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VIA ELECTRONIC FILING

Sept. 17, 2021

The Honorable George Bedwick, Chairman  
Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17101

Dear Chairman Bedwick,

On behalf of the Pennsylvania Chamber of Business and Industry, the largest, broad-based business advocacy organization in the Commonwealth, thank you for the opportunity to provide comments regarding the Environmental Quality Board's final-form regulation to implement and administer the Land Recycling Program under Chapter 250 (IRRC Regulation #7-552).

As expressed in our initial comments to the Environmental Quality Board (EQB), filed in April 2020, the PA Chamber's membership is keenly interested in a well-functioning, thoughtful administration of the state's landmark land recycling statute, the Pennsylvania Land Recycling and Environmental Remediation Standards Act (commonly referred to as Act 2), which has, over the past two and a half decades, encouraged the cleanup of hundreds of abandoned or contaminated industrial sites for reuse into new development – in the process, removing environmental contamination from the environment while encouraging new investment into the state. The PA Chamber remains concerned that the rule in final-form (and associated regulatory documents) does not appropriately respond to the concerns raised by the PA Chamber, the Cleanup Standards Scientific Advisory Board (CCSAB), the Independent Regulatory Review Commission (IRRC), and other stakeholders regarding the statewide residential clean-up standard for vanadium; however, the Department of Environmental Protection (DEP) has in recent weeks informed stakeholders and the CCSAB that it will soon be providing information concerning steps to move forward with a separate rulemaking to address this issue. DEP has updated its Regulatory Agenda accordingly as well. As such, while we very much believe that cleanup standards for vanadium should have been addressed in the pending rule that is before IRCC, we encourage IRRC to approve the rulemaking before it in this docket and to continue to press the EQB and DEP to work expeditiously with stakeholders and the CCSAB in drafting and promulgating a streamlined supplemental rulemaking focusing on vanadium that can be finalized as quickly as possible.

Prior comments to EQB from the PA Chamber and the CSSAB are attached as an enclosure, and the sections contained therein regarding vanadium remain relevant for IRRC's consideration. To summarize these issues: the statewide residential cleanup standard for vanadium is below background levels for naturally occurring levels of vanadium in soils across the state; Pennsylvania's residential cleanup standard for vanadium is far more restrictive than cleanup standards adopted by other regulatory entities that are protective of human health and the environment; the Chapter 250 standards are implicated not just in the cleanup of brownfields seeking relief of liability under Act 2 but in DEP's administration of the Solid Waste Management Act through its Management of Fill Policy – and as such, have raised significantly the time, costs, and resources for public and private construction and infrastructure projects; and there is a workable alternative available for the EQB to implement, as suggested by the Chamber and unanimously recommended by the CCSAB and which IRRC suggested EQB adopt.

To briefly discuss each of these issues further, the United States Geologic Survey has conducted several assessments of the naturally occurring background levels of various constituents of soils in Pennsylvania. In

these surveys, vanadium was present in every single one of the 243 virgin soil samples that were collected at concentrations ranging up to 162 mg/kg. Only two of the 243 soil samples contained vanadium at concentrations less than the current statewide residential standard for vanadium in soils of 15 mg/kg that the EQB adopted in 2016. The standard for vanadium that was adopted in 2016 was two orders of magnitude lower than the previous statewide standard (at 1,500 mg/kg) even though alternatives existed to promulgate more reasonable risk-based statewide standards for vanadium at that time. Contrary to Act 2's objective of encouraging remediation of contaminated sites in an efficient and protective manner, this extremely low statewide standard has resulted in project sponsors either cancelling projects or expending significant capital and resources in an effort to work around the road-blocks created by this standard.

While the Chapter 250 regulations directly serve to implement Act 2, DEP also uses them to administer provisions of the Solid Waste Management Act (SWMA), through its Management of Fill Policy, which provides a line demarcation between clean fill materials that can be used as construction materials in a relatively unfettered manner and regulated fill materials that are considered to be wastes and subject to regulation under the SWMA. DEP recently amended this policy effective at the beginning of last year to automatically incorporate by reference the statewide residential cleanup standards for soils in Chapter 250. In effect, this means that the standards used to quantify when soils have been appropriately remediated at residential properties for relief of liability under the statewide health standard of Act 2 are the same standards used to quantify whether soils must be considered a waste. Therefore, the below-background standard for vanadium has caused, and will continue to cause, a considerable increase in time and resources not just for remediation projects, but any project involving the movement of soil due to the relevance of the Management of Fill Policy to such projects.

Those affected by the restrictive standards for vanadium cover virtually the entire regulated community and include the Pennsylvania Department of Transportation (PennDOT), the Pennsylvania Turnpike Commission, local economic development organizations, municipal and investor-owned utilities, local governmental entities and private developers. We also raise as a matter of public policy that increasing infrastructure build-out and rehabilitation is a major topic of debate for both state and federal lawmakers: Congress is working on finalizing a bipartisan infrastructure bill, and both Gov. Wolf and the General Assembly have over the past two years furnished reports outlining the need for both revenues and increased efficiencies in transportation and infrastructure buildout, as well as increasing general fund appropriations devoted to PennDOT's capital budget. Should the issue of cleanup standards for vanadium at below-background levels remain unresolved, these regulations will serve as a direct impediment to the achievement of the public policy goals established by Congress and state officials.

As IRRC will recall, its comments to the EQB dated June 1, 2020, IRRC suggested that EQB adopt an alternative approach, unanimously endorsed by the CCSAB and also supported by the Chamber and other stakeholders, to utilize relevant peer-reviewed toxicity data within the Integrated Risk Information System (IRIS) maintained by the U.S. Environmental Protection Agency (EPA), to establish the vanadium standards. As the PA Chamber and CCSAB's comments to EQB noted, EPA has in the past explicitly chosen to use the toxicity information from the IRIS database over the toxicity information that DEP used in establishing the current cleanup standards for vanadium. Indeed, the IRIS database is generally considered by DEP to be the "gold standard" for toxicity information. We continue to maintain, and our understanding is the CCSAB does as well, that this peer-reviewed information in the IRIS database should be used to establish a workable statewide health standard for vanadium in the administration of the land recycling program in Pennsylvania. Other states, notably New Jersey, have recently used this information as a basis for updating their soil remediation standards in May 2021, and we encourage IRRC to continue to support its use in the follow-up rulemaking.

Comments of the PA Chamber to Chairman Bedwick  
RE: EQB Chapter 250 Cleanup Standards #7-552  
Sept. 17, 2021

In closing, we thank IRRC for its attention to this matter and encourage prompt resolution to the issue of vanadium, so as to effectuate the stated public policy goals of Act 2 and the bipartisan agreement at the state and federal level for infrastructure build-out and rehabilitation.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Sunday". The signature is fluid and cursive, with a large initial "K" and "S".

Kevin Sunday  
Director, Government Affairs

CC: The Honorable Patrick McDonnell, Secretary, Pennsylvania DEP  
The Honorable Gene Yaw, Chairman, Senate Environmental Resources and Energy Committee  
The Honorable Carolyn Committa, Minority Chair, Senate Environmental Resources and Energy Committee  
The Honorable Daryl Metcalfe, Chairman, House Environmental Resources and Energy Committee  
The Honorable Greg Vitali, Minority Chair, House Environmental Resources and Energy Committee