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

June 25, 2007

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

Re: Regulation #7-408 (IRRC #2598)
Environmental Quality Board
Permit Streamlining

Dear Chairperson McGinty:

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

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

cc: Honorable Mary Jo White, Chairman, Senate Environmental Resources and Energy Committee
Honorable Raphael J. Musto, Minority Chairman, Senate Environmental Resources and Energy Committee
Honorable Camille George, Majority Chairman, House Environmental Resources and Energy Committee
Honorable Scott E. Hutchinson, Minority Chairman, House Environmental Resources and Energy Committee

Comments of the Independent Regulatory Review Commission

on

Environmental Quality Board Regulation #7-408 (IRRC #2598)

Permit Streamlining

June 25, 2007

We submit for your consideration the following comments on the proposed rulemaking published in the March 24, 2007 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Environmental Quality Board (EQB) to respond to all comments received from us or any other source.

1. Adequate Public Notice – Reasonableness; Need.

The Preamble states that the Department of Environmental Protection (Department), as part of an effort to streamline the permitting process, investigated ways to “reduce the plan approval application time, reduce unnecessary costs to industry **and continue to ensure that citizens receive adequate notice of all potential plan approval/permitting actions to enable timely comment on issues of public concern.**” (Emphasis added.) We received two public comments in support of the amendments. However, a joint comment from eight organizations, dated May 25, 2007, was sent to the EQB urging rejection of the amendments. Specifically, the joint commentators cite concerns with the amendments in Sections 127.44, 127.44(b)(6) and 127.45(5), as they relate to public notice in the *Pennsylvania Bulletin*.

We recognize that, as amended, Section 127.45(5) would require “a brief description of the conditions being placed in the plan approval with reference to applicable State and Federal requirements.” We also note that proposed Section 127.44(b)(5) is essentially the same as the existing requirement under Section 127.44(a)(6). Nonetheless, the EQB should explain further why these amendments are needed and how the amended regulation will provide adequate notice to the public.

2. Section 127.12d. Completeness determination – Consistency with statute; Reasonableness; Clarity.

Adequate, Streamlined and Reasonable Procedures

In its Preamble, the EQB cites 35 P.S. § 4006.1(b.3) which states:

The board shall by regulation establish **adequate, streamlined and reasonable procedures for expeditiously determining when applications are complete** and for expeditious review of applications.... (Emphasis added.)

The procedures in Subsections (a) and (c) of the regulation require the Department to evaluate applications for completeness, but do not address when the Department must take action. To be consistent with 35 P.S. § 4006.1(b.3), the EQB should consider adding time limits for Department action to Subsections (a) and (c).

Administratively Incomplete Applications

Under Subsection (c), if the Department finds that an application is incomplete, the Department will “return the application and fees to the applicant, along with a written statement of the specific information...required to make the application administratively complete.” We agree with a commentator that the procedure would be less burdensome by allowing the opportunity to rectify the deficiency rather than essentially restarting the process by returning the application and fees. Why is it necessary to return the application and fees?

Vague Language

Subsection (b) includes vague requirements for “necessary information” and “other documents.” These subjective phrases do not give the regulated community the specific information needed to file a complete application. For clarity, we recommend that the phrases “necessary information” and “other documents” be replaced with the specific information needed to file an administratively complete application.

3. Section 127.44. Public notice – Reasonableness; Need; Clarity.

Subsection (b)

There are three concerns. First, the EQB should explain why it needs to delete existing Paragraph (5) which requires notice for “other sources required to obtain plan approval.” What sources would this amendment affect?

Second, as amended, new Paragraph (5) discusses “other sources, including synthetic minor permit applications.” In conjunction with the deletion of the requirement for notice of “other sources required to obtain plan approval,” the EQB should provide more detail on the “other sources” that would be included.

Finally, it is not clear what the phrase “including synthetic minor permit applications” encompasses. The EQB should define this phrase.

4. Section 127.45. Contents of notice. – Reasonableness; Need.

As amended, Paragraph (5) would no longer require a “description of the reasons” for including conditions. Why is the description of the reasons no longer needed?

5. Miscellaneous Clarity

- There is inconsistent language in the regulation. Paragraph 127.44(a)(2) refers to the plant or facility “at which the construction, modification, reactivation or installation is proposed” but, Paragraph (a)(3) only mentions equipment “to be installed or modified.” In addition, Paragraph 127.45(2) only refers to the plant or facility at which “construction, modification or installation is proposed.” Why do the words “reactivation” and “construction” appear in some provisions, but not others?
- Paragraph 127.44(a)(4) requires “a person” to contact for additional information. This provision should specify whether the person to contact would be a representative of the applicant or would be someone from the Department’s regional office.

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INDEPENDENT REGULATORY REVIEW COMMISSION
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To: Debra L. Failor
Agency: Department of Environmental Protection
Phone: 7-2814
Fax: 705-4980
Date: June 25, 2007
Pages: 5

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of Environmental Protection's regulation #7-408 (IRRC #2598). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Debra McCowley Date: 6-25-07