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

February 15, 2002

Honorable David E. Hess, Chairman
Environmental Quality Board
Rachel Carson State Office Building
400 Market Street, 16th Floor
Harrisburg, PA 17101

Re: Regulation #7-369 (IRRC #2227)
Environmental Quality Board
Portable Fuel Containers

Dear Chairman Hess:

Enclosed are the Commission's Comments which list objections and suggestions for consideration when you prepare the final version of this regulation. These Comments are not a formal approval or disapproval; however, they specify the regulatory criteria which have not been met.

The Comments will soon be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Nyce". The signature is fluid and cursive.

Robert E. Nyce
Executive Director
evp
Enclosure

cc: Honorable Arthur D. Hershey, Majority Chairman, House Environmental Resources and Energy Committee
Honorable Camille George, Democratic Chairman, House Environmental Resources and Energy Committee
Honorable Mary Jo White, Chairman, Senate Environmental Resources and Energy Committee
Honorable Raphael J. Musto, Minority Chairman, Senate Environmental Resources and Energy Committee

Comments of the Independent Regulatory Review Commission

on

Environmental Quality Board Regulation No. 7-369

Portable Fuel Containers

February 15, 2002

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 If the final-form regulation is not delivered by January 16, 2004, the regulation will be deemed withdrawn.

1. Section 130.102. Definitions. - Clarity.

The following terms are defined in the California Air Resources Board's (CARB's) rules relating to portable fuel containers: "consumer"; "distributor"; "fuel"; "retailer"; "retail outlet"; "manufacturer"; and "VOC." These terms are not defined in the proposed regulation.

The terms "retailer" and "retail outlet" are defined in the EQB's existing regulations at 25 Pa. Code Section 121.1. The definition of "retailer" is identical to the definition in CARB's rules. However, the definition of "retail outlet" in Section 121.1 relates to the sale of gasoline, not portable fuel containers and spouts. For clarity and consistency with CARB's rules, the EQB should add definitions for the above-referenced terms to the final-form regulation.

2. Section 130.105. Innovative products. - Clarity.

Paragraph (1) requires an applicant for an innovative product exemption to "apply in writing to the Commonwealth...." However, the regulation does not include a time frame within which the Department of Environmental Protection (Department) will review the application and render a decision. The EQB should include a time frame for Department review in the final-form regulation.

3. Sections 130.105. Innovative products. and 130.107. Variances. - Clarity.

Section 130.105(4) provides that the Department may revoke or modify an innovative product exemption. Section 130.107(c) addresses variances from the performance standards for portable fuel containers. It states that "the Department may review and modify or revoke a variance...." However, neither section contains or references the process for a party to appeal the Department's decision.

It is our understanding that the Department's decision would constitute a final agency action that a party could appeal to the Environmental Hearing Board (EHB). Clarity would be improved if Sections 130.105(4) and 130.107(c) of the final-form regulation contained a cross-reference to the EHB appeal procedures in 25 Pa. Code Sections 1021.51 through 1021.54.

4. Section 130.108. Test Procedures. - Clarity.

Section 2467.7 of CARB's rules relating to "test procedures" notes that the section numbers for the July 6, 2000 version of CARB's rules were corrected on September 13, 2000. This notation should be included in Subsections (a) and (b).