

KIRKPATRICK & LOCKHART LLP

PAYNE-SHOEMAKER BUILDING
240 NORTH THIRD STREET
HARRISBURG, PENNSYLVANIA 17101-1507

TELEPHONE (717) 231-4500
FACSIMILE (717) 231-4501
www.kl.com

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SECRETARY'S OFFICE

R. TIMOTHY WESTON
(717) 231-4504
westonrt@kl.com

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June 8, 1998

VIA HAND CARRY

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

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

Dear Mr. Seif:

On behalf of the Perrier Group of America, Inc. ("PGA"), 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, PGA 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. PGA 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.

PGA 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 requirements established under current Section 109.1005(e). Section 109.1005(c) of the proposed rule states:

Hon. James M. Seif, Chair
Environmental Quality Board
June 8, 1998
Page 2

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 subsection (f), relating to permit amendment applications, shall be obtained.* (emphasis added)

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 Amendment 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 modifications which can generally be accomplished under this paragraph include changes in treatment chemicals; construction of storage tanks designed to standard specifications; installation of

Hon. James M. Seif, Chair
Environmental Quality Board
June 8, 1998
Page 3

replacement equipment; and changes in legal status, such as transfers of ownership, incorporation or mergers.

(emphasis added)

Thus, the current regulations require a permit amendment only 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 examples above, but in either case the permit amendment requirement is not triggered unless the modification is "substantial."

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 change 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 subsection (f), relating to permit amendment applications, shall be obtained if required by subsection (f).

§109.1005(c)(3)(i)

PGA 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."

Hon. James M. Seif, Chair
Environmental Quality Board

June 8, 1998


Page 4

Although designed to ensure the objectivity of third-party evaluations, with which we agree, this change could have the unintended effect of eliminating from 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 or receive financial support from the bottled water companies, although the organization's inspectors are independent from the 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.

PGA thanks the Board and the Department for the opportunity to provide these comments, and looks forward to working with the Department in the continued refinement and implementation of these rules.

Very truly yours,



R. Timothy Weston