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House of Representatives

INDEPENDENT REGULATORY
REVIEW COMMISSION
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

COMMITTEES

Environmental Resources & Energy,
Republican Chairman
Veterans Affairs & Emergency Preparedness
Republican Policy
Joint Legislative Air & Water Pollution Control
& Conservation Committee Chairman

APPOINTMENTS

Environmental Quality Board
Wild Resources Conservation Program Board
of Directors

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September 28, 2007

Honorable Kathleen McGinty
Chairperson
Environmental Quality Board
Department of Environmental Protection
P.O. Box 8477
Harrisburg, PA 17105-8477

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Dear Chairperson McGinty:

The Department of Environmental Protection (DEP) has put before the Environmental Quality Board (EQB) several proposed changes to DEP Hazardous Waste Regulations. I have had the opportunity to review the changes as proposed and offer the following perspective.

First, the DEP has proposed the elimination of Subchapter H Financial Requirements, specifically relating to the Corporate Guarantee and Financial Assurance Test. The department is proposing to replace the current procedures with a closure insurance process.

For many years, Pennsylvania corporations have utilized the Corporate Guarantee and Financial Test. This has proven to be a cost-effective way of providing the appropriate level of funding to address accidental releases of pollutants and for closure and/or post closure costs.

Since the program's inception in 1999, there has been very little data to demonstrate significant failures that the financial test did not identify when properly applied. I am concerned that eliminating the use of the Corporate Guarantee and Financial Test could produce a variety of unintended consequences to the regulated industries and the general public, while not providing any additional level of environmental cleanup or liability protection.

This could be particularly true in the instances where a Pennsylvania company is a subsidiary. If the current program is replaced with a surety bond or other type insurance instrument, a parent company would be required to offer a corporate guarantee to the Commonwealth. Absent this guarantee a subsidiary might not be able to provide financial assurance since their finances are part of their parent company. This could prove very harmful to the overall financial assurance program.

I would recommend that the DEP adopt by regulation the full federal Corporate Guarantee and Financial Assurance Test requirements adopted by the U.S. Environmental Protection Agency(EPA). These regulations are contained at 40 CFR 264, Subpart H. The EPA has completed an extensive analysis on these requirements and their validity has been affirmed on each occasion.

I appreciate the opportunity to comment on these regulations. If you should have any questions or need additional information, please contact me at 783-8188.

Sincerely,

Scott E. Hutchinson, Republican Chairman
Environmental Resources & Energy Committee
PA State Representative
64th District - Venango & Butler Counties