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

November 3, 2000

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

Re: Regulation #7-356 (IRRC #2133)
Environmental Quality Board
Administration of Land Recycling Program

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, Regulatory Coordinator, Environmental Quality Board
Barbara Sexton, Director of the Policy Office, Environmental Quality Board

Comments of the Independent Regulatory Review Commission

on

Environmental Quality Board Regulation No. 7-356

Administration of Land Recycling Program

November 3, 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)) that has not been met. The Environmental Quality Board (Board) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by October 4, 2002, the regulation will be deemed withdrawn.

1. Section 250.5. Public notice by applicant. - Clarity.

Subsection (d)

Subsection (d) states "the remediator shall send notice to every municipality and community water supplier servicing the area...." Will the remediator have to "send notice" through first class or registered mail? Will notice by phone or electronic mail suffice? The final-form regulation should include a clarification of the notice requirement.

Subsection (e)

Subsection (e) begins with the phrase "Upon receipt of a request...." What constitutes "receipt"? Additionally, upon receipt, the "municipality and community water supplier shall have 45 days to indicate... any information relevant to the requirements of § 250.303." When does the 45-day time frame begin? The final-form regulation should indicate how receipt is documented.

2. Section 250.6. Public participation. - Reasonableness; Clarity.

Subsection (e) requires a person making a precertification determination request for a non-use aquifer to develop and implement a public involvement plan. We have a number of concerns regarding this subsection.

First, this subsection requires that a public involvement plan "... shall be developed by the person making a precertification determination request under § 250.303(f)...." Section 250.303(f) allows only municipal authorities and political subdivisions to make a precertification determination request. Is this the intent? Should a company interested in remediating the site also be able to develop a public involvement plan?

Second, Subsection (e)(2) requires a person making a pre-certification determination request to implement a public involvement plan. One component of the public involvement plan is a 90-

day comment period. How was the 90-day time frame time determined? Would 45 or 60 days be sufficient time for local governments to respond?

Third, Subsections (c)(1) and (e)(3) require the public to have access to documentation at “convenient locations.” For clarity, examples of “convenient locations” should be included in these subsections in the final-form regulation.

Fourth, Subsections (c)(1) and (e)(3) should require the documentation to be available to the public at *convenient times*. They should include examples of convenient times.

Finally, Subsections (c)(1) and (e)(5) require “A location near the proposed nonuse aquifer designation site for any public hearings and meetings....” The word “near” is vague and needs clarification.

3. Section 250.303. Aquifer determination; current use and currently planned use of aquifer groundwater. - Consistency with the statute; Clarity.

We have several concerns with Subsection (f). First, the regulation refers to “receipt of a nonuse aquifer determination request, and receipt of the required public involvement plan.” The final-form regulation should clarify what constitutes “receipt.”

Second, Subsection (f) establishes a three-year expiration date for a nonuse aquifer determination made under this subsection. How was the three-year period determined? Would a longer period of time suffice? Additionally, what does the renewal process entail? Is another public involvement plan required?

Finally, under this subsection, the nonuse aquifer determination “may be updated at any time additional *relevant* information comes to the attention of the Department.” (Emphasis added.) For clarity, the final-form regulation should include examples of what type of information would be considered relevant to updating a nonuse aquifer determination.

4. Section 250.311. Evaluation of ecological receptors. - Clarity.

Subsections (c) and (d) address “Constituents of Potential Ecological Concern (CPECs) associated with a release at the site....” Does “release” refer to any historical release on the site, or only the release that is currently being remediated?

5. Section 250.707. Statistical tests. - Clarity.

There are several concerns with this section. First, Subsection 250.707(b)(1)(iii) uses the phrase “full site characterization.” It is our understanding that the required components of a “full site characterization” are listed in existing Subsections 250.204(b) - (e). If so, Subsection 250.707(b)(1)(iii) should cross-reference the subsections that describe a “full site characterization.”

Second, the regulation only addresses situations in which a “full site characterization” has not been done in association with an excavation remediation. What requirements apply when a “full site characterization” has been done?

Third, does Subsection 250.707(b)(1)(iii) pertain only to underground storage tank systems or does it involve releases in other situations?

Finally, Subsection 250.707(b)(1)(iii)(C) states: "All sample results shall meet the Statewide health standards." The subsection should cross-reference or identify the appropriate "Statewide health standards."

6. Appendix A, Medium-Specific Concentrations (MSCs) for Organic Regulated Substances, Physical and Toxicological Properties. - Consistency with other regulations; Reasonableness; Clarity.

Part of this regulation was a correction of typographical and calculation errors in Appendix A. This is a continual process. BP Exploration & Oil, Inc., Pennsylvania Electric Association, PPL Generation LLC and Energy Association of Pennsylvania noted the need for additional corrections. The Appendix should be reviewed and corrected in developing the final-form regulation.

In particular, there is a concern with the standards and calculations for polychlorinated biphenyls (PCBs). The Energy Association of Pennsylvania noted that the standards and calculations for PCBs in the proposed regulation are inconsistent with and more stringent than the federal standards of the U.S. Environmental Protection Agency. The standards for monitoring PCBs need to be clarified. If they are more stringent than comparable federal standards, the need for the higher standards should be justified.

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: November 3, 2000
of Pages: 6

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Environmental Quality Board's regulation #7-356 (#2133). Upon receipt, please sign below and return to me immediately at our fax number 783-2864. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Shirley Hartman Date: 11/3/00

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