Original: 2454

(4)

PENNSYLVANIA CHEMICAL INDUSTRY COUNCIL

200 N. THIRD STREET • 10TH FLOOR
HARRISBURG, PENNSYLVANIA 17101
717-232-6681
FAX 717-232-4684
HTTP://WWW.PCIC.ORG

February 22, 2005

The Honorable Kathleen A. McGinty
Environmental Quality Board
Rachel Carson State Office Building, 15th Floor
400 Market Street
Harrisburg, PA 17105-2301

Dear Secretary McGinty:

On behalf of the members of the Pennsylvania Chemical Industry Council (PCIC), I would like to thank you for the opportunity to comment on the proposed rulemaking concerning environmental laboratory accreditation. Ensuring quality analysis and testing of environmental samples is of foremost importance to PCIC members. The thorough nature of these comments is evidence that the Department also considers the quality of these laboratories a high priority.

Our primary concern is that this regulation does not extend beyond the facilities that it was intended to address. It was not the intention of Act 90 of 2002 to place stringent requirements on laboratories that use their measurements for internal quality control purposes. I hope that you will consider PCIC's comments in any further review of this proposed rulemaking.

- **The Department should consider reciprocating other testing programs other than NELAP.** Act 90 of 2002 permits the Department to include any other specific broad-based Federal or State accreditation program for certification. There may come a time in the future when a laboratory accrediting program similar to NELAP, such as the American Association for Laboratory Accreditation, may emerge as an alternative to NELAP. In order to account for this possibility, the rulemaking should include language in Section 252.5 giving the Department the ability to recognize reciprocal accreditation when granted by a program with guidelines similar to those of the Commonwealth.

- **The proposed rulemaking does not extend far enough in its consideration of in-house laboratories.** In the preamble, the Department states its intention to consider and address the needs of small laboratories, including in-house laboratories. Section 252.6 creates an accreditation-by-rule program. The primary purpose of accreditation-by-rule is to clearly define facilities that fall on the periphery of this rulemaking.

While PCIC recognizes the need for an accreditation-by-rule program, we contend that it was never the intent of Act 90 to open in-house laboratories to the possibility of requiring accreditation through accreditation-by-rule. PCIC requests that an exemption be instituted for all in-house laboratories that perform simple quality assurance or backup testing rather than using the data to maintain compliance with an environmental permit or regulation..

In-house environmental laboratories are often NPDES permitted and are required to report measurements for biochemical oxygen demand (BOD), chemical oxygen demand (COD), total dissolved solids (TDS) and total suspended solids (TSS). Because in-house laboratories are reporting these measurements as a mandate by the Department under NPDES, they would not be considered eligible for accreditation-by-rule as environmental laboratories operated by an industrial wastewater treatment facility. Since the four aforementioned analyses are typically conducted by in-house laboratories, and because of the Department's stated interest in considering the needs of in-house laboratories, we request that the Department add the four analyses listed above to the list of analyses accepted for accredited-by-rule in Section 252.6(f).

PCIC also requests that analysis of phosphate detection be added to Section 252.6(f) in order to maintain consistency with other regulations. Under the Safe Drinking Water Act, facilities that test drinking water for phosphates are eligible for permit-by-rule. Any in-house laboratories that test for phosphates should also be permitted to attain accreditation-by-rule when testing non-potable water or solid and chemical materials, which are not consumed by the public, unlike drinking water.

- **Environmental consulting firms that do limited field testing should either be exempted or considered accredited-by-rule.** The tests or analyses included in the accreditation-by-rule section could be subject to several interpretations. It often puts firms in an uncertain position where they may be considered accredited-by-rule, or they may be considered an accredited laboratory. One type of facility that may be improperly deemed an accredited environmental laboratory is an environmental consulting firm.

  These consulting firms complete analyses in the field using test kits, portable gas chromatographs or X-ray fluorescence units, which are usually rented for short periods of time. None of these analyses are complicated, and would in no way be confused with the work of an environmental laboratory. However, these analyses are not listed as accredited-by-rule under Section 252.6. Although a consulting firm may be able to claim that a portable gas chromatograph is a handheld survey instrument, instruments like X-ray fluorescence units, field chemical test kits for various parameters, and field test kits using such techniques as immunoassays are clearly not included in the list. The list of

excluded analyses needs to be expanded for consultants to continue to perform these types of tests in the field.

- **An interim accreditation clause should be added to allow the opportunity to make necessary changes in preparation of the new rulemaking.** As the regulations read now, there is no interim period in which the regulated community and the Department can enact changes to their policies in response to this rulemaking. PCIC recommends that the Department include a clause in Section 252.6 that accredits all regulated laboratories by-rule until a future date, by which all affected laboratories will have to meet the requirements of this rulemaking.

- **The requirement for separate accreditation for mobile laboratories convolutes the field testing process.** Mobile laboratories are established for their simplicity. They typically provide basic analyses for a very limited period of time with temporary facilities. Section 252.201(d) would require separate accreditation for mobile laboratories, even when affiliated with an established environmental laboratory. Their accreditation will require them to complete the accreditation process and receive an initial assessment by the Department, which may take a longer period of time than the actual field work would require.

  PCIC requests that the Department consider types of testing that mobile laboratories typically complete in the course of their field work. If the analysis is complex in nature, and would normally be completed by an accredited environmental laboratory, accreditation for the mobile laboratory may be necessary. But if the testing involved is not complex, such as hazard characterization or sample compositing, with subsequent samples being sent to a permanent laboratory for analysis, accreditation is unnecessary.

- **The fee structure heavily favors larger environmental laboratories, and disadvantages smaller and specialty laboratories.** Section 252.204 sets the fee structure for accreditation. Although it is in the preamble that consideration is to be paid for smaller laboratories, the fee structure as drafted in the rulemaking may create advantages for larger laboratories in practice. A laboratory that receives a large amount of income by offering all categories of testing will easily reach the maximum fee that they can pay, which is approximately $19,000. However, a smaller laboratory that specializes in specific categories of testing will end up paying a larger proportion of their income in accreditation fees. A larger lab that pays $19,000 in accreditation fees but grosses twenty times that number will find compliance much easier than a smaller laboratory that pays $3,000 but receives much less income.

  PCIC requests that the fee structure be reconsidered with the perspective of smaller laboratories firmly in mind.

- **There should be a fee for accreditation renewal along with the fee for initial accreditation.** If fees are truly representative of the costs needed to fund the

accreditation process, there should be a lower fee included for the accreditation renewal. The cost of initial accreditation should naturally be higher than the cost of accreditation renewal, which should only require some simple administrative steps.

- **The Consumer Price Index escalator is a circumvention of the regulatory process.** Section 252.204(b) imposes a fee escalator every three years based on the Consumer Price Index. PCIC believes this escalator to be an inappropriate use of Departmental power and an attempt to bypass the regulatory process for future increases.

  The purpose of the regulatory review process is to avoid unchallenged or hurried decision-making. While the regulatory review process can be cumbersome, it has been established to avoid provisions like this automatic escalator. This provision employs a stealthy mechanism other than regulatory review to amend regulation that may otherwise generate outside comment.

  This escalator also does not account for any future changes in the scope of the accreditation program. Perhaps in the future the Department will find that the demand for accreditation and inspection is lower than expected, or perhaps the industry could face a sharp decline or increase in the number of accredited laboratories. An automatic escalator does not account for these changes, and may lead the accreditation program into a period of unnecessary prosperity or deficiency.

  It is for these reasons that PCIC requests that any language regarding an automatic escalator be removed from this proposed rulemaking.

- **The fee structure will limit the marketplace by discouraging out-of-state laboratories from becoming accredited in Pennsylvania.** Many environmental consulting firms and chemical manufacturers rely on out-of-state environmental laboratories for specialty analysis of environmental samples. These out-of-state laboratories receive limited business from Pennsylvania, and would not want to pay exorbitant accreditation fees for the small amount of business that it receives. In addition to accreditation fees, the laboratory would also be responsible for compliance costs, fees for on-site assessments and proficiency examinations, which could exceed $25,000 per year.

  It would be more economically sensible for these laboratories to refuse to accept samples from Pennsylvania than to participate in the proposed accreditation program. This marketplace exclusion will increase costs of environmental testing of participating labs and limit the number of firms Pennsylvania businesses can potentially choose. PCIC recommends that the fee structure be amended to reflect this potential constraint.

- **It is not necessary for the Department to assess laboratories that are reciprocally accredited by other states or NELAP.** The need for the Department to assess out-of-state laboratories is often duplicative and unnecessary. If the Department is willing to accept reciprocal accreditation for an environmental laboratory located in another state, the Department concedes that the state's laboratory accreditation rule is similar to Pennsylvania's rule. If this is true, an assessment from an out-of-state official should be also be sufficient to maintain accreditation in another state. The same should also be true for laboratories that are accredited by NELAP and inspected by NELAC.

  The burdensome travel costs associated with on-site assessments will greatly limit the number of laboratories available to Pennsylvania businesses. If a laboratory in another state specializes in one type of analysis, but only receives a few samples per year, it would be cost-prohibitive for this out-of-state laboratory to pay for travel costs and accreditation fees to Pennsylvania to be accredited in the Commonwealth. This would greatly reduce or eliminate the potential market for specialty out-of-state analyses.

  PCIC requests that out-of-state laboratories that are either accredited by their home state or NELAP be permitted to reciprocate their home state assessment instead of being required to receive a Pennsylvania inspection. An out-of-state laboratory that is not accredited in its home state or does not meet Pennsylvania's standards for reciprocal accreditation should receive assessments from the Department.

- **Department personnel should not be permitted to request on-site assessments for out-of-state laboratories.** Section 252.205(b) permits the Department to conduct on-site assessments of out-of-state environmental laboratories based on requests from Department personnel. This may be construed as a potential conflict of interest if the requesting party would also be conducting the assessment. Apart from this concern, the only way that Department personnel could ever determine an out-of-state laboratory worthy for an assessment is by a finding of discrepancies with testing results or errors in reporting data, both of which are covered as potential reasons for an on-site assessment.

  PCIC respects the need for the Department to conduct out-of-state assessments and does not want to limit the Department's right to do so. For these reasons, PCIC requests that requests from Department personnel show cause for any on-site assessment.

- **Training courses in ethical and legal responsibilities are unnecessary.** Section 252.304(b)(3)(iv) requires laboratory management to be responsible for maintaining records demonstrating the technical staff's participation in training courses in ethical and legal responsibilities. These training courses are unnecessary, as the responsibilities of laboratory personnel are more clearly

expressed in writing. Section 252.304(b)(3)(v) requires management to ensure that all technical staff have read, understood and acknowledged their ethical and legal responsibilities, which is sufficient for the purposes of this rulemaking.

For these reasons, PCIC requests that Section 252.304(b)(3)(iv) be deleted.

- **The requirements under Section 252.306 for equipment calibration are excessively specific.** The measures required under Section 252.306 are detailed to a fault. The constant calibration and measurement of laboratory equipment is an unmanageable requirement that is equally difficult to enforce. This section also does not take specialty equipment and new technologies that may only be used by certain laboratories into consideration.

  In place of the convoluted language in Section 252.306, PCIC recommends that the Department draft a simpler requirement stating that a laboratory must document that any instrument used in the testing process is in good working condition and has been calibrated within a set timetable. This wording would allow greater flexibility in determining the accuracy of all laboratory equipment.

- **The reference to "visual comparison devices" is confusing and vague.** According to Section 252.306(f)(11), visual comparison devices must be calibrated according to manufacturer or method specifications. The term "visual comparison device" can be defined in any number of ways. PCIC recommends that the rulemaking be amended either to define visual comparison devices, or to provide examples of what exactly is meant by a visual comparison.

- **The prescriptive nature of determining analytical methods exceeds some of the requirements of federal regulation.** The EPA Office of Solid Waste has implemented a Performance-Based Measurement System (PBMS) for all analytical measurements conducted in support of the Resource Conservation and Recovery Act. PBMS does not require the application of state or federal approved methodology, as long as it is applicable to the analyte and it provides an accurate and defendable result.

  The requirement of this rulemaking to comply with available DEP methods denies a laboratory the flexibility to select a method that is most appropriate for that particular sample. It greatly limits the ability of laboratories to implement new and emerging technologies to meet mandated reporting requirements. It also violates the requirements of Executive Order 1996-1, which prohibits Pennsylvania's regulations from exceeding federal standards without a compelling reason.

  PCIC recommends that Section 252.307 and any other applicable sections making mention of methodology requirements be amended to allow laboratories flexibility in determining the most appropriate methodology when available to them through PBMS.

- **EPA does not approve methods for testing that falls under PBMS.** Section 252.307(b) requires the laboratory to comply with applicable state or federal regulations when selecting an appropriate method. Although EPA does publish methods for environmental testing, several of the EPA methods employ PBMS, and issue interpretable guidelines instead of methods. PCIC recommends that Section 252.307(b) be amended in consideration of this.

- **The requirement for a work cell to demonstrate capability upon the addition of a new member is unreliable.** According to Section 252.307(j)(7)(ii), when a member of a work cell changes, the new work cell must demonstrate capability. The burden of a capability demonstration is upon the entire cell, not the new analyst. This means that a veteran analyst in a particular work cell may have to complete several capability demonstrations, and can do so without any input from the new analyst. This does nothing to demonstrate the abilities of a new analyst.

  The requirement for initial capability demonstration if the work cell cannot achieve acceptable quality control performance checks in four consecutive batches is also unreliable and excessive. The inability to achieve acceptable results may have very little to do with the new analyst or the work cell in general. Laboratories should be given the ability to determine the qualifications of their own analysts.

  PCIC recommends that this rulemaking be amended allow new analysts to demonstrate capability on an individual level, without the assistance of the other members of a work cell.

- **Language regarding initial calibration for the chemistry essential quality control requirements is unclear.** Section 252.402(c)(6) requires the lab to report any results not bracketed by the initial calibration standards with appropriate qualifiers. Results from testing are typically bracketed by an initial calibration (ICAL) and a continuing calibration. According to the working of this subsection, ICALs may be able to be performed on separate days. PCIC recommends that the language in this subsection be clarified to address this issue.

- **Evaluation criteria for the control sample, duplicate sample and surrogate spike would be better served through historical laboratory data.** According to Section 252.402(h-j), the evaluation criteria for the chemistry quality control requirements make reference to the method. A more accurate measurement of the accuracy of the laboratory would be to use recovery and relative percent difference criteria based on the historical laboratory data, which takes laboratory standard operating procedure and implementation into account.

Also, in order to ensure quality control reliability for Section 252.402(k), PCIC recommends that language be added requiring the method detection limit study be conducted annually.

- **Language regarding the function properties of an autoclave and hot air oven is unclear.** In the essential quality control requirements for microbiology, the rulemaking requires evaluation of autoclaves in Section 252.404(c)(1), and of hot air ovens in Section 252.404(c)(2). These subsections require laboratories to establish the equipments' function properties and performance, and provides heat distribution as one of the properties. It is unclear the measurement that the Department is requiring in this section. In order to avoid confusion, it is recommended that the rulemaking be clarified with specific measurements upon revision.

- **A time limit should be placed on the requirement to complete an on-site assessment.** Section 252.601(a) requires an environmental laboratory to receive an on-site assessment from the Department prior to receiving accreditation. If a laboratory has to wait an indefinite period of time prior to accreditation, it will adversely affect their financial stability.

  This rulemaking assigns the regulated community a number of timely-filing guidelines under the assessment process, including corrective action reports 60 days after assessment, revised corrective action reports 30 days after departmental response and correction of deficiencies within 120 days of receipt of the report. Yet no guidelines exist for completing an on-site assessment when it greatly affects the financial stability of the regulated community. Timely Departmental action requirements have precedent as well, including Act 2 of 1995 and the Money Back Permit Review Guarantee Program.

  For these reasons, PCIC requests that either an on-site assessment be completed within a specified number of days, or that a lab be permitted to operate under its standard operating procedures until the Department can complete an assessment.

- **Section 252.708 concerning subcontracting should be clarified.** Section 252.708(a) requires that "the subcontracted environmental laboratory shall be indicated on the final report." Neither the definitions in the beginning of the rulemaking nor any prior definition in this section make reference to a final report. And the reference to ***the*** subcontracted environmental laboratory implies a specific laboratory, when none is previously referenced. PCIC requests that the Department clarify the language in this section to avoid confusion.

- **There is no need to report changes in analysts or equipment.** Section 252.709 requires environmental laboratories to notify the Department within 30 calendar days of changes in analysts or equipment used. Larger laboratories employ many analysts and make use of several pieces of equipment, and the

requirement to report of changes in their status would become administratively difficult for both the laboratory and the Department.

In addition to this administrative burden, nowhere in the regulation is the initial reporting of laboratory analysts required. If the original list is not required, reports of changes will be useless.

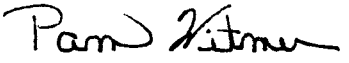
For these reasons, PCIC requests that any mention of analysts, analyst assignments or equipment used be removed from Section 252.709(b).

- **The definition of "laboratory notebook" should include a reference to more modern technology.** The term "notebook" implies a bound paper book used for record keeping. Most laboratories have converted all calibration records onto a personal computer. PCIC requests that the definition of notebook reflect this change.

- **The definition of "work cell" should be changed to include individuals.** There is no requirement in the regulation that requires testing or analysis be completed by more than one person. In smaller or specialized laboratories, one person may make up an entire work cell, especially if that analyst is specially trained on a particular piece of equipment. But the definition of work cell defines work cell as "a defined group of analysts." Considering the Department's stated consideration of small laboratories, PCIC requests that the definition of "work cell" be changed to include both groups and individuals.

If you would like further clarification on our comments, please feel free to contact me at any time. Thank you for your consideration.

Sincerely,



Pam Witmer, President
Pennsylvania Chemical Industry Council

Cc: The Honorable William Adolph, Pennsylvania House of Representatives
The Honorable Bud George, Pennsylvania House of Representatives
The Honorable Mary Jo White, Pennsylvania Senate
The Honorable Ray Musto, Pennsylvania Senate
The Independent Regulatory Review Commission
PCIC Board of Directors
PCIC Public Policy and Advocacy Committee

(15)

Original: 2454

KEYSTONE CEMENT COMPANY

320-D Midland Parkway
Summerville, SC 29485

Phone:
(843)851-9898

Toll Free:
(800)845-1174

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

March 11, 2005

Mr. Robert E. Nyce
Executive Director
Independent Regulatory Review Commission
14th Floor, Harristown 2
333 Market Street
Harrisburg, Pennsylvania 17101

RE: Keystone Cement Company
Comments on Proposed Regulations
Certification for Environmental Laboratory Accreditation
25 PA Code Chapter 252 (PA Bulletin Volume 35, 35-4, January 2005)

Dear Mr. Nyce:

On behalf of Keystone Cement Company (Keystone), I am providing a copy of recent comments made by Keystone to the subject Proposed Regulations.

Briefly, Keystone is concerned about the proposed regulation and believes that if it were to go final; in its present form then it would place unnecessary and burdensome requirements on the company with little or no added environmental benefit. Keystone expressed our concerns and offered specific constructive suggestions to the Environmental Quality Board (EQB) on February 21, 2005 (Attached).

Keystone would appreciate your assistance in supporting our suggested modifications to the proposed regulation.

Please do not hesitate to contact me at (843) 851-5668 or sholt@gchi.com, if there are questions.

Respectfully Yours,

Stephen P. Holt, P.E.
Vice President

KEYSTONE CEMENT COMPANY

P.O. BOX A, BATH, PA 18014-0058 TELEPHONE (610) 837-1881

February 21, 2005

Rachel Caron state Office Building
15th Floor
400 Market Street
Harrisburg, Pennsylvania 17105-2301

RE: Keystone Cement Company
Comments on Proposed Regulations concerning
Certification for Environmental Laboratory Accreditation
25 PA Code Chapter 252 (PA Bulletin Volume 35, 35-4, January 2005)

Dear Sir or Madam:

On behalf of Keystone Cement Company (Keystone), I am pleased to provide comments on the Environmental Quality Boards' proposed regulations to establish the Pennsylvania Environmental Laboratory Accreditation Program, specifically as it applies to small and on-site laboratories. Keystone owns and operates a Portland cement manufacturing facility regulated under the Solid Waste Management Act and the RCRA Boiler and Industrial Furnace (BIF) regulations. Keystone owns and operates a RCRA permitted hazardous waste storage facility contiguous to, and wholly contained within, the property boundaries of our Portland cement facility. The RCRA permitted waste storage facility provides hazardous waste derived fuel to be used in the adjacent Keystone facility cement kilns.

The facility owns and operates an on-site laboratory that performs environmental analyses to demonstrate compliance with regulatory requirements that apply to both the waste storage and cement manufacturing facility. Specifically, the on-site laboratory performs screening analyses on incoming shipments of hazardous waste fuel to determine if it meets the permitted acceptance criteria. In addition, the laboratory performs detailed analyses to demonstrate that the stored fuel meets the acceptance criteria under BIF and Clean Air Act Title V Permits. Analyses conducted by the laboratory are performed pursuant to a Waste Analysis Plan (WAP) and Quality Assurance Plan (QAP) and standard operating procedures (SOP) approved by the Department of Environmental Protection (DEP). The WAP identifies the parameters tested, the frequency of testing, and the test methods used. The QAP and SOPs address specific data quality objectives and quality control procedures to demonstrate accuracy, reliability, and precision of the test methods used to meet the requirements outlined in the WAP. Keystone is required to seek and receive approval from the DEP for laboratory SOPs and the QAP prior to use by the laboratory.

The analyses performed by the on-site laboratory are screening analyses to ensure that the incoming hazardous waste shipments and stored hazardous waste fuel tanks meet our facility's acceptance criteria. Data generated from the on-site laboratory analyses are kept in the operating records, and are required to be made available to the DEP upon request. Keystone has undergone an extensive permit review process in establishing the existing Waste Analysis Plan and Quality Assurance Plan and standard operating procedures for the facility. Additionally, the facility has recently (September 30, 2003) become subject to the Clean Air Act Hazardous Waste Combustor regulations (40 CFR Part 63, Subpart EEE), which require the establishment of a Feedstream Analysis Plan (FAP).

ADMINISTRATION
RT. 329, BATH, PA 18014-0058
FAX 610-837-2267

PLANT & RECEIVING
RT. 512, BATH, PA 18014-0058
FAX 610-837-2291

Consequently, Keystone is subject to considerable regulatory requirements designed to demonstrate the accuracy and reliability of the tests that are performed on-site. It is uncertain that additional requirements would yield added environmental protections or benefits.

Specific suggestions regarding changes in the language of the proposed regulations are provided below:

1. Duplicative Regulation / Variance Procedures. The proposed regulation does not include a mechanism to obtain a variance from the regulation. Consequently, the regulation should be re-proposed with additional provisions which will allow for laboratories that perform routine testing as part of a RCRA Waste Analysis Plan and MACT Feedstream Analysis Plan to be able to apply for a variance, especially those facilities where SOPs are DEP approved.

2. In the Alternative to comment No. 1 above, expand Section 252.6 (f) Accreditation-by-Rule to include all analyses and tests preformed by an in-house laboratory that are required by state or federal laws, regulations, an order or permit conditions.

3. Consideration for small or in-house laboratories. The Environmental Laboratory Accreditation Act, Act 2002, No. 25 required the Environmental Quality Board to consider the unique needs of small businesses. The proposed regulation does not completely address the needs of small industrial laboratories.

    a. Fees. The proposed fee structure will be significantly burdensome to the operation of a small laboratory. We recommend that the fee structure be altered taking into account that small laboratories are typically overhead of a facility and therefore, the tests performed do not result in the generation of any revenue. Accordingly, a fee schedule for small non-commercial laboratories should be considerably less than that for commercial or "for-hire" laboratories.

    b. Work Cell. We recommend that the definition of a work cell be modified to state that in certain circumstances, such as in a small laboratory, a work cell may consist of a single individual. The original language is somewhat vague on this definition.

Keystone appreciates the opportunity to provide EQB with our comments on the proposed regulations to establish the Environmental Laboratory Certification Accreditation. If EQB would like further information regarding laboratory operations at the Keystone facility, please contact me at 610-837-1881.

Sincerely,

Rocco P. Marinaro
Manager, Environmental Compliance

BY OVERNIGHT DELIVERY
And Electronically to: RegComments@state.pa.us

Original: 2454

PENNSYLVANIA CHAMBER OF BUSINESS AND INDUSTRY
Fighting For Business On Capitol Hill

417 Walnut Street
Harrisburg, PA 17101-1902
717 255-3252 / 800 225-7224
FAX 717 255-3298
http://www.pachamber.org

(8)

February 22, 2005

Environmental Quality Board
PO Box 8477
Harrisburg, PA 17105-8477

RE: Comments on the proposed Environmental Laboratory Accreditation Rule

Dear Sir or Madam:

The Pennsylvania Chamber of Business and Industry is the largest, broad based business association in Pennsylvania. Our more than 9,000 members employ about 50% of the state's private workforce or approximately 1.5 million people. 80% of our members have less than 100 employees.

We appreciate the opportunity to provide comments to the Pennsylvania Department of Environmental Protection (DEP) on the proposed Environmental Laboratory Accreditation Rule, draft 25 Pa. Code Chapter 252. Our detailed comments to this package are attached.

Thank you for the opportunity to review this document. Please feel free to contact me should you have any questions.

Sincerely,

Gene Barr
Vice President,
Political and Regulatory Affairs

Attachment

Pennsylvania Chamber of Business & Industry
Comments on Environmental Laboratory Accreditation Rule

[25 PA. CODE CH. 252]

February 17, 2005

On behalf of its over 9,000 members, representing the spectrum of Pennsylvania industry, business, and commercial enterprises, the Pennsylvania Chamber of Business & Industry appreciates the opportunity to provide comments to the Pennsylvania Department of Environmental Protection (DEP) on the proposed Environmental Laboratory Accreditation Rule, draft 25 Pa. Code Chapter 252.

The Department is to be commended for the apparent decision to exclude air quality sampling and monitoring from the ambit of the proposed rule. The current oversight of air testing requirements and related laboratory analysis is sufficiently addressed in DEP's Air Quality Source Testing program, and to include facilities involved in air program monitoring in this proposed lab accreditation regulation would be duplicative and confusing. In this regard, as noted below, we believe that there are several points in the regulations where the exclusion of air monitoring could be clarified (*e.g.*, where there may be overlaps between programs that cross-reference the air regulation requirements).

The Chamber is seriously concerned with and strongly opposes, however, the proposal to automatically escalate fees every three years as proposed in §252.204. The Chamber believes that this proposal goes beyond DEP's regulatory authority and represents bad public policy. It would allow the Department, without proper input from the regulatory community and oversight by the Environmental Quality Board and Independent Regulatory Review Commission, to make a *de facto* change to regulations. Moreover, for the reasons state in further detail below, we believe that such an automatic escalator provision is not justified, and will lead to fiscal non-accountability. The Chamber requests that DEP remove all reference to escalation of fees from the rule. Should it be necessary in the future to change the fees based on actual facts and experience, the Chamber recommends that DEP go through the proper regulatory process for proposing a revised regulation, where the justification for new or increased fees can be fully vetted.

Below are the Chamber's detailed comments and recommendations, which are organized by reference to the affected sections of proposed Chamber 252. We would welcome the opportunity to discuss any of these concerns and recommendations in greater detail.

Section 252.1 – Definitions

Additional Definitions

We would recommend the addition of definitions for the following terms to provide clarification to the rule:

1. Certified – as it applies to §252.301(b) "The laboratory supervisor shall certify that each test is accurate…"

2. Validation – as it applies in §252.307 Methodology. Published methods have been validated. Is this referring to a suitability study?

3. Surrogate spike – as it applies to §252.402 – Essential quality control requirements for chemistry.

"Environmental Sample"

We note that while "gas" is listed in §252.1 in the definition of an "environmental sample," it is not listed in the definition of "Matrix" or "Matrices," which define the media of an environmental sample subject to these regulations. Gas is also not listed in § 252.3 relating to the scope of the regulations. Since it is our understanding that these rules are to specifically exclude air pollution control monitoring, clarification is need as to what "gasses" this definition of "environmental sample" are intended to include, versus what is excluded. Based on our understanding that air quality samples are not to be part of these rules, the Chamber would recommend the word "gas" be removed from the definition of "environmental sample."

Section 252.3(a) – Scope

Clarification Regarding Testing Required Under Federal Regulations/Industrial Wastewater Pretreatment Requiements

As we understand the structure of §252.3, the proposed rule is applicable to facilities that test or analyze environmental samples for the matrices listed in subsection (b) of §252.3 for the purpose of complying with one of the twelve listed environmental statutes in subsection (a). Section 252.4 further provides that environmental testing meeting the above matrix and statutory applicability shall be performed by an accredited environmental laboratory.

The required matrices in 252.3(b) are understandable, and we commend PaDEP for recognizing the lack of Federal laboratory accreditation standards for these matrices, and taking the necessary step to ensure continued protection of the Commonwealth's environment by establishing consistent laboratory testing quality standards and requirements.

However, the applicability criteria of Section 252.3 creates some confusion. Aside from the four specific exclusions listed in section 252.3(c), the rule fails to clarify environmental sampling requirements that fall outside of the statutes listed in §252.3(a) but are required by a related Federal law.

For example, the Federal Clean Water Act establishes the legal requirements for industrial wastewater pretreatment. Industrial users are regulated through U.S. EPA general pretreatment regulations and applicable categorical pretreatment standards. We acknowledge that the Clean Streams Law establishes requirements for "persons or municipalities" that receive industrial waste (35 P.S. § 691.307) to ensure compliant management and treatment of the industrial waste, and that Pennsylvania reference the Federal Clean Water Act requirements for industrial pretreatment (25 Pa Code §92.53). These regulations, however, are for the purpose of establishing regulatory requirements for NPDES-permitted publicly-owned treatment works (POTW) to ensure a compliant discharge to the waters of the Commonwealth, and not for establishing direct regulatory requirements on industrial users or more specifically establishing criteria for industrial pretreatment sampling and analysis.

Under the current regime governing pretreatment, legal responsibility is placed on the POTW, answering to U.S. EPA as the Approval Authority, to implement a pretreatment program and issue a "Control Mechanism" to control industrial users connected to the POTW's facility. These "control mechanisms", however, are approved by U.S. EPA, not PaDEP, and the POTW has some latitude with industrial pretreatment sampling as long as the control mechanism is within the bounds of the Federal statute, and their final discharge is in compliance with the NPDES permit.

Although §92.4(a)(6)(ii) establishes allowances for the State to issue discharge permits to problematic indirect dischargers that adversely impact a direct discharger, the Pa. Clean Streams Law and regulations adopted under the state statute do not establish specific industrial pretreatment standards and are silent to any direct mandate for industrial pretreatment environmental sampling, with this as a requirement exclusive to the Federal Clean Water Act. The preamble to the proposed laboratory accreditation rule further acknowledges that there is no Federal standard for accreditation of an environmental laboratory for testing nonpotable water (wastewater). Therefore, industrial users subject to Federal pretreatment standards which discharge to an NPDES-permitted POTW appear to be specifically exempt from Pennsylvania lab accreditation requirements. We request this exemption be specifically listed in Section 252.3(c) to ensure industries subject to Federal pretreatment standards within the Commonwealth do not unnecessarily expend resources in attempting to comply with a non-applicable rule.

Clarification of Clean Air Act/Air Pollution Control Act Exclusion

While the Clean Air Act (CAA) and Pennsylvania Air Pollution Control Act are not listed as one of the statutes covered by Chapter 252, we note that regulations under a number of the listed statutes, such as the Solid Waste Management Act ("SWMA"), cross-reference air permitting and regulatory requirements. These cross-references could create ambiguity as to whether, for example, testing for air emissions at facilities regulated under the SWMA are subject to the Ch. 252 rules or not. At the same time, there are references in other parts of Ch. 252 to tests or analysis that would only be used for compliance with specific air regulations. For instance, we understand that the testing and analysis of airborne asbestos fibers is governed under the Clean Air Act and related Pa. Air Pollution Control Act rules, and should therefore be outside the scope of this regulation.

In order to make clear that air emissions testing and monitoring is not encompassed within these rules, we recommend that §252.3(c) be amended to incorporate a specific exclusion for all sampling and monitoring of air emissions and air quality, including any sampling and analysis requirements covered by the Clean Air Act and Air Pollution Control Act, whether or not such air related requirements are referenced in regulations or permits issued under the environmental statutes listed in §252.3(a).

Section 252.6 – Accreditation-by-Rule

Facilities and Tests Covered

The Chamber generally supports the concept of "accreditation-by-rule." but a number of our members are confused as to which laboratories or activities will be eligible for coverage. If, however, we understand the rule as currently structured, we believe that it may be overly restrictive as applied to industrial wastewater treatment facility labs that are monitoring their own facility.

Section 252.6(d) currently reads: "An environmental laboratory operated by an industrial wastewater treatment facility in compliance with subsections (a) and (b) shall be deemed to be accredited under this chapter to perform testing or analysis ***not mandated by the Department*** and those tests identified in subsection (f)." (emphasis added) The reference to tests and analysis not mandated by PaDEP does not make sense. If the testing or analysis is not mandated by the Department, it would not be subject to the requirements of this regulation. The scope of this regulation is to regulate only those tests mandated by specific environmental statutes.

Section 252.6(d) indicates that an on-site lab operated by an industrial wastewater treatment facility is considered as "accreditation-by-rule" only for the limited list of tests delineated in §252.6(f). Of the 25 analyses that an accredited-by-rule lab may perform, only three (pH, dissolved oxygen and residual disinfectant concentration) typically appear in a discharge permit.
The rule's preamble indicates that "the following are not included under accreditation-by-rule, (sic) total residue testing, biochemical oxygen demand testing and fecal coliform testing." Most industrial dischargers are required by NPDES permit to perform total residue testing, and all sewage treatment plants are required to perform all three tests. As a result, it appears that virtually no industrial wastewater treatment facility's on-site lab would be eligible for accreditation-by-rule, forcing all to apply for an expensive and burdensome accreditation.

For example, in the case of Chamber members, their industrial wastewater facilities are required to perform tests for total suspended solids, iron, zinc, lead, oil and grease, and pH on treated wastewater to demonstrate compliance with NPDES discharge permit requirements. The permits require weekly sampling and testing of these parameters, translating into about 300 analytical procedures performed over the course of a year at each of their labs. The application fee for accreditation of each lab would be $3250 initially, and $2550 annually. This does not include the material and labor costs for performing the required QC/QA procedures (estimated cost: $20,000), training personnel and maintaining voluminous records.

The preamble's explanation of how the analytic parameters were selected for accreditation-by-rule appears to offer no meaningful rationale for the selections. For example, why would a test with a short allowable holding time be less preferable for consideration than a test that is less sensitive to holding times? Why would non-instrumented tests be better than those using instruments that are calibrated? Why would one offer accreditation by rule for tests involving sample that "cannot be transferred/transported without degradation," but deny accreditation by rule for tests involving samples that degrade with transportation?

In order to establish more reasonable criteria and requirements for accreditation-by-rule, we would suggest that major NPDES dischargers are already required to participate in the USEPA's annual Discharge Monitoring Report-Quality Assurance (DMRQA) Study. As long as an in-house lab (one that only performs analyses for its own facility's permit requirements) successfully performs the analytical procedures under the DMRQA program, it should be deemed accredited-by-rule. If this approach were adopted, in-house labs at minor NPDES dischargers can voluntarily participate in this program, and by doing so would likewise be able to achieve accredited-by-rule status.

In terms of specific tests listed in subsection (f), we raise the question as to whether some of the tests or analyses identified even fall within the ambit of the regulation, if air emissions monitoring is excluded. For example, is carbon dioxide (CO_2) and vapor analysis with handheld instruments intended to refer to air monitoring, or monitoring of some other media (such as volatile compounds in soils)?

Recordkeeping Requirements for On-Site Labs

Under §252.6(a)(4), small on-site industrial and municipal wastewater facility labs are required by reference to follow the recordkeeping requirements of §252.707. Section 252.707, in turn, requires maintenance of records for a minimum of five years. Further, §252.707(d) states that labs shall have a written plan for transferring records if there is a change in ownership.

The cross-referenced provisions of §252.707 were obviously written for commercial laboratories that perform analysis for other parties. The same provisions do not make particular sense for a small industrial or municipal lab that is performing its own sampling to meet the requirements of an NPDES permit.

The Chamber would suggest that the recordkeeping requirements for captive labs be separated from those applicable to commercial laboratories. As to on-site, captive laboratories, the rules should contain provisions that reflect the following:

- Accredited-by-rule labs should only be required to maintain records in accordance with the applicable permits for which the lab tests were conducted. An NPDES permit, for example, only requires records to be kept for three years. An in-house lab should be allowed to follow the recordkeeping requirements of the permit for which the tests are made.

- In terms of record transfers, when a wastewater or other facility that has an in-house lab is sold, normally the former permittee for whom the tests were conducted (the seller) must retain the records covering their period of operation, and provisions requiring that those records be transferred to other parties would not make sense.

Section 252.204 – Fees

Fee Escalator

As stated earlier in our comments, the Chamber believes that DEP has over-stepped its regulatory authority by proposing an automatic fee change every three years based on the percentage change of the Consumer Price Index ("CPI"). The establishment of fees is a fundamental regulatory step, and decisions to increase fees should be subject to full public disclosure, justification, public review and comment – in short, public accountability. Skirting the process of notice of proposed rulemaking and public comment severely undercuts such public accountability.

One cannot and should not assume that program costs will simply ever escalate into the future. Such an assumption undermines any incentive toward increased efficiency and innovation.

The fact is that this program will have some significant startup costs, as laboratories are first accredited and inspected. But that does not mean that such costs will be continued forever into the future. As we have seen in a wide range of regulatory programs over the past two decades, facts and circumstances change. The number of regulated entities or sites may decline, or more efficient methods may be found to achieve the same ends. Before fees are escalated simply for the sake of escalation, the real work of the program and its costs should be closely examined, and that examination should be open for public scrutiny.

Accordingly, should it be necessary in the future to change the fees as currently proposed, the Chamber recommends that DEP go through the existing regulatory process for proposing a regulatory amendment, where the facts can be reviewed by the EQB and public alike in a full and open forum.

Specific Fees

Section 252.204(a) indicates a special fee regarding the asbestos category. Asbestos testing requirements are contained in several statutes, including the Federal Clean Air Act. It is our understanding that airborne asbestos testing under the Clean Air Act and Air Pollution Control Act is not covered in the scope of this regulation. We would request that references to asbestos testing and the asbestos category be clarified to specify what asbestos testing requirements under which applicable statutes listed in §252.3(a) are anticipated to be covered by this "category."

Section 252.205(b) – Out-of-State Laboratories

The requirements imposed on out-of-state laboratories, including payment for travel, lodging, means and salaries of assessors, seem overly restrictive and punitive. This could limit the availability of environmental labs needed by Pennsylvania businesses that require compliance testing that is not offered within Pennsylvania or that is more cost effective at an out-of-state lab.

As an example, while characterizing a waste for disposal, one of our members was required to have a specialized test conducted on the waste stream for total sulfur. Because the laboratories in Pennsylvania did not offer that test, our member had to contract it out to a laboratory in Kentucky. For such relatively infrequent and specialized testing, it may not be in the interest of an out-of-state lab to become certified if to do so means that they will bear a large expense of an on-site visit where they would have to pay for meals, lodging and travel time for each assessor, particularly if the volume of testing they do for Pennsylvania entities is low.

As an alternative, we recommend that a flat fee be established to cover part of the cost associated with an on-site visit to an out-of-State laboratory. At the same time, we recommend that national accreditation held by out-of-state labs be accepted by Pennsylvania without the need for applying for secondary accreditation. Those labs that are NELAP accredited are already inspected and meet all of the standards of this regulation, therefore requiring them to also be subject to Pennsylvania fees and inspections would be over burdensome and add no value.

Particular flexibility is needed in the case where there is no Pennsylvania laboratory that can perform a required test, because of the need for timely analysis. We request that a provision be included to allow for a variance for out-of-state labs from the accreditation process if there is no Pennsylvania laboratory that performs the required analysis.

Section 252.304 – Personnel Requirements

In §§ 252.304(b)(3)(iii) and (iv), it is not clear what types of training or workshops would meet these training requirements. It is also unclear as to how often this type of training is required. With respect to paragraph (iv), for example, providing training in legal requirements and penalties may be easier to discern, but the scope of "ethical" training is much harder to define. We would recommend that the regulation be clarified to require training concerning an ethics policy statement developed by the lab to govern laboratory operations.

The requirements in §252.304(b)(3)(vii) for a demonstration of continued proficiency go beyond the required quarterly Quality Control (QC) samples and annual Proficiency Tests (PT), and in some cases may become excessively burdensome. For example, for one of our members with an in-house lab 7 technicians run more than 7 methods on a regular basis. Requiring each member to be retested for proficiency in each method that the lab performs would be an arduous task. In order to avoid repetitious and unnecessary testing, we would recommend that this repeated proficiency testing only be required when there is a change in instrumentation or method.

In §252.304(b)(4), the language requiring records "documenting analytical and operational activities of the laboratory" is particularly vague. We recommend that the type of documentation to be required be substantially clarified.

Section 252.304(b)(8)'s language requiring the documentation of the "quality of data reported by the laboratory" is also vague. We recommend this section be made clearer as to how the quality of the data is to be summarized, recorded and documented.

Section 252.301 – Laboratory Supervisor

Section 252.301(a) states that "testing, analysis and reporting of data by an environmental laboratory shall be under the direct supervision of a laboratory supervisor." It is unclear as to whether this means that a supervisor must be on-site at all times when samples are being analyzed, or alternatively that a lab supervisor have administrative oversight and responsibility for direction of the laboratory. In this regard, we note that some in-house laboratories operate as "self managed teams" without constant direct supervision; however they do report to a Laboratory Supervisor.

Section 252.301(b) states that "The laboratory supervisor shall certify that each test or analysis is accurate and valid and the test or analysis was performed in accordance with all conditions." In-house laboratories working as self directed teams have procedures in place for peer review and data check of recorded results and they are not over checked by the laboratory supervisor. We recommend that a provision be included for peer review, rather than supervisor certification, as long as the appropriate Quality Assurance measures are in place.

Section 252.302 – Qualifications of Laboratory Supervisors

The requirements for qualifications of laboratory supervisors under Section 252.302 puts industrial sites at a disadvantage. At many of our member's facilities, college education is not a requirement for Operators nor is a Certified Wastewater System Operator required for industrial wastewater facilities (IW's). (The department recommends certification, but IW's are exempt from the operator certification act.) In addition the grandparent provisions provided under Section 252.303 will ease the initial impacts of getting a supervisor, but long term it will be difficult. Many members do not have a requirement of a college degree for supervisory positions. Having such a requirement will restrict their ability to promote from within. Also, as a general note, we believe that the qualifications of the laboratory supervisor do not give enough flexibility to facilities that have rotating role positions and it will inhibit advancement in companies who are not in the lab business.

Our recommendations concerning the laboratory supervisor are:

- There should be some additional flexibility for subsection (b). We believe that more years of experience should be comparable to some level of college education. This is not to discount education, but it is overlooking those who have a lot of experience and no continuing education. As example, according to Pennsylvania's Operator Certification Plan, one college course is equivalent to one and a half months of experience. If the reverse of this theory is

used, then sixteen credits is equivalent to approximately six classes and would therefore equal an additional nine months of operating experience. We believe that substituting additional experience in lieu of college credits would provide additional flexibility without jeopardizing data.

- According to subsection (h), you need to have a certified operator. This subsection should be consistent with the Operator Certification Act and it should note that Industrial wastewater facilities do not need to meet that requirement.
- There is no information on what the laboratory supervisor certification will involve. The department should develop the certification so owners and operators understand what the implications and requirements it will have.

Section 252.306(f)(2)(iv) – Equipment, supplies and reference materials, working Thermometers

This section states that "a working thermometer that differs by more than 1.0 degree Celsius from the referenced thermometer may not be used." The standard outlined in the U.S/ Pharmacopia (USP) allows for a difference of 2.0 degrees Celsius. We recommend that the tolerance be set to the USP standard of 2.0 degrees Celsius.

Section 252.709(b) – Reporting and Notification Requirements

The reporting and notification requirements of §252.709(b) purport to require a notification of any change in supervisor, analysts, or supervisor/analyst assignments, or testing or analysis equipment and facilities that "affect accredited fields of accreditation." Just what this means is far from clear. Moreover, the notification requirements appears to be overly burdensome, in light of the fact (as we read it) that an initial listing of laboratory personnel and their duties or the equipment being used is not required to be submitted to the Department at the time of certification application. Given the lack of an initial listing, requiring repeated notifications as to changes in personnel or equipment would seem to be a meaningless exercise.

13

Original: 2454

Hughes, Marjorie

From: BASAJSCHON@aol.com
Sent: Tuesday, February 22, 2005 6:06 PM
To: RegComments@state.pa.us
Subject: Chapter 252 Environmental Lab Accreditation Comments

To: Environmental Quality Board

From: M. John Schon, P. E., Manager
Butler Area Sewer Authority
100 Litman Road
Butler, PA 16001-3256
724-282-1978
basajschon@aol.com

Attached is a 2-page word file presenting the Authority's comments and suggestions relative to the proposed Chapter 252 Environmental Laboratory Accreditation regulations. Please call me if you have any questions or problem downloading this file.

BUTLER AREA SEWER AUTHORITY
100 Litman Road, Butler, PA 16001-3256
Phone 724-282-1978 Fax 724-282-7656
M. John Schon, P. E., Manager

COMMENTS ON PROPOSED ENVIRONMENTAL LABORATORY ACCREDITATION RULE [25 PA. CODE CH. 252]

February 22, 2005

The Butler Area Sewer Authority appreciates the opportunity to provide comments to the Pennsylvania Department of Environmental Protection (DEP) on the proposed Environmental Laboratory Accreditation Rule, draft 25 Pa. Code Chapter 252. The Authority owns and operates a 10.0 MGD municipal wastewater treatment facility, which has its own in-house environmental laboratory for analysis of parameters regulated by its NPDES discharge permit and internal process control analyses.

The Authority generally supports the need for regulations addressing environmental laboratory accreditation. While proposed regulations have taken in to consideration some of the needs of non-profit, municipal environmental laboratories, the Authority is very concerned that the detailed procedures and requirements contained in the draft regulations do NOT satisfactorily distinguish such laboratories from the commercial "for-profit" laboratories. For example, Section 252.402 requires QA/QC samples, such as method blanks, laboratory control samples, and sample duplicates, to be performed a minimum of once per preparation batch. The definition of "batch, preparation" reflects the common commercial laboratory practice of testing a large number of samples for the same parameter on one day. However, a municipal laboratory that analyzes only one or two samples a day (influent and effluent) for a parameter would be required to perform these QA/QC samples every day by the way a preparation batch is defined. For municipal laboratories, QA/QC sample frequencies should be defined in terms of a minimum of one per "X" number of samples analyzed.

The Authority also objects to the proposal to automatically escalate fees every three years as proposed in Section 252.204. While it would certainly make life easier for the Authority if we had an automatic escalator factor built into our sewer service rate schedule, the Authority believes that an automatic escalator provision is not justified and it represent bad public policy. Future fee increases should be based on actual costs experience and subject to full public disclosure, justification, public review and comment – in short, public accountability.

The Authority's comments and suggestions regarding several other sections of the proposed Chapter 252 regulations are outlined below. We would welcome the opportunity to discuss any of these concerns and recommendations.

Section 252.707 - Recordkeeping

Section 252.707 requires all laboratories to maintain records for a minimum of five (5) years unless otherwise specified. Section 252.707(d) further states that labs shall have a written plan for transferring records if there is a change in ownership. It would seem that such provisions are more applicable to commercial laboratories that perform analysis for other parties. Municipal wastewater laboratories and small accredited-by-rule laboratories should only be required to maintain records in accordance with the applicable permits or statutes for which the tests were conducted. For example, municipal wastewater labs should only be required to maintain records for a minimum period of three (3) years as required by the NPDES permit.

Section 252.304 – Personnel Requirements

The requirements of Section 252.304(b)(3)(vii) for a demonstration of continued proficiency for each analyst every 12 months goes way beyond the specified Quality Control (QC) samples and annual Proficiency Tests (PT) required for the environmental laboratory to be accredited. For example, our in-house municipal wastewater lab utilizes 4 to 5 analysts to run daily (7 days per week) analysis for NPDES permit parameters. Requiring each analyst to be retested for proficiency in each method that the lab performs would be an arduous task. In addition, the costs for multiple proficiency tests of each analyst would be very expensive and are inconsistent with the estimated compliance costs cited in the proposed regulations. In order to avoid repetitious and unnecessary testing, we would recommend that the specified demonstration of continued proficiency only be required when there is a change in instrumentation or method or an unsatisfactory annual proficiency test of the environmental laboratory.

Section 252.302 – Qualifications of Laboratory Supervisors

The Authority appreciates that Section 252.302(h) recognizes that an employee holding a valid operator's certificate under the Water and Wastewater Systems Operators Certification Act for the appropriate facility classification is deemed a qualified laboratory supervisor. We concur that a certified operator should satisfy the qualifications for a laboratory supervisor, especially for many of the small municipal water and wastewater facilities that may only have one certified operator conducting analyses. However, this section then goes on to also require a valid certificate under the Water and Wastewater Systems Operators Certification Act for laboratory supervisor. Such a certification does not currently exist for wastewater operators under the Water and Wastewater Systems Operators Certification Act. The Authority objects to any regulation or requirement that requires compliance with some future regulation that has yet to be defined or adopted by due regulatory process. The Department should define this certification and the specific qualifications for such certification before it is incorporated into this regulation to allow owners and operators understand what the implications and requirements it will have.

Section 252.709(b) – Reporting and Notification Requirements

Section 252.709(b) requires an environmental lab to notify the DEP in writing within 30 calendar days of any changes in laboratory supervisors, analysts, supervisor/analyst assignments, or testing or analysis equipment and facilities that "affect accredited fields of accreditation". This is an extremely broad, unclear, and overly burdensome reporting requirement. It is recommended that this language be modified to define and limit reporting to material or major changes, such as lab supervisors or new equipment requiring a different test method. We do not believe the DEP really wants to know when new replacement glassware, thermometers or probes are purchased, or a designated back-up analyst fills in for the normal analyst for a one-week vacation.

Original: 2454

Hughes, Marjorie

10

From: Deb Kitner [Dkitner@ENERGYPA.ORG]
Sent: Tuesday, February 22, 2005 9:26 AM
To: EP, RegComments
Cc: Michael Love; Deb Kitner; rgrapin@alleghenyenergy.com; msnider@nisource.com; bob.jubic@conectiv.com; robert_asplund@dom.com; Sheri_L_Franz@dom.com; jbigi@duqlight.com; ekappler@duqlight.com; scook@aglresources.com; Pcarfagna@eqt.com; askicki@gpu.com; flowersP@natfuel.com; dschwar@nisource.com; allan.fernandes@exeloncorp.com; buchanan@pgenergy.com; lisa.popovics@pgworks.com; kristopher.roscoe@pgworks.com; rgrapin@alleghenyenergy.com; mjhasel@pplweb.com; jsteeber@ugidc.com; jrondeau@ugi.com; tminto@washgas.com; tfryer@washgas.com; johnewright@comcast.net; sroth@pachamber.org
Subject: Environmental Laboratory Accreditation proposed rulemaking - Energy Association of PA Comments

VIA ELECTRONIC MAIL to RegComments@state.pa.us
Re: Proposed Amendment to 25 Pa. Code: Chapter 252, Environmental Laboratory Accreditation

Dear Environmental Quality Board Members:

Pursuant to the notice appearing in the January 22, 2005 (Volume 35, No. 4), issue of the Pennsylvania Bulletin, the Energy Association of Pennsylvania, whose membership consists primarily of Pennsylvania's regulated electric and natural gas utilities, submits these electronic comments for consideration.

Before raising issues concerning elements of the proposed rulemaking, the Energy Association has examined the proposed rulemaking and based on that examination wishes to applaud the efforts of the Department of Environmental Protection and the Laboratory Accreditation Advisory Committee in developing this rulemaking. We support this proposal and believe that the PADEP did a good job in addressing stakeholder comments. Further, we offer the following comments:

As presently drafted, we are unsure whether the testing of PCBs falls within this proposed rulemaking.

Regarding Para. 252.301 (f), Para. 252.501 (k), and Para. 252.709 (b):

Para. 252.301 (f):
'An environmental laboratory shall designate another staff member meeting the qualifications of a laboratory supervisor to temporarily perform this function when a laboratory supervisor is absent for a period exceeding 15 consecutive calendar days.'

Fifteen consecutive calendar days is exceeded by a vacation period of two weeks, including initial and final weekends - not an uncommon occurrence. We recommend restating using a 23 day period. Why does one particular staff member need to be made this assignation? Why couldn't the various components of lab supervision be distributed to multiple staff members? Would a Director, superior to the Lab Supervisor, satisfy this requirement by default?

Para. 252.501 (k):
'If an environmental laboratory fails to successfully analyze a proficiency test study .....'

Define 'failure' as it is used in this context. If a laboratory tests for 25 parameters in a proficiency study, and 24 are acceptable, is this a failure? For a laboratory performing a proficiency test study which has two levels of concentration - if one level of a parameter is acceptable, and the other level not acceptable, is this a failure? To what extent is there a possibility of mitigation of a test parameter 'non-acceptance' when there exists a significant bias between the true value of a test study parameter, and the mean of the test results?

Para. 252.709 (b):

'An environmental laboratory shall notify the Department, in writing, within 30 calendar days, of changes in laboratory supervisors, analysts, supervisor or analyst assignments, testing or analysis equipment and facilities which affect accredited fields accreditation.'

If it has been previously emphasized that laboratory supervision and management is responsible for the capability of the analysts, the quality of the results, the reliability of the equipment,..., then why is it necessary to notify the Department on any changes than those in laboratory supervision and management?

The Energy Association thanks the Environmental Quality Board for providing this opportunity to provide comments on this proposal, and we appreciate your considering the points raised above as you continue your deliberations in this matter. Please do not hesitate to call if you have any questions regarding our position on this matter.

Respectfully submitted,
J. Michael Love, President and CEO

cc: Energy Association Environmental Committee members
Sharon Roth, Pennsylvania Chamber of Business and Industry

****

Debra L. Kitner
Manager, Membership Services
Energy Association of Pennsylvania
dkitner@energypa.org
Phone: 717-901-0609
Fax: 717-901-0611

Original: 2454

Hughes, Marjorie

9

From: pdelvalle@gpu.com
Sent: Tuesday, February 22, 2005 10:45 AM
To: RegComments@state.pa.us
Cc: cmowbray@gpu.com; starheimf@firstenergycorp.com; browns@firstenergycorp.com; kkunkel@gpu.com; tdsmith@firstenergycorp.com; spreckerr@firstenergycorp.com; bankom@firstenergycorp.com; berardih@firstenergycorp.com
Subject: Environmental Laboratory Accreditation

Environmental Lab Accreditatio...

FirstEnergy Corp. is submitting the attached comments on the proposed regulations for Environmental Laboratory Accreditation.

(See attached file: Environmental Lab Accreditation.pdf)

PLEASE NOTE: Any written response should be directed to: Mr. Charles Mowbray

Manager, Environmental Affairs

FirstEnergy Corp.
2800 Pottsville Pike
PO Box 16001
Reading, PA 19612-6001
(610) 921-6903
cmowbray@gpu.com

I await your electronic acknowledgement of receipt of this document. Thank you.

FirstEnergy

2800 Pottsville Pike
PO Box 16001
Reading, PA 19612-6001

February 22, 2005

Environmental Quality Board
Rachel Carson State Office Building
15th Floor, 400 Market Street
Harrisburg, PA 17105-2301

Dear Board Members:

Re: Proposed 25 PA Code Chapter 252 Environmental Laboratory Accreditation

The following comments on the proposed regulations in Chapter 252 Environmental Laboratory Accreditation (PA Bulletin, Vol. 35, No.4, 1/22/2003) are being submitted on behalf of FirstEnergy Corp. (FirstEnergy), which is a diversified energy company headquartered in Akron, Ohio. Its subsidiaries and affiliates are involved in the generation, transmission and distribution of electricity, as well as energy management and other energy-related services. Its seven electric utility operating companies comprise the nation's fifth largest investor-owned electric system, based on 4.4 million customers served within a 36,100-square-mile area of Ohio, Pennsylvania and New Jersey.

FirstEnergy supports these proposed regulations, particularly §252.6, Accreditation–by-rule, and §252.205, Out-of-State laboratories. The following comments on the proposed regulations are offered for your consideration.

§ 252.6. Accreditation-by-rule.

FirstEnergy strongly supports this provision because it will allow the small, onsite, power plant laboratories to comply with the requirements of the proposed rule at a level that is commensurate with the tests and analyses that are authorized by this accreditation.

All of the proposed conditions ensure the accuracy, precision, and reliability of the data generated by these power plant laboratories. FirstEnergy also strongly supports that an environmental laboratory that is accredited-by-rule is exempt from all other requirements in proposed Chapter 252.

§252.6(a)(4) references §252.707 Recordkeeping. FirstEnergy agrees that environmental laboratories accredited-by-rule should comply with items (a), (b), and (c) in §252.707. Item (d), requiring a written plan that specifies how records will be maintained or transferred if a laboratory transfers ownership or terminates operations, would not be applicable to a power plant laboratory that is accredited-by-rule. The laboratory would not

transfer ownership unless the power plant that it supports transferred ownership, so the record transfer would occur as part of a larger agreement of sale or transfer of ownership. The power plant laboratory would cease operation if the power plant closed, so there would be no need to maintain or transfer records in that instance.

FirstEnergy suggests that § 252.6(a)(4) be amended to read:

(4) Records pertaining to the testing or analysis of environmental samples are retained onsite and in accordance with §252.707 (relating to recordkeeping). Records shall be made available to the Department upon request. *The written plan required in §252.707 (d) is not required by an environmental laboratory, accredited-by-rule, that operates solely in support of the facility of which it is part and is under the same management as the facility it supports.*

§ 252.205. Out-of-State laboratories.

FirstEnergy owns and operates Beta Lab in Mayfield Village, OH. This lab services our generation, transmission, and distribution operations in Pennsylvania. FirstEnergy appreciates this provision, because it allows our company the opportunity to continue to use this lab for work in Pennsylvania by outlining a procedure for out-of-state labs to obtain Department-recognized accreditation.

§ 252.206. Out-of-State onsite reimbursement.

FirstEnergy agrees that the costs associated with onsite assessments should be reimbursed. The costs identified in §252.206. (1), (2), and (3), for transportation, meals, lodging, and the hourly charge for travel time are reasonable and are viewed as normal business expenses. However, we do request a clarification of "travel time" as used in § 252.206 (3). FirstEnergy believes that the assessed charge of $50/hour should include actual commuting time, but not the overnight hours spent in a hotel before or after the onsite assessment.

FirstEnergy thanks you for the opportunity to express comments on these proposed regulations and trusts that the Department will consider these comments during the formulation of the final regulation.

Respectfully submitted,

K. M. Kunkel
for

Charles S. Mowbray
Manager, Environmental Affairs

File: General DEP Information Pennsylvania

F:\EnvAffs-PA-NJ\Comments-regulatory-legislative\Lab Accreditation.doc

Original: 2454

(12)

Hughes, Marjorie

From: Dave Wildasin [Dave.Wildasin@americanwestech.com]
Sent: Tuesday, February 22, 2005 4:30 PM
To: RegComments@state.pa.us
Subject: 25 PA. CODE CH. 252 (35 Pa.B. 519) comments

To Whom It May Concern:

The following comments are in response to the proposal entitled:

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 252]

Environmental Laboratory Accreditation

[35 Pa.B. 519]

We applaud your desire to improve the overall quality of laboratory data. However, after a review of the annual fees and PT costs we are concerned that the annual costs may be prohibitive. The proposal is responsive to the needs of small laboratories, but does not seem to be responsive to medium-size laboratories. While large laboratories may benefit by the category maximums, medium-sized labs don't seem to benefit by these maximums. Up to $25,000 dollars a year for annual fees and PTs may cause financial strains on medium-sized environmental laboratories.

Thank you,

David S. Wildasin
QA/QC Officer
American Westech, Inc.
4359 Linglestown Road
Harrisburg, PA 17112
Phone: (717) 651-9700
Fax: (717) 657-0752

Original: 2454

Hughes, Marjorie

11

From: Barbara Jordan [bjordan@pa.gsc-global.com]
Sent: Tuesday, February 22, 2005 3:39 PM
To: RegComments@state.pa.us
Cc: 'Robert M. Croydon'
Subject: Public comments on proposed 25 PA Code Ch. 252

Ch. 252 Comment.doc

To whom it may concern,

Attached are public comments from Geologic Services Corporation on the referenced proposed regulation. Thank you for your attention in this matter.

Barbara Jordan, P.G.
Senior Environmental Scientist

Geologic Services Corporation
260 Executive Drive, Ste 500
Cranberry Township, PA 16066
Toll Free: 800 401 7677
Tel: 724 772 7072 x203
Fax: 724 772 7079
bjordan@pa.gsc-global.com
www.gsc-global.com

Geologic Services Corporation
science, engineering & technology

February, 2005

Proposed 25 Pennsylvania Code Chapter 252 – Enviromental Laboratory Accreditation

Section 252.6 Accreditation by Rule

We appreciate the recognition of responsible, accurate environmental sampling and analysis outside the rigorous requirements of the environmental laboratory accreditation process. We think, however, that the language of the section should reflect the intention of the regulation rather than writing a list "in stone" of parameters that can be analyzed under this section. The intention (as stated in 35 PA.B. 519) is to permit testing with only minimal oversight by the Department if the test meets a list of criteria, is relatively easy to perform and, if performed improperly, would have minimal impact on the environment or the public welfare. We would suggest that the language include tests that are not permitted by this rule (total residue, biochemical oxygen demand and fecal coliform – a relatively short list) rather than the 25 item list of permitted parameters. We also think that the language should contain the criteria to measure a test against and the provision that, if the criteria are met, the test is permitted under this rule. The permitted list will almost certainly change as comments are considered. We participated in the construction of this list with the LAP and LAAC as members of the public and the regulated community and thank the Department for all of the input opportunities afforded.

Outside of the proposed rulemaking, we would suggest a slight modification to the LAAC bylaws to include an environmental engineer ***or a professional geologist.*** We feel that this change might better represent the regulated community and/or the technical expertise available in the environmental consulting industry.

Contacts
NAME Robert Croydon, Barbara Jordan
TITLE Operations Manager, Senior Environmental Scientist
PHONE 724.772.7075
EMAILrcroybon@pa.gsc-global.com
www.gsc-global.com

Original: 2454

7

Hughes, Marjorie

From: Pete Slack [slack@municipalauthorities.org]
Sent: Monday, February 21, 2005 3:18 PM
To: RegComments@state.pa.us
Cc: Jennifer Case; John Brosious; Donna L. Wingle; Hurst, Randy; akmartin@chesterwater.com
Subject: DEP Proposed Environmental Laboratory Accreditation Regulations

Attached are comments from PMAA on the proposed environmental laboratory accreditation regulations.

Pete Slack
Government Relations Associate
PA Municipal Authorities Association
1000 North Front St., Suite 401
Wormleysburg, PA 17043

717-737-7655

slack@municipalauthorities.org
www.municipalauthorities.org

PENNSYLVANIA MUNICIPAL AUTHORITIES ASSOCIATION
1000 North Front Street, Suite 401 Wormleysburg, PA 17043
717-737-7655 • 717-737-8431(Fax)
www.municipalauthorities.org • info@municipalauthorities.org

Transmitted Via Electronic Mail
To: RegComments@state.pa.us

February 21, 2005

Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

To Whom It May Concern:

On behalf of the Pennsylvania Municipal Authorities Association (PMAA), I would like to offer comments on the proposed rulemaking concerning Environmental Laboratory Accreditation. PMAA represents over 660 authorities, most of which provide sewer and water service to over 9 million Pennsylvania citizens.

It should be noted that PMAA has appreciated the opportunity to attend meetings of the Laboratory Accreditation Advisory Committee, and to provide informal input to the Department during the development of these regulations. After reviewing the actual proposed rulemaking, we have identified some aspects of the regulations where clarification would be appreciated and/or where some further consideration would be warranted.

Subchapter A. General Provisions

§ 252.6 Accreditation –by-rule

Subsection 252.6(c) outlines the provision to grant ABR to public water suppliers, and appears to grant accreditation for the full range of drinking water parameters listed in Ch. 109, in contrast to a very limited number of parameters for wastewater laboratories. We understand that this is not the intent and suggest clarifying this in the final rulemaking.

Subchapter B. Application, Fees and Supporting Documentation

General

This subchapter focuses on the "process" for obtaining accreditation. It might be useful to relocate some of the provisions contained in Subchapter G, that deal with "process" matters (i.e. §§ 701-705) to Subchapter B for continuity purposes.

§ 252.201 Application and supporting documents

There is no reference to the statutory requirement for environmental laboratories to apply for accreditation within six months of promulgation of the final regulations. We suggest that this be identified somewhere in the final rulemaking package.

§ 252.204 Fees

We suggest adding the parameters TKN (total kjeldahl nitrogen) and Nitrite to the non-potable water category in § 204(a) to avoid potential confusion in implementing this provision.

Also, as regards the specific analytical fee categories, we assume that these will be described in more detail in DEP guidance documents.

Subchapter C. General Standards for Accreditation

§ 252.301 Laboratory supervisor

Under § 301(f), if the laboratory has more than one designated supervisor, does the requirement to appoint a temporary supervisor for a >15 day absence and the requirement to notify DEP on a >30 day absence apply? This wouldn't seem to be necessary, but the rule as stated isn't clear.

§ 252.302 Qualifications of the laboratory supervisor

We suggest some clarification relative to the sequence of presentation of these requirements.

Under the "basic nonpotable water" and "basic drinking water" categories, that are covered under subsection 302(b), a laboratory supervisor could be supervising both "chemical" and "microbiological" analyses, which are the subject of more rigorous qualification provisions contained in (a) and (d). However, the qualifications in (b) are sandwiched among the other, more rigorous, qualification subsections. Perhaps (b) should be relocated just prior to (h), and some "notwithstanding" language added for further clarification.

§ 252.303 Grandfathering provisions for laboratory supervisors

The preamble to the proposed rulemaking states that approval under this provision is limited to the current facility and may not be transferred to a different environmental laboratory, but this is not stated as such in the regulation. To avoid confusion, we suggest either deleting this statement from the preamble or adding corresponding language to the regulation.

In § 303(a)(1), we suggest clarifying that the date that "the environmental laboratory becomes subject to accreditation" is not the date that the Laboratory Accreditation Act was enacted (April 2, 2002), but "6 months after the EQB establishes the requirement by regulation," as stated in the Act (27 Pa.C.S.A. § 4107(b)). In other words, the person must have been a supervisor for at least 12 months by a date 6 months after the date that the regulations are finally adopted, not by April 2002.

Subchapter G Miscellaneous Provisions

See above general comment on Subchapter B relative to relocating "process" provisions.

§ 702 Denial of application

Subsection 702(b)(14) provides that an application can be denied for "failure to pass an on-site evaluation." However, the rules for on-site evaluations provide a mechanism to cure any failings. Thus, theoretically, a lab could "fail" an inspection, provide the corrective action, and

be denied accreditation for the initial failure. We suggest clarifying this subsection to reflect that denial for "failure to pass an on-site inspection" would also require failure to cure the deficiency as provided in Subchapter F. Alternatively, (14) could possibly be removed since the situation is essentially covered in Subsections 252.702(a)(2) and (b)(10).

Subsections 702(b)(2) and 703(b)(9) refer to "selectively reporting data." We assume it refers to intentionally failing to disclose some data so as to create an inaccurate record. In any event, the terminology is sufficiently vague so as to create the potential for misinterpretation on the part of laboratories and Department staff, and we suggest that an effort be made to further define this terminology and how it fits into the context of denial of accreditation.

§§ 702(b)(15), 703(b)(15) and 704(a) provide for rescission of accreditation for denial of access to DEP inspectors (in fact § 704(a) mandates suspension for this). However, circumstances may justify denial of access in certain situations, such as an ongoing on-site emergency situation requiring limited access for safety purposes. It may be worthwhile to qualify these provisions to include the phrase "without good cause."

Again, thank you for the opportunity to provide comments on this rulemaking.

Sincerely,

Peter T. Slack, P.E., DEE
Government Relations Associate

5

Original: 2454

Hughes, Marjorie

From: Rocco Marinaro [rmarinaro@keystone-cement.com]

Sent: Monday, February 21, 2005 4:19 PM

To: RegComments@state.pa.us

Cc: Diana Borger

Subject: Comments on Proposed Regulations concerning Certification for Environmental Laboratory Accreditation

KEYSTONE CEMENT COMPANY

Dear Sir or Madam:

Please find attached comments from Keystone Cement Company concerning Certification for Environmental Laboratory Accreditation.

Sincerely,

Rocco Marinaro

Manager, Environmental Compliance
Keystone Cement Company

February 21, 2005

Rachel Caron state Office Building
15th Floor
400 Market Street
Harrisburg, Pennsylvania 17105-2301

RE: Keystone Cement Company
Comments on Proposed Regulations concerning
Certification for Environmental Laboratory Accreditation
25 PA Code Chapter 252 (PA Bulletin Volume 35, 35-4, January 2005)

Dear Sir or Madam:

On behalf of Keystone Cement Company (Keystone), I am pleased to provide comments on the Environmental Quality Boards' proposed regulations to establish the Pennsylvania Environmental Laboratory Accreditation Program, specifically as it applies to small and on-site laboratories. Keystone owns and operates a Portland cement manufacturing facility regulated under the Solid Waste Management Act and the RCRA Boiler and Industrial Furnace (BIF) regulations. Keystone owns and operates a RCRA permitted hazardous waste storage facility contiguous to, and wholly contained within, the property boundaries of our Portland cement facility. The RCRA permitted waste storage facility provides hazardous waste derived fuel to be used in the adjacent Keystone facility cement kilns.

The facility owns and operates an on-site laboratory that performs environmental analyses to demonstrate compliance with regulatory requirements that apply to both the waste storage and cement manufacturing facility. Specifically, the on-site laboratory performs screening analyses on incoming shipments of hazardous waste fuel to determine if it meets the permitted acceptance criteria. In addition, the laboratory performs detailed analyses to demonstrate that the stored fuel meets the acceptance criteria under BIF and Clean Air Act Title V Permits. Analyses conducted by the laboratory are performed pursuant to a Waste Analysis Plan (WAP) and Quality Assurance Plan (QAP) and standard operating procedures (SOP) approved by the Department of Environmental Protection (DEP). The WAP identifies the parameters tested, the frequency of testing, and the test methods used. The QAP and SOPs address specific data quality objectives and quality control procedures to demonstrate accuracy, reliability, and precision of the test methods used to meet the requirements outlined in the WAP. Keystone is required to seek and receive approval from the DEP for laboratory SOPs and the QAP prior to use by the laboratory.

The analyses performed by the on-site laboratory are screening analyses to ensure that the incoming hazardous waste shipments and stored hazardous waste fuel tanks meet our facility's acceptance criteria. Data generated from the on-site laboratory analyses are kept in the operating records, and are required to be made available to the DEP upon request. Keystone has undergone an extensive permit review process in establishing the existing Waste Analysis Plan and Quality Assurance Plan and standard operating procedures for the facility. Additionally, the facility has recently (September 30, 2003) become subject to the Clean Air Act Hazardous Waste Combustor regulations (40 CFR Part 63, Subpart EEE), which require the establishment of a Feedstream Analysis Plan (FAP).

Consequently, Keystone is subject to considerable regulatory requirements designed to demonstrate the accuracy and reliability of the tests that are performed on-site. It is uncertain that additional requirements would yield added environmental protections or benefits.

Specific suggestions regarding changes in the language of the proposed regulations are provided below:

1. Duplicative Regulation / Variance Procedures. The proposed regulation does not include a mechanism to obtain a variance from the regulation. Consequently, the regulation should be re-proposed with additional provisions which will allow for laboratories that perform routine testing as part of a RCRA Waste Analysis Plan and MACT Feedstream Analysis Plan to be able to apply for a variance, especially those facilities where SOPs are DEP approved.

2. In the Alternative to comment No. 1 above, expand Section 252.6 (f) Accreditation-by-Rule to include all analyses and tests preformed by an in-house laboratory that are required by state or federal laws, regulations, an order or permit conditions.

3. Consideration for small or in-house laboratories. The Environmental Laboratory Accreditation Act, Act 2002, No. 25 required the Environmental Quality Board to consider the unique needs of small businesses. The proposed regulation does not completely address the needs of small industrial laboratories.

    a. Fees. The proposed fee structure will be significantly burdensome to the operation of a small laboratory. We recommend that the fee structure be altered taking into account that small laboratories are typically overhead of a facility and therefore, the tests performed do not result in the generation of any revenue. Accordingly, a fee schedule for small non-commercial laboratories should be considerably less than that for commercial or "for-hire" laboratories.

    b. Work Cell. We recommend that the definition of a work cell be modified to state that in certain circumstances, such as in a small laboratory, a work cell may consist of a single individual. The original language is somewhat vague on this definition.

Keystone appreciates the opportunity to provide EQB with our comments on the proposed regulations to establish the Environmental Laboratory Certification Accreditation. If EQB would like further information regarding laboratory operations at the Keystone facility, please contact me at 610-837-1881.

Sincerely,

Rocco P. Marinaro
Manager, Environmental Compliance

BY OVERNIGHT DELIVERY
And Electronically to: RegComments@state.pa.us

Original: 2454

American Analytical & Environmental Inc.

19

Environmental Testing and Air Monitoring
ELAP Certification #11665
NELAP Accredited

February 18, 2005

CERTIFIED MAIL 7002 2410 0002 0738 5164
RETURN RECEIPT REQUESTED

Environmental Quality Board
Rachel Carson State Office Building, 15th Floor
400 Market Street
Harrisburg, PA 17105-8477

Re: Chapter 252 Proposed Rulemaking
Stakeholder Comments

Board Members:

Our comments are as follows:

§252.204 – Fees

The fee schedule subsidizes big business and proposes to place an unfair tax burden on smaller laboratories. Conceptually, a laboratory doing $100,000 dollars in gross receipts will pay the same fees as a laboratory doing $10,000,000 gross in the state. Assuming an annual fee of $5,000 dollars per laboratory, the smaller lab would incur a fee tax of 5% while the larger laboratory would incur a fee tax of 0.05 %. 5% of gross is a substantial economic burden while 0.05% of gross is not.

The fee schedule presumes that the Departments' costs will be equal for inspection /oversight and certification of a laboratory doing 10,000 tests per year and a laboratory doing 1,000,000 tests per year. This is not realistic.

The fee schedule to fund the Departments proposed program should be based on the number of tests conducted by a laboratory to be fair to laboratories of all sizes.

We believe that smaller local labs serve an important segment of the analytical market, most specifically those treatment plants and wastewater dischargers that require testing for parameters with short holding times. We further believe that it is the State's policy to promote the vitality of small business.

Sincerely,
American Analytical & Environmental, Inc.

Douglas H. Sammak, President

DHS:hs

cc: Senator Lisa Boscola
Ms. Sharon Roth, Customer Advocacy, PA Chamber of Commerce

738 Front Street, Catasauqua, PA 18032 • Tel. 610.266.5343 • Fax 610.266.5344 • www.goAAE.com

1

Original: 2454

IRRC

From: Miller, Sarah E.

Sent: Wednesday, February 16, 2005 9:19 AM

To: IRRC

Subject: FW: Department Of Environmental Protection Proposed Regulation #7-392; Environmental Laboratory Accreditation Regulation

Please file under comments for #2454

-----Original Message-----
From: Elam M. Herr [mailto:eherr@psats.org]
Sent: Wednesday, February 16, 2005 9:12 AM
To: Miller, Sarah E.
Subject: RE: Department Of Environmental Protection Proposed Regulation #7-392; Environmental Laboratory Accreditation Regulation

Sarah: While the regulations are rather detailed, we think that the detail is necessary so that all labs will then be on the same page as far as standardized testing capabilities, which is a good thing for our membership. In this way they can rely on the results from the labs they use since they will be using them for the clean water act, safe drinking water act, solid waste act, hazardous sites cleanup, and brownfields issues (and there may be more).

Our only comment is that the regulations do address the concerns raised by small labs, such as theses used routinely by municipalities in the sewer and water business. The main issue was the cost of meeting accreditation. The regulations now seem to provide an option for compliance that is less costly (i.e. permit by rule) than the other option (full blown national accreditation). This may help keep the cost down to our membership.

Thank you again for contacting us. If you need any additional information, please let me know. Elam

Elam M. Herr
Asst. Executive Director
PSATS

-----Original Message-----
From: Miller, Sarah E. [mailto:smiller@irrc.state.pa.us]
Sent: Monday, February 14, 2005 10:04 AM
To: Elam M. Herr
Subject: Department Of Environmental Protection Proposed Regulation #7-392; Environmental Laboratory Accreditation Regulation

The Independent Regulatory Review Commission (IRRC) recently received the above-mentioned regulation. This is an entirely new set of regulations that provide the requirements for an environmental laboratory accreditation program for laboratories that test or analyze samples that are used to comply with statutes administered by DEP. You can find a copy of the regulation at http://www.pabulletin.com/secure/data/vol35/35-4/149.html . The public comment period closes February 22, 2005. IRRC's comments are due to the Department March 24, 2005. If you have any questions or concerns regarding this regulation or the process, please contact me. Thank you.

Sarah Miller
Regulatory Analyst
Independent Regulatory Review Commission

Original: 2454

BRINE & FRAC

HRT

WATER TREATMENT

HART RESOURCE TECHNOLOGIES, INC.

P.O. BOX 232 • CREEKSIDE, PA 15732 • 724-349-8600 • FAX: 724-349-8601
E-MAIL: hrt8600@adelphia.net • WEB PAGE: www.yourinter.net/hrt

20

February 15, 2005

Environmental Quality Board
PO Box 8477
Harrisburg, PA 17105-8477

Dear Sirs,

The following comments are being submitted concerning the proposed rulemaking for the Environmental Laboratory Accreditation, 25 PA. Code Chapter 252.

Although the concept of this rulemaking is greatly needed in the environmental testing field, the rulemaking is too broad-reaching in its administration. When this Act was signed into law, the June 2002 press release stated that the law was to "establish an accreditation program for all environmental laboratories that generate data or perform analyses to be used to comply with an environmental statute". The press release also went on to say that the "results of tests and analyses performed by independent laboratories are critical to assessing compliance with DEP permits". However, the law as currently written, also attempts to regulate small in-house laboratories maintained by private companies. These in-house labs are used to assure that the treatment processes within the facilities are complying with their mandated environmental regulations. The law also doesn't identify additional testing in 252.6 (f) which meet the criteria that the Laboratory Accreditation Advisory Committee (LAAC) set up to "address the unique needs of small laboratories" as stated in the Background and Purpose discussion.

Hart Resource Technologies, Inc (HRT) maintains a treatment facility for wastewaters generated by the Natural Gas Industry during the drilling and production phases of natural gas wells. We also provide consulting services to Pennsylvania Brine Treatment, Inc (PBT), another treatment facility that processes the same types of fluids as HRT.

Under 252.6 (d) HRT qualifies for the Accreditation-by-rule since the only parameter we perform in-house for our monthly NPDES compliance monitoring is pH, which is exempted in subsection (f). However, to comply with their NPDES permit, PBT monitors the chloride concentrations of their treated fluids once every 8 hours that the plant is discharging, as well as total suspended solids on a weekly basis. The chloride and total suspended solids analyses are not included in the accreditation-by-rule exemption list under 252.6 (f).

PBT's in-house chloride analysis was approved by DEP's Bureau of Oil & Gas Management, Meadville Office in March of 1999. The approval for this analysis to be performed in-house stems from the fact that the plant must meet certain pound per minute discharge requirements for chloride. Since this analysis is performed once every shift the plant is operating or whenever a different holding tank is being processed, it is impossible to send the sample out for analysis due to the lag in reporting time from the independent laboratory. Thus, this chloride analysis meets the criteria that the LAAC recommended to the Department to qualify for the accreditation-by-rule in that the process testing is used for immediate decision making purposes.

The in-house total suspended solids analysis that PBT personnel perform also was approved by the Department in 1989. This approval was granted because the holding time for the analysis, as well as the chloride content, contribute a positive interference to the analytical result performed by independent outside laboratories. Therefore, this analysis also meets the LAAC recommendation for the accreditation-by-rule since the sample can't be transferred/transported without degradation.

Our industrial wastewater treatment facilities represent only one portion of a much broader industrial community that may be unduly regulated and financially burdened due to the implementation of this proposed law. HRT feels strongly that exceptions to the proposed regulation must be made when any analysis, which has already been approved by DEP, is being performed by a private company for its own use for compliance monitoring.

Thank you for the opportunity to comment on these regulations.

Sincerely,

Rebecca Snyder
Operations Manager

Original: 245

ENVIROTROL, INC.

18

Activated Carbon and Resource Recovery Services
432 Green Street, P.O. Box 61 · Sewickley, Pennsylvania 15143-0061
(412) 741-2030 · Fax (412) 741-2670

February 17, 2005

RECEIVED
APR 1 1
ENVIRONMENTAL QUALITY BOARD

Environmental Quality Board
Rachel Carson State Office Building
15th Floor
400 Market Street
Harrisburg, PA 17105-2301

RE: Proposed Rulemaking, 25 PA Code Chapter 252 (Environmental Laboratory Accreditation)

AIRBORNE EXPRESS #2411698752

Dear Sir or Madam,

Enclosed please find written comments regarding the proposed rulemaking to add Chapter 252 regarding Environmental Laboratory Accreditation per the order adopted by the Environmental Quality Board at its meeting of August 17, 2004. Should you have any questions or comments do not hesitate to contact me at (412) 741-2030 ext. 549. Thank you for your consideration.

Sincerely,

Joyce M. Fankulewski

Joyce M. Fankulewski
Director of Environmental Affairs

CC: Carl Spadaro/PADEP
Manny Miller/PADEP

Envirotrol Inc.'s (EI)
Comments of the Proposed Addition of PA Code Chapter 252
(Environmental Laboratory Accreditation)

Background

EI has been in business for over 30 years as a Pennsylvania-based supplier and recycler of spent sorbents, principally activated carbon. Activated carbon is a very porous adsorbent material that is an exceptional filter medium. It is particularly effective at removing organic contaminants from both liquid and gas streams. Because of this capability, activated carbon has many applications including: remediation of contaminated aquifers, emission control from tanks and industrial applications, purification of drinking water, chemical and pharmaceutical process applications, and odor control. Once carbon reaches its adsorptive capacity (i.e. spent), the generator may choose reactivation of the carbon as an alternative to disposal in a landfill or incinerator. EI uses a proprietary, thermal desorption process to liberate organic contaminants from the spent sorbents. The contaminants are thermally oxidized in EI's pollution abatement system to an efficiency that exceeds 99.9998%. The sorbents continue through the process whereby its pore structure is recreated, and is suitable for reuse in adsorption activities. EI's approach eliminates potential cross contamination and mixing of spent materials while maximizing product quality, process yields and efficiencies. The facility reactivates both hazardous and residual waste.

EI owns and operates two adsorbent reactivation facilities in Western Pennsylvania. Both are fully permitted facilities for the storage of hazardous and residual waste. One facility operates as a fully permitted Thermal Treatment site, while the other operates with interim status for thermal treatment, though its permit is currently under review with the Department. EI is the nation's largest customer segregated carbon reactivation company. In 2004 EI reactivated over 15 million pounds of sorbent. Currently there are only a handful of carbon reactivation facilities in the US. Customers wishing to recycle these carbons typically ship them long distances to the EI facility.

EI operates an on-site laboratory to perform testing required by its RCRA Part B permit. For required analytical testing that cannot be performed internally, EI also uses contracted laboratories, and provides their results to the Department to fulfill permit requirements. Therefore, the proposed addition to the regulations affect EI's current and future operations.

Comments

The definition of "Environmental Laboratory" should be restricted to "Commercial Environmental Laboratory"

§ 252.1 currently defines "Environmental Laboratory" as a facility engaged in the testing or analysis of environmental samples. EI is a permitted TSDF that performs testing in accordance with its RCRA Part B permit. As such, EI's on-site laboratory may be considered an environmental laboratory per the current definition. EI's internal testing is performed in accordance with its permit. All test methods and required recordkeeping have already been defined for this particular facility to account for both its site specific considerations and the unique characteristics of the spent sorbents. As the Department has already determined appropriate standards for the internal testing performed, the additional requirements laid out in Chapter 252 are unnecessary. Furthermore, as EI is not a commercial environmental laboratory, it has no recourse to recuperate the additional expenses inherent in this effort. As these additional requirements provide no benefit to non-commercial laboratories that are already performing testing in accordance with a Department issued permit, these facilities should be excluded. EI is requesting that the definition be restricted to commercial environmental laboratories.

Include an option for facilities to seek case-specific exclusion from the requirements of this Chapter

§ 252.3 specifies the scope of Chapter 252. Although exclusions are provided for in 252.3(c), currently there is no provision for facilities to request exclusion from the Chapter in case-specific situations. An additional exclusion should be added to this chapter allowing requests to be filed to the Department for case-specific exclusion from the requirements of the Chapter.

Out-of-state generators should not be required to perform testing through a PA accredited laboratory

§ 252.3 indicates that the Chapter applies to facilities that test or analyze samples in accordance with an environmental statute. All waste generators are required to classify their wastes. EI provides this information (along with associated waste profiles) to the Department prior to receipt at EI. However, out-of-state generators may be unfamiliar with the additional PA requirements of Chapter 252. Should these generators have out-of-state laboratories perform TCLP testing to aid in their waste classification, this testing should be acceptable for receipt at a PA TSDF regardless of whether the lab is PA accredited. Requirement of a second round of TCLP testing by a PA accredited lab will increase the cost to the generator and cause EI to lose its competitive advantage. The location of the destination TSDF should not affect the requirements of the generators. Testing required to meet these standards should only be applicable to in-state generators.

Regarding out-of-state laboratories, the Department should recognize accreditation granted by a primary NELAP accrediting authority without additional burdensome fees and paperwork requirements

§ 252.205a(2) indicates that the Department will recognize accreditation granted by a primarily NELAP accrediting authority for the same fields of accreditation for which the Department is a primary NELAP accrediting authority. However, 252.205a(2)iii then outlines significant fees and paperwork requirements that may make it time and cost prohibitive for some laboratories to undertake. As discussed before, EI receives waste at its PA facilities from across the country due to the limited number of facilities in our industry. Therefore, if environmental statute-required testing is performed on behalf of a waste generator in another state, this testing may not be considered valid even if it is performed to NELAP standards set by their state. Many out-of-state laboratories do not do enough business with the state of PA to warrant the currently required fees and paperwork effort. Therefore, these results would be considered invalid. The Department should recognize out-of-state NELAP accreditation without an associated burdensome application process. This section should be revised to remove the conditions of 252.205a(2)iii.

Original: 2454

Wheatland Tube Company
Wheatland Division

(21)

February 16, 2005

Environmental Quality Board
P.O. 8477
Harrisburg, PA 17105-8477

RE: Proposed Rulemaking
Environmental Laboratory Accreditation
25 PA. Code Chapter 252

Gentlemen:

The Wheatland Tube Co. has reviewed the proposed regulations and prepared the following comments and suggestions.

The Wheatland Tube Co. has two manufacturing facilities in Pennsylvania that operate under NPDES permits. Each plant has an in-house laboratory that conducts analyses of wastewater discharges for the purpose of reporting to DEP, in addition to conducting numerous other analytical procedures relating to manufacturing process control

The concept of "accreditation-by-rule" is good, but it's not clear from the proposed regulation as to which labs are eligible. In the preamble, it states "*...the following are not included under accreditation-by-rule,* (sic) *total residue testing, biochemical oxygen demand testing and fecal coliform testing.*" Most industrial dischargers are required by permit to perform total residue testing, and all sewage treatment plants are required to perform all three tests. Apparently, none are eligible for accreditation-by-rule, forcing all to apply for an expensive and burdensome accreditation. What's left that can be accredited-by-rule?

The language in Section 252.6 dealing with accreditation-by-rule is not much clearer. It sounds like if a lab is employing established analytical methods and procedures in sampling and testing to determine compliance with its own permit, it may be deemed to be accredited under this chapter. However, the DEP goes on to list 25 analyses that an accredited-by-rule lab may perform, only three of which (pH, dissolved oxygen and residual disinfectant concentration) typically appear in a discharge permit.

One Council Avenue, Wheatland, PA 16161 • 724-342-6851 • FAX 724-342-0808

In our case, we are required to perform tests for total suspended solids, iron, zinc, lead, oil and grease, and pH on our treated wastewater to demonstrate compliance with our NPDES discharge permits. Our permits require weekly sampling and testing of these parameters, translating into about 300 analytical procedures performed over the course of a year at each of our labs. The application fee for accreditation of each lab would be $3250 initially, and $2550 annually, assuming the DEP does not raise the fees. This does not include the material and labor costs for performing the required QC/QA procedures (estimated cost: $20,000), training personnel and maintaining voluminous records. It would be more economical for us to turn this function over to a commercial laboratory, which is probably what this regulation is all about.

Section 252.707 requires maintenance of laboratory records for a minimum of five years. Our NPDES permits require us to keep records for only three years. While this requirement may be suitable for a commercial laboratory, it is unnecessary for an in-house lab.

I'm not opposed to DEP oversight of environmental laboratories to ensure proficiency, but criteria and requirements for accreditation-by-rule need to be more reasonable. I suggest the following:

1. Major NPDES dischargers are already required to participate in the USEPA's annual Discharge Monitoring Report-Quality Assurance (DMRQA) Study. As long as an in-house lab (one that only performs analyses for its own facility's permit requirements) successfully performs the analytical procedures under this program, it should be deemed accredited-by-rule. In-house labs at minor NPDES dischargers can voluntarily participate in this program to achieve accredited-by-rule status.

2. Accredited-by-rule labs should only be required to maintain records in accordance with their permits.

I hope the board will consider revising the proposed regulations in include the above requests.

Respectfully submitted,

Arthur E. Hall, P.E., DEE
Director, Environmental Affairs

Original: 2454

(3)

IOGA

Independent Oil & Gas Association of Pennsylvania

February 15, 2005

Environmental Quality Board
PO Box 8477
Harrisburg, PA 17105-8477

RE: Proposed Rulemaking-Environmental Laboratory Accreditation: 25 PA Code Chapter 252

Dear Sirs:

It has been brought to the attention of the Independent Oil and Gas Association of PA (IOGA) that the referenced proposed rulemaking may affect several of IOGA's member companies.

These companies treat and dispose of fluids that are generated during the drilling and production of natural gas wells. The companies are required to perform environmental testing to maintain their NPDES discharge permits. Several of the tests that they perform to monitor the quality of their effluent (chlorides and total suspended solids) are done in-house by trained personnel. These in-house testing procedures have been adopted and approved by the DEP Bureau of Oil & Gas Management, however the tests that are performed are not listed in the accreditation-by-rule exemption as outlined in the proposed rulemaking document. IOGA believes that these tests should be added to the exemption for the following reasons:

- The analyses have already been approved by DEP and have been in place for several years with no adverse effect.
- The analyses are specific to the industry and can't be performed accurately by outside independent laboratories.
- The analyses are only used for compliance of that particular facility. No analyses are performed for outside companies or individuals.
- The analyses meet several of the criteria outlined in the proposed rulemaking for the accreditation-by-rule exemption.

The regulation, as proposed, should be more flexible as to the accreditation-by-rule parameters and should be amended to accept those individual cases where the intent of the law is being followed. Thank you for the opportunity to comment.

Sincerely,

Louis D. D'Amico,
Executive Director

Northridge Office Plaza II, 115 VIP Drive, Suite 110, Wexford, PA 15090-7906
Telephone (724) 933-7306 Fax (724) 933-7310

Original: 2454

17

Pennsylvania PBT Brine Treatment

PENNSYLVANIA BRINE TREATMENT

5148 US 322 • FRANKLIN, PA 16323 • 814-437-3593 • FAX 814-432-3047

February 15, 2005

Environmental Quality Board
PO Box 8477
Harrisburg, PA 17105-8477

SUBJECT: Environmental Laboratory Accreditation

Dear Sirs,

Please accept the following comments concerning the proposed rulemaking for 25 PA Code Chapter 252 - Environmental Laboratory Accreditation.

The concept of this Act is welcomed by industry for the regulation of commercial, independent laboratories; however the proposed rulemaking is too all inclusive in its content. Although the Laboratory Accreditation Advisory Committee (LAAC), the Certification Program Advisory Committee (CPAC) and the State Board for Certification of Water and Wastewater Systems Operators all had input on the draft proposed rulemaking, we question whether the needs of private industrial laboratories were fully researched. The main intent of the rulemaking is to establish a certification program for independent laboratories. However, the law also attempts to regulate small in-house laboratories maintained by private companies that perform testing only for their control and compliance purposes. These small in-house laboratories are used to assure that the treatment processes of the facilities are complying with their regulations as determined by the Department of Environmental Protection. Since these small labs had no input in the proposed rulemaking, the Act doesn't specifically identify additional testing parameters in 252.6 (f) which also meets the criteria that the LAAC set up to "address the unique needs of small laboratories".

Pennsylvania Brine Treatment Inc. (PBT) maintains two treatment facilities for wastewaters generated by the Oil and Natural Gas Industry during the drilling and production phases of oil and gas wells. Both of these plants must maintain very small kitchen-type laboratories utilizing simple procedures to assure environmental compliance within and during the treatment process.

Under 252.6 (d) PBT should qualify for the Accreditation-by-rule. However, to comply with our NPDES permit, PBT must monitor the chloride concentrations of their treated fluids once every 8 hours that the plant is discharging, as well as total suspended solids on a weekly basis. The chloride and total suspended solids analyses are not included in the accreditation-by-rule exemption list under 252.6 (f).

PBT's in-house chloride analysis is a fairly simple test procedure and was approved by the Meadville Office of DEP's Bureau of Oil & Gas Management in March of 1999. The approval for this analysis to be performed in-house was allowed because the plant must meet certain pounds per minute discharge parameters for chloride. Since this analysis is performed once every shift the plant is operating or each time a different holding tank is being processed, it is impossible to send the sample to an independent laboratory for analysis due to the reporting time factor. Parameters for control purposes that must be reported to verify that control require a testing procedure that is simple, immediate and accurate. Thus,

this chloride analysis meets the criteria that the LAAC recommended to the Department to qualify for the accreditation-by-rule in that the process testing is used for immediate decision making purposes.

The in-house total suspended solids analysis that PBT personnel developed and perform also was approved by the Department's Bureau of Laboratories and the Department's Regional Office in Meadville in 1989. This testing procedure with its modifications was further approved for all brine and high total dissolved solids wastewater facilities. This approval was granted because the holding time for the analysis, as well as the high chloride content, contributes to positive interference to the analytical result when performed by outside independent laboratories. The approved modification requires the sample to be analyzed within 8 hours and no longer than 24 hours after sampling. Therefore, this analysis also meets the LAAC recommendation for the accreditation-by-rule since the sample can not be held or transported without degradation.

Our industrial wastewater treatment facilities are only part of a much broader industrial community that may be financially burdened and overly regulated due to the implementation of this proposed Act. Pennsylvania Brine Treatment Inc. strongly believes that exceptions to the proposed regulation must be made when any of these types of mandated analyses, which have already been thoroughly investigated and approved by the DEP, are being performed by a private company for its own use for control and compliance monitoring. This law should not regulate small businesses that must maintain kitchen-type laboratories. If it is intended to regulate them then 252.6(f) should be reexamined and expanded to include the types of tests explained above or allow for submittal of these types of tests to be added.

Thank you for the opportunity to comment on these regulations.

Sincerely,

Elton W. DeLong Jr.

Elton W. DeLong Jr., Operations Manager
Pennsylvania Brine Treatment Inc.
5148 US322
Franklin, PA 16323
(814) 437-3593

Original: 2454

AIR PRODUCTS

(14)

Air Products and Chemicals, Inc.
7201 Hamilton Boulevard
Allentown, PA 18195-1501
Telephone (610) 481-4911

15 February 2005

Environmental Quality Board
Rachel Carson State Office Building
15th Floor
400 Market Street
Harrisburg, PA 17105-2301

Certified Mail: 7160 3901 9842 6766 6005

Subject: **Comments on Environmental Laboratory Accreditation Proposed Rule**

Dear Sir/Madam:

Air Products and Chemicals, Inc. (Air Products) is pleased to have the opportunity to comment on the proposed rulemaking that was published in the January 22, 2005 Pennsylvania Bulletin which will establish an environmental laboratory accreditation program for "small in-house laboratories". By way of background, Air Products employs approximately 5,000 people at nearly twenty manufacturing, distribution, laboratory and office locations throughout Pennsylvania, including our world headquarters near Allentown. Major business areas are industrial gases, electronics specialty materials, chemicals and equipment manufacturing. Research and Development is also conducted at our Corporate Headquarters in Trexlertown.

Regarding the scope of this proposed rulemaking in section 252.3, it is Air Products' understanding that the Department of Environmental Protection has chosen not to promulgate regulations at this time that would apply to the testing and analysis requirements of samples to comply with EPA's Clean Air Act or DEP's Air Pollution Control Act. The impact of this type of regulation is significant to Air Products since we operate air pollution control devices (e.g., scrubbers) that are controlled by monitoring the pH and other operational parameters related to the performance of the system. In conducting this monitoring, Air Products employs conventional analytical quality control/quality assurance procedures such as instrument calibrations. The analyses associated with this monitoring are done by operators who have been trained to operate these air pollution control devices and to conduct the required monitoring. We are interested in participating in any early efforts at developing regulations concerning the air programs so that we can understand the potential impact to our facilities and share with the Department what we believe are best practices associated with this environmental monitoring. It would be useful for Air Products to understand the Department's schedule, if defined, for moving forward with additional lab accreditation regulations.

Air Products is in favor of the "accreditation-by-rule" concept proposed in section 252.6 for "small in-house laboratories" such as our Corporate Headquarters where we measure the pH and temperature of our NPDES discharge once per month and once per week, respectively. Many of our facilities with NPDES Stormwater permits conduct these and other routine tests using trained operators. Most of the tests conducted by our operators are for samples that require immediate sample analysis (i.e., limited to no holding times), so allowing facilities the option of having an in-house lab accredited under this rule is both practical and very cost effective.

If you have any questions or need additional information, please contact me at (610) 481-6238. Thank you.

Sincerely,

Kevin B. Snyder
Environmental Specialist

Original: 2454

(2)

Hughes, Marjorie

From: John Schmidt [jschmidt.cnbtjsa@covad.net]
Sent: Friday, February 11, 2005 5:24 PM
To: RegComments@state.pa.us
Cc: Kathy Watson; Randy Hurst
Subject: Laboratory accreditation

Comments: Proposed Rulemaking - EQB
25 PA Code Ch. 252
Environmental Laboratory Accreditation
35 PA B. 519

From: John Schmidt
Chalfont-New Britain Twp Sewage Authority
1645 Upper State Rd
Doylestown, PA 18901
jschmidt.cnbtjsa@covad.net

I have some concerns about the Laboratory Supervisor requirements, concerns that may be typical of many small operations in PA.
In small municipal water or wastewater laboratories (1 or 2 employees), many lab employees currently recieve direct supervision only from a Chief Operator or Plant Superintendent, both of whom are probably Certifed Operators for the facility, but may or may not have some limited lab experience. No "lab" employee is considered a "supervisor" by any designation.
The new regs have a grandfather provision to allow a Certified Operator to act temporarily as lab supervisor, but only until a Lab Supervisor Sub-Class Certification takes effect.
Assuming the Sub-Class happens soon, and assuming the Chief Op and the Supt are not qualified to pass a test for that sub-class, a water or WW facility is now in the very difficult position of determining who is now to be the "new lab supervisor". Assuming it will be handed over to the most-qualified of the lab employees is very much understating the potential problems involved, such as--
One would assume the new assignment to be a "promotion", with much greater legal responsibilities. What if no qualified lab employee wants the promotion - afraid of the legal responsibilities? What if he will accept the promotion, but only with a pay increase? What if internal protocals such as wage structures or union contracts do not allow for an increase (or even a promotion)? What if it is allowable but pay increase is limited (equal to equivalent supervisors, but no more), and the lab employee decides it is still not enough extra pay to warrant acceptance of the promotion (and responsiblity).
I could go on and on with this line of thinking, but hopefully you understand the point. I realize that you may think this to be just an internal company problem, but many facilities are going to find it extremely difficult to overcome. The bottom line is that, unless the facility already has one, designating a lab employee as a Lab Supervisor must be considered a promotion. I cannot force someone to accept a promotion. I cannot fire him for refusing the promotion. At that point what are we to do now - hire an extra employee from the outside to take the position (a very highly paid position of course)? That would be a ridiculous answer, but a facility could be faced with that as the only possible course of action (remember, we are talking here about smaller facilities, not Phila and Pittsburgh). Or, the other very dissapointing option (to all) would be to close the lab, lay off the employees, and hire a contract lab. That is not acceptable.
I believe the best answer is to continue to always allow a Certified Operator that is in responsible charge to act as Lab Supervisor. Their are many other ways to ensure quality in our small labs, many(or all) of which are written in to the new regs. This provision is unnecessary and will cause significant problems for many. It is my understanding that some comprimises were put in to the revised regs in order for small facilities to remain in business. The lab supervisor provision, as written , is not one of them.
Thank you for your consideration.

14

Original: 2454

IRRC

From: Hurst, Randy [rghurst@mette.com]

Sent: Monday, March 14, 2005 12:34 PM

To: IRRC

Subject: Comments on EQB Laboratory Accreditation Regulations 7-392

Gentlemen:

Please accept the attached document regarding the proposed Laboratory Accreditation Regulations, No. 7-392. Because of the very short public comment period afforded by the Notice of Proposed Rulemaking, our volunteer organization was unable to draft comments to be presented to the EQB within the "official" timeline. However, as our concerns regard fundamental legal issues, we believe that the Commission should take notice of these deficiencies, no matter when they are brought to your attention. In addition, because we believe that our "untimely" comments would not be forwarded to the IRRC by the Department, we are providing them directly to you instead of to the EQB.

Thank you for the opportunity to bring these important issues to your attention. Should you have any questions regarding these comments, please contact me.

Randall G. Hurst
Mette, Evans & Woodside
3401 North Front Street
P.O. Box 5950
Harrisburg, PA 17110-0950
(717) 231-5215

<<EPWPCOA_GAC Lab comments to IRRC.PDF>>

Eastern Pennsylvania Water Pollution Control Operators Association
Government Affairs Committee

March 14, 2005

Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Re: Environmental Quality Board
Proposed Regulation 7–392 Environmental Laboratory Accreditation

Gentlemen:

I am writing on behalf of the Eastern Pennsylvania Water Pollution Control Operators Association (EPWPCOA) to support certain of the comments submitted by the Pennsylvania Chemical Industry Council regarding the above-referenced proposed regulation. Specifically: the issue of the regulations' accommodation of small laboratories. In 2004 the EPWPCOA presented the Laboratory Accreditation Advisory Committee with a comprehensive written proposal to provide separate and less onerous rules for small municipal and industrial laboratories; these comments received no consideration by the Committee. Whether or not our proposal had merit, the concept of addressing the unique needs of small labs is unquestionably necessary, both practically and legally; the Department's failure to do so requires a response.

The enabling statute specifically provides that "the Environmental Quality Board shall establish requirements and procedures that address the unique needs of small businesses, municipalities, municipal authorities and in-house laboratories." However, the proposed regulations utterly fail to address these needs. Indeed, the preamble to the proposal acknowledges that very few provisions were made to address the unique needs of small labs. With regard to the mandate, the EQB notes only that all labs—large and small—may avoid the expense of NELAP accreditation, and that the proposed rules provide (1) accreditation-by-rule, (2) laboratory supervisor qualifications "tailored to the complexity of the analysis," (3)

provisions regarding certified operators, and (4) a fee structure that addresses laboratories performing only a few kinds of tests. (Preamble, 35 *Pa. Bulletin,* pg. 520, January 22, 2005.)

First, we note that the cited provisions deal with the *analyses to be performed*, not with the *size of the environmental laboratory*, as required by the statute. The "unique needs" of small municipal in-house laboratories include, among other things, financial constraints and small staffs. Additionally, small municipal and industrial labs are not offering services for hire to the general public as commercial labs do. None of these matters is mentioned, much less addressed, in the proposed regulations. While it is generally true that small labs do fewer tests, providing special requirements based on the *kind of test* does not address the unique needs of small labs as the statute requires. In fact, as drafted, the regulations will impose significant and unnecessary costs on small municipal treatment plant laboratories; costs equivalent to those imposed on large commercial labs who not only have greater initial resources, but which are able to charge fees to cover the costs.

All publicly owned treatment works ("POTWs") have discharge permits that contain effluent limits for fecal coliform bacteria, carbonaceous biochemical oxygen demand (C-BOD) and total suspended solids ("TSS"). With a few exceptions (mostly applicable to large POTWs), all three of these parameters are "technology-based" limits not directly related to environmental quality. That is, the limits are set using a standard based on meeting a prescribed treatment technology, not on protecting water quality. In many cases, effluent concentrations of all three parameters could be considerably in excess of the limits without causing any environmental problem. We note that only one of these three parameters (fecal coliform bacteria) even has an associated water quality criterion, and that criterion is only applicable for part of the year (see Title 25, Chapter 93 for the water quality criteria). Thus, the "environmental protection" significance of these tests is low—their use is primarily to demonstrate that the appropriate technology ("secondary treatment"—see § 92.2c(a) & (b)) has been implemented.

Additionally, all three of these tests are imprecise by nature. The Environmental Protection Agency requires that POTW laboratories annually participate in quality assurance testing, involving testing "unknown" standardized samples. For the parameters C-BOD and TSS the acceptable range of results is quite large. For instance, if the "true" result for a C-BOD test is 15 ppm, the acceptable range of results may be as great as (and sometimes greater than) 10 to 25

ppm. Similar "acceptable" ranges apply to TSS test results. This reflects the inherent uncertainty of the test method even when properly performed by a qualified analyst.

Given the low environmental significance and imprecise methods, it is simply not necessary to require the full range of accreditation activities such as those in Subchapter D for these analyses by small POTWs. Although this issue might be addressed by including these tests in the accreditation-by-rule list of approved tests (§ 252.6), we recognize that some technical skill may be required for BOD, TSS and fecal coliform testing that goes beyond the levels anticipated in the accreditation-by-rule provisions. A special provision for small labs performing tests of this nature (others of this kind include ammonia and phosphorus) that would require some level of demonstration of expertise and a "medium" level of administrative tasks (quality assurance and recordkeeping), while avoiding the extensive and expensive requirements for large commercial laboratories, would meet the statutory requirements. Again, we note that we made such a recommendation in detail and in writing to the LAAC and received no response.

We generally agree with the qualifications provisions for laboratory supervisors (§ 252.302), but note that some small POTWs may not be able to provide lab personnel with either the academic credits or certification as a water or wastewater system operator. Given the few simple tests being performed by these small labs (such as C-BOD, TSS and fecal coliform, discussed above), and the fact that they are not being performed "for hire," the supervisor educational requirements as applied to small labs (e.g., § 252.302(b) are arbitrary. It simply is not necessary to have 16 hours of college science and two years of experience to oversee these simple tests. Nor does the grandparent provision (§ 252.303) make much sense. Specifically, the requirement for a year of experience is not related to the ability to understand and supervise the conduct of these simple tests. Again, by focusing on the tests performed or the supervisor's experience, rather than the unique needs of the small facility, the proposed regulations fail to meet the statutory requirements to accommodate the needs of small facilities. More modest supervisory requirements which address the needs of small municipal labs are needed.

In December the Department announced a major new initiative to reduce nutrient loading to the Chesapeake Bay. Projected costs of compliance for the 143 dischargers who contribute to the Bay watershed exceed $350 million. Virtually no grant money is available from state or federal sources to assist in this monumental undertaking: it will all have to come from local

coffers. With the increasing financial burdens being placed on small municipal treatment plants, it is inequitable to charge the same fees to small POTWs that are charged to large commercial labs. Section 252.204 should make accreditation affordable for small municipalities, which are already bearing more than their share of environmental protection costs.

Overall, the EPWPCOA supports the concept of improving the oversight of environmental laboratories, large and small. We believe, however, that the mandate of the statute to accommodate the unique needs of small municipal and industrial laboratories should be taken seriously. We urge the Independent Regulatory Review Commission to bring this important and overlooked requirement to the attention of the Department.

Very truly yours,

//s Randall G. Hurst //

Randall G. Hurst
Chair, Government Affairs Committee