



PA Trout Unlimited
PO Box 5148
Pleasant Gap, PA 16823
www.patrou.org

Trout Unlimited National
1300 North 17th Street, 500
Arlington, VA 22209
www.tu.org



February 10, 2010

Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477
regcomments@state.pa.us

RE: Comments on Proposed Rulemaking, 25 PA Code, Chapter 95 Wastewater Treatment Requirements

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Oral Testimony Given on December 16, 2009

Written Comments Submitted February 11, 2010

Dear Environmental Quality Board:

Trout Unlimited is the nation's leading conservation organization dedicated to conserving, protecting and restoring North America's coldwater fisheries and their watersheds. We have over 12,000 members in Pennsylvania working at the grassroots level and we wish to present these comments on the proposed changes to 25 PA Code, Chapter 95.

Organizations and agencies, including Trout Unlimited, have worked for decades to clean up the waters of the Commonwealth and have spent billions of dollars and millions of man hours. Why would we allow all of those efforts to go to waste? Neither Pennsylvania Trout Unlimited (PATU) nor Trout Unlimited National believes that we should max out the assimilative capacity of our streams, especially now that we've finally cleaned many of them up and are working tirelessly to finish the job.

An end of pipe discharge limit set by DEP is a necessary tool. It will aid in protecting water quality and will provide a more stringent way to protect the designated uses of a stream. The proposed Chapter 95 standards place an important tool in the Pennsylvania Department of Environmental Protection's (DEP) toolbox – by requiring the burden of treatment and the requirement of water quality protection to be placed on the ***pollution discharger*** and **not** on the downstream users.

Chapter 95 – Establishing Technology Based Standards:

PA TU and Trout Unlimited National are supportive of regulations and policies that will better regulate wastewater and are protective of water quality and their designated uses as codified in 25 Pa. Code, Chapter 95. We understand that DEP has set this protective criteria based on sound science and best available technology. We understand that the technology is available to implement and effectively regulate end of pipe discharges that meet DEP's proposal of 500 mg/L for Total Dissolved Solids (TDS) and 250 mg/L each for Sulfates and Chlorides.

It is critical that any TDS wastewater effluent standard adopted by the DEP be protective of both drinking water uses and aquatic life. The proposed Chapter 95 standards will go a long way towards ensuring that federal drinking water standards are met across the state for TDS and regulation at the point of discharge will be helpful in assuring protection of aquatic life. Further, the proposed regulation is a welcome regulatory means to prevent impairment and to help avoid the need for a TMDL process. However to ensure both of these protections, the DEP must not weaken their proposed discharge standard for TDS. In fact, in some cases a more stringent criteria may be necessary dependent upon

a streams dilution capacity and the aquatic life and public health protection criteria set through Chapter 93. The following modifications are necessary to provide adequate protections for both drinking water and aquatic life:

- The TDS effluent standard should be stated as a daily maximum, not a monthly average. DEP should also clearly state that dilution of wastewater cannot be used to escape the applicability thresholds.
- All large TDS sources should be covered by the standard. New sources and new discharges at existing waste water facilities should be required to meet the TDS standards immediately. Existing sources of large TDS discharges should be eventually covered through the NPDES permit renewal process.
- The DEP should clarify how TDS will be measured and reported by dischargers. The current tracking system does not provide a clear “cradle to grave” process that is accurate and timely.

Effective Date: The Commonwealth needs these regulations to be in place as soon as possible to protect both aquatic life and drinking water sources. At a minimum, the DEP should ensure these regulations are in place at least by January 1, 2011. Additionally, until both Chapter 93 and 95 revisions are in place, or until a drilling operator can certify that the waste water generated will not be discharged into receiving surface water, the DEP should stop issuing drilling permits, which simply serves to increase existing wastewater loads in Pennsylvania streams. Drinking water standards for TDS have already been exceeded on multiple occasions.

Monitoring: DEP must take measures to ensure that waste water influent is adequately characterized and properly sampled to match those of its effluent sampling requirements. A minimum of at least a dozen pre-screening events would ensure a sampling average that would provide realistic assessment of the composition of any influent. Adequate staff and funding should be in place ensuring that waste water effluent is meeting the Chapter 95 regulations.

Pollution and Permitting: PATU and Trout Unlimited National also feel that the current set of regulations and policies are not adequate to regulate the groundwater and surface water impacts and the contamination that is occurring from all aspects of drilling operations. Continued permitting of well pads, production wells and pipelines, particularly in Exceptional Value (EV) and High Quality (HQ-CWF) watersheds without effective regulations that require monitoring wells, design standards, and surface and ground water protection plans is not fulfilling the Commonwealth’s stewardship responsibilities as required by its Constitution. We also strongly encourage DEP to: (1) not permit future well sites in floodplains, and (2) revoke all current permits issued in floodplains due to potential human health and environmental concerns.

Waste Water Reuse: While wastewater reuse is a beneficial opportunity for both the industry and our aquatic ecosystems, we are concerned about the lack of agency oversight in these operations. There needs to be better reporting about the percent of flowback water being reused, the quality of the water, and where the water is being reused. Additionally, water quality standards must be in place to ensure that the reused water is not contributing to additional contamination of drinking water sources and aquatic life.

Public Comment: PA TU and Trout Unlimited National also request that if and when the proposed rule is redrafted, the Department should afford the public another opportunity for additional public comment prior to adoption. Any redraft must effectively address the protection of water resources from the pollutants found in gas development wastewaters in a manner that focuses first and foremost on receiving stream protection and adequately controls wastewater pollutants of concern.

The Commonwealth has the duty and the authority to make these much needed regulatory changes to protect aquatic life and human health. Thank you.

Respectfully Submitted,

Dave Rothrock, President
PA Council of Trout Unlimited
daver2@comcast.net
570-745-3861

Elizabeth Maclin, Vice President for Eastern Conservation
Trout Unlimited National
emaclin@tu.org
703-284-9437