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SECRETARY'S OFFICE

June 8, 1998

Hon. James M. Seif
Chairperson
Environmental Quality Board
16th Floor, Rachel Carson State Office Building
P.O. Box 8477
Harrisburg, PA 17105

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Re: Comments on Proposed Changes to 25 Pa. Code Chapter 109.

Dear Mr. Seif:

On behalf of the Ephrata Diamond Spring Water Co., we appreciate the opportunity to provide the following comments to the Environmental Quality Board with respect to the proposed amendments to 25 Pa. Code Chapter 109 (permit-by-rule for bottled water suppliers), as published at 28 Pa. Bull., 2265 (May 8, 1998).

Overall, Diamond Spring supports the efforts made by the Department to streamline and focus the regulatory process, as reflected in the proposed permit-by-rule for the bottled water industry. Diamond Spring believes that the proposed permit-by-rule will assist in avoiding unnecessary paperwork, while allowing Department staff and company quality managers to focus on the key objectives of the Safe Drinking Water Program - namely, the assurance of consistently safe and high quality water for the public.

Diamond Spring has only a few comments and suggested improvements to the proposed regulations.

109.1005(c)

The introductory language to Section 109.1005(c) of the permit-by-rule may unintentionally be interpreted to expand the scope of the permit amendment required and establish under Section 109.1005(e), Section 109.1005(c) of the proposed rule states:

The permit-by-rule does not apply to the addition of new sources or the expanded use of existing sources used by a bottle water system. For the addition of new sources or the expanded use of existing permitted sources, a permit amendment under subsection (f). Relating to permit amendment applications, shall be obtained.

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In referring to the "expanded use of permitted sources," this language in 109.1005(c) may be misread to enlarge the current requirement for permit amendments. The current regulations governing permit amendment applications found in Section 109.1005(e) do not require a permit amendment every time rate of use of a permitted source is changed. Existing 109.1005(e) states:

(e) *Permit Amendments Applications*. A bottled water system shall obtain a permit amendment before making a *substantial modification* to the public water system.

(1) A water supplier shall submit an application for a major permit amendment in accordance with subsection (d) [relating to permit applications], if the proposed modification constitutes a *major change* to the public water system.

(i) For bottled water systems...typical modifications which may be considered major changes are proposed new sources, additions, or deletions of treatment techniques or processes and new types of products.

(2) A water supplier shall submit a written request to the Department for a minor permit amendment if the proposed modification constitutes a relatively minor change to the public water system.

(i) For bottled water systems and retail water facilities, typical modification which can generally be accomplished under this paragraph include changes in treatment chemicals: construction of storage tanks designed to standard specifications; installation of replacement equipment; and changes in legal status, such as transfers of ownership, incorporation or mergers.

Thus, the current regulation require a permit amendment on for "substantial modifications" to a bottled water system. The permit amendment may be either a "major" permit amendment for "major changes" or a "minor" permit amendment for "minor changes" in accordance with the changes above, but in either case the permit amendment requirement is not triggered unless the modification is "substantial."

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The proposed amendment to 109.1005(c), however, appears to impose a permit amendment requirement for any "expanded use" of an existing source - although no definition is provided as to what constitutes an expanded use. As drafted 109.1005(c) might be read to require a permit amendment for any increased use of an existing sources, even though such an increase might not qualify as a "substantial modification" (either major or minor) under the current rule. Currently, after the Department has approved a source and its safe yield as part of an initial permit, increases in the amount of water actually withdrawn within that approved safe yield do not trigger a permit amendment.

In order to clarify the cross-reference in proposed 109.1005(c) to the permit amendment requirements, we suggest the following changes to the proposed rule:

The permit-by-rule does not apply to the addition of new sources or the expanded use of existing permitted sources used by a bottled water system. For the addition of new sources or the expanded use of existing permitted sources, a permit amendment under section (f), relating to permit amendment applications shall be obtained if required by subsection (f).

109.1005(c)(3)(i)

Diamond Spring also wishes to offer comments regarding proposed 109.1005(c)(3)(i). This subsection provides one of the proposed criteria for evaluating the acceptability of third-party evaluators of FDA compliance. Under the proposed provision, a prospective third-party evaluator would need to demonstrate to the Department that "it is independent of the bottled water systems using the organization's services."

Although designed to ensure the objectivity of third-party evaluations, with which we agree, this change could have the unintended effect of eliminating from the consideration industry organizations that have knowledge and information which would enable them to serve as particularly effective evaluators. The meaning of "independence" in this context is not clear from the language of the rule or the preamble. For example, some inspection organizations include membership of receive financial support from the bottled water companies they are inspecting.

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For example, some inspection organizations include membership of receive financial support from the bottled water companies they are inspecting. Eliminating such organizations from consideration may remove from consideration the entities that are perhaps best suited to undertake the evaluations.

A prior draft of this proposed rule amendment used the phrase "operationally independent." The requirement that prospective evaluators be operationally independent of the systems that will be evaluated would adequately serve to ensure the objectivity of the evaluations, while not eliminating from consideration the expert organizations who may have among their members companies from the bottled water industry.

Diamond Spring thanks the Board and the Department for the opportunity to provide these comments, and looks forward to working with the department in the continued refinements and implementation of these rules.

Very truly yours,



Rick Hess
President

RAH/jm

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Address Correction Requested

