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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

May 26, 1999

Honorable James M. Seif, Chairman  
Environmental Quality Board  
Rachel Carson State Office Building  
400 Market Street, 16th Floor  
Harrisburg, PA 17105

Re: Regulation #7-323(#1876)  
Wastewater Management

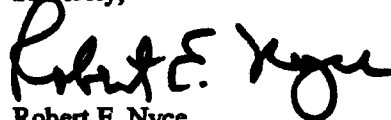
Dear Chairman Seif:

The enclosed Comments are in response to your Department's request in the Advanced Notice of Final Rulemaking published in the *Pennsylvania Bulletin* on April 24, 1999. We appreciate the opportunity to respond.

Pursuant to Subsection 5(g) of the Regulatory Review Act (71 P.S. § 745.5(g)), an action by our Commission to approve or disapprove the final-form regulation will be based primarily upon three factors. These three factors are our Comments dated October 22, 1997, changes made to the proposed regulation or comments from the House or Senate Environmental Resources and Energy Committees. Hence, the enclosed Comments are for your consideration but are not a substitute for our Comments dated October 22, 1997.

If you want to discuss these Comments, please contact Fiona Wilmarth at 783-5438.

Sincerely,



Robert E. Nyce  
Executive Director

REN:wbg  
Enclosure  
cc: Sharon Freeman  
Barbara Sexton

**COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION**  
**ON THE ADVANCED NOTICE OF FINAL RULEMAKING FOR**  
**ENVIRONMENTAL QUALITY BOARD REGULATION NO. 7-323**  
**WASTEWATER MANAGEMENT**

**MAY 26, 1999**

The Independent Regulatory Review Commission (Commission) has reviewed the captioned draft final regulation that was the subject of an advance notice of final rulemaking published by the Department of Environmental Protection (Department) in the *Pennsylvania Bulletin* on April 24, 1999. Pursuant to Section 5(g) of the Regulatory Review Act, the Commission submitted Comments on October 22, 1997, (Comments) to the Environmental Quality Board (EQB) on the proposed version of this regulation. The following issues were raised in the Commission's Comments and are still relevant to the draft final regulation.

1. In Section 91.1 the definitions of "National Pollutant Discharge Elimination System (NPDES) Permit" and "water quality management permit" remain unclear because the meaning of "requirements" is not explained. It is unclear when "requirements" would be considered the equivalent of a permit. (Comments, Issue 1, pages 1-2.) The EQB should clarify these definitions in the final regulation.

The definition of "industrial waste" remains unclear because it references "establishment" but does not define the term. (Comments, Issue 1, page 2.) The EQB should clarify the definition of "industrial waste" in the final regulation.

2. In response to our Comments on Section 91.15(a), the Department added language which clarifies that Chapter 16 is a policy statement. (Comments, Issue 2, page 2.) We have a remaining concern, however, because Subsection (a) requires compliance with Chapters 93, 95 and 16. A policy statement is an announcement that provides guidance to regulated entities, but does not constitute a binding norm. Consequently, if the EQB wants to require compliance with Chapter 16, it should be promulgated as a regulation. If Chapter 16 is intended only to provide guidance, the EQB should clearly state in the regulation that Chapter 16 contains non-binding guidelines.
3. Section 91.27(b)(1) states that the Department will publish a notice in the *Pennsylvania Bulletin* of its intent to issue or amend a general permit and will provide an opportunity for interested parties to file comments. In our Comments, we noted that publishing notice of applications for general permits in local newspapers and the *Pennsylvania Bulletin* would help to ensure that affected parties are aware of and have the opportunity to comment on a pending general permit. (Comments, Issue 3, page 2.) We suggest the EQB add this requirement or explain why it is not in the public interest to do so.

4. Section 91.27(b)(4) provides that the Department will review a notice of intent “for completeness or to determine if the wastewater treatment facility qualifies under the provisions of the general permit except as provided in Subsection (c)(1), (2) or [(4)] (5).” Subsection (c) lists five conditions which may result in the denial of coverage under a general permit. The EQB should explain why conditions (3) and (4) are not included in the list of exceptions in Section 91.27(b)(4).

We have identified the following issues and questions that result from the changes to the proposed rulemaking in the draft final regulation:

1. The Department has made several revisions to Section 91.6. The Department added language listing the preferred order in which measures for waste management should be considered. New language also states that “Pollution prevention measures used currently or proposed shall be encouraged and acknowledged in the water quality management permit application.”

The new provisions are not written in regulatory language; they provide guidance on waste management measures. These provisions would be more appropriately placed in a guidance document or policy statement and should be deleted from the regulation.

The Department is deleting the sentence which reads, “The term ‘practical’ is not limited to that which is profitable or economical.” The Department’s basis for the deletion is that this sentence might hinder pollution prevention efforts. We request the EQB explain how this sentence would hinder pollution prevention efforts.

2. The Department has added language to Section 91.34(b) which states that certain pollution prevention measures are preferred and that measures for pollutant handling or treatment should be considered in a certain order of preference. As previously discussed, the new provisions are not written in regulatory language. They would be more appropriately placed in a policy statement or guidance document and should be deleted from the regulation.
3. Section 91.36(a) is being revised to require certain animal manure storage facilities to comply with the publication entitled “Manure Management for Environmental Protection” and “The Pennsylvania Technical Guide.” At the proposed rulemaking stage, some commentators asserted that the “Manure Management for Environmental Protection” is outdated and doesn’t reflect the more recently updated guidelines in “The Pennsylvania Technical Guide.” (Comments, Issue 4, page 3.) Do these two publications contain overlapping requirements? Are the requirements in these publications consistent so that a facility will be able to comply with both?
4. Section 91.36(a)(2) references the “ ‘Manure Management for Environmental Protection’ prepared by the Department or the ‘Pennsylvania Technical Guide’ ....” (Emphasis added.) To be consistent with Section 91.36(a) which requires compliance with both documents, “or” should be changed to “and.”

MAY-26-99 WED 9:10

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# INDEPENDENT REGULATORY REVIEW COMMISSION

**To:** Shirley Hartman  
 or Cindy Lauderbach  
 or Denise Henke

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**Date:** May 26, 1999  
**# of Pages:** 4

RECEIVED  
 INDEPENDENT REGULATORY REVIEW COMMISSION  
 99 MAY 26 AM 9:22  
 (717) 783-2684

**Comments:** We are submitting the Independent Regulatory Review Commission's comments on the Environmental Quality Board's advance notice of final rulemaking regulation #7-323. Upon receipt, please sign below and return to me immediately at our fax number 783-2684. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Shirley Hartman Date: 5/26/99