



**INDEPENDENT REGULATORY REVIEW COMMISSION
COMMONWEALTH OF PENNSYLVANIA
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**(717) 783-5417
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July 9, 1998

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

**Re: IRRC Regulation #7-337 (#1948)
Environmental Quality Board
Bottled Water Systems; Permit by Rule**

Dear Chairman Seif:

Enclosed are our comments on your proposed regulation #7-337. These comments outline areas of concern raised by the Commission. The comments also offer suggestions for your consideration when you prepare the final version of this regulation. These comments should not, however, be viewed as a formal approval or disapproval of the proposed version of this regulation.

If you or your staff have any questions on these comments or desire to meet to discuss them in greater detail, please contact Chuck Tyrrell at 772-3455. He has been assigned to review this regulation.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Nyce".

**Robert E. Nyce
Executive Director**

REN:cae

**cc: Sharon Freeman
Barbara Sexton
Office of General Counsel
Office of Attorney General
Pete Tartline**

COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION

ON

ENVIRONMENTAL QUALITY BOARD REGULATION NO. 7-337

BOTTLED WATER SYSTEMS; PERMIT BY RULE

July 9, 1998

We have reviewed this proposed regulation from the Environmental Quality Board (EQB) and submit for your consideration the following objections and recommendations. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) specify the criteria the Commission must employ to determine whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to the reasonableness and clarity of the regulation. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

1. Section 109.1005 Permit Requirements – Clarity and Reasonableness

We have several concerns with the new permit by rule provisions that need to be addressed by the EQB. First, two commentators expressed a concern that amendments to Section 109.1005(c) will expand the requirements for permit amendments. The commentators believe that the reference to “expanded use of permitted sources” may require a permit amendment. The commentators observe that a permit amendment is not currently required in this case.

It is our understanding that EQB did not intend to expand the permit requirements. To improve the clarity of the rulemaking, the EQB should clarify its intent of this new provision.

Second, Subsection (c)(1) references protocols that may be used by the DEP in determining if the bottled water system uses permitted groundwater that is not under the direct influence of surface water. The EQB needs to identify what protocols the DEP may use in making this determination.

Third, Subsection (c)(3)(i) requires that the third party evaluator must be independent from the bottled water industry. Two commentators expressed concern over what criteria the DEP will use to determine whether or not a third party evaluator is independent from the bottled water industry. We recommend the EQB further define or explain how “independence” from the bottled water industry will be determined.

Finally, Subsection (c)(5)(ii) allows validation of treatment technologies by “protocols established by organizations such as, but not be limited to, NSF, the American Water Works Association Research Foundation and the EPA Technology Verification Program.” We question what other organizations will be acceptable to the DEP. We suggest that the Department annually publish a list of organizations whose standards it deems acceptable.

INDEPENDENT REGULATORY REVIEW COMMISSION

To: Shirley Hartman
or Cindy Lauderbach
or Denise Henke
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From: Kristine M. Shomper
Deputy Director for Administration
Company: Independent Regulatory Review
Commission
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Date: July 9, 1998
of Pages: 3

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Environmental Quality Board's regulation #7-337. Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Shirley A. Hartman Date: 7/9/98