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

September 15, 2000

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

Re: Regulation #7-352 (IRRC #2123)
Environmental Quality Board
Coal Refuse Disposal

Dear Chairman Seif:

Enclosed are our Comments. They will soon be available on our website at www.irrc.state.pa.us.

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce
Executive Director

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Enclosure

cc: Honorable Arthur D. Hershey, Majority Chairman, House Environmental Resources & Energy Committee
Honorable Camille George, Democratic Chairman, House Environmental Resources & Energy Committee
Honorable Mary Jo White, Chairman, Senate Environmental Resources & Energy Committee
Honorable Raphael J. Musto, Minority Chairman, Senate Environmental Resources and Energy Committee
Sharon Trostle
Barbara Sexton

Comments of the Independent Regulatory Review Commission

on

Environmental Quality Board Regulation No. 7-352

Coal Refuse Disposal

September 15, 2000

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which has not been met. The Environmental Quality Board (EQB) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by August 16, 2002, the regulation will be deemed withdrawn.

1. Section 88.310. Coal refuse disposal: general requirements. - Clarity.

Subsection (k) requires installation of a system to prevent precipitation from contacting the coal refuse when an operation temporarily ceases for more than 90 days “unless the Department approves a longer period....” Under 52 P.S. § 30.56a(i), the Department may approve a longer period “for reasons of a labor strike or business necessity.” For improved clarity, the EQB should specify the conditions under which the Department will extend the 90-day period, and the criteria it will use to determine a “business necessity.”

2. Section 90.1. Definitions. - Clarity.

Public recreational impoundment

This definition is taken directly from 52 P.S. § 30.53(10.1). Rather than repeating the definition, the EQB should consider simply referencing the statute.

Operator

This term is used throughout the regulation, but is not defined. For clarity, the EQB should include a reference to the definition of “operator” in 52 P.S. § 30.53(8).

3. Section 90.5. Site selection and permitting. - Clarity.

Subsection (a) refers to “coal refuse disposal activities.” The term “coal refuse disposal operations” is used in the preamble and in other sections of the regulation, such as Section 90.49. In the Act and Subchapter F, Section 90.302, “coal refuse disposal activities” is the defined term. If these terms have the same meaning, “coal refuse disposal activities” should be used consistently and exclusively throughout the regulation. If these terms have different meanings, each term should be separately defined.

4. Section 90.13. Groundwater information. - Clarity.

In the permit application requirements, Subsection (2) requires “[s]pecific attention shall be given to describing the groundwater flow system....” The phrase “specific attention” is vague. The EQB should consider revising this provision to simply require a description of the groundwater flow system.

5. Section 90.49. Stream buffer zone variance. - Consistency with the statute; Clarity.

Subsections (a) and (c)

Under 52 P.S. § 30.56a(h)(5), a variance can be granted under certain circumstances “to dispose of coal refuse *and to relocate or divert streams in the stream buffer zone.*” (Emphasis added.) Subsections (a) and (c) do not include the statutory variance to relocate or divert streams. For consistency with the statute, the EQB should revise Subsection (c) to address stream relocation or diversion.

Subsection (b)

This subsection uses the phrase “[c]oal refuse disposal operations other than coal refuse disposal.” What are “coal refuse disposal operations other than coal refuse disposal”?

Subsection (c)(1)

This subsection states “Stream buffer zone variances will only be granted if the operator *demonstrates to the satisfaction of the Department* that the coal refuse disposal will not adversely affect water quality and quantity....” (Emphasis added.) It is unclear how an operator can make the required demonstration. The final-form regulation should include the criteria the Department will use to judge if an operator has made an adequate demonstration.

6. Section 90.50. Design criteria: groundwater and surface water protection system. - Clarity.

Subsection (c) requires a permit application to include a description of the site’s susceptibility to mine subsidence. The description must include “particular attention to subsidence-induced impacts or other physical or chemical processes that could adversely affect the operation of the systems.” The regulation does not specify the physical or chemical processes that must be addressed. As a result, the party submitting the permit application may not know exactly what information must be included in the application.

In the final-form regulation, the EQB should clarify the meaning of “other physical or chemical processes.” Additionally, the phrase “particular attention” is vague and should be clarified.

7. Section 90.122. Coal refuse disposal. - Clarity.

In the *Pennsylvania Bulletin* publication of the proposed rulemaking, the right bracket showing the deletion of Subsection (g) was inadvertently omitted. This bracket should be included in the final-form regulation.

8. Section 90.167. Cessation of operations: temporary. - Clarity.

Subsection (d) states that, "The department may approve a longer period, not to exceed 1 year, for reasons of a labor strike or *business necessity*." (Emphasis added.) The EQB should specify what it considers to be a "business necessity."

9. Section 90.201. Definitions. - Consistency with statute; Clarity.

Search area

This definition contains a substantive provision in the last sentence. The EQB should move the last sentence to Section 90.202(b).

10. Section 90.202. General requirements. - Consistency with statute; Clarity.

Subsection (c)(2) states "[t]he site is known or is likely to contain Federally listed threatened or endangered plants or animals...." The phrase "or is likely to" does not appear in 52 P.S. § 30.54a(b). The EQB should delete the phrase "or is likely to."

11. Section 90.203. Proposing a preferred site. - Clarity.

This section appears to reiterate the requirements listed in Section 90.202. If Section 90.203 does not add new requirements, it should be deleted.

12. Section 90.302. Definitions. - Clarity.

General

The definitions of "actual improvement," "coal refuse disposal activities," and "pollution abatement area" are taken directly from 52 P.S. § 30.53. Rather than repeating these definitions, the EQB should consider simply referencing the statute.

Best professional judgment

The phrase "reasonably available data" is not clear. The EQB should specify what it considers "reasonably available data."

13. Section 90.303. Applicability. - Need; Clarity.

Subsection (a) rephrases the parallel statute language at 52 P.S. § 30.56b(b). The EQB should explain the need to alter the statutory language.

14. Section 90.304. Application for authorization. - Clarity.

In Subsection (a)(2)(ii), what criteria will the EQB use to determine "other water quality parameters the Department deems relevant"? How will the operator be informed?

15. Section 90.306. Operational requirements. - Need; Clarity.

Section 90.306(4) requires operators to submit progress reports to the Department within 30 days of completing each step of an abatement program including “a notarized statement signed by the operator, and if required by the Department, a statement signed by the supervising engineer....” Why must these statements be notarized?

Additionally, the phrase “if required by the Department is unclear.” When would a statement signed by the supervising engineer be required? Does this statement also have to be notarized?

INDEPENDENT REGULATORY REVIEW COMMISSION

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or Cindy Lauderbach
or Denise Henke

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Date: September 12, 2000

of Pages: 6

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Environmental Quality Board's regulation #7-352 (#2123). 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 Hartman Date: 9/15/00

RX TIME 09/15 '00 08:54

