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

February 25, 1999

Honorable James M. Seif, Chairman
Environmental Quality Board
Rachel Carson State Office Building
400 Market Street, 16th Floor
Harrisburg, PA 17105

Re: IRRC Regulation #7-334 (#1980)
Environmental Quality Board
Mobile Equipment Repair and Refinishing

Dear Chairman Seif:

Enclosed are our Comments on your proposed regulation #7-334. They are also available on our website at <http://www.irrc.state.pa.us>.

The Comments list our objections and suggestions for your consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you want to meet with us to discuss these Comments, please contact Mary Lou Harris at 787-8491.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Nyce".

Robert E. Nyce
Executive Director

REN:kcg

Enclosure

cc: Sharon Freeman
Barbara Sexton
Steve Taglang
Office of General Counsel
Office of Attorney General
Pete Tartline

COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION

ON

ENVIRONMENTAL QUALITY BOARD REGULATION NO. 7-334

MOBILE EQUIPMENT REPAIR AND REFINISHING

FEBRUARY 25, 1999

We have reviewed this proposed regulation from the Environmental Quality Board (Board) and submit for your consideration the following objections and recommendations. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) 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 economic impact, need, reasonableness and clarity. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

In the preamble to the proposed rulemaking, the Department of Environmental Protection (Department) requested comment on:

- 1) The application of the proposal to all facilities, regardless of size and amount of material used;
- 2) The use of a general permit as a permitting mechanism, as well as the possible use of a permit by rule for smaller facilities; and
- 3) Whether all provisions should apply to rural areas of the Commonwealth where volatile organic compound (VOC) reductions may not have a significant impact on attainment.

Our Comments will address these issues as well as the proposed regulations.

1. Statewide Permitting for Mobile Equipment Repair and Refinishing - Reasonableness

The amendments to Chapter 127 require statewide permitting for mobile equipment repair and refinishing facilities (facilities). The purpose is to establish controls on the VOC emissions from such facilities.

Seven counties in the Southwest and the five-county Philadelphia area in the Southeast are nonattainment areas for the health-based standard for ozone. The proposal was developed as one result of stakeholder working groups established in those nonattainment areas. Both the Southeastern and the Southwestern Pennsylvania Working Group recommended strategies for ozone attainment and maintenance based on health-based standards and the requirements of the Clean Air Act. Is it reasonable then to require permitting statewide? Does all of Pennsylvania exceed the health-based standard for ground-level ozone?

How will permitting of facilities statewide help achieve the goal of health-based attainment levels in the nonattainment areas? Adopting this measure for noncompliance regions only, similar to the approach taken for the Vehicle Emission Programs, would seem to be more

cost effective. If the statewide permit requirement is maintained in the final-form regulation, the Board should explain how a statewide requirement is beneficial in reaching the health-based standard for ozone in the nonattainment areas.

2. Permit by Rule as an Alternative to the General Permit - Need

A general permit would require each facility to apply for and meet the requirements of the general permit. A permit by rule would allow smaller facilities to be deemed to have a permit by just meeting the requirements of the regulation.

Is a general permit application really necessary for smaller facilities? Would all the information required in the general permit be necessary from the smaller facilities. We recommend the Board allow permit by rule for smaller facilities. This could be based on size, such as one to two bays, or the amount of coatings consumed at the facility.

3. Section 129.75(e). Allowable Content of VOCs in Mobile Equipment Repair and Refinishing Coatings - Clarity

Section 129.75(e) establishes the allowable VOC content of automobile coatings. Table III in Subsection (e) contains the standards for specific coating categories.

The Regulatory Analysis Form (RAF) indicates the proposed regulations are consistent with the proposed federal limits on VOCs in automobile refinish materials. However, there are some differences between the proposed regulation and recently adopted Federal changes.

We recommend the Board update the standards in Table III to be consistent with the categories and amounts published by the Environmental Protection Agency in its final regulation (63 FR 48808 and 48819) published in the *Federal Register* on September 11, 1998.

4. Section 129.75(k)(3). Minimization of Spills - Clarity

Section 129.75(k) contains housekeeping, pollution prevention and training measures. Subsection (k)(3) requires the facility owner and operator to use handling and transfer procedures that "shall minimize spills" during transfer of refinishing products. This requirement is vague. The Board should include the procedures it expects facilities to implement in order to "minimize" spills. For instance, the Board could include using spouts on larger containers, maintaining covers on containers when not in use, etc.

5. Section 129.75(k)(4). Training - Clarity

Section 129.75(k)(4) requires the facility owner or operator to "ensure that a person who applies mobile equipment repair and refinishing coatings has completed training" in the proper use and handling of equipment and products.

The training requirement is vague. How will the owner or operator know when their employees have "completed training?" How much training, i.e. how many hours, are required? What are the standards for the quality and content of the training? The Board should provide more specific requirements as well as a method of validation, i.e. testing or records of employee training in handling and applying materials.

6. Section 129(i)(3). Touch-up Repair – Clarity

Section 129(i) lists exemptions for the application equipment requirements in Subsections (g) and (h). Subsection (i)(3) exempts the application of touch-up and repair finish materials by brush. However, Sections 129(g) and (h) list “brushcoating” as a covered activity. The Board should clarify how “brush coating” differs from “touch-up and repair by brush.”

7. Section 129.75(l). Permit Fees - Economic Impact and Clarity

The proposal requires owners or operators of a facility to apply for a permit in accordance with Chapter 127. Facilities vary in size from one bay to very large operations. How will the cost of the permit be determined? Is the size of a facility and its ability to emit VOCs considered?

Section 129.75(l) provides that facilities shall apply for a permit in accordance with Chapter 127. The Regulatory Analysis Form indicates the fee will be \$250. This amount is consistent with the operating permit fee provisions of Section 127.703(b). However, Section 127.703(d) states the Department may establish application fees for general operating permits at the time the general permit is issued which do not exceed the other fees contained in Section 127.703.

Since the Board anticipates using general permits for these facilities, we recommend the Board specify the amount of the permit fees in its final-form regulation. The Board should also explain whether the same application fee would be applied to all sizes of facilities. We further recommend that the Board demonstrate that the permit fee is consistent with the cost of permitting and compliance activity of the Department.

8. Enforcement and Penalties – Clarity

The proposal does not specify the manner of enforcement or the penalties for failing to meet its provisions. We recommend the Board address enforcement and penalties in the final-form regulation through a reference to the applicable provision in existing regulations, or through the addition of specific provisions to this subchapter.

INDEPENDENT REGULATORY REVIEW COMMISSION

333 Market Street, 14th Floor, Harrisburg, PA 17101

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MEMORANDUM

To: Fred Taylor,
Legal Counsel
Hon. Robert D. Reber, Jr.
Chairman, House Environmental
Resources and Energy Committee

Patrick Henderson,
Executive Director
Hon. Mary Jo White
Chairman, Senate Environmental
Resources and Energy Committee

Rich Thomas,
Executive Director
Hon. Camille George
Democratic Chairman, House
Environmental Resources and
Energy Committee

Ron Ramsey,
Executive Director
Hon. Raphael J. Musto
Democratic Chairman, Senate
Environmental Resources and Energy
Committee

From:  Mary Lou Harris, Senior Regulatory Analyst

Date: March 2, 1999

Re: Commission's Comments on Proposed Rulemakings
Environmental Quality Board

Mobile Equipment Repair and Refinishing
Regulation #7-334 (IRRC# 1980)

Gasoline Volatility Requirements
Regulation #7-341 (IRRC#1981)

On February 25, 1999, the Commission submitted its Comments to the Environmental Quality Board on the referenced proposed regulations. Copies are attached for your review.

John Nanorta is the analyst assigned to Regulation #7-341. Please call John (7-8491) or me (2-1284) with any questions. I am also available to discuss Regulation #7-334.

ATTACHMENT

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FAX NO. 717 705 4984

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INDEPENDENT REGULATORY REVIEW COMMISSION

To: Shirley Hartman
or Cindy Lauderbach
or Denise Henke

Agency: Department of Environmental Protection
Phone: 7-2814
Fax: 705-4980

From: Kristine M. Shomper
Deputy Director for Administration
Company: Independent Regulatory Review
Commission
Phone: (717) 783-5419 or (717) 783-5417
Fax: (717) 783-2864

Date: February 25, 1999
of Pages: 5

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Environmental Quality Board's regulation #7-334. Upon receipt, please sign below and return to me immediately at our fax number 783-2864. We have sent the original through Interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Shirley Hartman Date: 2/25/99