



Environmental Quality Board

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October 17, 1997

REC'D
97 OCT 22 PM 2:50
INDEPENDENT REGULATORY REVIEW COMMISSION

Mr. Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
14th Floor, Harristown #2
333 Market Street
Harrisburg, PA 17120

RE: Proposed Rulemakings - Malodors (RBI #3) (#7-325) and Equivalency Determinations and Aerospace Manufacturing (#7-326)

Dear Mr. Nyce:

The Environmental Quality Board (EQB) held three public hearings concerning the subject rulemakings on September 23 in Harrisburg, September 25 in Pittsburgh and September 29 in King of Prussia. Enclosed are copies of the official verbatim transcripts for the hearings.

Since there were no witnesses present for the Equivalency Determinations and Aerospace Manufacturing hearings, those transcripts contain only the opening statements that were read for the record.

Please contact me if you have any questions.

Sincerely,

Sharon K. Freeman
Regulatory Coordinator

Enclosures

DEPARTMENT OF
ENVIRONMENTAL PROTECTION

* * * * *

IN RE: Proposed Regulatory Basics
Initiative #3 - Malodors

BEFORE: Brent Glass, Chairman
Terry Black
Sharon Freeman
Francine Carlini

97 OCT 22 PM 2:13
RECEIVED
REVIEW COMMISSION

LOCATION: Upper Merion Township Building
175 West Valley Forge Road
King of Prussia, PA

DATE: Monday, September 29, 1997

TIME: 1:10 p.m. - 2:00 p.m.

WITNESSES: Jerome Balter, Tina Daly, Zulene
Mayfield, Jane Garbacz, Donna
Madaras Cuthbert

* * * * *

Reporter: Christine E. Fike

* * * * *

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BRENT GLASS:

Good afternoon and welcome to this Environmental Quality Board public hearing on proposed amendments to the Department of Environmental Protection's air resource regulations concerning malodors. This proposal was approved by the EQB on June 17th, 1997.

My name is Brent Glass. I'm the executive director of the Pennsylvania Historical Museum Commission. It's the only part of this group that I'm sure of, I'm confident about. And I'm also a member of the Environmental Quality Board. Also with me today from the Department of Environmental Protection, Terry Black, who --- the Regulation and Policy Development Section, Bureau of Air Quality and also Sharon Freeman, who is the regulatory coordinator of the policy office of the Department of Environmental Protection. And we also

1 have Francine Carlini here who is the
2 southeast regional office air program
3 manager. She's in the audience.

4 Notice of today's hearing was
5 printed in the Pennsylvania Bulletin on
6 August 23rd, 1997. In addition,
7 notices were published in major
8 newspapers throughout the Commonwealth.
9 This proposal is the third in a series
10 of amendments to the Department of
11 Environmental Protection's air resource
12 regulations resulting from the
13 Regulatory Basics Initiative which we
14 will refer to as RBI. We'll refer to
15 the Department in this statement as
16 DEP. The RBI began in August 1995 with
17 DEPs review of existing regulations to
18 determine those which were more
19 stringent than federal law and
20 regulations, those which lacked clarity
21 and those which imposed
22 disproportionate costs on the regulated
23 community.

24 This proposal addresses
25 recommendations received from both the

1 public and the regulated community
 2 concerning DEPs program for addressing
 3 malodors. Proposed changes include
 4 modifying the definition of malodor,
 5 adding a definition of odor
 6 investigation and modifying the
 7 existing program for investigating and
 8 addressing malodor complaints. The
 9 proposal will allow a single member of
 10 the public to initially identify the
 11 objectionable odor and allow the DEP
 12 air program staff to investigate and
 13 determine whether an objectionable odor
 14 exists.

15 Proposed changes to Section
 16 123.31(c) of 25 Pennsylvania Code
 17 provide that a facility which controls
 18 malodorous air contaminants through the
 19 use of best available technology will
 20 not be required to further reduce
 21 residual odors for a five-year period.
 22 The EQB, the Environmental Quality
 23 Board, is also specifically seeking
 24 comments on two other issues. The
 25 first involves how the frequency of

1 odors and the public concern about the
2 odor should be factored into DEPs
3 investigation and documentation of
4 objectionable odors. The second issue
5 is whether DEP should retain its
6 existing minimum control requirement of
7 incineration or its equivalent for
8 addressing odors resulting from
9 emissions of volatile organic
10 compounds, VOCs. The regulation, if
11 approved, will be submitted to the
12 Environmental Protection Agency as a
13 revision to the State Implementation
14 Plan.

15 In order to give everyone an
16 equal opportunity to testify at this
17 hearing, I would like to note the
18 following ground rules. I will first
19 call upon the first witness, upon the
20 witnesses who have preregistered to
21 testify at today's hearing as included
22 on today's schedule of witnesses.
23 After hearing from these witnesses I
24 will provide other interested parties
25 with the opportunity to testify as time

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allows. Oral testimony is limited to ten minutes. Organizations are requested to designate one witness to present testimony on its behalf. Each witness must submit three written copies of the testimony to aid in transcribing the hearing. Please hand me your copies of your testimony prior to presenting your testimony. Please state your name and address for the record prior to presenting your testimony. We would also appreciate your help in spelling names and terms that may not be generally familiar so that the transcript may be as accurate as possible.

Interested persons may submit written comments in addition to or in place of oral testimony presented today. All comments must be received by the Environmental Quality Board by October 29th, 1997. Comments should be addressed to the Environmental Quality Board, Post Office Box 8477, Harrisburg, Pennsylvania. ZIP Code is

1 17105-8477. Anyone interested in a
2 transcript of this hearing, may contact
3 the Reporter here today to arrange to
4 purchase a copy.

5 Now, I'd like to call upon the
6 first witness and I don't know if
7 Jerome Balter is here.

8 JEROME BALTER:

9 Just showed up.

10 BRENT GLASS:

11 Welcome. I hope you heard the
12 ground rules on the way in.

13 JEROME BALTER:

14 I'm afraid I didn't.

15 BRENT GLASS:

16 We're going to ask you to ---
17 first if you have a copy of your
18 testimony, please give me a copy now.

19 JEROME BALTER:

20 I do not.

21 BRENT GLASS:

22 Okay. We would like you to
23 limit your testimony to ten minutes and
24 if you can please stand there
25 (indicates) and deliver your testimony.

1 Mr. Balter, just for your information
2 since you missed the opening, my name
3 is Brent Glass and I'm a member of the
4 Environmental Quality Board. And Terry
5 Black, who is with the Regulation and
6 Policy Development Section is here and
7 Sharon Freeman is also here of the
8 policy office from the Department of
9 Environmental Protection.

10 JEROME BALTER:

11 Thank you. My name is Jerry
12 Balter. I'm an attorney with the
13 Public Interest Law Center. And I
14 suggest that I probably have more use
15 of the odor regulations of the
16 Department than any other private
17 individual, so that what I have to say
18 is said based upon my experience.

19 I came here today to oppose
20 any of the proposed changes in the
21 environment of the old regulations
22 being proposed here today. I have no
23 understanding of why these amendments
24 are being proposed. The odor
25 regulations are the first and perhaps

1 the last line of defense of people in
2 the community to pollution and these
3 regulations would either eliminate
4 those protections and those defenses or
5 seriously reduce their effectiveness.
6 And I will take them in sequence. With
7 respect to the proposed changes in the
8 definition of a malodor, changing that
9 so that it includes a tie-in to a new
10 word of thought or phrase of thought
11 called odor investigation. Now, odor
12 investigation is not in the present
13 regulations. Odor investigation, as
14 being proposed, says an investigation
15 of the source and frequency of odors.
16 I don't know what frequency of odors
17 has to do with an investigation of an
18 odor.

19 Source of infrequency of odors
20 which may include but it is not limited
21 to an inspection of a facility,
22 surveillance activities in the area of
23 the facility. That's okay if you want
24 to find out where the odor is coming
25 from. Affidavits for odor laws. What

1 does that have to do with it? An odor
2 violation only is written by an
3 inspector, but these affidavits of the
4 inspector, these laws of the inspector,
5 it's not clear. So that what you've
6 done here is create a confusion which
7 would put a lot of money into the
8 pockets of lawyers, but wouldn't help
9 any communities. Now, more important
10 is the addition that you would make to
11 what you call the standards for
12 contaminants odor conditions 123.31 by
13 adding Section C. Section C is a most
14 peculiar section. I want to get ---
15 before I get on that, let me get back
16 on those definitions. You may or may
17 not be aware of the fact that the
18 present odor definitions and the
19 enforcement program have been
20 challenged on constitutional grounds.

21 The Environmental Hearing
22 Board found them to be constitutional.
23 And in one of my cases the federal
24 courts have found them to be
25 constitutional. You start playing

1 around with them you're treading on
2 very thin ice as to that
3 constitutionality. And I urge you,
4 don't play around with these odor
5 regulation definitions because you may
6 lose them altogether unless that is the
7 purpose in the first case. Now,
8 getting back to the question of
9 limitations. This says that if a firm
10 puts in best available technology for
11 reducing odors, it is then immunized
12 for a period of five years. Well, let
13 me suggest that you wouldn't want to
14 live in the community next to one of
15 those places, because they put in BAT,
16 the odor continues on and you have to
17 live with it for five years.

18 I want to call to your
19 attention a situation a few years ago
20 in which the Department issued a permit
21 to an outfit that was doing steam
22 sterilizing of infectious waste. And
23 the Department issued a waste permit
24 but no air permit. And when questioned
25 the Department said, no need to have

1 anything like this because there
2 weren't going to be any contaminants
3 issued. Well, that place stunk to high
4 heaven. So much so that the Department
5 had to issue orders for that workplace
6 to make serious changes to eliminate
7 the problem. Now, in effect, the
8 Department had said best technology,
9 best available technology was no
10 technology at all. You're not going to
11 have a problem. So that's a very, very
12 serious business going on. It seems to
13 me that it would set the following bad
14 precedent. These emission regulations
15 in our code are regulations of strict
16 liability. And what you're doing here
17 is saying no more strict liability.
18 Put in this crew, put in that scrubber
19 and no more strict liability and even
20 if you're coming out and you're
21 violating the regulation, you're going
22 to be immunized.

23 Well, the next thing you're
24 going to know is every time the
25 Department issues a permit saying that

1 an outfit has best available
2 technology, you're going to let them
3 off the hook in terms of the emissions
4 of chemicals and toxins and so on. So
5 you're really playing around with some
6 serious business here and I urge you
7 not to do that. This morning's New
8 York Times carried on its front page,
9 that's why I got here one minute late,
10 an article called U.S. Reshaping Cancer
11 Strategy as Incidents in Children
12 Rises. And the article points out that
13 over the last ten or 12 years there's
14 been about a 15 percent increase in
15 children's cancer. And they believe
16 that most of this may come from
17 environmental pollution. They don't
18 know but they're going to investigate.
19 And it seems to me that a report like
20 this, instead of resulting in a
21 reduction in enforcement should result
22 in quite the opposite.

23 BRENT GLASS:

24 We're going to ask you to wind
25 up in one minute.

1 JEROME BALTER:

2 Yeah.

3 TINA DALY:

4 I'll give him two minutes of
5 mine or five minutes or seven minutes,
6 whatever he wants of my time.

7 BRENT GLASS:

8 Are you Tina Daly?

9 TINA DALY:

10 Yes.

11 BRENT GLASS:

12 Okay.

13 JEROME BALTER:

14 I'm just about wound up. I
15 have two tangential points which won't
16 take me a minute. The first tangential
17 point is why did they put this public
18 hearing here? Why didn't you put it in
19 Chester where they have all these damn
20 odor problems? If you were to look ---
21 if you were to look at the places where
22 they complain about odor problems,
23 you'll find overwhelmingly they're from
24 the City of Chester. That's where
25 people live and that's where you should

1 get your testimony.

2 Secondly, it would be for a
3 place like a foreigner like me if we
4 had a map to know where to come to for
5 this hall. I really mean that. We
6 have been floating around to find it.
7 At any rate, thank you for your time.

8 BRENT GLASS:

9 Thank you, Mr. Balter. Tina
10 Daly?

11 TINA DALY:

12 My name is Tina Daly, D-A-L-Y,
13 and my address is on the paper there.
14 And I --- it's a hard act to follow,
15 Jerry, and it would be worse to follow
16 some of these ladies who are coming
17 after me so I'm glad I'm next.

18 The Pennsylvania DEP and the
19 EQB should schedule public hearings at
20 a time that working citizens can attend
21 such as in the evening, certainly not
22 during the working day. Further the
23 hearings should be held close to
24 problem areas as Jerry Balter pointed
25 out. Also, they should be nearer to

1 the public transportation routes and I
2 haven't the slightest idea how you
3 could ever get here on the bus. My
4 main point is that by holding hearings
5 in the daytime and in areas such as
6 King of Prussia shows us that EQB
7 probably isn't too concerned about
8 hearing from the public that's affected
9 by this kind of thing. The proposed
10 definition of an odor will allow the
11 DEP staff to decide if the odor is
12 objectionable. I would like to ask
13 that you please rewrite the definition
14 so the public can have some part in the
15 decision if not all of it. The number
16 of times an odor is noticed by the
17 public has no relevance to whether or
18 not that odor must be controlled.
19 There's no way that best available
20 technology is ever going to protect us
21 from anything.

22 These are all points that
23 Jerome Balter made much better than I
24 can. Five years is way too long. It's
25 outrageous, it's totally unacceptable.

1 It would appear that industry wrote
2 these regulations and not an agency
3 that has any interest in the public
4 it's supposed to protect. DEP has
5 deregulated the management of waste and
6 the production of waste past all
7 comprehension and we're turning into a
8 place where waste can come or we're
9 asking for waste and where odors are
10 certainly going to be found. We've
11 been exempting a lot of industries from
12 all sorts of air and odor regulations
13 and one of the big concerns to the
14 Pennsylvania Environmental Network,
15 which I'm representing their sludge
16 team today, is these big hog factories,
17 they're not really even farms. That in
18 part have been led out of these kind of
19 regulations, they've been exempted.
20 And I'm asking that Pennsylvania go
21 back to permitting and to regulating.
22 We've had enough of going the other
23 direction. These are way too weak and
24 they're inappropriate. And that's all
25 I have for today. Thank you.

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BRENT GLASS:

Thank you, Ms. Daly. The next person who has preregistered is Zulene Mayfield, Chester Residents Concerned With The Quality of Living. Do you have any written statement?

ZULENE MAYFIELD:

No.

BRENT GLASS:

Okay.

ZULENE MAYFIELD:

My name is Zulene Mayfield. I'm chair of Chester Residents Concerned With The Quality of Living, 2731 West Third Street in Chester, PA, Delaware County. I am also here as a resident who lives fence line to a number of waste facilities in Chester. A person who represents a community where there are no engineers, there is no scientific equipment. We don't have many degrees in environmental matters.

So essentially the only thing that we have for our protection is our sensories, that is our eyes and ears,

1 our nose, things that we feel in the
2 community. When DEP and Mr. Sife
3 (phonetic) from the Ridge
4 administration has been issuing permits
5 in Chester, initially there was a noise
6 factor. From the number of complaints
7 generated by the community on the
8 smells, the odors, the things that we
9 witnessed, fires that weren't fires,
10 things falling off the garbage trucks,
11 DEP in response to the complaints from
12 the community put an inspector in that
13 community. And now to have regulations
14 that will take away basically our own
15 rights, our own protection which is
16 ourselves say that the things that we
17 smell are not objectionable. The
18 things that we smell need to be
19 documented over a long period of time.
20 It's just plain stupid. It's just
21 stupid.

22 To say, well, you know, it has
23 to be smelled five times out of the
24 week before anything can be done. What
25 every permit did was every waste

1 facility in Chester was permanent. The
2 Department used a term that at the time
3 we didn't understand but now we do.
4 This is the best available technology
5 or the reasonable available technology.
6 These things --- state of the art
7 stinks, every single day the house
8 stinks. I have the inspector out 4:30
9 in the morning and it stinks. So now
10 to take away the inspector's power say,
11 well, yes, I find that to be
12 objectionable. I have a complaint in
13 here, she uses to be objectionable.
14 So, well, now we know that this place
15 is going to stink so we'll just not
16 write any violations because that's
17 what this is basically about. We won't
18 issue any violations, we won't fine
19 these companies. We'll just allow them
20 to continue to emit things into the
21 air.

22 And everybody that has any bit
23 of common sense, if you go in your
24 house and the refrigerator is stinking,
25 you know that something is bad. If you

1 have trash in your house and it stinks,
2 something is wrong, there is a problem.
3 And say, well, no. We'll just allow it
4 to sit in our house and stink. It's
5 just nasty. And what these
6 regulations, these proposed regulations
7 is nasty for communities like mine. So
8 we're supposed to walk around and ask
9 --- what I suggested DEP and call Mr.
10 Ridge and tell him to issue air packs
11 for everybody that lives in Chester.
12 Because if you're not going to write
13 any violations, that's what we're going
14 to need. You just won't come to
15 Chester. Even now we have people that
16 ride through on I-95 amongst the gas
17 fumes, the car fumes, the truck fumes,
18 they can smell Chester. And say we're
19 just not going to have regulations any
20 more around malodors. That's just
21 crazy. And I do agree with the
22 previous speaker, I don't think anybody
23 with any common sense wrote this. So
24 it had to be a bureaucracy or an
25 industry or the combination of both.

1 Because these regulations benefit no
2 one from the community.

3 And I also agree, you know, I
4 don't know what Upper Merion has in
5 terms of waste facilities, but this is
6 also a stupid place to hold a hearing.
7 I wish you would have held the hearing
8 in Chester. In fact, I'm going to ask
9 that you do hold another one just in
10 Chester so the community --- if you
11 really want public input, you want
12 public participation on this matter,
13 you'll get an earful because we're sick
14 of it, you know, no more malodors. So
15 what protection will the community
16 have. They'll have none essentially.
17 Because DEP did not send us to smoke
18 school. We cannot read opacity
19 readings. We cannot get inside of
20 facilities. We don't have that right
21 of entry as does DEP. So we are on the
22 fence line in our homes, watching then
23 smelling what is happening and saying,
24 well, we understand that they have
25 problems there.

1 We know that they had previous
2 smell problems or malodors or odor
3 violations, that we're just --- because
4 we are aware of it, we're not going to
5 take any action. When you take an
6 action it indicates there's a new
7 facility that DEP permitted in Marcus
8 Hook. It was not new. KS Processing,
9 where they also put in the best
10 available technology. Now everybody in
11 Marcus Hook is complaining. In fact,
12 they want to take them to court. They
13 want to do something. They want the
14 odors to stop. But they also have the
15 best available technology. So we
16 cannot say that we're not going to
17 write any violations if not. You know,
18 we might as well just open up the state
19 and say, look, bring everything ---
20 bring everything here. We don't care
21 what it is, what it smells like, what
22 it does to the people living in
23 Pennsylvania. We're just going to
24 allow it. We're not going to have any
25 enforcement. We want to have a

1 brighter, newer, friendlier DEP.

2 What's going to happen to
3 people that vote in this Commonwealth
4 when they get tired of this nonsense?
5 We're going to get rid of Mr. Sife and
6 his friend is going to go also. And
7 we'll revamp DEP again and put some
8 enforcement action back into it instead
9 of having merely paper supporting
10 nonsense regulations like this because
11 it's not going to happen. It's just
12 crazy to sit up there and say that we
13 --- me as an affected person in an
14 affected community has been dumped on,
15 has to tolerate this. We don't open up
16 windows now. We don't have barbecues
17 now. We do not hang laundry on the
18 lines now because of the smells. We
19 don't even have people over who don't
20 live in the immediate neighborhood
21 because we're embarrassed because of
22 the smells. And that's with so-called
23 enforcement.

24 So what these regulations are
25 proposing is that we may as well be in

1 a Nazi state because that's what we're
2 going to be like in our homes. You
3 will not come outside. We have kids
4 now who are outside playing, when they
5 smell odors they run in the house, and
6 that's with enforcement. So what
7 you're saying is, well, we've
8 identified the problem area. We have
9 identified the problem odor. We are
10 aware that they have a problem with
11 malodors and we will not take any
12 enforcement action on it for five
13 years. It's also stupid from a
14 business sense because the fines that
15 are levied against the companies go
16 back to the Commonwealth. So
17 essentially they're keeping the
18 revenues for themselves, which doesn't
19 make any sense. But we're going to
20 fight it. Thank you.

21 BRENT GLASS:

22 Thank you. Thank you, Ms.
23 Mayfield. I'd like to call on Jane
24 Garbacz.

25 JANE GARBACZ:

1 My name is Jane Garbacz. I
2 live at 149 Central Plain,
3 Conshohocken. Before I begin I'd just
4 like to make a request, and I don't
5 know if it's possible that this request
6 could be fulfilled. It's come to my
7 attention from a former EQB member that
8 members of the EQB do not see the
9 actual testimony that is given by
10 citizens. They see either an executive
11 summary if it's one page or they see
12 some kind of a summary. And even
13 though apparently the record is trans
14 --- I mean, there is a transcript, I've
15 been told that to save trees, the
16 actual testimony is not forwarded to
17 the EQB. There's been some powerful
18 testimony today and I would
19 respectfully ask if this testimony
20 could be given in its entirety to all
21 the members.

22 In the Notice of the Proposed
23 Rulemaking it is stated that this
24 proposal streamlines both the complaint
25 and investigation process and

1 establishes clear limits of
2 responsibility for facility owners. I
3 disagree. There's not one thing listed
4 in this proposal that streamlines the
5 complaint and investigation process. I
6 do not see anything different from what
7 the Department has been doing for
8 years. Why must an objectionable odor
9 be first identified by a member of the
10 public? While this would be the case
11 in many instances, isn't DEP supposed
12 to be the expert? If DEP personnel are
13 out on the road and an objectionable
14 odor permeates the air, they should
15 have the authority to investigate
16 immediate. Response time is key in
17 verifying odor violations. Therefore
18 the definition should be changed to
19 objectionable odor which is first
20 identified by a member of the public or
21 an employee of the department.

22 The proposal for subsection C
23 of Section 123.31 states, quote, if a
24 person controls malodors air
25 contaminants from a source through the

1 use of the best available technology
2 for odors for that source, as
3 determined by the Department, then no
4 additional measures will be required to
5 further reduce residual odors. After
6 five years following implementation of
7 the best available technology, if a
8 malodor exists, the Department may
9 require a new determination of and
10 implementation of best available
11 technology for odors.

12 What is best available
13 technology for odors? Best available
14 technology means different things in
15 different programs. For example, we
16 have BAT, BACT, BDT, BCT, BPT, et
17 cetera. In many cases the best
18 available technology is not necessarily
19 the best. Other factors come into play
20 resulting in a lesser technology. Will
21 economic considerations be a feature of
22 BATFO, I'm calling it for odors.
23 Energy considerations? Social
24 considerations? Something else? How
25 can anyone know without a definition?

1 And what will be the scenario if no
2 technology exists to control
3 objectionable odors? It should also be
4 noted that residual odor is never
5 defined. How does it differ from the
6 original malodor? Does it differ in
7 detectability, intensity,
8 characteristics, frequency, duration,
9 hedonics?

10 In the summary of regulatory
11 revision it is stated that subsection C
12 of Section 123.31 will create certainty
13 for both the public and facility
14 operators concerning the extent of
15 responsibility for emissions of
16 malodorous air contaminants. Since
17 facility operators bear responsibility
18 for the malodorous air contaminants
19 coming from their facilities, DEP
20 should create certainty regarding the
21 extent of that responsibility.
22 However, in this proposal, the property
23 rights of citizens and their quality of
24 life will be violated. In effect, the
25 Department wants to grant a five-year

1 license for a continuing violation of
2 the Air Pollution Control Act. The way
3 this regulation is written, in order to
4 limit the facility owner's
5 responsibility, DEP must transfer some
6 of the responsibility to neighboring
7 citizens. If the so-called, quote,
8 unquote, residual odors are nauseating
9 or give you a headache, deal with it.
10 Embarrassed to invite guests over? Get
11 over it. Can't open windows because of
12 the smell? Air condition. And for
13 those who feel that the residual odors
14 from the best available technology for
15 odors is worse than the original
16 malodor, notify DEP in five years.
17 Yes, this proposal creates certainty
18 for the facility owner. Unfortunately,
19 the only certainty created for members
20 of the public is the uncertainty of how
21 residual odors may affect them.
22 However, there is a way to create
23 certainty for both the facility owner
24 and the public. Enforce the law. Make
25 it clear that notices of violation

1 and/or penalties will be issued when
2 the law is violated. DEP won't have to
3 get into the business of issuing best
4 available technology for odor
5 determinations. And the term residual
6 odors and BATFO won't even need to be
7 defined.

8 The five-year odor license
9 isn't the only controversial part of
10 the proposal. While the present
11 regulations exempt the production of
12 agricultural commodities in their
13 unmanufactured state, DEP is proposing
14 additional exemptions, private
15 residences, restaurants, materials
16 odorized for safety purposes, and other
17 sources or classes of sources
18 determined to be of minor significance
19 by the Department. While I am aware
20 that Section 4.1 of the Commonwealth's
21 Air Pollution Control Act prohibits the
22 EQB from regulating agriculture, I
23 disagree with the other exemptions.
24 While odorizing materials for safety
25 may be a worthwhile endeavor, if the

1 odor causes discomfort, an
2 investigation may be warranted and an
3 adjustment made in the type of odorant
4 utilized. Deregulating private
5 residences could have some unfortunate
6 consequences. Illegal drug labs and
7 other criminal activities have been
8 discovered in private homes and
9 criminals prosecuted due to malodor
10 complaints. Numerous activities at a
11 private residence as well as
12 restaurants could necessitate an odor
13 investigation. While most local
14 municipalities would deal with the
15 aforementioned problems under nuisance
16 ordinances, if the Department
17 deregulates them, what will be the
18 impact? Particularly troublesome is
19 the fact that DEP has a tentative list
20 of other sources or classes of sources
21 that will be exempted. The EQB should
22 demand to see this list in order to
23 ascertain what minor significance
24 means.

25 I believe that the proposed

1 regulations are an affront to any
2 citizen who lives in proximity to any
3 undesirable land use. The rule is
4 especially cruel when it is a known
5 fact that waste facilities are
6 concentrated in poor and/or minority
7 communities. Numerous times I have
8 attended meetings where DEP personnel
9 have acted sympathetic to people living
10 in communities inundated with waste
11 facilities. Countless times I've heard
12 such remarks as, it's not our fault, we
13 feel your pain, there's nothing we can
14 do, that was the old DER. Well, this
15 is the new DEP. Will citizens'
16 olfactory nerves have to deal with
17 residual odors from plant A, plus
18 residual odors from plant B, plus
19 residual odors from plant C, et cetera,
20 et cetera? Not to mention all the
21 other risks from emissions, truck
22 traffic, synergistic effects, et
23 cetera. Will DEP announce to the
24 legislature how compliance is improved
25 and fail to mention that deregulation

1 is a major factor?

2 The importance of odors in
3 human terms is related primarily to
4 psychological stress. Offensive odors
5 can cause poor appetite for food, lower
6 water consumption, impaired
7 respiration, nausea and vomiting, and
8 impaired mental faculties. Offensive
9 odors can lead to the deterioration of
10 personal and community pride, interfere
11 with human relations, discourage
12 capital investment, lower socioeconomic
13 status and deter growth. Odors can
14 scare people. There is always the
15 uncertainty over how the odors will
16 affect one's future health or the
17 health of family members. For example,
18 will the odors cause cancer? All of
19 these problems can result in a decline
20 in market and rental property values,
21 tax revenues, payrolls and sales.

22 In 1992 I served on a
23 subcommittee of the Southeast Regional
24 Round table that was totally devoted to
25 the problem of malodors. Jim Rue, most

1 recently a Deputy Secretary of DEP, was
2 Regional Director and attended most of
3 the subcommittee meetings. I still
4 have a copy of the draft report. While
5 improvements have been made regarding
6 the complaint coordinator, tracking
7 system and there have been some success
8 stories, many of the same problems
9 identified by the group remain. While
10 I would acknowledge some improvement
11 and do not mean to be overly critical,
12 many of the problems identified in 1992
13 persist. I've listed a few. Citizens
14 do not believe their complaints are
15 taken seriously by the Department.
16 Response time is too slow and in some
17 cases nonexistent. This affects
18 citizens' confidence in the agency.
19 Follow-up is too slow, if at all.
20 Failure to respond in the beginning
21 causes more time in the end. When the
22 Department does stop the problem, it
23 takes a long time because of
24 negotiations with the polluter rather
25 than enforcing the law. NOVs are

1 rarely issued.

2 I remember Jim Rue saying that
3 the Central Office had apparently
4 sanctioned this policy in the southeast
5 region. Many polluters are never taken
6 to court or made to pay for violations
7 even when the violations are well
8 documented. In some cases, the
9 Department has misled citizens
10 regarding the status of abatement
11 activities, court cases, et cetera.
12 Dishonesty has led to citizens
13 initiating actions such as appealing to
14 the EHB or other court actions and the
15 calling of newspapers or government
16 officials. Abatement actions are
17 usually not taken until large groups or
18 politicians become involved. Odor
19 problems are given low priority and
20 they should be given high priority.
21 The Department does not know the
22 seriousness or extent of the health
23 threat so it should respond as if it
24 were serious. Odor problems directly
25 affect citizens. Department needs to

1 differentiate between isolated
2 incidents and continuing or repetitive
3 complaints.

4 There is a need to respond
5 when an odor is fresh. The Department
6 must respond to repeated violations and
7 must not let complaints die. People do
8 not continue to call. The Department
9 must treat odor logs seriously and not
10 consider them to be an end of response
11 or merely as a tool in an enforcement
12 action. They can be an effective tool
13 in dealing with the problem, and can
14 convince citizens that they are
15 participating in a solution to the
16 problem. More staff should be
17 scheduled for the night shift, when
18 most odors occur. Pagers, car radios,
19 et cetera, should be used. NOV's should
20 be issued if there is a violation,
21 industry takes them seriously, they
22 must be used on a regular basis. Their
23 usage gives the Department a
24 negotiating position at the bargaining
25 table, and citizens believe that they

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are the proper enforcement response.
The Air Quality Bureau should not be
afraid to use criminal summary
proceedings or refer cases for civil
penalties.

The New Air Statute provides
the Department attorneys to represent
inspectors in summary proceedings and
bigger fines and potential jail time
can act as powerful enforcement and
bargaining tools. The civil section
allows assessment of civil penalties
and requires prepayment of civil
penalty in order to appeal. The local
officials may use new act. New act ---
also the act does not use the term
malodor but instead makes it easier to
enforce whenever there is any odor
that, quote, unreasonably interferes
with the comfortable enjoyment of life
or property. Thank you.

BRENT GLASS:

Thank you. The next speaker
is Donna Madaras Cuthbert.

DONNA MADARAS CUTHBERT:

1 That's right. My name is
2 Donna Madaras Cuthbert and I'm speaking
3 on behalf of ACE, The Alliance for a
4 Clean Environment.

5 BRENT GLASS:

6 Could you give your address?

7 DONNA MADARAS CUTHBERT:

8 549 Vine Street, Stowe, 19464.

9 The legal notice for this hearing
10 claims the proposal for these
11 unthinkable and indefensible changes to
12 DEP air quality regulations came from
13 the public as well as the regulated
14 community. ACE wants to know just what
15 private citizen in this state would
16 think it is safe or healthy to lower
17 regulations on the very air we need for
18 survival. Who would insist that their
19 families, friends and neighbors be
20 forced to have their lives ruined by
21 the stench of any kind of corporate
22 pollution? People in our area were
23 tortured by the stench of the Pottstown
24 Landfill for many years. They couldn't
25 enjoy their homes indoors or outdoors.

1 The stench permeated their furniture
2 and clothes. They were forced to keep
3 their windows closed all year long and
4 purchase air filters they could not
5 afford.

6 Picnics, walks and other
7 enjoyable outdoor activities were not
8 possible for these citizens. Many of
9 them suffered severe headaches, nausea
10 and developed severe asthma and
11 allergies. Pennsylvania citizens do
12 not intend to continue to tolerate any
13 more abuse to our environment because
14 DEP employees want to make their jobs
15 more convenient by accommodating big
16 business and industry. This plan to
17 change air regulation abandons every
18 citizen in this state. A five-year
19 check on odors is the same as no check
20 at all. Pennsylvania DEP is trying to
21 wash its hands from the responsibility
22 of helping people in this state
23 overcome such abuse. Why? Is it too
24 much trouble for DEP to do the job we
25 pay it to do, or is the pressure from

1 the regulated community too much for
2 DEP employees to withstand? Thank you.

3 BRENT GLASS:

4 Thank you, Ms. Cuthbert. And
5 those are all the people who have
6 signed up to speak. Does anyone else
7 here who would like to speak on this
8 issue? Therefore I will close the
9 hearing, but also before I close, I
10 would like to indicate that there are
11 members of the DEP staff here, as I
12 indicated earlier, that Terry Black is
13 here and that also Francine Carlini is
14 here from the Southeast regional office
15 air program manager from that office
16 and they had agreed to stay here and
17 answer some questions informally to
18 discuss with anybody who is attending
19 the hearing. So if there is no other
20 person who wishes to speak, I'm going
21 to officially close this hearing.
22 Anyone else want to speak who has not
23 already been heard? Thank you to
24 everyone who has attended and the
25 hearing is now closed.

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HEARING CONCLUDED AT 2:00 P.M.

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C E R T I F I C A T I O N

I hereby certify that the foregoing is a true and correct transcript of the notes taken by me at the hearing in this matter.

10-13-97 *Cristine E. Tule*
DATE REPORTER

BEFORE THE
ENVIRONMENTAL QUALITY BOARD
OF

COPY

DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN RE: REGULATORY BASICS INITIATIVE #3 -
MALODORS

BEFORE: PAUL HESS, CHAIRMAN
SHARON FREEMAN, MEMBER
TERRY BLACK, MEMBER

LOCATION: Rachael Carson Building
400 Market Street
First Floor Hearing Room
Harrisburg, PA

HEARING: Tuesday, September 23, 1997
1:00 p.m.

WITNESSES: Michael Fiorentino
David W. Patti
Nancy Parks
Karl J. Novak
Richard Thomas
Reporter: Amy J. Patterson

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I N D E X

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P R O C E E D I N G S

1
2 -----
3 MR. HESS:

4 Good afternoon. It's
5 September 23rd, 1997, at 1:00 p.m. and
6 this is the Environmental Quality Board
7 public hearing on proposed regulations,
8 Regulatory Basics Initiative #3 on
9 Malodors.

10 Welcome to this Environmental
11 Quality Board public hearing on
12 proposed amendments to the Department
13 of Environmental Protection's air
14 resources regulations concerning
15 malodors. This proposal was approved
16 by the Environmental Quality Board on
17 June 17th, 1997.

18 My name is Paul Hess. I am a
19 Citizens Advisory Council
20 representative to the Environmental
21 Quality Board.

22 Also with me today from the
23 Department of Environmental Protection
24 are, to my left, Terry Black, who is
25 Regulation and Policy Development

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Section of the Bureau of Air Quality of the Department of Environmental Protection. And on my right is Sharon Freeman, who is the Regulatory Coordinator for the Policy Office, Department of Environmental Protection.

Notice of today's hearing was printed in the Pennsylvania Bulletin on August 23rd, 1997. In addition, notices were published in major newspapers throughout the Commonwealth.

This proposal is the third in a series of amendments to the Department of Environmental Protection's air resource regulations resulting from the Regulatory Basics Initiative. The RBI began in August, 1995, with the Department of Environmental Protection's review of existing regulations to determine whether those were --- which were more stringent than federal laws and regulations, those which lacked clarity, and those which imposed disproportionate costs on the

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regulatory --- regulated community.

This proposal addresses recommendations received from both the public and the regulated community concerning DEP's program for addressing malodors. Proposed changes include modifying the definition of malodor, adding a definition of odor investigation. And modifying the existing program for investigating and addressing malodor complaints. The proposal will allow a single member of the public to initially identify the objectionable odor and allow the DEP air program staff to investigate and determine whether an objectionable odor exists. Proposed changes to Section 123.31(c) of 25 Pennsylvania Code provides that a facility which controls malodorous air contaminants through the use of best available technology (BAT) will not be required to further reduce residual odors for a five-year period.

The EQB is also specifically seeking comments on two other issues.

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The first involves how the frequency of odors and the public concern about the odor should be factored into DEP's investigation and documentation of objectionable odors. The second issue is whether DEP should retain its existing minimum control requirements of incineration or its equivalents for addressing odors resulting from emissions of volatile organic compounds (VOCs). The regulation, if approved will be submitted to the Environmental Protection Agency as a revision to the State's Implementation Plan, the (SIP).

In order to give everyone an equal opportunity to testify at this hearing, I would like to note the following ground rules: One, I will first call upon the witnesses who have preregistered to testify at today's hearing as included on today's schedule of witnesses. There is a copy of the schedule out there at the desk. After hearing from these witnesses, I will provide any other interested parties

1 with the opportunity to testify as time
2 allows. Oral testimony is limited to
3 ten minutes. Try to keep within that.
4 I'm not going to enforce it real hard,
5 but try to keep within that ten
6 minutes. Organizations are requested
7 to designate one witness to present
8 testimony on its behalf. Each witness
9 must submit three written copies of the
10 testimony to aid in transcribing the
11 hearing. Please hand me your copies
12 prior to presenting your testimony.
13 Please state your name and address for
14 the record prior to presenting your
15 testimony. We would also appreciate
16 your help in spelling names and terms
17 that may not be generally familiar so
18 that the transcript can be as accurate
19 as possible.

20 Interested person may submit
21 written comments in addition to or in
22 place of oral testimony presented
23 today. All comments must be received
24 by the Environmental Quality Board by
25 October 29th, 1997. Comments should be

Sargent's Court Reporting Service, Inc.

(814) 536-8908

1 addressed to the Environmental Quality
2 Board, P.O. Box 8477, Harrisburg, PA
3 17105-8477.

4 Anyone interested in a
5 transcript of this hearing may contact
6 the Reporter here today to arrange to
7 purchase a copy. She will be here
8 after it's over.

9 I would like to call the first
10 witness and I would like to have the
11 witness over here so the people in the
12 audience can listen and hear. So, my
13 first witness is Michael Fiorentino,
14 Clean Air Council. Michael, you're up.
15 Just come in behind us. And use the
16 microphone because we would like to
17 hear you and I think the people in the
18 audience should be able to hear, too.
19 Thank you.

20 Do you have three copies of
21 your written statement?

22 MICHAEL FIORENTINO:

23 I'll distribute copies to you
24 and I'll also provide you with by
25 business card. Yes, Mr. Chairman.

1 Thank you. Good afternoon, Mr.
2 Chairman, ladies and gentlemen. My
3 name is Michael Fiorentino. I am a
4 staff attorney with the Clean Air
5 Council, a statewide membership-based
6 nonprofit environmental advocacy and
7 education organization. The Council
8 uses public education, citizen-based
9 advocacy, and governmental oversight to
10 protect the rights of Pennsylvania
11 residents to breathe clean air.

12 Odor regulations provide
13 neighborhood residents with one of the
14 few mechanisms that enable them to
15 effectively battle polluters in order
16 to safeguard their environmental and
17 their health. This is because malodors,
18 often signaling the presence of some of
19 the more dangerous environmental
20 hazards to which people are exposed,
21 are also more easily detected than most
22 other types of pollution. The Council
23 is extremely concerned with the
24 Department's desire to weaken the
25 current malodor regulations.

1 Malodors are often a serious
2 environmental and public health threat
3 throughout the Commonwealth. The DEP
4 claims that nearly a third of all
5 complaints that its regional air
6 program offices receive relate to
7 malodors. This being the case, the
8 Council finds the Department's attempts
9 to streamline the complaint and
10 investigation process to be
11 inappropriate and confusing. The
12 Council believes that each and every
13 odor complaint deserves serious
14 attention from the Department.
15 Limiting the issuance of notices of
16 violation for malodor to only those
17 that have been reported a certain
18 number of times or to those that elicit
19 the most public objection severely
20 jeopardizes the public health and will
21 discourage residents from reporting
22 problems in their neighborhoods. All
23 malodors, whether they are being
24 reported for the first time or the 50th
25 and whether one person has complained

1 or 50, deserves serious attention from
2 Department investigators. There is
3 probably no other kind of enforcement
4 action taken by the Department that
5 better reflects its respect for the
6 members of the community than how it
7 handles odor complaints.

8 Even a single documented
9 complaint should be sufficient grounds
10 for the issuance of a notice of
11 violation. Polluting entities are
12 responsible for knowing that the law
13 prohibits malodor migration.

14 Furthermore, requiring an
15 inspector to undertake a complex
16 investigation of the frequency of odors
17 from a source and acquiring affidavits
18 and odor logs has the potential to
19 further burden the entire process,
20 thereby defeating the Department's
21 objectives. An investigator needs to
22 be able to issue a notice of violation
23 to a facility when he or she detects a
24 malodor while conducting an inspection
25 in response to a complaint. If the

1 Department is suggesting, however, that
2 the investigator must first undertake a
3 complex investigation process before
4 being able to document an official
5 malodor then the process will become
6 mired down in bureaucracy and will fail
7 to serve the needs of community
8 residents. Prolonging the entire
9 process will also subject the affected
10 community to further harm as the
11 facility continues to emit the malodor
12 during that time period. At a time
13 when the DEP's ability to enforce the
14 full range of air quality laws and
15 regulations is stretched thin, it is
16 highly unlikely the resources will be
17 available to make these proposals work
18 with the efficacy of its regulatory
19 predecessor.

20 Regarding malodors that result
21 from the emissions of volatile organic
22 compounds, the Council encourages the
23 Department to retain the current
24 minimum requirements that facilities
25 must meet. VOCs are some of the most

1 pervasive and dangerous air pollutants
2 in Pennsylvania. Maintaining a strict
3 limit on malodors from the incineration
4 of materials which result in the
5 emission of VOCs is essential to
6 protect public health.

7 Finally, the Council would
8 like to address the Department's
9 proposal to exempt facilities from
10 having to reduce residual odors for a
11 five year period for those that control
12 malodorous air contaminants through the
13 use of best available control
14 technology. Pollution control
15 technology evolves at such a rapid rate
16 that what is considered best available
17 control technology will change from
18 year to year. Exempting a facility
19 from having to reduce residual odors
20 for five years, despite the fact that
21 the control technology it uses will
22 most likely become outdated, is an
23 endorsement by the Department for
24 facilities to emit malodors that
25 threaten public health. The Council

1 believes that a more stringent and
2 periodic review of all facilities that
3 emit malodorous air contaminants it is
4 more environmentally friendly and is a
5 more effective means of protecting
6 public health.

7 Thank you for the opportunity
8 to speak before you today. The Council
9 will reserve its right to submit
10 further comments in writing.

11 MR. HESS:

12 Okay. Thank you. I think you
13 used the term best available control
14 technology.

15 MR. FIORENTINO:

16 Yes.

17 MR. HESS:

18 And I think in the rulemaking,
19 I think it says best available
20 technology.

21 MR. FIORENTINO:

22 Oh, best available control is
23 not part of that?

24 MR. HESS:

25 No.

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MR. FIORENTINO:

Okay.

MR. HESS:

Not as part of the terminology
and not as part of Section 123.31, not
BACT. It's just BAT.

MR. FIORENTINO:

I believe you are correct, Mr.
Chairman. I think that might have been
a clerical oversight.

MR. HESS:

Thank you. Okay. Thank you.

MR. FIORENTINO:

Thank you.

MR. HESS:

Next is David Patti. Yes.

DAVID W. PATTI:

My name, address and other
pertinent information is on the top of
the written copy of the transcript.

MR. HESS:

Okay. Thank you.

MR. PATTI:

Good afternoon and thank you
holding these important public hearings

1 and for providing the Pennsylvania
2 Chemical Industry Council an
3 opportunity to comment on the proposed
4 amendments to the Commonwealth's
5 malodor regulation. My name is David
6 Patti. I am the President of PCIC.

7 There are over 560 chemical-
8 related facilities in Pennsylvania.
9 Industries in the state that rely on
10 the chemical industry for a significant
11 portion of their input employ about 1.3
12 million workers in the Commonwealth.
13 The industry itself employs about
14 65,000 people, or more than six percent
15 of the state's manufacturing workers.
16 The chemical industry's total wage and
17 salary payments in Pennsylvania amount
18 to more than three billion dollars
19 annually, or more than ten percent of
20 the total for manufacturing in the
21 state. The state's chemical workers
22 earn average annual wages and salaries
23 of about \$48,000, or nearly 50 percent
24 higher than the state's overall
25 average.

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The Commonwealth ranks seventh among the states in chemical production. The value of the state's chemical shipments total more than 14 billion dollars annually. Each year over one billion dollars' worth of products from the state go abroad as exports.

We make in this state the basic chemicals for products critical to our daily lives; pharmaceuticals, plastics, fertilizers, pesticides, paints and coatings, food additives and preservatives, synthetic fibers, cosmetics and building materials.

The proposed amendments to the malodor regulation, we believe, is important to our ability to manufacturer in these areas.

The malodor regulation is, in our opinion, a major departure from historical approaches to public nuisances. In fact, we were somewhat surprised to find this proposal in the Regulatory Basics Initiative since it

1 is more far reaching than a procedural
2 or streamlining issue.

3 PCIC and its 100 member firms
4 share the concern of our Commonwealth's
5 citizens that bad odors originating in
6 manufacturing operations can be
7 unpleasant, distasteful, irritating,
8 disruptive, and even threatening to
9 property values. Through voluntary
10 efforts such as Responsible Care, the
11 chemical industry has worked hard to be
12 good neighbors within the communities
13 in which we are located.

14 Historically, Pennsylvania has
15 recognized the spirit of a social
16 contract between neighbors and has only
17 implemented public policy provisions
18 when that contract was broken through
19 behavior or actions that created a
20 continuing public nuisance. The
21 definition of air pollution in the
22 state Air Pollution Control Act
23 requires proof of a noxious or
24 obnoxious odor which may be inimical to
25 the public health, safety and welfare

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or which unreasonably interferes with the comfortable enjoyment of life or property. The statutory emphasis on public health and unreasonable interference clearly implies there must be a public interest sufficiently strong to require a lawful business to invest in odor control equipment.

The regulatory definition of malodor, in the current regulation, is consistent with the state statutory definition by requiring proof that the odor be an odor which causes annoyance or discomfort to the public and which the Department determines to be objectionable to the public.

Case law requires the Department, in order to prove an odor violation, to present the testimony of more than one complainant to demonstrate a public nuisance because of the subjective nature of a community's perception of odors.

The current regulatory definition of malodor has withstood a

1 challenge based upon void for vagueness
2 in past years. Suit was brought on the
3 grounds that the regulation required
4 that an odor must discomfort the public
5 before action could be taken. The
6 Third Circuit Court of Appeals held
7 that Pennsylvania's odor emission
8 regulation is not unconstitutional and
9 noted that the words annoy and
10 discomfort have long been used in both
11 common law and statutory law.

12 The DEP proposal --- or
13 proposes to amend the definition of
14 malodor at 121.1 by deleting the
15 phrase, quoting here, an odor which
16 causes annoyance or discomfort to the
17 public and which the Department
18 determines to be objectionable to the
19 public and by replacing that phrase
20 with, quote, an objectionable odor
21 which is first identified by a member
22 of the public and subsequently
23 documented by the Department in the
24 course of an odor investigation to be
25 an objectionable odor.

1 DEP also proposed to add a
2 definition of odor investigation which
3 would be, quote, an investigation of
4 the source and frequency of odors which
5 may include, but is not limited to, an
6 inspection of a facility, surveillance
7 activities in the area of a facility,
8 affidavits, or odor logs.

9 Currently, the presumptive
10 remedy for malodors is incineration.
11 DEP proposes to amend the regulation to
12 state that best available technology or
13 BAT is required. If a malodor exists
14 after five years following
15 implementation of BAT, then DEP may
16 require under the proposal a new BAT
17 determination.

18 DEP says the proposed
19 regulation streamlines both the
20 complaint and investigation process and
21 establishes clear limits of
22 responsibility for facility owners.

23 Frankly, we don't agree with
24 that assessment. PCIC fears that the
25 proposal will make dealing with

1 malodors more contentious, more bogged-
2 down in procedure and legal wrangling,
3 more costly, and ultimately less
4 responsive to the public and the
5 demands of good environmental
6 stewardship.

7 Mr. Fiorentino, the first
8 witness echoed those sentiments.

9 By removing annoyance and
10 discomfort to the public from the
11 definition of odor, the Department is
12 moving beyond its statutory authority
13 to address air pollution. The essence
14 of malodor regulatory history is to
15 balance public nuisance with economic
16 burdens on business. The proposal sets
17 no standards to determine or evaluate
18 when an odor is objectionable. The
19 absence of annoyance and discomfort to
20 the public makes the proposed
21 regulation so subjective as to make
22 enforcement arbitrary.

23 It is our very strong belief
24 that malodor remedies should be reached
25 on a case-by-case process involving the

1 firm, the citizens who make the
2 complaints, and the Department. There
3 should be a continuum of response that
4 takes into account a firm's adherence
5 to the social contract and
6 demonstration of good neighbor
7 behavior.

8 Our recommendations: The
9 definition of malodor, we believe, must
10 maintain the common law traditions of
11 annoyance and discomfort to the public.
12 A single complaint should not trigger
13 an investigation. This is a waste of
14 governmental, as well as industry,
15 resources. In the Bay Area Basin of
16 California, for example, their air
17 basin requires ten validated complaints
18 to trigger an investigation. The
19 concept of incident validation is an
20 important one. Validation requires the
21 Department to show that yes, there was
22 an odor; yes, it caused a public
23 nuisance or annoyance; and, yes, the
24 Department confirmed that the suspected
25 source was indeed the origination point

1 of the odor. Often people will assume
2 they know the source of an odor and
3 report it without determining that
4 shifting wind conditions are bringing
5 an odor from an unusual source.

6 Let me suggest another concept
7 that should be present in the
8 definition. In order to trigger
9 Departmental action, it should be
10 demonstrated that the alleged malodor
11 is both systematic and routine. That
12 is a part of a facility's normal
13 operations. This can be demonstrated
14 through a record of complaints.

15 A malodor complaint which is
16 the result of an incident or process
17 upset at a facility should not result
18 in a former --- formal odor
19 investigation or in the requirement to
20 implement BAT as the corrective action.
21 The validation process can be used to
22 determine whether an odor is ongoing or
23 resulted from a one time occurrence.
24 The Department's response should differ
25 from this determination. I might add

1 parenthetically that doesn't mean that
2 there shouldn't be a Departmental
3 response to an upset, but that's a
4 separate problem from a problem of
5 continuing odor from a facility and one
6 that should be dealt with for what
7 happened there not for the odor.

8 The validation process should
9 use metrics to reduce subjectivity and
10 to demonstrate the degree of public
11 discomfort caused by the odor. Several
12 jurisdictions employ the ASTM butanol
13 odor intensity scale. This system uses
14 a binary scale from one to eight in
15 which every point on the scale
16 indicates the doubling of the
17 concentration of butanol in the control
18 air. Air samples from a site are then
19 compared with the control. Level one
20 or level two on the scale probably
21 won't result in any complaints. Level
22 two or three may result in complaints.
23 Higher levels indicate air
24 concentrations of odors that are
25 detectable and objectionable.

1 Trigeminal irritation, that is the
2 irritation of the nerves in the face
3 and the nose, usually is triggered at
4 around level five. Such a procedure in
5 Pennsylvania might actually result in
6 the streamlining the agency seeks in
7 this amendment and I would suggest that
8 more information on these techniques is
9 available from several professional
10 associations, including the Air and
11 Waste Management Association which has
12 done much work in the area of odor
13 control.

14 PCIC believes that an odor
15 investigation should be defined as a
16 multi-step progression of actions.
17 Initiation of an investigation after
18 validated complaints have been reviewed
19 should require the suspected source to
20 work proactively with the citizens who
21 filed complaints to understand the
22 problem and to rectify or implement
23 corrective action to the citizens' and
24 DEP's satisfaction. Often operational
25 changes or leak detection or repair

1 activities may be the appropriate
2 remedy to eliminate or reduce the
3 source of the malodor.

4 Failure on the part of the
5 source to conduct meaningful corrective
6 action in a responsible manner could
7 drive the process to more prescriptive
8 measures, up to and including ordering
9 the implementation of BAT controls for
10 the malodor. An order to install and
11 maintain BAT should not, however, be
12 the expected outcome of an odor
13 investigation. Ordering BAT means the
14 system of mediated understanding and
15 cooperation has failed, not succeeded.

16 When Bat is ordered PCIC does
17 not believe that incineration should be
18 the presumptive remedy for malodor,
19 especially for volatile organic
20 compounds. Incineration is not the
21 only option which is effective at
22 controlling emissions. Worse,
23 incineration wastes fuel since there is
24 little or no fuel value in the odors
25 themselves, and could potentially

1 generate other regulated emissions,
2 most especially those considered Nox.
3 The Department should
4 encourage facilities to identify the
5 solution to the malodor which has the
6 lowest total environmental impact.
7 Alternative control technologies such
8 as scrubbing, biofiltration,
9 absorption, and closed loop vapor
10 balancing all have the potential to
11 reduce or control malodorous emissions
12 below the level which would trigger a
13 malodor. In addition, as noted
14 earlier, operational changes and leak
15 detection and repair activities may be
16 more appropriate for eliminating or
17 reducing the source of the malodor.
18 The facility in question should be
19 afforded greater flexibility in
20 identifying control technologies or
21 operational changes to eliminate the
22 malodor problem. The facility should
23 be required to demonstrate, based on
24 sound engineering practices or past
25 practice, that the proposed solution

1 will actually deliver the intended and
2 expected result. Continued citizen
3 complaints would, of course, trigger
4 another investigation and additional
5 departmental action.

6 If a firm is ordered to
7 install BAT, it should be granted a ten
8 year operating period before a review
9 of the technology is required.
10 Validated odor complaints resulting
11 from a different process or piece of
12 equipment within the same facility
13 would, of course, trigger a new and
14 different odor investigation. However,
15 it is important that firms have some
16 stability in their regulatory
17 framework. I'd also add that it's
18 important that the resources of the
19 Department and the resources of that
20 firm are directed to handling serious
21 pollution that we're concerned about,
22 whether it be in our Nox or hazardous
23 air pollutants programs and, of course,
24 any dangerous omissions from the plant
25 as suggested by the previous witness.

1 One related issue is our
2 concern about malodor and that
3 regulation being part of the SIP.
4 Unlike most states, Pennsylvania's odor
5 regulation is part of the State
6 Implementation Plan and appears to be
7 federally enforceable. This means the
8 odor regulation may be a, quote,
9 applicable requirement for major
10 sources subject to Title V permitting.
11 Notwithstanding any proposed revision
12 to the malodor regulation, PCIC
13 believes that SIP should be revised to
14 eliminate the malodor regulation.
15 Malodors are a particularly appropriate
16 area for local community standards and
17 should not be federally enforceable.
18 In addition, the malodor regulation
19 does not bear any relation to
20 attainment or maintenance of a National
21 Ambient Air Quality Standard.

22 Thank you again for the
23 opportunity to present our views. We
24 will be submitting formal written
25 comments as well to the Department. I

1 will be happy to take your questions
2 now or to try to obtain for you any
3 additional information on any points.

4 MR. HESS:

5 Thank you. Nancy Parks?

6 NANCY PARKS:

7 I'd like to thank Dr. Hess and
8 the committee members for the
9 opportunity to testify today.

10 I am Nancy Parks and I
11 represent 19,000 members of the
12 Pennsylvania Chapter of the Sierra Club
13 today and I am Chair of their Clean Air
14 Committee.

15 Before I describe my specific
16 comments on this particular regulation,
17 I would like to enter a polite protest.
18 It's a disturbing trend to me that the
19 EQB has scheduled these kinds of
20 regulatory hearings during the day and
21 in inaccessible locations. Air
22 Regulation and, in particular the
23 malodors regs, are of intense interest
24 to the public, the general public.
25 These regulatory hearings should take

1 place in the evening so that those
2 working during the day with little or
3 no opportunity to take a day off could
4 be here to express their very important
5 opinions. These hearings should also
6 be held in locations where they are of
7 most interest to the public. In this
8 case, that would be in Philadelphia and
9 Pittsburgh. And here we have an
10 instance when there is no Philadelphia
11 hearing scheduled at all and the King
12 of Prussia location, as I'm
13 unfortunately familiar with is
14 virtually inaccessible to the public by
15 public transit, whereas the Pittsburgh
16 site of the hearing is located on an
17 island where public transit is quite
18 limited.

19 So the Sierra Club requests
20 that the EQB make it a policy that all
21 regulatory hearings be held in the
22 evenings and that they be held in the
23 field at the locations where the
24 interest of the public is the greatest
25 and that only locations accessible to

1 public transit be used.

2 Now, my specific comments on
3 this regulation are as follows. Under
4 Section 121.1, Definitions, the Sierra
5 Club believes that the definition of
6 malodor should be changed to delete the
7 words at the end of that definition
8 which state that DEP will determine it
9 to be an objectionable odor. We feel
10 it's the right of the general public to
11 specifically decide if that odor is
12 objectionable to them. It should not
13 be the subjective decision of the DEP
14 staff person or inspector alone, but
15 that's actually happening. Only the
16 person experiencing the malodor, they
17 could be more --- people who are more
18 or less sensitive these days at any
19 particular time and place, can identify
20 can odor as objectionable to their
21 particular person and it will depend
22 entirely on them, their experience and
23 their sensitivity.

24 Under the definition of
25 malodor, we praise DEP for their change

1 to the definition that allows a single
2 individual to complain to DEP of an
3 objectionable malodor.

4 Under odor investigation we
5 would like to see the words source and
6 frequency of deleted from the
7 definition. We believe that the number
8 of times a malodor is smelled and
9 identified by a member of the public
10 has no relevance whatsoever to whether
11 or not the odor must be controlled.
12 Any attempt to add a frequency
13 requirement to this regulation would be
14 viewed by the Sierra Club, Pennsylvania
15 Chapter, as an attempt to further
16 weaken this regulation from its current
17 form and would, in fact, makes its use
18 by the public moot. Pennsylvanians
19 have the constitutional right to clean
20 air and, therefore, they have the right
21 to live without those objectionable,
22 dangerous, or even life-threatening
23 odors. The Sierra Club would not take
24 lightly the denial to our 19,000
25 members the right to complain about

1 those odors and to have a report from
2 DEP into an investigation of this in a
3 prompt manner.

4 Under Section 123.31,
5 Limitations, the Sierra Club believes
6 that we should delete the BAT
7 requirements. Best available
8 technology contemplated under this
9 proposed revision of the reg would not
10 provide reasonable protection to the
11 public. We also believe that this
12 section should be deleted because of
13 the loophole that allows good people to
14 be exposed to objectionable odors for
15 at least a five year period if the BAT
16 not work to end the problem. And I'd
17 like to offer an example. This is
18 specifically what worries me. Since
19 this is going to be SIPped and if a
20 source that has been found to be
21 emitting an objectionable odor
22 possesses an air permit, a review of
23 that air permit is done at the end of
24 every five years. What I'm afraid is
25 going to happen specifically is that if

1 a source is in, for instance, only the
2 first year of its permit and it's four
3 years until that permit review takes
4 place, if an odor is identified and
5 that is applied there will be four
6 years until that permit review, but the
7 BAT review is not triggered for five
8 years. So it's possible that a BAT
9 review would not happen during that
10 permit review cycle. And it's not
11 clear to me that DEP is saying that
12 they will, without question, look at
13 the review at that time even though the
14 five year period hasn't exactly been
15 triggered. So that what could happen
16 is that the BAT review would wait until
17 the next permit cycle, allowing for a
18 nine or ten year period when there is
19 no review of that BAT regulation.

20 We also feel that for the use
21 of something like BAT to be acceptable
22 to the public and to the Sierra Club's
23 members that review would need to be no
24 longer than two years after the
25 installation of BAT. We also feel that

1 it's generally inadequate to protect
2 the public and the decision as to what
3 that technology is likely to be at any
4 given instance is far too open to
5 manipulation and negotiation by
6 affected sources and that politics
7 would have too great a role in the
8 decision of what BAT would be. The DEP
9 would also need to create a mechanism
10 to choose the BAT whereby the public
11 could feel assured that that choice
12 would be independent of the affected
13 source or independent of politics.

14 DEP has indicated that the BAT
15 determinations and requirements would
16 be included in the SIP. That would be
17 a very good idea since we feel strongly
18 that local municipalities would neither
19 be able to afford or would ever have
20 the staff to implement odor regulations
21 themselves. And this is something that
22 the State should be doing and it's
23 something that should be included in
24 the SIP so that it's enforceable for
25 people, especially considering how

1 large the number of complaints since we
2 get over 600 complaints a year in the
3 state.

4 Additionally, the Sierra Club
5 believes that under Section 123.31(d)
6 that parts two, three, four, and five
7 which are new additions to this
8 regulation should be deleted. We
9 believe that the inclusion of these
10 additional exemptions significantly
11 weakens the regulation that has already
12 and for a very long time found it
13 difficult to protect the public from
14 odors. There is no good reason to
15 protect these activities from public
16 complaints. If they do cause
17 objectionable odors, then one of two
18 things should happen. Either they
19 should be regulated at the start and
20 they should be liable for complaints
21 and regulation or they should never be
22 permitted in residential neighborhoods
23 to start with.

24 Up until this point my
25 comments have addressed two of the

1 three questions that DEP has proposed
2 for public comment in The Pennsylvania
3 Bulletin, and that is in documenting
4 whether the odor is objectionable and
5 how should the frequency or occurrence
6 and extent of the public objection be
7 evaluated. And we agree that the
8 single individual should be permitted
9 to lodge the formal complaint and that
10 a single occurrence of an objectionable
11 odor should trigger the investigation.

12 Question Number three is is
13 the five year review period for BAT the
14 appropriate time frame. And we do not
15 recognize that. We believe that that
16 is unacceptable unless it meets the
17 criteria that we stated before of being
18 every several years and a mechanism be
19 chosen where --- that we can be assured
20 is independent.

21 Now, as for Question Number
22 two, should the Department retain its
23 long-standing minimum requirements for
24 malodors resulting from emissions of
25 VOCs. I had to admit I was very

1 surprised to see this question in The
2 Pennsylvania Bulletin. Because I'm a
3 member of --- I've been a member of
4 AWQTAC for many years and of the
5 current air advisory committee, I have
6 been present for all the conversations
7 that we've had on malodors and I don't
8 have any memory of dealing with this
9 particular issue or any notes taken
10 from those meetings on this issue. So
11 I would like to spend some time talking
12 with DEP personnel about this. But I
13 would like to say one thing about this
14 in that some of the VOCs that might be
15 considered objectionable in some
16 instances are listed under the Clean
17 Air amendments, Section 112, as toxic
18 air pollutants, hazardous air
19 pollutants with a requirement for MACT
20 technology. And the language of this
21 regulation would seem to imply that DEP
22 intends to use a BAT instead of the
23 minimum requirement of the Clean Air
24 Act that they use the maximum
25 achievable control technology. And

1 that would obviously not follow the
2 minimum requirements of the Clean Air
3 Act. It would, in fact, be illegal to
4 do that.

5 In conclusion, it is obvious
6 that the occurrence of malodors is
7 especially important to our membership
8 and the Sierra Club believes that DEP
9 should be expanding and strengthening
10 this regulation and not effectively
11 eliminating this regulation as we see
12 happening through this proposed
13 regulatory language. And we would
14 recommend first that it be
15 strengthened; that the single member of
16 the public should be able to file a
17 complaint; that the response of DEP
18 should continue to be an immediate
19 response; that the inspections of the
20 facility and source should be immediate
21 and should be unannounced, that all
22 manner of investigation techniques
23 should be available to DEP beyond those
24 that have been listed in the regulation
25 and that in order to accomplish what we

1 know is a very demanding task of
2 regional staff, we believe that
3 regional offices, particularly in
4 Philadelphia and Pittsburgh, should
5 have dedicated staff to work on odor
6 complaints. And that, in fact, and
7 particularly in these offices that the
8 air staff be increased in number so
9 that it's adequate to address all the
10 complaints that are coming into those
11 offices. Thank you.

12 MR. HESS:

13 When you went back to what
14 would trigger that, I think what you
15 said was if a facility had an accident.
16 In other words, they were just
17 operating and that would produce a
18 malodor, correct, ---

19 MS. PARKS:

20 Uh-huh (yes).

21 MR. HESS:

22 --- observed by one person it
23 would trigger this? In other words, it
24 wouldn't be normal facility operations,
25 it would be an accident, a spill, two

1 or three hours or something like that
2 and someone, a single person, the way
3 it reads now, could then get ahold of
4 DEP regional office and put the
5 complaint in; correct?

6 UNIDENTIFIED SPEAKER:

7 Right. Uh-huh (yes).

8 MS. PARKS:

9 That would be one instance,
10 sure. But I think even under normal
11 operations that we need to look at
12 these things if these things are
13 sighted in your residential
14 neighborhood.

15 MR. HESS:

16 But an accidental spill or
17 something like that ---

18 MS. PARKS:

19 Sure. Absolutely.

20 MR. HESS:

21 --- and then maybe something
22 would trigger?

23 MS. PARKS:

24 Well, yeah. I think it should
25 be triggered even when it's not.

1 MR. HESS:

2 Okay. Terry?

3 MR. BLACK:

4 No, not right now. I think if
5 we go back though and check the EQB
6 minutes you'll find that the
7 consideration issue was discussed,
8 Nancy.

9 MS. PARKS:

10 Oh, at the EQB?

11 MR. BLACK:

12 No, it's not ---.

13 MS. PARKS:

14 Yeah. It's not in my minute
15 --- it's not in my --- you know, my
16 notes.

17 MR. HESS:

18 Okay. Thank you. Next we
19 have Karl Novak. Here he is.

20 KARL NOVAK:

21 Thank you very much for
22 letting me speak this fine day. And I
23 have a couple of comments with regards
24 to PA Bulletin Volume 27, Number 34 of
25 23 August 1997.

1 I find one of the provisions,
2 specifically 1223.32(d), to be most
3 objectionable. This provision would
4 exclude agricultural commodities in
5 their unmanufactured state. In other
6 words, my interpretation of this would
7 be that hog waste would no longer be
8 considered objectionable. This notion
9 is completely unrealistic, especially
10 considering the hog factories (Confined
11 Animal Feeding Operations) of thousand
12 of hogs with an annual output of
13 upwards to five million gallons of
14 waste.

15 I live in the community of
16 Clearville, Pennsylvania, Bedford
17 County, and it's stated that we're
18 slated for two very large factories in
19 the near future and they will require
20 an additional 36 finishing houses to
21 take care of, which each house will
22 house 2,000 hogs. The net hog waste
23 production is estimated in my community
24 at 81 million gallons of waste per year
25 when those hogs come into full

1 production.

2 You may say that Act Six,
3 which is the Nutrient Management Act or
4 the regulations that will be
5 forthcoming from that will help prevent
6 the stench from an enormous --- this
7 enormous amount of waste. Not so.
8 This odor reduction Act acts just ---
9 excuse me. Not so. As the odor
10 reduction acts, such as injecting or
11 plowing down the wastes are not
12 required, additionally there are no
13 setbacks between fields receiving the
14 waste and homes, public parks,
15 churches, schools, hospitals, and
16 populated areas. The real tyranny of
17 Act Six is that it precludes townships
18 and municipal bodies from passing an
19 ordinance that is more restrictive or
20 protective of the public and also
21 presents --- preempts all existing
22 ordinances.

23 The counties of Fulton,
24 Susquehanna, Franklin, Tioga,
25 Lancaster, and Perry have also been

1 targeted for hog factories, so Bedford
2 County is not alone.

3 Why are these concentrated hog
4 feeding operations proliferating in
5 Pennsylvania? It's my thought that,
6 and I believe, that the thoughtless
7 pursuit of exports and the production
8 at any cost with a complete disregard
9 of future viability of family farms and
10 the ecological problems these
11 operations create are at the heart of
12 the problem. It is targeted for
13 feeding the Pacific Rim. That part of
14 the world has experienced recent
15 outbreaks of hoof and mouth disease and
16 has an intimate knowledge of the
17 staggering host of bacterial and viral
18 problems which thrive in concentrated
19 animal and human populated areas. It
20 is in our long-term interest --- is it
21 in our long-term interest to thrust
22 these risks on our children and
23 grandchildren? We must ask ourselves a
24 very timely question. Are we willing
25 to assume these long-term human and

1 ecological problems which have the
2 potential of requiring an expenditure
3 of millions of dollars of cleanups,
4 completely destroying a clean area,
5 ruining a quality of healthy life and
6 fracturing a community so it is no
7 longer viable or livable?

8 We in Pennsylvania must
9 prepare and address the future which
10 could be a duplicate of what had been
11 planned for hog factories in Kentucky.
12 The Livestock Task Force News Update of
13 8 August 1997 announced that the
14 subsidiary of Vall, V-A-L-L,
15 Incorporated of Spain intends to build
16 a 24,000 sow operation in Kentucky which
17 would produce over one half million
18 pigs per year and millions and millions
19 of gallons of hog waste. We in
20 Pennsylvania could find ourselves
21 facing a similar planned factory of
22 comparable size in the future.

23 The proposal of extending
24 agriculture commodities in their
25 unmanufactured states is not in the

1 best interests of our sustainable
2 future.

3 I implore you to exclude this
4 provision from the malodor regulation
5 revisions.

6 MR. HESS:

7 Thank you.

8 MR. NOVAK:

9 Any questions?

10 MR. HESS:

11 Maybe I may even ask the legal
12 ---. Under the Nutrient Management Act
13 I don't think DEP has control over the
14 regulations for that; correct?

15 MS. FREEMAN:

16 I don't know that.

17 MR. HESS:

18 I don't think so. They don't.
19 In other words, Ag has it and they put
20 together their own set of regulations
21 to carry out the nutrient load on each
22 one of the farms. So if they're
23 overloading it, which is what I think
24 you're saying, then I think that
25 wouldn't fall under DEP control but

1 really under Department of Agriculture,
2 a group they've had to put together
3 because I sat in some of those meetings
4 they put together to try to control
5 just what you're talking about.

6 MR. NOVAK:

7 I've read those regulations
8 very assiduously, in fact, and you
9 actually have two different things
10 here. You have A, the actual farms or
11 factories that are being --- coming
12 into the state and they have property
13 but they don't have enough property to
14 actually go through the entire thing as
15 far as, you know, spreading manure. So
16 what they do is they go up and they
17 say, well we've got to have 100 or 500
18 or 600 more acres to spread the manure
19 on. So what they do is --- there's no
20 requirement for going out with a
21 contract with that. But they go out
22 and ask in the community, you know, who
23 wants that. But when it goes into that
24 state there is nothing in the way of
25 regulations to take care of that

1 exported bit of manure, nothing
2 whatsoever, a complete zero. The other
3 thing too is the lagoon which in our
4 case in Bedford County we'll have
5 lagoons of the five million gallon
6 variety which is rather massive to me
7 and that can be put anyplace within ---
8 well, the requirement is 200 feet of a
9 property and that's all the setback you
10 have, which is very, very small when
11 you stop to consider that's not even
12 the length of a football field. I
13 mean, I feel very strongly that those
14 regulations that came out of Act Six
15 are extremely full of holes and they
16 certainly do not promote the protection
17 of the people of Pennsylvania.

18 MR. HESS:

19 I think you may be right, I
20 don't know. But I know that that
21 doesn't come under DEP's authority.
22 I'm pretty positive of that.

23 MR. NOVAK:

24 Well, I think DEP will be the
25 ones that will be out in the field ---

1 MR. HESS:

2 For malodors.

3 MR. NOVAK:

4 --- on the malodor end, yes.

5 And I feel as though --- you know, if
6 we go through with this provision, I
7 feel very strongly that it doesn't bode
8 well for the people of Pennsylvania.
9 It doesn't give them the authority to
10 be vocal when something goes wrong. I
11 don't think it's in our best interest,
12 short-term or long-term, especially
13 long-term.

14 MR. HESS:

15 Okay. Well, thank you.

16 MR. NOVAK:

17 Thank you.

18 MR. HESS:

19 That's the four who
20 preregistered. Is there anybody else?
21 Please come and identify yourself and
22 then we'll get our copies of the ---.

23 MR. THOMAS:

24 Dr. Hess, my name is Rich
25 Thomas. I work for Representative Bud

1 George, who's a member of the General
2 Assembly.

3 MR. HESS:

4 Do you have a copy of your
5 presentation?

6 MR. THOMAS:

7 I do not, however, I will get
8 them to Sharon before the end of the
9 day. My comments will be very brief.

10 MR. HESS:

11 Okay. Thank you.

12 MR. THOMAS:

13 Thank you for the opportunity
14 to speak on these regulations. My name
15 is Richard Thomas. I'm a staff member
16 for Representative Bud George,
17 Democratic Chairman of the
18 Environmental Resources and Energy
19 Committee in the Pennsylvania State
20 House of Representatives.

21 Simply put, the
22 administration's plan to significantly
23 weaken tools that citizens have to
24 complain and act against industrial
25 plants and businesses that produce foul

1 odors should be abandoned. Included in
2 these changes is a five-year bar
3 against --- about complaints against
4 malodors once a business has tried to
5 fix a problem through the use of best
6 available technology.

7 I don't subscribe to the
8 argument that capital investments made
9 for these changes to comply with best
10 available technology would make it too
11 expensive to control odors. Businesses
12 buy new computers, FAX machines and
13 automobiles and other capital
14 expenditures every year. There's no
15 logic in not requiring businesses to do
16 the same to reduce outstanding foul
17 odors. If a business can't be a good
18 neighbor, they shouldn't get a five
19 year vacation from trying. Moreover,
20 the proposed changes will also
21 completely prohibit any complaints from
22 being filed against restaurants and
23 private residences. I also believe the
24 changes proposed in this rulemaking set
25 up a new loophole that will allow the

1 Department to exempt thousands of
2 businesses from following even these
3 weakened rules in the future by
4 determining them to be of minor
5 significance. Although the Department
6 has worked closely with regulated
7 industries on this regulation, they
8 have not disclosed what types of odors
9 they are planning to describe as of
10 minor significance, thus excluding them
11 from all malodor regulations.

12 We don't know what businesses
13 will be covered. We don't know what
14 plants will be covered and, in fact, we
15 in the General Assembly will not have a
16 chance to review the additions to the
17 lists that are included in the
18 regulations through the normal
19 regulatory process.

20 Finally, complaints about
21 odors make up a significant number of
22 the total environmental complaints
23 filed in Pennsylvania. As a member of
24 the General Assembly and the
25 Environmental Quality Board I believe

1 it's our duty to insure the quality of
2 the air that we breathe in accordance
3 with our constitution.

4 This regulation is a step
5 backward. I urge the Department to do
6 what is right and delete both the five
7 year best available technology
8 provision as well as the provision
9 allowing the Department to add
10 additional exemptions without going
11 through the standard regulatory
12 process.

13 Thank you for the opportunity
14 to speak.

15 MR. HESS:

16 Thank you. Terry, comments?

17 MR. BLACK:

18 (Indicates no).

19 MR. HESS:

20 Okay. Thank you. But you'll
21 have copies for Sharon?

22 MR. THOMAS:

23 I will get them to Sharon by
24 the end of the day.

25 MR. HESS:

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Okay. Thank you. Now, any
other comments from the audience?
There being none, I adjourn the meeting
and thank everyone for coming here.

* * * * *

HEARING CONCLUDED AT 1:50 P.M.

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C E R T I F I C A T I O N

I hereby certify that the foregoing is a true and correct transcript of the notes taken by me at the hearing in this matter.

10/7/97
DATE

Amy J. Patterson
REPORTER

BEFORE THE ENVIRONMENTAL QUALITY BOARD
PUBLIC HEARING ON PROPOSED REGULATIONS
REGULATORY BASICS INITIATIVE #3-MALODORS

* * * * *

COPY

BEFORE: DAVID STRONG, MEMBER
TERRY BLACK, MEMBER
SHARON FREEMAN, MEMBER

LOCATION: Southwest Regional Office
500 Waterfront Drive
Pittsburgh, PA 15206

HEARING: September 25, 1997
1:05 P.M.

WITNESSES: Maria Kocoshis
Hon. Ivan Itkin
Myron Arnowitz
Tom Buell

REPORTER: LEAH E. PETERS

97 OCT 22 PM 2:51
REVIEW COMMISSION

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A P P E A R A N C E S

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SHARON FREEMAN, ESQUIRE
P.O. Box 8477
Harrisburg, PA 17105-8477
COUNSEL FOR EQB

I N D E X

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DISCUSSION AMONG PARTIES	6 - 33
CERTIFICATE	34

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EXHIBIT PAGE

PAGE

NUMBER

IDENTIFICATION

IDENTIFIED

NONE OFFERED

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OBJECTION PAGE

ATTORNEY

PAGE

NONE MADE

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P R O C E E D I N G S



MR. STRONG:

Welcome to the Environmental Quality Board's Public hearing on the proposed amendments to the Department of Environmental Protection's air resource regulations concerning malodors. This proposal was approved by the EQB on June 17th, 1997. I'm David Strong. I'm an EQB member of the Citizens Advisory Council. With us here today are Terry Black, Regulations and Policy Development Section, Bureau of Air Quality, and Sharon Freeman, Regulatory Coordinator and Policy Office.

Notice of today's hearing was printed, of course, in the Pennsylvania Buletin on August 23, 1997. In addition, notices were published in the major newspapers throughout the Commonwealth.

This proposal is the third in a series of amendments to the

1 Department of Environmental
2 Protection's, DEP's, air resource
3 regulations resulting from the
4 Regulatory Basis Initiative. The RBI
5 began in August 1995 with DEP's review
6 of existing regulations to determine
7 those which were more stringent than
8 federal law and regulations, those
9 which lack clarity, and those which
10 imposed disproportionate costs on the
11 regulated community.

12 This proposal addresses
13 recommendations received from both the
14 public and the regulated community
15 concerning DEP's program for addressing
16 malodors. Proposed changes include
17 modifying the definition of malodor,
18 and adding a definition of odor
19 investigation, and modifying the
20 existing program for investigating and
21 addressing malodor complaints. The
22 proposal will allow a single member of
23 the public to initially identify the
24 objectionable odor and allow DEP ---
25 DEP's air program staff to investigate

1 and determine whether the objectionable
2 odor exists. Proposed changes to this
3 Section, 123.31(c) of 25 Pennsylvania
4 Code provide that a facility which
5 controls malodorous air contaminants
6 through the use of Best Available
7 Technology, BAT, will not be required
8 to further reduce residual odors for a
9 five-year period.

10 The EQB is also specifically
11 seeking comments on two other issues.
12 The first involves how the frequency of
13 odors and the public concern about odor
14 should be factored into DEP's
15 investigation and documentation of
16 objectionable odors. The second issue
17 is whether DEP should retain its
18 existing minimum control requirement of
19 incineration or use its equivalent for
20 addressing odors resulting from
21 emissions of volatile organic
22 compounds. The regulation, if
23 approved, will be submitted to the
24 Environmental Protection Agency as a
25 revision to the State Implementation

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Plan.

Okay. Now the rules of running the program here today. In order to give everyone an equal opportunity to testify at this hearing, I would like to note the following ground rules: I will first call upon the witnesses who have preregistered to testify at today's hearing as included on today's schedule of witnesses. After hearing from these witnesses, I will provide any other interested parties with the opportunity to testify as time allows, and we will have time. Oral testimony is limited to ten minutes. Organizations are requested to designate one witness to present testimony on its behalf. Each witness must submit three written copies of the testimony to aid in transcribing the hearing. And I guess we already have our copies in from everyone. Present them when you're ready to give your testimony, if you would, please. Please state your name and address for

1 the record, prior to presenting your
2 testimony. We may need a little help
3 in spelling your names in terms that
4 may not be generally familiar so that
5 the transcript can be conducted
6 accurately. Also, interested persons
7 may submit written comments in addition
8 to or in place of oral testimony
9 presented today. All comments must be
10 received by the EQB by October 29,
11 1997. Comments should be addressed to
12 the Environmental Quality Board, P.O.
13 Box 8477, Harrisburg, PA 17105-8477.
14 Anyone interested in a transcript of
15 this hearing may contact the reporter
16 here to arrange to purchase a copy.

17 And now we can call the first
18 witness, which, the first one I guess
19 is not going to be here, so we'll call
20 the second witness.

21 MS. KOCOSHIS:

22 Hello. My name is Maria
23 Kocoshis. Thank you for the
24 opportunity to speak today on the
25 proposed rulemaking regarding malodors,

1 Title 25: Pennsylvania Code Chapters
2 121 and 123. I am making a statement
3 of behalf of the Group Against Smog and
4 Pollution.

5 This proposed rulemaking, part
6 of the Regulatory Basics Initiative; is
7 a significant weakening of the previous
8 Pennsylvania code and as such, is an
9 appalling affront to citizen
10 involvement in air quality enforcement.
11 In reality, this proposed rulemaking
12 will prevent there from ever being
13 another odor complaint in Pennsylvania.
14 We are concerned that this is removing
15 a constitutional right and putting the
16 business community's interests ahead of
17 the citizens' interests.

18 A malodor is an early warning
19 system to the public, often the first
20 any sometimes the only clue that
21 something is wrong. Depending on the
22 source of the odor, in particular those
23 from chemicals, by the time an
24 individual smells an odor, public
25 health has already been put at risk,

1 and an individual or community may have
2 been exposed to a toxic dose.

3 In chapter 121.1 on
4 definitions, we object to the phrase at
5 the end of the malodor definition, in
6 quotes, to be an objectionable odor,
7 close quote. This subjective
8 phraseology allows the Pennsylvania DEP
9 to make the determination that this
10 odor is objectionable, and that right
11 belongs to the public. We believe that
12 the change which allows a single member
13 of the public to identify a malodor,
14 objectionable to them, is a preferred
15 revision.

16 The new language regarding
17 odor investigation is disturbing in
18 that it now requires a complex
19 investigation which may or may not
20 include an inspection of a facility by
21 a Pennsylvania DEP inspector. The
22 affidavit, no matter by whom, will
23 provide a totally subjective opinion,
24 one subjective opinion against another.
25 There is no value in that, the public

1 deserves a more objective response and
2 by one qualified to make a
3 determination.

4 We suggest that within this
5 definition the word frequency be
6 deleted. Odor control strategy should
7 not be determined by how frequent a
8 malodor is identified by the public.
9 Subsection (C) of Chapter 123.31 is the
10 most egregious of these revisions. To
11 the public, it means that there is no
12 control of odors; and this whole
13 section should be deleted. The
14 provision that a facility will be
15 exempt for five years with the best
16 available technology is unacceptable.
17 The public will have to wait five years
18 for a review that the Pennsylvania DEP
19 may, and I emphasize may do, and during
20 that time complaints will be stifled.
21 If citizens under this proposed
22 subsection (c) have no recourse under
23 Pennsylvania DEP regulations, what
24 recourse will they have when a source
25 continues to produce objectionable

1 odors? Will their only recourse be to
2 declare it a nuisance? Or will there
3 be no recourse?
4 The addition of exemptions
5 under subsection (d), numbers two,
6 three and five, further weaken this
7 regulation that already can not
8 effectively protect the public. These
9 exemptions should be removed. We
10 strongly object to subsection (e),
11 which allows the Pennsylvania DEP to
12 add exemptions. It is a very
13 disturbing precedent to leave so much
14 discretion in the hands of the
15 Pennsylvania DEP. The Pennsylvania
16 Bulletin is not an acceptable place to
17 publicize the Pennsylvania DEP's
18 intention to modify the exemption list
19 and will not adequately inform the
20 public about changes and public comment
21 periods. The announcement of any
22 changes and comment periods must be in
23 a publication with wide circulation and
24 contained in the main body of the
25 publication.

1 We believe this regulation
2 should be strengthened, not further
3 weakened as in the proposed rulemaking.
4 The public deserves an immediate
5 response from the Pennsylvania DEP,
6 site inspection should be immediate and
7 unannounced. Malodors are a threat to
8 the public and deserve serious response
9 and/or correct action from the
10 Pennsylvania DEP. The proposal of a
11 five-year exemption for a facility
12 using best available technology is an
13 insult to the community. It says we
14 just have to live with it. These
15 proposed revision would take away the
16 right of the public to have a say in
17 the enforcement of air pollution
18 controlling regulations in their
19 community --- in their neighborhood,
20 thus effectively depriving them the
21 right to a safe and healthy
22 environment. We strongly urge you to
23 withdraw these weakening revisions.

24 In conclusion, we believe that
25 once again these proposed regulations

1 are pro business. The business
2 community is treated with a great deal
3 of respect and the citizens are
4 afforded none. These proposed
5 regulations are anti-citizen and anti-
6 community and are just wrong. We call
7 upon the DEP, I realize this should be
8 EQB, to do what is right for the
9 citizens and reject these weakening
10 amendments. And I'd like to add that
11 again, I'd like to say there's a reason
12 that doesn't pertain so much to the
13 regulations, but the reason that the
14 public is in fear that this is a
15 relatively accessible location for the
16 public to reach, and time is not good
17 for these people to come to an
18 agreement like that.

19 MR. STRONG:

20 I take it. Thank you. Next
21 is Ivan Itkin. They're not here yet,
22 so then we'll have to go with Myron.

23 MR. ARNOWITZ:

24 My name is Myron Arnowitz.
25 I'm the Western Pennsylvania Director

1 for Clean Water Action. Our address is
2 607 Penn Avenue, Number 212,
3 Pittsburgh, PA, 15222. I apologize for
4 not having written comments to give to
5 you. I will be submitting written
6 comments directly to the EQB during the
7 comment period. I'd just like to
8 summarize our concerns. I'd like to
9 add a number of the concerns that GASP
10 these proposed revisions concerning
11 these revisions to the regulations,
12 clean water action works closely with
13 citizens and residents in Allegheny
14 County. We get many calls in our
15 office regarding these very kinds of
16 complaints other than those special to
17 residents, who are living near
18 Industries or Neville's Island, which
19 I've had many citations, or odor
20 violations, over the years or, and we
21 certainly see these revisions as a way
22 to end the residents' ability to
23 complain, to have their complaints
24 investigated and to have action taken
25 as a result of those investigations.

1 In terms of some specifics,
2 the five year period is much too long.
3 This is essentially a five year
4 exemption from further complaints of
5 the malodors. The idea of --- even if
6 you'd accept the idea that we should
7 use BAT, best available technology,
8 that those are revised much more
9 frequently than five years, is no
10 rationale for such a lengthy limit.

11 Furthermore, BAT is not,
12 despite it's name, the best available
13 technology, it is a list which this is
14 negotiated essentially, and the
15 citizens have very little input into
16 what BAT actually is. There are
17 control technologies that are cited
18 which are generally more stringent, the
19 MACT. I'm pulling a blank. The
20 maximum achievable control technology,
21 MACT, is a higher standard which is
22 being ignored here. Also, there are no
23 provisions for proper use of the
24 controlled technology and the
25 regulations. You know, if a company

1 has control technology implemented and
2 they --- and it's malfunctioning in
3 some way, and it's considered the best
4 available technology, it's
5 malfunctioning in some way, or their
6 operators aren't operating them
7 properly, there is no proper training.
8 There are any number of reasons why
9 this control technology might not be
10 working. And that's been seen in terms
11 of what citizens have complained about
12 some of these issues. And the
13 regulations show nothing to indicate
14 that that would be a impossible reason
15 for an investigation to be carried out
16 in that case.

17 In terms of some of the
18 exemptions that are listed here, clean
19 water actions also does not want to see
20 the list --- types of operations that
21 will be exempt from odor
22 investigations, extended. I
23 particularly don't understand why you
24 would exempt materials odorized safety
25 purposes. It seems that if a community

1 is smelling odor enough to complain to
2 the state, and the material is be
3 odorized for safety purposes, then
4 that's an extremely serious violation
5 that should be checked out immediately
6 because as the material is being
7 odorized because it's dangerous and
8 people are smelling it enough to
9 complain, then I can't imagine why we
10 would exempt that. And also, just the
11 process of setting up the process where
12 basically anything can come within this
13 realm of exemption from malodor
14 complaints, is something which the DEP
15 should not go down and tamper with.

16 The new definition of odor
17 investigation is something which is a
18 little unclear to me. There hasn't
19 been a definition in the regulations
20 previously, and this definition is
21 fairly vague in a lot of respects, it
22 does not require anything to actually
23 happen in an odor investigation, it
24 suggests what may be included, but
25 it does not actually indicate what has

1 to be included to actually conduct an
2 odor investigation. It seems that one
3 could do something as simple as go out
4 there and see if the company has noted
5 in its log that there was a odor
6 violation and that would be an
7 investigation. That's something which
8 if the DEP is looking for having a real
9 regulation for a definition of an odor
10 investigation, there has been some real
11 requirements of what is actually going
12 to happen, what are the complaints
13 about a malodor.

14 Finally, it seems that the
15 base problem that DEP is trying to deal
16 with here is a lack of staff to deal --
17 - a lack of resources to deal with the
18 complaint. It's noted in the
19 background that 30 percent of
20 complaints are of this nature to the
21 state. And it seems extremely
22 illogical for DEP to decide to deal
23 with a problem that they're getting a
24 lot of complaints by setting up a new
25 regulation which makes those complaints

1 once so they don't have to follow up.
2 If the problem is a lack of resources
3 within DEP, then I think DEP needs to
4 address the problem by either looking
5 at, how they can change its structure,
6 how to help resources, you know, what
7 staff is devoted to this. There needs
8 to be more staff devoted to
9 investigating these complaints. Often,
10 when there's a lack of staff and
11 they're repeated complaints, you get
12 into a situation where more and more
13 time needs spent on something that if
14 there was sufficient resources in the
15 first place, and the problem was
16 actually taken care of, the company was
17 actually taken to task by the state,
18 that would be something which would
19 save time. But just ignoring the
20 complaints or not being able to follow
21 up on them will because of lack of
22 resources is something that just causes
23 more staff time and it causes more
24 problems for the community. This has
25 obviously been seen in Allegheny County

1 with the situation of TAPCO (phonetic)
2 on Neville Island. A rendering plant
3 which has had numerous, numerous,
4 numerous complaints with very little
5 action. So, I would really like to see
6 DEP address this problem that they're
7 identifying, but not by changing the
8 regulations, but by looking at the
9 resources that could be brought to bear
10 to serve the community better. Thank
11 you.

12 MR. STRONG:

13 Thank you. Tom Buell.

14 MR. BUELL:

15 All right. Hi. My name is
16 Tom Buell, B-U-E-L-L, I live at 6625
17 Virginia Avenue, Ben Avon,
18 Pennsylvania, 15202. I come here as a
19 citizen of a town that is many
20 occasions downwind from Neville Island.
21 I am a member of Clean Water Action,
22 but I do not sit here as a
23 representative of Clean Water Action, I
24 am here as a citizen speaking for my
25 family on a private unofficial basis

1 for members of my community. I do not
2 have written remarks, I will be brief,
3 I do intend to submit written remarks
4 within the period of time mentioned.
5 I'm really here just to kind of talk
6 for some personal feelings on this
7 matter. I guess I will start by saying
8 I wholeheartedly agree with the
9 comments from GASP and from Myron. I
10 feel very strongly that there should
11 be, if anything, strengthening of the
12 regulations regarding the malodors
13 emissions or any kind of other
14 emissions from Neville Island. They
15 are very powerful at times, and we are
16 concerned about whatever technology is
17 available is not enough to protect us.
18 I just --- anecdotally this
19 may have nothing to do with the topic,
20 but in my mind it does. I just learned
21 that three children in my son's third
22 grade class at Nevil Elementary have
23 leukemia. And that seems like a very
24 unusually high number to me. I have
25 no information that this has anything

1 to do with Neville Island, but I find
2 it hard to believe that there isn't
3 some connection there. I think, as I
4 say, that any changes that are made now
5 should be to strengthen the regulations
6 which would be made to increase the
7 level of enforcement of existing
8 regulations. I would oppose any
9 changes that would give any sign to the
10 public that their concerns about odors,
11 which in my mind represent what we can
12 smell may be the tip of the iceberg to
13 what we can't smell, and I'm very
14 concerned that there may be health
15 problems associated with this long term
16 exposure. I am not from here, but my
17 children --- my son was born here, and
18 now I see that there may be this health
19 trend taking place and I'm concerned
20 and that's why I'm here today. I
21 appreciate it. Thank you very much.

22 ATTORNEY FREEMAN:

23 Could you repeat the town
24 you're from?

25 MR. BUELL:

1 Yes. Ben Avon.

2 B-E-N, A-V-O-N.

3 MR. STRONG:

4 Is there anybody else who
5 would like to speak today? All right.
6 If you could relax and give us your
7 name and address, please.

8 MR. GRIFFITH:

9 My name is Alex Griffith. I
10 live at 134 Pilgrim Drive in Sewickley.
11 I'm here representing my mom, Miss Sara
12 Casey.

13 MR. STRONG:

14 If you would like to give us
15 your --- what you have to say, Alex?

16 MR. GRIFFITH:

17 I'm here because of the fact
18 that we live down the river from
19 Neville Island, and it's a source of
20 concern that with my mom and myself
21 that any odors coming in from that
22 place, as stated before, might be a
23 precluder to any like dangerous
24 chemicals or toxins that might be
25 released from any of the plants on

1 Neville Island. We believe that such
2 odors should not be ignored and from
3 --- well, some of the things that I've
4 heard, if there's like any problems
5 concerning like phone calls about these
6 odors, there should be more people
7 hired instead of replaced. I heard
8 something about the effect that there
9 might be consideration due to like lack
10 of finances or something of downsizing
11 the people in charge for taking phone
12 calls as concern to these odors. I
13 believe that instead of downsizing you
14 should hire more if there is such as
15 problem.

16 MR. STRONG:

17 Anything else?

18 MR. GRIFFITHS:

19 Not that I can think of.

20 MR. STRONG:

21 Take your time. If you have
22 other things that you'd like to say or
23 bring up, this is the forum. We want
24 all your comments, they're all
25 important.

1 MR. GRIFFITHS:

2 At this present moment I can't
3 think of anything else.

4 MR. STRONG:

5 Again, you could take the
6 address that we gave you earlier, if
7 you would like to present something to
8 the EQB in writing, we'd very much like
9 to have it.

10 MR. GRIFFITH:

11 Okay.

12 MR. STRONG:

13 Very much. These are
14 important issues and all comments from
15 the citizens and public are welcome and
16 well appreciated. Now, we still have
17 one group that we're waiting for, so
18 we're going to take a little bit of
19 time and see if Honorable Ivan will be
20 here. Do you have that address, sir?

21 MR. GRIFFITH:

22 No, I don't.

23 OFF RECORD DISCUSSION

24 MR. STRONG:

25 At your convenience, sir.

1 MR. ITKIN:

2 Thank you very much. I am
3 pleased to be here today to offer
4 testimony on the proposed rulemaking
5 about noxious odors, because I think
6 it's extremely important to give the
7 people of Pennsylvania an opportunity
8 to deal with this offensive issue.
9 Now, last year, Governor Tom Ridge
10 introduced a plan which he called the
11 Link to Learn by putting computers in
12 every classroom. And then he proposed
13 to sell off the state stores which
14 would increase underage drinking and we
15 called that, Link to Drink. Now,
16 Governor Ridge and his administration
17 are suggesting that plants be allowed
18 to spew foul-smelling air for five
19 years. I characterize that as Link to
20 Stink. This governor, Tom Ridge, is
21 absolutely determined to hand over
22 control of this state to corporations.
23 Whatever he can do to help businesses
24 he does, even at the expense of the
25 citizens' well-being, safety and

1 comfort.

2 This governor brags about the
3 low wages that workers will toil for.
4 He opens up --- highways up to bigger,
5 more dangerous trucks. He calls or has
6 called for the selling of the state
7 liquor stores his top priority, but he
8 lost on that, as if that's what most
9 Pennsylvanians worry about at night.

10 His environmental permit
11 process is obsessed with turnaround
12 time, with little regard for actually
13 reviewing a plan's environmental
14 impact. At every turn, he undermines
15 the daily lives of Pennsylvania's
16 working people, and this proposed
17 regulation fits neatly in that pattern.

18 For instance, use of the word
19 control in Section C is ambiguous. I'm
20 afraid that control doesn't actually
21 mean eliminating the problem. Instead,
22 it could mean that a plant just has to
23 show that it tried real hard to fix the
24 problem. And this creates a big
25 problem because that's when the five-

1 year grace period kicks in. So say
2 that Joe plant owner installs the best
3 available technology. It doesn't
4 control the terrible emission that's
5 been plaguing the neighbors, but then
6 six months later new technology comes
7 along that could do the trick. The
8 neighbors are saved, right? Wrong.
9 Joe plant owner got a five year
10 reprieve straight from the governor if
11 these regulations are adopted. He
12 doesn't have to drop a dime.

13 At that point, the neighbors
14 have no recourse. Legally, they can't
15 force Joe plant owner to make a change
16 because if they try the time honored
17 method of public pressure, Joe plant
18 owner can hit them with a libel suit
19 because we don't have an anti-slapp law
20 in this state, which is something that
21 I strongly advocate.

22 Once again, the working
23 citizen is boxed in by Ridge
24 administration policy. They're
25 breathing unsavory, and possibly even

1 unhealthy air. They can't enjoy a
2 day in their own backyard without
3 gagging. Their children come down with
4 mysterious respiratory ailments, and
5 they can't do anything about it for
6 five years.

7 Right now, you're probably
8 thinking, okay. If citizens are so
9 burned up about this policy, where are
10 they? Why hasn't attendance at these
11 hearings been better? To which I
12 respond, that's just what the Ridge
13 administration wants. The average
14 Pennsylvanian has enough to worry about
15 without having to wonder what's in the
16 Pennsylvania Bulletin every week. They
17 have to trust public officials to make
18 wise decisions on their behalf. And
19 that's when Tom Ridge strikes, when
20 nobody's looking. He sneaks to or
21 attempts to sneak through decisions
22 that aren't wise and that only benefit
23 businesses.

24 As the EQB, the Environmental
25 Quality Board, those that are --- have

1 been commissioned to protect the
2 public, I urge you to act on behalf of
3 all citizens whether or not this
4 regulations directly affects them right
5 now. Many citizens don't have a
6 problem with plant odors currently, but
7 it could happen to anyone at any time,
8 making a home they love intolerable.

9 This proposed regulations
10 compounds the problem by leaving
11 home owners defenseless against an
12 insidious problem. On their behalf, I
13 urge you to reject this misguided
14 proposal. I hope that it can be
15 stopped at your station, without having
16 to go any further. Thank you very
17 much. And I'll be pleased to answer
18 any questions that you might have.
19 Speechless.

20 MR. STRONG:

21 For this forum, yes. But EQB
22 would be more than happy to hear any
23 extensions to your comments and any
24 more detailed response that you might
25 have on this.

1 MR. ITKIN:

2 Now, I'm sure that you and
3 your colleagues will --- should, and I
4 expect that you will, look at these
5 comments and other comments that have
6 been made today opposing the
7 regulations. Obviously, if it passes
8 your muster, and it must before ERC, it
9 also must come to the legislature. So
10 it's not the last time you'll probably
11 hear from me on this particular
12 subject. Thank you, have a good day,
13 and I appreciate your waiting for my
14 testimony.

15 DAVID STRONG:

16 Thank you for the input sir, I
17 appreciate it. Any other comments?
18 Anybody else in the crowd? Then I
19 believe that we shall conclude this
20 session and adjourn.

21 * * * * *

22 HEARING CONCLUDED AT 1:45 P.M.

23 * * * * *

24
25



Environmental Quality Board

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Nyce
Notebooks (2)

p.o. box 8477 • harrisburg, pa. 17105-8477 • (717) 787-4526

October 21, 1997

97 OCT 27 AM 9:16
INDEPENDENT REGULATORY REVIEW COMMISSION

Mr. Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
14th Floor, Harristown #2
333 Market Street
Harrisburg, PA 17120

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

Dear Mr. Nyce:

The Environmental Quality Board has received comments regarding the above referenced proposed rulemaking from the following:

1. The Honorable David K. Levdansky, PA House of Representatives
2. The Honorable Tim Holden, Congress of the United States
3. The Honorable Dan Surra, PA House of Representatives
4. The Honorable Michael A. O'Pake, Senate of PA
5. The Honorable Steven R. Nickol, PA House of Representatives

These comments are enclosed for your review. Copies have also been forwarded to the Senate and House Environmental Resources and Energy Committees. Please contact me if you have any questions.

Sincerely,

Sharon K. Freeman
Regulatory Coordinator

Enclosure

DAVID K. LEVDANSKY, MEMBER
112 SECOND AVENUE
ELIZABETH, PENNSYLVANIA 15037
PHONE: (412) 384-2258
FAX: (412) 565-2252

311 SOUTH OFFICE BUILDING
HOUSE BOX 202020
HARRISBURG, PENNSYLVANIA 17120-2020
PHONE: (717) 783-1020
FAX: (717) 783-1193



House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

October 7, 1997

COMMITTEES

ENVIRONMENTAL RESOURCES AND ENERGY
SUBCOMMITTEE CHAIRMAN, MINING
HEALTH AND HUMAN SERVICES
GAME AND FISHERIES

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James M. Seif, Secretary
Department of Environmental Protection
16th Floor, Rachel Carson State Office Building
Harrisburg, PA 17105-2063

RECEIVED
97 OCT 27 11 06 AM
DEPARTMENT OF ENVIRONMENTAL PROTECTION
RENEWAL COMMISSION

Dear Secretary Seif:

I would like to express my deep concern about the Department's proposed changes to the Malodor Regulations. Since a large percentage of citizen complaints to your department are related to malodors, it is apparent to me that we should not be adding to the problem by weakening our regulations.

I am particularly concerned about what will determine what is the best available technology. If cost is the overriding factor, will citizens of Pennsylvania be forced to live with problems beyond a reasonable amount of time? I am also concerned that the Department can add to the list of instances that are totally exempted from the malodor regulations with no legislative oversight. I believe it is important to have some kind of checks and balances in the process.

My legislative district is host to a number of landfills and chemical plants. I am deeply concerned that the proposed changes will only make a bad situation worse in many areas. I implore you to reconsider the focus of the department in this matter. It is time that people in my area of the state begin to enjoy their constitutional right to clean air.

Sincerely,

DAVID K. LEVDANSKY
State Representative
39th District

DKL/ldr

TIM HOLDEN

6TH DISTRICT, PENNSYLVANIA

- 1421 LONGWORTH BUILDING
WASHINGTON, DC 20515
(202) 225-5546
- BERKS COUNTY SERVICES CENTER
FIRST FLOOR
633 COURT STREET
READING, PA 19601
- 303 CORESATES BANK BUILDING
101 N. CENTRE STREET
POTTSVILLE, PA 17901



**CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES**

October 3, 1997

COMMITTEE ON AGRICULTURE
LIVESTOCK, DAIRY, POULTRY
RESOURCE CONSERVATION,
RESEARCH AND FORESTRY

COMMITTEE ON TRANSPORTATION
AND INFRASTRUCTURE
PUBLIC BUILDINGS AND
ECONOMIC DEVELOPMENT

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RECEIVED
97 OCT 27 AM 9:15
REVENUE COMMISSION

Honorable James M. Seif
Secretary
Department of Environmental Protection
P.O. Box 2063
Harrisburg, Pennsylvania 17105-2063

RE: Ms. Michelle P. Kircher
Exeter Township Board of Supervisors
4975 DeMoss Road
Reading, PA 19606

Dear Secretary Seif:

I am contacting you on behalf of the above-captioned constituent regarding her attempts to secure additional information regarding the DEP Proposed Rule changes as they pertain to "malodors".

Enclosed is information I received from Ms. Kircher which further details her situation. Please be assured that I would appreciate your assistance in responding to my constituent's concern. Kindly forward your correspondence to me at my Reading district office.

Thank you for your time and attention to this important matter.

Sincerely,

TIM HOLDEN
Member of Congress

TH/mb

Enclosure

4975 DeMoss Road
Reading, PA 19606
Exeter Township, Berks County,
Pennsylvania



Office: 779-5660
Engineering: 779-5702
Fire Marshall: 779-4888
Park & Rec.: 779-2580
Police: 779-1490
Treatment Plant: 582-8300
Fax: 779-5950
Area Code 610

EXETER TOWNSHIP

Board of Supervisors

September 26, 1997

Congressman Timothy Holden
6th District
Berks County Services Center
633 Court Street
Reading PA 19601

**RE: PROPOSED NEW
DEP RULEMAKING
REGARDING "MALODORS"**

Dear Congressman Holden:

Enclosed is a copy of the **NOTICE OF PROPOSED RULEMAKING** issued by the DEP Environmental Quality Board regarding "malodors."

These proposed new regulations will allow malodors to leave existing and new facilities' property boundaries with no penalty to the property owners as long as they use the best available technology for odor control. This limitation on responsibility lasts for a permit term of five (5) years.

This proposed new ruling violates residents' civil rights and their right to clean air. It will also adversely affect their quality of life and greatly reduce their property values. Townships, Boroughs and Cities will no longer be able to enforce their Ordinances regulating these odors because their Ordinances are superceded by State legislation.

I am asking you, on behalf of the residents of Exeter Township and the Board of Supervisors, to take immediate action to stop this proposal from becoming law.

Congressman Timothy Holden
September 26, 1997
Page II

Thank you for your anticipated support in this important matter.

If you have any questions, please contact me. I can be reached at
779-0561 (Home) or 779-5660 extension 364 (Township Office).

Sincerely,

EXETER TOWNSHIP
BOARD OF SUPERVISORS

A handwritten signature in cursive script that reads "Michelle P. Kircher".

Michelle P. Kircher
Treasurer

MPK/dtc
Enclosures

**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 _____, 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 prepared by 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 EQB Public Hearings

The Department is specifically requesting comments on two 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.

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 on the following dates and at the following locations:

Persons wishing to present testimony at the hearings must contact Sharon Freeman 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 Sharon Freeman 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 (60 days from the date of publication). 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 (60 days from the date of publication). 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 Reqcomments@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 (60 days from the date of publication).

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:

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.

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

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