



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460



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DEC - 8 2017

OFFICE OF WATER

Mr. David Clark, President
Pennsylvania Grade Crude Oil Coalition
Post Office Box 149
Mt. Jewett, Pennsylvania 16740

Dear Mr. Clark:

Thank you for your August 25, 2017, petition asking the U.S. Environmental Protection Agency to conduct rulemaking to reconsider the pretreatment standards for unconventional oil and gas (UOG) extraction facilities, finalized in June, 2016. Given the post-promulgation information referenced in your letter, you assert that the existing UOG rule is based on incorrect and incomplete facts, that the EPA failed to adequately consider the burden imposed on small businesses, that the basis for selecting the "zero discharge" option is not valid, and that the EPA failed to consider costs and non-water quality environmental impacts of the rule. In your petition and in your follow-up letter of November 6, 2017, you also asked the EPA for an administrative stay of the UOG rule or other relief from enforcement.

Your organization also filed a petition for review of the rule in the U.S. Court of Appeals for the Third Circuit on November 7, 2016. The EPA filed a motion (unopposed by your organization) for voluntary remand on August 31, 2017, which was granted by the Court on October 3, 2017. In the motion, the EPA discussed the post-promulgation information referenced in your letter, acknowledging that this information is inconsistent with the record for the rule. Further, the motion explained that the EPA requested the remand in order to consider any additional evidence relevant to the UOG rule, develop the record, and take any follow-up action as appropriate, including providing the public notice and an opportunity to comment as appropriate. Given that this remand was granted by the Court, and EPA is proceeding accordingly, this effectively addresses the request in your petition for reconsideration of the pretreatment standards.

Your letter also provides proposed remedies for the "errors" you have identified in the existing rule. The EPA will consider these remedies in determining the best course of action after the agency considers any additional evidence relevant to the UOG rule, in accordance with the remand. Furthermore, PGCC can raise any such remedies in any administrative process on remand.

Regarding your request for an administrative stay of the rule "until the rulemaking to reconsider the rule is complete," the EPA notes that there is no imminent need for such a stay. When the EPA first received the post-promulgation information indicating that some facilities were not meeting zero discharge during the time of rulemaking, the EPA extended the compliance deadline for such existing facilities from August 29, 2016 to August 29, 2019, the full three-year compliance period allowed for new pretreatment standards under the Clean Water Act. See 81 FR 88126. Accordingly, the Agency has sufficient time to consider the new information before any such facilities will be required to comply with the rule. Moreover, extending the date beyond three years for these operators would be inconsistent with the three-year statutory deadline for compliance with pretreatment standards in CWA section 307(b)(1). In

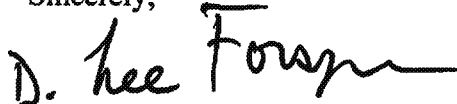
addition, there is no basis to stay the rule for "PA-defined operators" that were meeting zero discharge at the time of rulemaking as they were not sending wastewater to POTWs at the time of rulemaking, indicating that zero discharge is both available and economically achievable for these facilities.

Similarly, the EPA does not see a basis to stay the rule for new sources because, under the Clean Water Act, new sources are held to a standard at least as stringent as existing sources, and the vast majority of existing facilities do not send wastewater to a POTW and are required to meet zero direct discharge. In addition, there is no information in this petition to indicate that new sources in Pennsylvania are unable to meet the zero discharge requirement.

For these reasons, the EPA respectfully declines at this time to commit to a rulemaking to stay the 2016 rule, or to provide "enforcement relief" with respect to operators that are currently required to comply with the rule.

Again, thank you for your letter. If you have further questions, please contact me at (202) 564-5700 or you may contact Robert Wood, Director of Engineering and Analysis Division at (202) 566-1822 or wood.robert@epa.gov.

Sincerely,

A handwritten signature in black ink that reads "D. Lee Forsgren". The signature is written in a cursive style with a long horizontal flourish at the end.

D. Lee Forsgren
Deputy Assistant Administrator