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

October 27, 2000

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

Re: Regulation #7-355 (IRRC #2132)
Environmental Quality Board
Storage Tank Program

Dear Chairman Seif:

Enclosed are our Comments. They are also available on our website at www.irrc.state.pa.us.

Our Comments list objections and suggestions for 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 would like to discuss these Comments, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce
Executive Director

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Enclosure

cc: Honorable Arthur D. Hershey, Majority Chairman, House Environmental Resources & Energy Committee
Honorable Camille George, Democratic Chairman, House Environmental Resources & Energy Committee
Honorable Mary Jo White, Chairman, Senate Environmental Resources & Energy Committee
Honorable Raphael J. Musto, Minority Chairman, Environmental Resources and Energy Committee
Sharon Trostle, Regulatory Coordinator, Environmental Quality Board
Barbara Sexton, Director of Policy Office, Environmental Quality Board

Comments of the Independent Regulatory Review Commission

on

Environmental Quality Board Regulation No. 7-355

Storage Tank Program

October 27, 2000

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. The Environmental Quality Board (EQB) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by September 27, 2002, the regulation will be deemed withdrawn.

1. Section 245.1. Definitions. - Clarity.

General

This section defines five terms that are defined in 35 P.S. § 6026.103. Rather than reiterate the definitions in the regulation, this section should reference the definitions of "aquifer," "background," "cleanup or remediation," "contaminant" and "groundwater" in 35 P.S. § 6026.103.

Reportable Release

Paragraphs (ii) – (iv) have been deleted from the definition of "reportable release," and a provision has been added that states, "A release of petroleum to the surface of the ground that is less than 25 gallons." Commentators have expressed confusion with this new provision. The definition should clarify whether all releases of 25 gallons or greater are reportable even if the release is contained or on an impervious surface.

Survey

This definition contains the phrase, "sufficient level of detail." What is a "sufficient level of detail?"

2. Section 245.305. Reporting Releases. - Reasonableness; Duplication; Clarity.

Subsection (a) has been amended to require the owner or operator to notify the Department of Environmental Protection (Department) no later than 24 hours after the owner or operator has confirmation of a reportable release. Currently, a report must be made within two hours.

What constitutes "confirmation" of a reportable release? Is it when the release is discovered by the operator or by someone walking by who reports it? The regulation should clearly define the term "confirmation" so that it is clear when the 24-hour notification period begins.

A commentator requests that the 24-hour standard also apply to releases reported under the requirements of 25 Pa. Code Section 91.33. This section requires “immediate” notice, but does not specify a maximum time limit.

We have two concerns. First, there is confusion over whether a tank owner or operator should follow the timeframe in Section 245.305 or Section 91.33 to report a release. A release that poses a threat to public safety should be reported immediately. On the other hand, reporting within 24 hours may be appropriate for a minor release in a containment area. For clarity, this section ought to establish a timeframe to report any release.

Second, a release could be subject to both Sections 245.305(a) and 91.33. Does a single notice of a release meet the requirements of both sections?

3. Section 245.309. Site characterization. - Clarity.

Subsection (b)

Subsection (b)(5) requires the registrant to determine “values for input parameters including hydraulic conductivity, source dimensions, hydraulic gradient, water table fluctuation and fraction organic carbon necessary for fate and transport analysis.” Is this information readily available? How much detail is required to meet this requirement?

Subsections (b)(6) and (7) require a licensee to “provide sufficient information.” What is “sufficient information” to meet Subsections (b)(6) and (7).

4. Section 245.310. Site characterization report. - Reasonableness; Clarity.

Subsection (a)

This section requires the site characterization report to “be complete and concisely organized” and to “contain” specific elements. This section is silent as to the consequences of not submitting a complete site characterization report. The regulation should define the consequences if a registrant does not meet the objectives of a site characterization report. Will the Department add provisions addressing a deficient site characterization report? Or will the Department notify the registrant of any deficiencies and the procedure to correct them?

Reports

Subsection (a) requires a site characterization report to be filed within 180 days of reporting a release. Subsection (b) allows a less detailed report if the site has been remediated. However, the regulation is not clear whether a report filed under Subsection (b) eliminates the filing requirement under Subsection (a).

Review period

The regulation does not address the amount of time the Department will take to review the site characterization report. It would be helpful to a responsible party to have a specified period of time for Department review established in the regulation. The regulation should contain a maximum time period for Department review of these reports.

Subsection (b)

Subsection (b)(4) provides the “results of the evaluation of ecological receptors” should be included in the site characterization report. A cross-reference to Section 250.311 relating to the evaluation of ecological receptors would clarify this requirement.

5. Section 245.311. Remedial action plan. - Reasonableness; Clarity.

Subsection (a)(5)

This subsection requires the “the results of treatability, bench scale or pilot scale studies or other data collected to support remedial action.” How often and under what circumstances would this information be necessary? Is this information readily available? How much detail is included in this requirement?

Subsection (c)

This subsection states “a remedial action plan is not required and no remedy is required if the site specific standard is chosen and no current or future exposure pathways exist.” A commentator questioned whether a remedial action plan is required when the Statewide Health Standard is selected and no current or future exposure pathways exist. This provision should be clarified in the regulation.

Additionally, can a remedial action plan be denied based on the type of remediation standard selected? Also, how can the responsible party show attainment of the selected standard?

6. Section 245.312. Remedial action. - Reasonableness; Clarity.

Reporting requirements

A commentator suggests allowing a responsible party to combine the reports required by Section 245.310, relating to site characterization reports, and this section. Section 245.303(e) states the Department may waive or combine requirements. Can the reports required by Sections 245.310 and 245.312 be combined? If so, is Department permission required prior to submittal?

Subsection (e)

This subsection requires the responsible party to request an amendment to the remediation plan if the plan is not achieving the remediation standard. However, there is no time requirement for the Department to respond to the request to amend a remediation plan that is not working.

Commentators suggest adding a fixed review period of 30 or 90 days for the Department to respond to a request. This subsection should include a time limit to expedite correction of remediation plans.

Subsection (g)

Subsection (g) is being deleted. It requires designated monitoring wells to be sampled quarterly for one year. Since this section relates to remedial action, in place of Subsection (g), a cross-reference should be added to Section 250.704, which relates to general attainment requirements for groundwater.