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May 7, 2003

Honorable Kathleen A. McGinty, Acting Chairman
Environmental Quality Board
Rachel Carson State Office Building
400 Market Street, 16th Floor
Harrisburg, PA 17101

Re: Regulation #7-381 (IRRC #2331)
Environmental Quality Board
Safe Drinking Water; Radionuclides Rule

Dear Acting Chairman McGinty:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The Comments will 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,

Robert E. Nyce
Executive Director

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Enclosure

cc: Honorable William F. Adolph, Jr., 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. 7-381

Safe Drinking Water; Radionuclides Rule

May 7, 2003

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) 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regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

1. General. - Consistency with federal regulations; Clarity.

In comments dated April 3, 2003, the U.S. Environmental Protection Agency Region III (EPA) questioned areas of the proposed regulation that are inconsistent with federal regulations. These comments include the following:

The proposed regulation does not include compliance dates set forth in federal regulation at 40 CFR § 141.66(f).

A sentence in the federal regulation at 40 CFR § 141.26(a) concerning whether the “gross alpha result will be used to determine the future monitoring frequency” is omitted from Section 109.301(14)(i)(C) of the proposed regulation.

The proposed regulation does not contain a provision consistent with the federal regulation at 40 CFR § 141.66(g) which lists “best available technologies (BAT).”

The EQB should address these comments by amending the final-form regulation or by providing explanations on how these issues may be resolved without amending the regulation.

2. Section 109.301(14)(i). Monitoring requirements for gross alpha particle activity, radium-226, radium-228 and uranium. - Implementation procedures; Reasonableness; Clarity.

Clause (D) uses the phrases “historical monitoring data,” “monitoring data,” “appropriate historical monitoring data” and “appropriate historical data.” Do these terms have the same meaning? If so, we recommend that one term be used consistently.

Subclause (D)(III) states:

...provided that the Department finds that the historical data satisfactorily demonstrate that each entry point **is expected** to be in compliance based upon the historical data and **reasonable assumptions** about the variability of radionuclide levels between entry points. The system shall supply sufficient information to allow

the Department to make a written finding indicating how the data conform to these requirements.” (Emphasis added.)

We have two concerns.

First, what happens if the entry point is tested and the results do not comply with the requirements? What are the consequences for the community water system?

Second, the phrase “reasonable assumptions” is vague. What sort of assumptions would be considered reasonable?

3. Section 109.301(14)(ii). Monitoring requirements for beta-particle and photon radioactivity. - Implementation procedures; Reasonableness; Clarity.

Clause (A) states, “Systems designated by the Department as **vulnerable** to beta-particle or photon radioactivity or both shall sample for beta particle or photon radioactivity.” (Emphasis added.) We have two concerns.

First, how will the Department determine if a community water system is vulnerable?

Second, the Preamble states that the EPA recommends the use of a 15-mile radius from the nuclear facilities as the designation for vulnerability. The EQB has chosen a “watershed-based approach” to determine contamination. Please explain what a “watershed based approach” is and how it would be implemented. Is this approach more or less stringent than the federal requirements?

Subclause (A)(II) states, “For systems in the **vicinity** of a **nuclear facility**, the system may utilize **environmental surveillance data** collected by the nuclear facility in lieu of monitoring at the system’s entry points, when the Department determines that the data is applicable to the system.” (Emphasis added.) We have three concerns.

First, what criteria will the Department use to determine if a community water system is in the vicinity of a nuclear facility?

Second, the proposed regulation does not contain a definition of a “nuclear facility.” However, the term is defined in the Preamble. What is the Department’s rationale for not including the definition of nuclear facility in the regulation?

Third, the term “environmental surveillance data” needs to be clarified. It is our understanding that the U.S. Nuclear Regulatory Commission (NRC) requires routine monitoring of release points of power plants. If these NRC requirements are contained in federal regulations, this subclause should contain a specific reference to those federal rules.

Clause (B) states, “Systems designated by the Department as utilizing waters contaminated by effluents from nuclear facilities shall sample....” How will the Department notify a system that it is designated as using waters contaminated by a nuclear facility?

4. Section 109.301(14)(iii). General monitoring and compliance requirements. - Clarity.

Clause (A) states, “The Department may require more frequent monitoring than specified in subparagraphs (i) and (ii), or may require confirmation samples.” We have two concerns.

First, when would the Department require more frequent monitoring?

Second, monitoring refers to all of the responsibilities of a community water system. Sampling is a specific action. This provision would be clearer if it stated, "The Department may require more frequent *sampling*...."

Clause (B) states the following, "Each system shall monitor at the time designated by the Department during each compliance period." How will a system be notified of the time designated by the Department?

5. Section 109.303. Sampling requirements. - Clarity.

Subsection (j) states: "Performance samples required under § 109.301(14)(i)(B)(V) (relating to general monitoring requirements) shall be taken **immediately following treatment** for the radionuclide, or at another location approved by the Department." (Emphasis added.) We have two concerns.

First, the use of the phrase "immediately following treatment" is unclear. It is our understanding that the phrase relates to a location or place where sampling may occur. That location is downstream from the radionuclide treatment area. The final-form regulation should be revised to indicate that the phrase "immediately following" refers to a place and not a time.

Second, if a system opts to use another location, how would they apply for approval of the Department?

Revised 12/10/01

INDEPENDENT REGULATORY REVIEW COMMISSION

To: Shirley Wright
or ~~Cindy Lauderbach~~
or ~~Denise Henke~~

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From: Kristine M. Shomper
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Commission
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Date: May 7, 2003
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Comments: We are submitting the Independent Regulatory Review Commission's comments on the Environmental Quality Board's regulation #7-381 (IRRC #2331). 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: 5/7/03