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KIM KAUFMAN, EXECUTIVE DIRECTOR
LESLIE A. LEWIS JOHNSON, CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

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

October 31, 2007

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

Re: Regulation #7-412 (IRRC #2633)
Environmental Quality Board
Safe Drinking Water - General Update

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 me.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

cc: Honorable Mary Jo White, Chairman, Senate Environmental Resources and Energy Committee
Honorable Raphael J. Musto, Minority Chairman, Senate Environmental Resources and Energy Committee
Honorable Camille George, Majority Chairman, House Environmental Resources and Energy Committee
Honorable Scott E. Hutchinson, Minority Chairman, House Environmental Resources and Energy Committee

Comments of the Independent Regulatory Review Commission

on

Environmental Quality Board Regulation #7-412 (IRRC #2633)

Safe Drinking Water - General Update

October 31, 2007

We submit for your consideration the following comments on the proposed rulemaking published in the September 1, 2007 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Environmental Quality Board (Board) to respond to all comments received from us or any other source.

1. General - Fiscal impact; Consistency with other regulations; Reasonableness; Implementation procedure; Clarity.

On September 27, 2007, Richard A. Rogers, Chief, Drinking Water Branch, U.S. Environmental Protection Agency, Region III (EPA III), submitted written comments on this proposed regulation to the Board. The EPA III comments raised several issues related directly to our criteria. Its comments contained suggestions and recommendations designed to bring the Pennsylvania regulations into greater consistency with the federal rules. We share the same comments, suggestions and recommendations expressed by EPA III and incorporate them into the Commission's comments on this proposed regulation.

The Pennsylvania State Association of Township Supervisors (PSATS) submitted written comments expressing concerns with the "cumulative impact on the cost of complying with increasingly stringent regulations." It is especially concerned with the impact on small water systems across the state, including more than 3,300 systems that each serves fewer than 500 people. While most of the regulations are federal mandates, these added costs bear an impact, particularly on smaller systems. In developing the final-form regulation, the Board and Department of Environmental Protection (DEP) should thoroughly examine the fiscal impact of the regulations on smaller water systems.

2. Section 109.301. General monitoring requirements. - Reasonableness; Implementation procedure; Clarity.

In addition to EPA III, another commentator noted a concern related to waivers in Subsection (5)(viii). Paragraph (C) in this subsection reads: "A waiver is effective for one compliance period and may be renewed in each subsequent compliance period." The commentator suggests that the regulation should make it clear that the water supplier is responsible for submitting the renewal application. We agree. The final-form regulation should clarify the procedures and process for renewals of waivers.

3. Section 109.701. Reporting and recordkeeping. - Fiscal impact; Reasonableness; Feasibility; Implementation procedure.

This section contains new language which implements "electronic reporting" of data by public water systems to DEP via the internet. In its written comments, PSATS expressed concern with the cost and feasibility of this mandate for smaller systems in remote areas which may not have access to the internet. The proposed regulation contains a provision whereby water systems could assign the responsibility for submitting the required reports to an accredited laboratory. However, this would entail another new cost for these systems. The Board and DEP should consider other alternate methods for submitting this data such as allowing water systems to submit data electronically recorded on a disk to DEP. In some cases, this approach may be more cost effective to a system than hiring a laboratory to submit the reports. As stated in Issue #1 above, the Board and DEP should examine methods for reducing the fiscal impact of this proposed regulation on smaller systems. The Board should also consider amending the final-form regulation to increase reporting flexibility for the smaller systems.

4. Section 109.1107. System management responsibilities. - Protection of public health and safety; Reasonableness; Need; Implementation procedures.

This section contains a new requirement that water systems report the "sample location" with their reports on lead and copper tap monitoring results. A commentator for the Philadelphia Water Department (PWD) expressed concern with this provision. This new requirement could hinder the PWD's effort at customer recruitment and relationships with customers who volunteered to participate in the lead and copper sampling program with the assumption of privacy. PWD recommends that provisions be made to protect the privacy of sampling participants. The Board and DEP should address this concern in the final-form regulation.

Facsimile Cover Sheet



Phone: (717) 783-5417
Fax #: (717) 783-2664
irrc@irrc.state.pa.us

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

To: Debra L. Failor
Agency: Department of Environmental Protection
Phone: 7-2814
Fax: 705-4980
Date: October 31, 2007
Pages: 4

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of Environmental Protection's regulation #7-412 (IRRC #2633). 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: Karen Gordy Date: 10-31-07
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