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

February 14, 2002

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

Re: Regulation #7-364 (IRRC #2239)
Environmental Quality Board
Hazardous Waste Management

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".

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. 7-364

Hazardous Waste Management

February 14, 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 If the final-form regulation is not delivered by January 14, 2004, the regulation will be deemed withdrawn.

1. Section 261a.3. Definition of “hazardous waste.” - Economic impact; Need; Reasonableness; Feasibility.

Subsection (b) states, “...the material shall be managed as a hazardous waste until the determination is made that indicates it is not a hazardous waste.” The Preamble states this requirement was inadvertently deleted in May of 1999 and is being reinstated to establish “a firm position to what would otherwise be an ambiguous provision in the regulations.” In response to Question 17 in the Regulatory Analysis Form the EQB states, “The proposed changes are clarifications and corrections, and there are no new requirements being proposed. Because of this, there are no additional costs imposed.”

A commentator believes the current obligation to properly manage wastes is sufficient. It believes proposed Subsection (b):

- Is overly prescriptive and unnecessary;
- Imposes costs without environmental benefit; and
- Is impractical because it would invoke other requirements such as requiring a hazardous waste label and code for an as yet unknown material.

We have three specific concerns.

First, is this provision needed in light of existing requirements to properly manage waste? Has waste been mismanaged as a result of the 1999 deletion of the provisions in Subsection (b)?

Second, will reinstating this provision impose new requirements and costs on the regulated community? If so, what are the requirements and their estimated costs?

Third, is a label required before the composition of the waste is determined? If so, what requirements would a label have to meet?

2. Section 262a.12. EPA Identification numbers. - Reasonableness; Need.

Subsection (b)(1)(iv) requires Department notification if the generator's facility class changes. The distinction between facility classes is based on the amount of hazardous waste generated in a month. If a generator experiences a temporary fluctuation in the amount of hazardous waste generated in a single month, two notices would be required: one notice when the quantity of waste falls under a different classification and a second notice when operations return to normal levels. Would notices of a temporary fluctuation in the amount of hazardous waste generated serve a useful purpose?

3. Section 262a.23. Use of the manifest. and Section 263a.12. Transfer facility requirements. - Clarity.

Amendments to Sections 263a.20(a)(1) and 264a.83(a)(2) use gender-neutral language. However, we note that Section 262a.23(a)(1) and Section 263a.12(4)(iii) use the word "his." Gender-neutral language should be used consistently throughout the regulation.

4. Section 262a.34. Accumulation time. - Need; Economic impact.

The addition of this section requires generators to comply with Chapter 265a, Subchapter I (relating to use and management of containers). As stated in Issue #1, the EQB states in the Regulatory Analysis Form that there are no additional costs imposed by this regulation.

A commentator believes the existing requirements are adequate and there is no justification to add new requirements. It believes many Large Quantity Generators may incur extensive capitol costs to comply with the secondary containment requirements.

We have two specific concerns.

First, is this provision needed in light of existing requirements?

Second, how did the EQB conclude there are no additional costs imposed by this provision?

5. Section 262a.43. Additional reporting. - Consistency with statute; Need; Economic impact; Protection of the public health, safety and welfare.

Hazardous material

The term "hazardous material" is used in this section. Commentators believe use of the term "hazardous material" rather than "hazardous waste" raises statutory concerns. We have not found a definition of the term "hazardous material" in 25 Pa. Code § 260a.10, Pennsylvania's Solid Waste Management Act (Act), or 40 CFR 260.10. Whereas, the term "hazardous waste" is defined in the Act, 40 CFR 260.10 and used in other sections of this regulation.

We have two concerns.

First, What is the statutory basis for using the term “hazardous material”?

Second, how will the regulated community know what materials are considered “hazardous material”?

Reinstatement of spill reporting requirements deleted in 1999

Commentators state that there have been no incidents since the spill reporting requirements were deleted in 1999 that would justify restoring them. They believe the existing regulatory framework provides sufficient protections. However, the Preamble states this section is being reinstated due to “many inquiries from the regulated community and questions from Department personnel about when spills must be reported.” The EQB should further explain the need for this provision and the additional costs it will impose.

Subsection (3)

This subsection allows waiver of identification numbers, licenses and manifests in the event of an emergency. However, this subsection does not specify any follow up after the emergency. After the immediate threat to safety is over, how is the hazardous waste that was moved during the emergency accounted for?

6. Section 263a.12. Transfer facility requirements. – Need; Economic impact; Clarity.

Commentators state that Subsection (3) exceeds Federal requirements, is not needed and would be financially burdensome. They advocate deleting this subsection. Why is this subsection needed and what is the economic impact of these requirements on transfer facilities?

Assuming Subsection (3) is needed, other commentators have indicated that the requirement for secondary containment in Subsection (3) is confusing. Do the storage trailers, impervious surfaces on the docks and pavement qualify as secondary containment? The regulation should specify the “secondary containment” requirements a transfer facility must meet either by reference to Federal regulations or by putting them in Pennsylvania’s regulation.

7. Section 263a.21. Compliance with the manifest. – Clarity.

The language in Subsection (3) is confusing because it could be read to prohibit “preprinted Manifest Document Numbers.” Is the intent to prohibit a manifest if an alteration was made by anyone other than the printer of the manifest to a preprinted Manifest Document Number or Manifest Tracking Number? Also, who is the “printer of the manifest”?

8. Section 264a.71. Use of the manifest system. - Feasibility; Reasonableness.

Subsection (3) requires the facility to state the “actual quantity received in bulk shipment” in the “Discrepancy Indication Space...on the manifest.” This requirement is inconsistent with the instructions for the EQB’s Official Pennsylvania Manifest Form (Form 2500-FM-LRWM0051 Rev 7/99 also titled “Uniform Hazardous Waste Manifest”).

Item 19 of the manifest is designated as the Discrepancy Indication Space. The instructions for completion of Item 19 state “The Designated Facility’s authorized representative must note in this space any significant discrepancy between the waste types or quantities described on the Manifest and those actually received. If waste is rejected, so indicate in this space.”

The concern is the actual quantity received would not be a discrepancy in most instances. Hence, entering the actual quantity received in the Discrepancy Indication Space is contrary to the form’s instructions. The regulation should be amended to make the requirements consistent with the manifest.

9. 264a.97. General groundwater monitoring requirements. – Need; Reasonableness.

A commentator indicates that Subsection (1) will limit flexibility in designing appropriate groundwater monitoring programs. They claim that there are instances where a longer time period between each monitoring is more appropriate. Are strictly defined monitoring periods needed for all locations where groundwater is monitored? Should the regulation allow different periods to be specified in the permit?

10. 270a.60. Permits-by-rule. – Implementation; Clarity; Reasonableness.

The EQB is adding a requirement to Subsection (a)(1) for the owner or operator using a permit-by-rule to give “prior notification to the Department....” Does the EQB intend to grandfather current permit-by-rule operators or will current operators be required to submit notice? If notice is required, will current permit-by-rule operators be given time to comply with this requirement after the regulation becomes effective?

INDEPENDENT REGULATORY REVIEW COMMISSION

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or Cindy Lauderbach
or Denise Henke

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Date: February 14, 2002
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Comments: We are submitting the Independent Regulatory Review Commission's comments on the Environmental Quality Board's regulation #7-364 (#2239). 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: 2/14/02