

# Regulatory Analysis Form

This space for use by IRRC

(1) Agency

Environmental Protection

(2) I.D. Number (Governor's Office Use)

7-325

**Bush**

IRRC Number:

1877

(3) Short Title

Malodors

(4) PA Code Cite

25 PA Code § 121.1 and § 123.31

(5) Agency Contacts & Telephone Numbers

Primary Contact: Sharon Freeman, 717-783-1303

Secondary Contact: Barbara A. Sexton, 717-783-1303

(6) Type of Rulemaking (Check One)

- Proposed Rulemaking  
 Final Order Adopting Regulation  
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No  
 Yes: By the Attorney General  
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The proposed regulation revises the existing definition of "malodor", adds a definition of "odor investigation", adds a provision specifying that a malodor source which installs and operates best available technology to mitigate the malodors will not be required to take additional measures for at least five years, and expands the list of sources exempt from odor control requirements..

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

This action is being taken under the authority of Section 5(a)(1) of the Air Pollution Control Act (35 P.S. § 4005 (a)(1)).

## Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The proposed revisions are not mandated by law, court order, or regulation.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

Statewide, approximately 30% of all complaints received by the Air Quality program are for malodors. In the southeast region, the most densely populated part of the state, approximately 65% of the complaints received by Air Quality are for odors.

Malodors can indicate improper operation of an air pollution source which often means that excess pollutants are being exhausted into a community. Some of these pollutants are considered air toxics which have a negative impact on public health. In addition to the possible health impacts, malodors negatively impact the quality of life for affected individuals.

These proposed regulations are one of the of regulatory changes implementing the Department of Environmental Protection's Regulatory Basics Initiative (RBI)

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

Malodors can impact public health and the quality of life. Pennsylvania currently regulates malodors. However, the regulation as written is difficult and costly to implement. The proposed revisions will clarify the regulatory language. This will make it easier to protect the public health and the quality of life for citizens in Pennsylvania.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

All Pennsylvania citizens have the potential to benefit because it will be easier for the Department to enforce the malodor regulation, thus protecting their health and quality of life. The proposed regulation will also reduce the burden the current regulation places on citizens during the documentation, investigation, and resolution of malodors complaints.

The Department will benefit because the regulation will be easier to implement. This will reduce the amount of staff time which must be devoted to malodor problems. Also, the regulation will give the Department more flexibility in the type of investigation it can conduct to document a malodor.

Industry will benefit because the regulation clarifies the extent of the remedial action that they must take to resolve a malodor violation.

## Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effect as completely as possible and approximate the number of people who will be adversely affected.)

The proposed revisions of the regulations are not expected to produce any adverse impacts on the regulated community, the citizens of the Commonwealth, or governmental entities.

Malodors are currently regulated in the Commonwealth. These proposed revisions will improve the Department's ability to react to citizen concerns and will clarify the scope of efforts which source operators might have to take to resolve odor situations.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

This regulation affects anyone who owns or operates an air contamination source which emits malodors except those specifically exempted. See #29 for a list of the exemptions.

With the expanded exemption list in the proposed rulemaking, the number of sources potentially affected should decrease.

(16) Describe the communications with and inputs from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The need for the regulatory changes was identified during the RBI analysis. Additionally, these proposed regulations were discussed and reviewed by the Air Subcommittee of the Air and Water Quality Technical Advisory Committee for their input and approval for proposed rulemaking.

(17) Provide a specific estimate of the cost and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The proposed revisions are not anticipated to impose any additional costs. Malodors are already regulated in the Commonwealth. The proposed revisions are a clarification of the existing regulations which should provide additional protection for both the affected citizens and the regulated community.

### Regulatory Analysis Form

(18) Provide a specific estimate of the cost and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

The proposed revisions to the regulations are expected to impose no additional costs on local governments.

Local governments have benefited over the years since the Department regulates malodors, thus obviating their need to do so. The Department does not anticipate any additional savings to local governments as a result of this proposed revision.

(19) Provide a specific estimate of the cost and/or savings to state government associated with the implementation of the regulation, including any legal, accounting or consulting procedures which may be required.

The proposed revisions are expected to impose no additional costs on state government. The proposed revisions may result in reduced costs to regulated entities and state government. See response to #21.

Some time savings may occur as a result of the improved mechanism for addressing citizen complaints and conducting ongoing investigations. The available staff resources resulting from these improvements will be utilized in existing ongoing inspection, permitting and inventory programs.

**Combined Regulations**

(20) In the table below, provide an estimate of the fiscal savings and cost associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	<b>Current FY Year</b>	<b>FY +1 Year</b>	<b>FY +2 Year</b>	<b>FY +3 Year</b>	<b>FY +4 Year</b>	<b>FY +5 Year</b>
<b>SAVINGS:</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b>Regulated Community</b>		0	0	0	0	0
<b>Local Government</b>		0	0	0	0	0
<b>State Governments</b>		0	0	0	0	0
<b>Total Savings</b>		0	0	0	0	0
<b>COSTS:</b>		0	0	0	0	0
<b>Regulated Community</b>		0	0	0	0	0
<b>Local Government</b>		0	0	0	0	0
<b>State Governments</b>		0	0	0	0	0
<b>Total Cost</b>		0	0	0	0	0
<b>REVENUE LOSSES:</b>		0	0	0	0	0
<b>Regulated Community</b>		0	0	0	0	0
<b>Local Government</b>		0	0	0	0	0
<b>State Governments</b>		0	0	0	0	0
<b>Total Revenue Losses</b>		0	0	0	0	0

(20a) Explain how the cost estimates listed above were derived.

Because the Commonwealth currently implements a malodor program, there are no anticipated cost increases either to state or local government agencies. There may be savings for the Air Program associated with reduced time spent on complaint investigations, but staff resources freed by the proposed changes will be redirected to inspections, permitting and inventory programs.

### Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY-3	FY-2	FY-1	Current FY
Air Quality	\$ 21,000,000	\$ 26,000,000	\$ 29,000,000	\$ 27,000,000

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and cost.

The proposed revisions may result in reduced costs to regulated entities and state government. The regulated community may experience reduced costs because the proposed revisions clarify the actions which may be required to address a malodor. The Department may experience a reduction in staff resources, especially overtime work, which must be utilized for complaint investigations.

(22) Describe the nonregulatory alternative considered and the cost associated with those alternatives. Provide the reasons for their dismissal.

No non-regulatory alternatives were considered. The proposed revisions are responsive to issues raised in the Department's RBI Initiative Project. Non-regulatory approaches would not have been responsive to the matter.

(23) Describe alternative regulatory schemes considered and the cost associated with those schemes. Provide the reasons for their dismissal.

Alternative: In lieu of the malodor regulation, attach a condition to all permits which prohibits malodors which are detectable beyond the property line. This determination would be made by a Department inspector and not require any citizen involvement. The disadvantage is that it would only apply to permitted sources. No difference in cost.

Alternative: Use an analytical technique to determine whether an odor is objectionable rather than rely on a subjective determination of an inspector. This has disadvantages because many compounds have an odor threshold below the level of detection of analytical equipment. The result could be that objectionable odors are identified by the public and verified by the Department, yet would not constitute a violation. There would be some cost associated with the initial purchase of equipment.

Alternative: The Department should leave the regulation of malodors to local municipalities. The disadvantage is that the public would not be served. In general, local municipalities do not regulate malodors due to cost and lack of expertise, so citizens would be on their own to resolve a problem which could impact their health and quality of life.

## Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

The federal government does not directly regulate malodors which makes the Department's regulation more stringent than federal requirements. The Department's existing malodor requirements are part of the State Implementation Plan.

(25) How does the regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The following nearby states and jurisdictions specifically control malodors: Maryland, New York, New Jersey, Delaware, Philadelphia County. In addition, Michigan, Illinois, Louisiana, Colorado, and the Bay Area of California are among others with malodors regulations. Four of the states share a border with Pennsylvania. One jurisdiction is within Pennsylvania and borders the southeast region. Therefore, the regulation should not put Pennsylvania at a competitive disadvantage.

The South Coast jurisdiction of California has a general nuisance regulation which would include odors; however, odors are not specifically stated in the regulation.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

Three public hearings will be scheduled.

### Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

No changes in recordkeeping, reporting, or other paperwork requirements are anticipated.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Certain categories of sources will be exempt from the malodor regulation. They are:

- the production of agricultural commodities in their unmanufactured state
- private residences
- restaurants
- materials odorized for safety purposes
- other sources or classes of sources determined to be of minor significance by the Department

Small businesses which are required to control their malodors may obtain free technical assistance from the Bureau of Air Quality's small business assistance program. Low interest/long term loans may also be available from this program depending on the availability of funds. Compliance assistance is available if it is needed by the affected facilities.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The effective date for the proposed revisions is anticipated to be mid-1998. The regulations will become effective upon publication in the *Pennsylvania Bulletin* as final rulemaking.

No permits or licenses are required.

(31) Provide the schedule for continual review of the regulation.

The regulations will be reviewed in accordance with the sunset review schedule published by the Department.



**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU**  
(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

*Christine J. Egan*

DEPUTY ATTORNEY GENERAL

JUN 23 1997

DATE OF APPROVAL

Check if applicable by not approved. Objections reached.

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-325

DATE OF ADOPTION: 6-17-97

BY: *James M. Seif*

TITLE: JAMES M. SEIF, CHAIRMAN  
EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality. Executive or Independent Agency

BY: *[Signature]*

JUNE 26, 1997

DATE OF APPROVAL

(Deputy General Counsel)  
(Chief Counsel, Independent Agency)  
(Strike inapplicable title)

Check if applicable. No Attorney General approval or objection within 30 days after submission.

NOTICE OF  
PROPOSED RULEMAKING  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD

25 Pa. Code, Chapters 121 and 123/  
Regulatory Basics Initiative #3 (Malodors)

**NOTICE OF PROPOSED RULEMAKING  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD**

**25 Pa. Code Chapters 121 and 123  
Regulatory Basics Initiative - 3**

**Preamble**

The Environmental Quality Board (EQB) proposes to amend 25 Pa. Code Chapters 121 and 123 (relating to definitions and standards for contaminants) as set forth in Annex A.

The changes to Chapter 121 modify the definition of malodor and add a definition of odor investigation. The changes to Chapter 123 modify the Department's existing program for investigating and addressing malodor complaints. These changes are in response to comments received as part of the Regulatory Basics Initiative concerning malodors.

This notice is given under Board Order at its meeting of June 17, 1997.

**A. Effective Date**

These amendments will be effective upon publication in the Pennsylvania Bulletin as final rulemaking.

**B. Contact Persons**

For further information, contact Terry Black, Chief, Regulation and Policy Development Section, Division of Compliance and Enforcement, Bureau of Air Quality, 12th Floor Rachel Carson State Office Building, P.O. Box 8468, Harrisburg, PA 17105-8468, telephone (717) 787-1663, or M. Dukes Pepper, Jr., Assistant Counsel, Bureau of Regulatory Counsel, Office of Chief Counsel, 9th Floor Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA 17105-8464, telephone (717) 787-7060.

**C. Statutory Authority**

This action is being taken under the authority of Section 5(a)(1) of the Air Pollution Control Act (35 P.S. §4005(a)(1)), which grants to the EQB the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution.

#### **D. Background of the Amendment**

The Regulatory Basics Initiative was announced in August, 1995 as an overall review of the Department of Environmental Protection's (Department) regulations and policies. The Department solicited public comments in August of 1995 by giving the regulated community, local governments, environmental interests and the general public the opportunity to identify specific regulations which are either more stringent than federal standards, serve as barriers to innovation, are obsolete or unnecessary, or which impose costs beyond reasonable environmental benefits or serve as barriers to adopting new environmental technologies, recycling, and pollution prevention.

In February 1996 the Governor issued Executive Order 1996-1 (Regulatory Review and Promulgation) establishing standards for the development and promulgation of regulations. This proposal meets the requirements of Executive Order 1996-1.

These proposed regulations are the third in a series of regulatory proposals implementing changes to the Department's air resource regulations resulting from the Regulatory Basics Initiative. These proposed changes implement recommendations received from both the public and the regulated community concerning the Department's program for addressing malodors.

Approximately 30% of the citizen complaints received by the Department's regional air program offices relate to malodors. The Department investigates each of these complaints and works with facility owners and operators and the public to resolve the complaints. The existing regulations and Court decisions interpreting them make it difficult and time consuming to document and resolve malodor problems. This proposal streamlines both the complaint and investigation process and establishes clear limits of responsibility for facility owners.

The Department worked with the Air Subcommittee of the Air and Water Quality Technical Advisory Committee (AWQTAC) in the development of these regulations. At its April 17, 1997 meeting, the Air Subcommittee acting on behalf of AWQTAC recommended adoption of the proposed regulations.

#### **E. Summary of Regulatory Revisions**

The proposed change to the definition of "malodor" retains the existing procedure that a member of the public must initially report the malodor and authorizes the Department to document that malodor in the course of an odor investigation. This "complaint driven" process authorizes the Department to conduct an investigation in response to a citizen complaint. The new definition of "odor investigation" requires the Department to

investigate the source and frequency of the odors and establishes that facility inspection, surveillance, affidavits or odor logs can be used to document a malodor.

The changes to the substantive provisions of Section 123.31 (relating to limitations) provides, in subsection (c), that a facility which controls malodorous air contaminants through the use of best available technology will not be required to further reduce residual odors for a five-year period. This provision establishes a limit on a facility's obligation based on the technology available to control odors. This limitation on responsibility lasts for a single permit term of five years. This provision creates certainty for both the public and facility operators concerning the extent of responsibility for emissions of malodorous air contaminants. Subsection (a) of Section 123.31 is being retained because it establishes the minimum requirements for reducing malodors resulting from volatile organic compounds (VOCs).

The revisions to subsection (d) of Section 123.31 excludes certain types of activities from the regulatory requirement. The exclusions include agricultural commodities in their unmanufactured state, private residences, restaurants, and materials odorized for safety purposes such as natural gas. In addition, the Department is authorized by paragraph (5) to identify additional sources for exclusion. Subsection (e) of Section 123.31 requires the Department to establish a list of additional sources through a public notice and comment process which provides both the public and the regulated community an opportunity for input. This provision is patterned after the existing requirement in Section 127.14 (relating to exemptions) of the Department's regulations.

Under the proposed revisions to the Department's malodor regulations, a complaint from an individual member of the public will result in an investigation by the Department's Air Quality technical staff to determine the source and frequency of the odor complained of. This investigation will include discussions with the owner of the facility at which the source creating odors is located as well as discussion with the complainants. If as a result of this investigation, the Department documents the objectionable odor, the Department will work with the facility owner to identify control technology, improved housekeeping or other strategies to eliminate the objectionable odor. For objectionable odors caused by the emission of volatile organic compounds, the reductions achieved through incineration establish the minimum requirements a facility must meet. For objectionable odors resulting from other pollutants, there is no minimum requirement. In all cases, the facility owners' responsibility is limited by the best available technology for odors.

This regulatory revision will be submitted to the Environmental Protection Agency as an amendment to the State Implementation Plan.

**F. Benefits, Costs and Compliance**

Executive Order 1996-1 requires a cost/benefit analysis of the proposed regulation.

**Benefits**

Overall, the citizens of the Commonwealth will benefit from these recommended changes because they streamline the procedures for implementing the Department's air quality program for addressing malodors.

**Compliance Costs**

These regulations should, in general, reduce compliance costs by streamlining the complaint and investigation process and by establishing a best available technology based compliance requirement.

**Compliance Assistance Plan**

The Department plans to educate and assist the public and the regulated community with understanding the newly revised requirements and how to comply with them. This will be accomplished through the Department's ongoing regional compliance assistance program.

**Paperwork Requirements**

The regulatory revisions will reduce the paperwork related to complaints and odor investigations.

**G. Sunset Review**

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

**H. Regulatory Review**

Under §5(a) of the Regulatory Review Act, the act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §745.5(a)), the Department submitted a copy of the proposed rulemaking on August 12, 1997, 1997 to the Independent Regulatory Review Commission and to the Chairmen of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided the Commission and the Committees with a copy of a detailed regulatory analysis form

the Department. A copy of this material is available to the public upon request.

If the Commission has any objections to any portion of the proposed amendments, it will notify the Department within thirty (30) days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The act specifies detailed procedures for the Department, the Governor, and the General Assembly to review these objections before final publication of the regulation.

#### **I. Public Comment and EOB Public Hearings**

The Department is specifically requesting comments on three aspects of this proposal:

1. In documenting whether an odor is objectionable, how should the frequency of occurrence and the extent of public objection be evaluated?

2. Should the Department retain its long-standing minimum requirements for malodors resulting from emissions of volatile organic compounds?

3. Is the five (5) year review period for best available technology (BAT) the appropriate timeframe?

#### **Public Hearings**

The EQB will hold three (3) public hearings for the purpose of accepting comments on the proposed amendments. The hearings will be held at 1:00 p.m. on the following dates and at the following locations:

September 23, 1997 Department of Environmental Protection  
1st Floor Meeting Room  
Rachel Carson State Office Building  
400 Market Street  
Harrisburg, PA

September 25, 1997 Department of Environmental Protection  
Southwest Regional Office  
500 Waterfront Drive  
Pittsburgh, PA

September 29, 1997 Upper Merion Township Building  
175 West Valley Forge Road  
King of Prussia, PA

Persons wishing to present testimony at the hearings must contact Kate Coleman at the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477, telephone (717) 787-4526, at least one (1) week in advance of the hearing to reserve a time to present testimony. Oral testimony will be limited to ten minutes for each witness and three written copies of the oral testimony must be submitted at the hearing. Each organization is requested to designate one witness to present testimony on its behalf.

Persons with a disability who wish to attend the hearings and require an auxiliary aid, service or other accommodations in order to participate, should contact Kate Coleman at (717) 787-4526 or through the Pennsylvania AT&T relay service at 1-800-654-5984 (TDD) to discuss how the Department may accommodate their needs.

#### Written Comments

In lieu of or in addition to presenting oral testimony at the hearings, interested persons may submit written comments, suggestions or objections regarding the proposed amendments to the EQB, 15th Floor Rachel Carson State Office Building, P.O. Box 8477, Harrisburg, PA 17105-8477. Comments received by facsimile will not be accepted. Comments must be received by October 29, 1997. In addition to the written comments, interested persons may also submit a summary of their comments to the EQB. This summary may not exceed one (1) page in length and must be received by October 29, 1997. The summary will be provided to each member of the EQB in the agenda packet distributed prior to the meeting at which the final regulations will be considered.

#### Electronic Comments

Comments may be submitted electronically to the EQB at Regcomments@a1.dep.state.pa.us. A subject heading of the proposal and return name and address must be included in each transmission. Comments submitted electronically must also be received by the EQB by October 29, 1997.

By

James M. Seif  
Chairman  
Environmental Quality Board

ANNEX A

Title 25. Environmental Protection

Part I. Department of Environmental Protection

Subpart C. Protection of Natural Resources

Article III. Air Resources

CHAPTER 121. GENERAL PROVISIONS

§ 121.1. Definitions.

*Malodor* – An [odor which causes annoyance or discomfort to the public and which the Department determines to be objectionable to the public.] OBJECTIONABLE ODOR WHICH IS FIRST IDENTIFIED BY A MEMBER OF THE PUBLIC AND SUBSEQUENTLY DOCUMENTED BY THE DEPARTMENT IN THE COURSE OF AN ODOR INVESTIGATION TO BE AN OBJECTIONABLE ODOR.

\* \* \* \* \*

ODOR INVESTIGATION – AN INVESTIGATION OF THE SOURCE AND FREQUENCY OF ODORS WHICH MAY INCLUDE, BUT IS NOT LIMITED TO, AN INSPECTION OF A FACILITY, SURVEILLANCE ACTIVITIES IN THE AREA OF A FACILITY, AFFIDAVITS, OR ODOR LOGS.



Chapter 123. STANDARDS FOR CONTAMINANTS

ODOR EMISSIONS

§ 123.31. Limitations.

(a) Limitations are as follows:

(1) If control of malodorous air contaminants is required under subsection (b), emissions shall be incinerated at a minimum of 1200°F for at least 0.3 seconds prior to their emission into the outdoor atmosphere.

(2) Techniques other than incineration may be used to control malodorous air contaminants if such techniques are equivalent to or better than the required incineration in terms of control of the odor emissions and are approved in writing by the Department.

(b) A person may not permit the emission into the outdoor atmosphere of any malodorous air contaminant from any source, in such a manner that the malodors are detectable outside the property of the person on whose land the source is being operated.

(c) NOTWITHSTANDING THE REQUIREMENTS OF SUBSECTIONS (a) AND (b), IF A PERSON CONTROLS MALODOROUS AIR CONTAMINANTS FROM A SOURCE THROUGH THE USE OF THE BEST AVAILABLE TECHNOLOGY FOR ODORS FOR THAT SOURCE, AS DETERMINED BY THE DEPARTMENT, THEN NO ADDITIONAL MEASURES WILL BE REQUIRED TO FURTHER REDUCE RESIDUAL ODORS. AFTER 5 YEARS FOLLOWING IMPLEMENTATION OF THE BEST AVAILABLE TECHNOLOGY, IF A

MALODOR EXISTS, THE DEPARTMENT MAY REQUIRE A NEW DETERMINATION OF AND IMPLEMENTATION OF BEST AVAILABLE TECHNOLOGY FOR ODORS.

(d) The prohibition in subsection (b) does not apply [to odor emissions arising from the production of agricultural commodities in their unmanufactured state on the premises of the farm operation.] WHEN THE ODOR RESULTS FROM THE FOLLOWING:

1. THE PRODUCTION OF AGRICULTURAL COMMODITIES IN THEIR UNMANUFACTURED STATE.
2. PRIVATE RESIDENCES.
3. RESTAURANTS.
4. MATERIALS ODORIZED FOR SAFETY PURPOSES.
5. OTHER SOURCES OR CLASSES OF SOURCES DETERMINED TO BE OF MINOR SIGNIFICANCE BY THE DEPARTMENT.

(e) THE DEPARTMENT MAY ESTABLISH A LIST OF SOURCES OR CLASSES OF SOURCES MEETING THE REQUIREMENTS OF PARAGRAPH (d)(5). THE DEPARTMENT WILL PUBLISH NOTICE OF ITS INTENTION TO ESTABLISH OR MODIFY THE LIST IN THE PENNSYLVANIA BULLETIN AND WILL ESTABLISH A COMMENT PERIOD OF AT LEAST 30 DAYS. AFTER THE CLOSE OF THE COMMENT PERIOD, THE DEPARTMENT WILL PUBLISH THE FINAL LIST OR ANY MODIFICATIONS TO THE FINAL LIST IN THE PENNSYLVANIA BULLETIN.



Pennsylvania Department of Environmental Protection

**Rachel Carson State Office Building  
P.O. Box 2063  
Harrisburg, PA 17105-2063  
August 12, 1997**

**The Secretary**

Mr. Robert E. Nyce  
Executive Director  
Independent Regulatory Review Commission  
14th Floor, Harrisstown II  
Harrisburg, PA 17101

RE: Proposed Rulemaking - Malodors (RBI #3) (#7-325)

Dear Bob:

Enclosed is a copy of a proposed regulation for review by the Independent Regulatory Review Commission pursuant to the Regulatory Review Act. Section 5(b)(3) of the Act provides that the Commission shall have 30 calendar days from the closing date of the public comment period to notify the Department of any objections.

The Department of Environmental Protection will provide the Commission with any assistance it may require to facilitate the review of this proposed regulation. If you have any questions regarding this proposal, please contact Sharon Freeman, Regulatory Coordinator, at 783-1303.

Sincerely,

James M. Seif  
Secretary

Enclosure

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

I.D. NUMBER: 7-325

SUBJECT: Regulatory Basics Initiative #3 (Malodors)

AGENCY: Environmental Protection

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**TYPE OF REGULATION**

X Proposed Regulation

Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

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**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
2-12-97	<u>Levi Comp</u>	HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
8-12-97	<u>RB</u>	SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
8/12/97	<u>Dr. Helmer</u>	INDEPENDENT REGULATORY REVIEW COMMISSION  ATTORNEY GENERAL
8/12/97	<u>Mayra Staiger</u>	LEGISLATIVE REFERENCE BUREAU

July 28, 1997