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

March 8, 2002

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

Re: Regulation #7-357 (IRRC #2237)
Environmental Quality Board
Noncoal Underground Mines and Other Excavations

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, appearing to read "Robert E. Nyce".

Robert E. Nyce
Executive Director
wbg
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. 7-357

Noncoal Underground Mines and Other Excavations

March 8, 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 If the final-form regulation is not delivered by February 6, 2004, the regulation will be deemed withdrawn.

1. Section 207.211. Safety requirements. - Clarity.

Subsection (c) requires documents sent to the United States Department of Labor, Mine Safety and Health Administration to also be submitted to the Department of Environmental Protection (Department). The regulation should specify where those documents should be sent.

2. Section 207.214. Certificate of qualification application requirements. - Clarity.

Subsection (2) uses the phrase "certified official under the Pennsylvania Anthracite Coal Mine Act (52 P.S. §§ 70-101-70-145) or the Pennsylvania Bituminous Coal Mine Act (52 P.S. §§ 701-101-701-706)...." If the term "certified official" is defined in statute, the regulation should provide a specific cross-reference to where the definition and the associated qualifications can be found. If the term is not defined in statute, the regulation should define the term.

3. Section 207.215. Standards for issuing certificates of qualification. - Reasonableness; Clarity.

Subsection (a) requires applicants to pass an examination to obtain a certificate of qualification. In the Preamble, the EQB states the Department has been using a voluntary program to certify mine foremen for noncoal mines. Will foremen who hold a voluntary certificate of qualification be granted certification without taking another examination when this rulemaking is implemented? If so, language should be added to the final-form regulation to allow voluntary certificate holders to qualify.

4. Section 207.303. Approvals. - Clarity.

In order for a business to operate in a mined-out area, a developed facility must be "approved by the Department." Is there a specific provision or citation in which a developed facility is "approved by the Department"?

5. Section 207.312. Lighting. - Clarity.

Subsection (a)

This subsection requires a “permanent lighting system,” but does not specify what would meet this requirement. The regulation should include or reference what qualifies as “a permanent lighting system.”

Subsection (b)

This subsection includes two vague requirements.

First, this subsection requires “an emergency lighting system meeting the requirements of the Department.” Does the Department have existing regulations that address the requirements of an emergency lighting system? If so, this subsection should provide a cross-reference to the requirements. If not, this subsection should specify the requirements an emergency lighting system must meet.

Second, this subsection allows the owner to provide each worker with “an approved personal lamp.” What is an approved personal lamp?

6. Section 207.314. Ventilation. - Clarity.

Subsection (a) requires mechanical ventilation systems to be approved by the Department. How does the owner obtain Department approval?

7. Section 207.317. Record of inspection. - Clarity.

This section includes the requirement that the log be dated and signed. It is unclear whether the requirement to date and sign applies to the entire log or each individual entry. The regulation should specify that each individual entry into the log should be dated and signed.

The last sentence of this section is unclear. It states, “Corrections *or* orders required by the Department representative shall be in writing and shall become part of the log.” Can the Department representative require orders? Is the Department representative required to date and sign a log entry for a correction or order?

8. Section 207.318. Storage of flammable liquids. - Protection of the public safety; Clarity.

Both subsections (a) and (b) specify requirements for storage of flammable liquids, but end with the phrase “unless otherwise approved by the Department.” How is this approval requested? Does a Department representative have authority to issue approval? Is the approval required to be in writing? This information should be included in the final-form regulation.

Revised 12/10/01

INDEPENDENT REGULATORY REVIEW COMMISSION

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or Cindy Lauderbach
or Denise Henke
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Date: March 8, 2002
of Pages: 4

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Environmental Quality Board's regulation #7-357 (IRRC #2237). 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 Wright Date: 3/8/02