulemaking History

The Pennsylvania Environmental Quality Board (EQB) adopted the proposed rulemaking in December 2019. See Proposed Rulemaking Preamble, “Water Quality Standard for Manganese and Implementation” (Dec. 17, 2019). This rulemaking was prompted by the addition of subsection (j) to section 1920-A of the Administrative Code of 1929, 71 Pa. Stat. § 510-20, by Act 40 on October 30, 2017. Act 40 directed the EQB to promulgate regulations under Pennsylvania’s Clean Streams Law, 35 Pa. Stat. §§ 691.1–.1001, and related statutes to require that the water quality criteria for manganese established under 25 Pa. Code ch. 93 be met.

On June 30, 2020, PADEP submitted a copy of the proposed rulemaking to the IRRC and to the chairpersons of the Standing Committees for review and comment. The proposed rulemaking was published in the *Pennsylvania Bulletin* on July 25, 2020, 50 Pa. Bull. 3724, with a 60-day public comment period that closed on September 25, 2020. Comments were received from 957 commenters, including testimony from 13 witnesses at the public hearings. Since the proposed rulemaking, PADEP met with the Mining and Reclamation Advisory Board, the Aggregate Advisory Board, the Public Water Systems Technical Assistance Center Board, and the Water Resources Advisory Committee to discuss the proposed rule. On August 9, 2022, the EQB voted to adopt the final manganese rule.

Recent Disapproval of Proposed Manganese Criterion and Possible Next Steps

After the EQB adopted the manganese rule as final at its August 9 meeting, the rulemaking was sent to the Standing Committees and the IRRRC. The IRRRC received over 30 comments on the rulemaking and heard in-person testimony from numerous interested parties, including members of the regulated industry. The Standing Committees and the IRRRC each voted to disapprove the rulemaking in early September. See IRRRC, “Regulation #7-553: Water Quality Standard for Manganese and Implementation,”

<http://www.irc.state.pa.us/regulations/RegSrchrslts.cfm?ID=3271>.

Because of these disapprovals, the manganese rule was not sent immediately to the Office of the Attorney General for final approval. Instead, the rule was sent back to the EQB, who can choose to withdraw the regulation or resubmit it—with or without changes—to the IRRRC and the Standing Committees within 40 days. If the EQB resubmits the rulemaking, the IRRRC will hold a second public meeting within 15 days, and the Standing Committees then receive the rulemaking and can issue a concurrent resolution disapproving the regulation within 14 days. If the Standing Committees do not issue a concurrent resolution, the rulemaking can become final after the Attorney General's approval. If the Standing Committees do issue a concurrent resolution, the rulemaking is sent to the General Assembly for a vote. If the General Assembly adopts the concurrent resolution, the General Assembly presents it to the Governor to sign or veto. If the General Assembly does not adopt the concurrent resolution, the rulemaking is sent to the Attorney General, who can approve the rulemaking. The regulation becomes final at publication in the *Pennsylvania Bulletin*. See 71 Pa. Stat. § 745.7; IRRRC, “The Regulatory Review Process in Pennsylvania,” at 17–22 (2019).

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