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

February 2, 2005

Honorable Kathleen A. McGinty, Chairperson
Environmental Quality Board
Rachel Carson State Office Building
400 Market Street, 16th Floor
Harrisburg, PA 17101

Re: Regulation #7-393 (IRRC #2451)
Environmental Quality Board
Hazardous Waste Management System; Proposed Exclusion for Identification and Listing
Hazardous Waste

Dear Chairperson McGinty:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary S. Wyatt", is written over the word "Sincerely,".

Mary S. Wyatt
Acting Executive Director/Chief Counsel

evp

Enclosure

cc: Honorable William F. Adolph, Jr., Majority Chairman, House Environmental Resources and Energy Committee
Honorable Camille George, Democratic Chairman, House Environmental Resources and Energy Committee
Honorable Mary Jo White, Chairman, Senate Environmental Resources and Energy Committee
Honorable Raphael J. Musto, Minority Chairman, Senate Environmental Resources and Energy Committee

Comments of the Independent Regulatory Review Commission

on

Environmental Quality Board Regulation #7-393 (IRRC #2451)

**Hazardous Waste Management System; Proposed Exclusion for Identification
and Listing Hazardous Waste**

February 2, 2005

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Environmental Quality Board (EQB) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on January 3, 2005. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

1. General. – Protection of the public health, safety and welfare.

The public commentators advocate continuing existing methods for recovery of metals prior to the disposal of Electric Arc Furnace Dust (EAFD). Will delisting EAFD result in placing recoverable materials in landfills? If so, why is delisting 300,000 cubic yards of EAFD per year in the public interest?

2. Section 261a.32. Hazardous wastes from specific sources. – Clarity.

Paragraph (3) Changes in Operating Conditions

The phrase “approved EAFD generators” is used in Subparagraph (3)(i). Who are “approved EAFD generators” and how do they obtain approval?

Subparagraph (3)(i) uses the phrase “significantly changes” twice. There could be disagreement over what constitutes a “significant change.” How will the petitioner know when this limit is reached? How will the Department enforce this provision?

The last sentence of Subparagraph (3)(i) requires notice, but does not specify when. The regulation should state the time limit in which the petitioner must notify the Department.

Paragraph (4) Data Submittals

Subparagraph (v) requires data to be maintained on site. As long as the data is available for inspection, why must the data be maintained on site?

Paragraph (5) Reopener Language

Subparagraph (i) requires reporting to the Department if “any constituent identified in paragraph (1) is at a level in the leachate higher than the Toxicity Characteristic (40 CFR 261.24)” A commentator observed that nickel is listed in Paragraph (1) but is not listed in 40 CFR 261.24. The EQB should review these lists and address any discrepancies.

Subparagraph (i) also requires reporting to the Department based on “specific facility action levels.” The regulation should state where these levels are listed.

Facsimile Cover Sheet

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2005 FEB -2 AM 11:02
INDEPENDENT REGULATORY REVIEW COMMISSION

To: Debra L. Failor
Agency: Department of Environmental Protection
Phone: 7-2814
Fax: 705-4980
Date: February 2, 2005
Pages: 4

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Environmental Quality Board's regulation #7-393 (IRRC #2451). 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: *Debra L. Failor* Date: 2/2/05