



New PADEP Permitting Strategy for High TDS Discharges Has Broad Implications

By M. Joel Bolstein

On April 11, the Pennsylvania Department of Environmental Protection (PADEP) released a document entitled "Permitting Strategy for High Total Dissolved Solids (TDS) Wastewater Discharges." At first glance, it doesn't sound like something that should have implications for landowners and real estate developers, but it could have a significant impact on them and a wide range of businesses.

In a nutshell, in the permitting strategy document PADEP unilaterally imposes a new method for addressing high TDS discharges. TDS is not a primary pollutant but it affects the aesthetic qualities of drinking water and is a potential indicator of chemical constituents in streams and ground water. Sources of high TDS are agricultural runoff and point source pollution from industrial facilities and sewage treatment plants. Up until now, PADEP has focused more attention on regulating the levels of hazardous substances in water discharges than it has on managing parameters like TDS.

According to PADEP, the justification for its new permitting strategy is a finding of high TDS concentrations in the Monongahela River and West Branch of the Susquehanna River. That surface water is used by power plants as a source of cooling water and the high TDS was causing operational issues. That supposedly triggered an internal PADEP analysis of its regulation of high TDS, which has led to this new permitting strategy. Many people also believe that the activities surrounding the production of oil and gas from the Marcellus Shale formation may also be a driver behind the new strategy.

Under the new permitting strategy, PADEP will be adopting and implementing a new treatment standard for high TDS sources and new in-stream water quality criteria for constituents that contribute to high TDS, such as sulfates and chlorides. A high TDS discharge is proposed to be anything that exceeds a TDS concentration of 2,000 mg/l or exceeds 100,000 pounds per day. Existing industrial dischargers, including power plants, chemical manufacturers, food processors, and mining and mineral producers, will be impacted inasmuch as many of them have discharge levels that would exceed the proposed limits. The technology required to treat high TDS discharges is very expensive, and its availability is limited. One solution, using reverse osmosis, could cost millions of dollars per facility, and it would still result in a highly concentrated waste material that would require off-site disposal. In addition to affecting industrial dischargers, the new limits will have a significant impact on municipal wastewater treatment facilities, which also discharge to surface water, and on the businesses that currently discharge into those municipal sewer systems.

Under the PADEP's new permitting strategy, no new or expanded high TDS wastewater source will be permitted unless the applicant proposes to install adequate treatment of TDS by January 1, 2011. How does this affect landowners and real estate developers? First, it will become a consideration in the siting of any new or expanded industrial facility in PA where the process generates

wastewater with high TDS. As a result, a company that was considering working with a developer on moving to PA or expanding its current operations in PA may chose to go to a state that has no or less stringent requirements for TDS. Second, landowners who have land available for such new or expanded industrial uses may find their land less desirable depending on the discharge stream or the capacity of a POTW to handle the high TDS discharges. Third, landowners who are looking to lease their property for development of oil and gas or who have been in negotiations over oil and gas leasing in the Marcellus Shale formation may find that the new permitting strategy has acted as a deterrent or that the amount of royalties being proposed is reduced by the increased cost of wastewater treatment for the high TDS discharges.

A number of groups representing the interests of PA businesses have come together in an effort to make PADEP aware of the broader implications of the new permitting strategy. Joel Bolstein is participating on a Task Force formed by the PA Chamber, and he is available to answer any questions or to work with you on comments on the permitting strategy or the draft regulations, which are expected to be distributed by PADEP in June or July.

For more information on this topic, contact Joel Bolstein at 215.918.3555 or jbolstein@foxrothschild.com.



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