



PENNSYLVANIA CHEMICAL INDUSTRY COUNCIL

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The Honorable John McGinley, Jr., Chair
The Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Dear Commissioner McGinley:

On behalf of the members of the Pennsylvania Chemical Industry Council (PCIC), I thank the Independent Regulatory Review Commission (IRRC) for the opportunity to comment on the final draft of the Department of Environmental Protection's (DEP) Environmental Laboratory Accreditation Regulations, IRRC # 2454. PCIC submitted comments on the proposed draft regulations in February of 2005, and we were pleased to see many of our comments echoed by other industry groups and IRRC. While several of our concerns were addressed, we still have concerns that the regulations as written deviate from the statutory authority given to the Department and will cause an inappropriately negative financial impact to manufacturers in Pennsylvania and hinder industry's efforts to comply with environmental requirements.

The overwhelming majority of PCIC's members have what are referred to as "in-house" or "captive" laboratories. The primary purpose of these laboratories is to test the water and solid materials that are used in manufacturing in order to comply with environmental permits and regulations. These labs are commonplace not only with chemical manufacturers, but also with municipal authorities and other manufacturers.

PCIC has been a supporter of accreditation of environmental laboratories, and was involved directly in the drafting of Act 90 of 2002, the empowering statute for these regulations. Many of PCIC's members make use of environmental laboratories for analyzing environmental samples in remediations and cleanups, and it is of utmost importance that these laboratories provide accurate results. But out of concern that the Department would take an overly aggressive approach in regulating the aforementioned in-house laboratories, PCIC was instrumental in including a provision in Act 90 that states the following:

"To the extent possible, the Environmental Quality Board shall establish requirements and procedures that address the unique needs of small businesses, municipalities, municipal authorities and in-house laboratories."

It is PCIC's contention that this statutory requirement has not been adequately addressed. Please consider the following:

- In PCIC's comments on the draft proposed regulations, PCIC objected to the provision that would limit testing considered accreditable-by-rule to very basic tests. Most in-house and small laboratories perform tests that would require regular accreditation. The following response from the Department is what was publicized on May 18, 2005 on the DEP website:

"Differentiating between in-house and commercial laboratories is not appropriate. The purpose of these regulations is to improve the quality of data for any testing or analysis of environmental samples that is required by the Department"

The Department has a right to interpret the scope of regulations **provided they fall within statutory authority**. But according to the aforementioned statement provided by the Department, they are obviously choosing to ignore their responsibility by law to establish requirements and procedures that address the unique needs of in-house laboratories. Neither DEP nor any rulemaking body has the right to choose its own interpretation and ignore an empowering statute.

- The primary focus of in-house laboratories is to test wastewater as a part of their parent facility's National Pollutant Discharge Elimination System (NPDES) permits. DEP issues NPDES permits on a local level, and they are based individually on the processes of each facility. For example, a chemical manufacturer that makes components of the airbag in your car will be required to test for elements commonly used in their process, while another facility with different processes or a different end-product would be required to test for different components. The NPDES permits are an effective measure that ensures the water discharged has been adequately treated.

By requiring in-house laboratories to go through excessively prescribed quality control measures, proficiency testing and other cumbersome accreditation requirements found in these draft regulations, DEP will either hinder the turnaround time that an in-house laboratory will have to comply with NPDES permits, or will require laboratories to contract with an accredited environmental laboratory, both of which will cause substantial delays and negative financial impacts. These cumbersome testing requirements are also redundant, as municipal waterworks or local DEP monitor any wastewater returned to a watershed.

- DEP is likely to respond to concerns that it is overregulating in-house laboratories by referring to the section that allows for accreditation-by-rule. This section lists twenty-five extremely simple tests, including such tests as odor, color, taste and temperature that would allow a laboratory to be accredited-by-rule, and avoid the cumbersome requirements of regular accreditation.

As a result of DEP's reference to the accreditation-by-rule section, PCIC surveyed its membership, asking:

1. If their facilities test any solid materials or wastewater pursuant to a DEP mandate, and;
2. For what components were they required to test?

Approximately eighty percent of PCIC members replied that they do test wastewater pursuant to an NPDES or stormwater permit, and their required testing exceeds that which would be considered accreditable-by-rule. If these numbers held true across the state, this means that approximately 493 out of 616 chemical manufacturers in Pennsylvania would be subject to these regulations, with countless more non-chemical manufacturers falling under these regulations. It is our contention that the cumbersome regulation of eighty percent of Pennsylvania's chemical industry does not constitute "addressing the unique needs of in-house laboratories."

It is for these reasons that PCIC asks that these regulations be referred back to the Department for further review. It is not our contention that all in-house laboratories be exempted from these regulations. Instead, PCIC recommends that the accreditation-by-rule section be expanded to include some basic testing that is commonly required under NPDES permits. Some of these tests include testing for nitrates and phosphates, biochemical oxygen demand and chemical oxygen demand. As an alternative, DEP could also relax the burdensome quality control standards for in-house laboratories or laboratories that do a limited number of tests. It is our belief that by expanding the testing for which a laboratory can be considered accredited-by-rule or reducing the amount of cumbersome requirements, the Department will have successfully complied with its requirement to address the unique needs of small and in-house laboratories.

Thank you,



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Cc: The Honorable Kathleen A. McGinty, Pennsylvania Department of Environmental Protection
The Honorable William Adolph, Pennsylvania House of Representatives
The Honorable Camille George, Pennsylvania House of Representatives
The Honorable Mary Jo White, Senate of Pennsylvania
The Honorable Ray Musto, Senate of Pennsylvania
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