

INDEPENDENT REGULATORY REVIEW COMMISSION

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Date: November 25, 1997
of Pages: 5

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Environmental Quality Board's regulation #7-326 (#1878). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Shirley Hartman Date: 11/26/97



**INDEPENDENT REGULATORY REVIEW COMMISSION
COMMONWEALTH OF PENNSYLVANIA
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November 26, 1997

Honorable James M. Seif, Chairman
Environmental Quality Board
16th Floor, 400 Market street
Harrisburg, PA 17101

Re: IRRC Regulation #7-326 (1878)
Environmental Quality Board
Equivalency Determinations & Aerospace Manufacturing & Rework-
VOC Emission Limitations

Dear Chairman Seif:

The Independent Regulatory Review Commission (Commission) has enclosed comments on your proposed regulation #7-326. These comments outline areas of concern raised by the Commission. The comments also offer suggestions for your consideration when you prepare the final version of this regulation. These comments should not, however be viewed as a formal approval or disapproval of the proposed version of this regulation.

If you or your staff have any questions on these comments or desire to meet to discuss them in greater detail, please contact John Jewett at 783-5475. He has been assigned to review this regulation.

Sincerely,


Robert E. Nyce
Executive Director

REN:wbg
cc: Barbara Sexton
Sharon Freeman
Office of General Counsel
Office of Attorney General
Pete Tartline

COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION

ON

ENVIRONMENTAL QUALITY BOARD REGULATION NO. 7-326

**EQUIVALENCY DETERMINATIONS AND AEROSPACE MANUFACTURING
AND REWORK -- VOC EMISSION LIMITATIONS**

NOVEMBER 26, 1997

We have reviewed this proposed regulation from the Environmental Quality Board (EQB) and submit for your consideration the following objections and recommendations. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act specify the criteria the Commission must employ to determine whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to clarity and consistency with federal regulations and statutes. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

1. Section 129.51. Federal law v. flexibility - Consistency with other regulations and statutes.

The proposed regulation would delete existing language in Subsection 129.51(a)(6) that requires alternative methods for compliance be approved by the U.S. Environmental Protection Agency (EPA). Currently, alternative methods must be submitted to the EPA for equivalency determinations and approval by EPA as State Implementation Plan (SIP) amendments.

David L. Arnold, Chief of the Ozone/CO and Mobile Sources Section at EPA Region 3, filed comments objecting to the proposed revisions to Subsection 129.51(a)(6). EPA Region 3 stated that it "cannot allow the use of the director's discretion to approve alternative methods that could change the approved SIP requirements."

In support of its position, EPA Region 3 claims that EPA cannot "approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement" pursuant to Section 110(l) of the Clean Air Act (42 U.S.C.A. § 7410(l)). In addition, EPA Region 3 contends:

Although Pennsylvania has proposed that the resulting emissions must be equal to or less than those emissions discharged by complying with the applicable emission limitation, there are no *specific criteria* listed that would have to be met in order for such an equivalency to be made. [Emphasis added]

The "equal to or less than" requirement is set forth in existing language in Subsection 129.51(a)(2). In Subsections 129.51(a)(3) - (4), existing provisions establish procedures for determining compliance including the requirement that "capture efficiency testing and emission testing" must be conducted according to methods approved by the EPA. Except for editorial

changes to Subsection 129.51(a)(3) to update its citations of other sections in the proposed regulation, no change is proposed to these two subsections.

We commend the EQB and the Department of Environmental Protection (DEP) for their efforts to provide greater flexibility to Pennsylvania industries in a timely fashion. The problem with the current regulation, according to DEP staff, is that it takes months, if not years, for EPA Region 3 to act on approvals of equivalency determinations and alternative methods. In some cases, Pennsylvania never receives a final response from EPA on a request for approval of an equivalency determination and alternative method. We understand the concerns of EPA Region 3 with compliance with the Clean Air Act. However, EPA Region 3 has not provided any substantive examples of how the proposed regulation violates the SIP or federal law. Indeed, there appears to be no violation since it requires that emissions from alternative methods be equal to or less than emissions discharged by other sources complying with the applicable requirements, and the emissions must be measured pursuant to EPA standards.

When the Clean Air Act Amendments of 1990 were enacted, a hallmark of the new federal law was an increase in opportunity for flexibility and new approaches in promoting clean air and reducing pollution. In this spirit, we recommend that the EQB and DEP respond to the concerns of EPA Region 3 in a manner that maintains the proposed regulation's goals of greater flexibility and timeliness in approving alternative methods while providing appropriate and sufficient guarantees that the requirements of the SIP and Clean Air Act will be met.

2. Subsection 129.51(a)(4) - Existing language and new EPA policy.

In its comments, EPA Region 3 is critical of the existing language in Subsection 129.51(a)(4). Even though this subsection was adopted as a final rule in 1992 and no amendments to it are included in this proposed regulation, EPA Region 3 makes the following statements:

EPA has developed specific methodology for the testing of capture efficiency that Pennsylvania has not yet incorporated into its regulations. If Pennsylvania is choosing now to include the EPA capture efficiency protocols, it should cite April 19, 1995 capture efficiency protocol. EPA did not conduct rulemaking on the capture efficiency protocols because it expected that states would do so when these methods were adopted. Therefore, Pennsylvania cannot simply state that capture efficiency testing is to be conducted in accordance with methods approved by EPA.

EPA Region 3's objection is prompted by the fact that EPA developed specific criteria in 1995 that is applicable to Subsection 129.51(a)(4). EPA Region 3 wants the EQB to include EPA criteria in this regulation. Unfortunately, the EPA criteria were not published as a federal rulemaking. While we support inclusion of the EPA criteria, we recommend that the EQB and DEP publish the EPA criteria as a new and separate proposed rulemaking. This will provide the public with the opportunity to comment on the criteria before they are imposed as regulation. An alternate plan would be to publish the criteria in an "advanced notice of final rulemaking" to provide an opportunity for public comment on the inclusion of the EPA criteria in this regulation.

3. Section 121.1. Definitions - Clarity, consistency with other regulations.

In its comments, EPA Region 3 notes terminology and language in the proposed regulation that are inconsistent with the most recent updates in federal rules, procedures and guidelines such as the EPA's aerospace draft Control Technique Guidelines (CTG) and the aerospace maximum achievable control technology (MACT) requirements.

For example, the definition of "aqueous cleaning solvent" in the proposed regulation is not totally consistent with the composition requirements for aqueous cleaning solvents set forth in a final rule by the EPA on page 45916 of the *Federal Register* on September 1, 1995. The substance of the proposed EQB definition and the EPA rule do not differ. Both define aqueous solvents as at least 80 percent water. However, the federal rule includes greater detail. For example, the federal rule requires that aqueous solutions have "a flash point greater than 93°C (200°F) (as reported by the manufacturer) and the solution must be miscible with water." EPA Region 3 notes that the draft CTG is being updated to insure that the definition of aqueous solvent is consistent with the composition rule cited above that is also a part of MACT.

In the preamble of the proposed regulation, the EQB claims that the EPA has worked with the aerospace industry to develop control techniques and guidelines for VOC emissions. According to the EQB, this proposed regulation incorporates the substantive provisions of the EPA draft guidelines into the DEP's air quality regulations. To the extent that the comments and recommendations from EPA Region 3 represent products of the dialogue with the industry, we recommend that the EQB and DEP use updates and revisions of the CTG to improve and clarify this regulation and bring it into greater consistency with guidelines, procedures and regulations that apply to the aerospace industry nationwide.

4. Section 129.73. Aerospace manufacturing and rework - Typographical error, clarity, consistency with other regulations.

As published in the *Pennsylvania Bulletin*, the first sentence of Section 129.73 contains a typographical error. We recommend that the first sentence be amended to read:

Except as provided in subsection (1), *the requirements of this section apply* to the manufacture or rework of commercial, civil or military aerospace vehicles or components at any facility located in any county designated as a severe nonattainment area and which has the potential to emit 25 tons per year of VOC's or more or located in any other county in the State and that has the potential to emit 50 tons per year or more. [Emphasis added for revisions to text]

Additionally, there is no need to label or reference this paragraph as Subsection 129.73(a) since there is no Subsection 129.73(b).

EPA Region 3 also noted inconsistencies with federal rules, the draft CTG and MACT in Section 129.73, and it provided suggestions for clarifying the language of this section. Again, we recommend that the EQB and DEP strive to bring this regulation into greater consistency with federal rules, guidelines, and procedures to insure that Pennsylvania industry is on equal footing with its competitors in the national market place.