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October 10, 2008
INDEPENDENT REGULATORY
REVIEW COMMISSION

2659
Mr. Michael Stephens
Regulatory Analyst
Independent Regulatory Review Commission
333 Market Street-14th Floor
Harrisburg, PA 17101

RE: Regulation 7-421 (IRRC # 2659) – Triennial Review of Water Quality Standards

Dear Mr. Stephens:

The purpose of this letter is to confirm our comments submitted regarding Regulation 7-421, as they were proposed last spring; but, nonetheless most recently approved by the Environmental Quality Board per Final Order and forwarded to your agency for final action.

The Pennsylvania Coal Association (PCA) is the principal trade organization of Pennsylvania's bituminous coal producers. We represent both large and small companies, partnerships and individuals that produce over 75% of the bituminous coal annually mined in the Commonwealth. Our members produce bituminous coal by surface (open pit and auger) methods and underground mining methods, and the also operate coal preparation plants and other regulated coal mining activities.

As stated in our comments on the proposed form of this regulation, PCA has a particular concern with the addition of "molybdenum" as a human health criteria, which we understand was developed at a level of 210 ug/l in response to a NPDES permitting event for a **single** discharger in western Pennsylvania. This discharger is not an operator engaged in coal mining-related activities which discharge little molybdenum; however, any new criteria is subject to revision and could unfairly and adversely affect our operations in the future.

EPA has not listed molybdenum as a toxic pollutant or non-priority pollutant in its "National Recommended Water Quality Criteria, 2006, and has specifically advised DEP (correspondence dated 6.7.2007) that this criteria is not a carcinogen.

PCA also had concerns with lack of clarity at Section 93.7, definition of "Critical Use" and the term "location," which leaves operators open to variable interpretations by different DEP regional and district offices. The Department addressed this with the use of scientific studies to affirm the need to protect more sensitive uses; however, the burden of proof against such findings would rest with the operator, who would be faced with the expense of legal action or the expense of compliance, the extent of which would be another unknown affecting his plan of operation.

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Regulatory Analyst –IRRC
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Again, we reiterate that, at Section 93.9(b), “If . . . a water quality “standard” is more stringent than those in this title, should be revised to say, “If a water quality “**criteria**” is more stringent. . . ., so all understand that we are using comparative numeric criteria, not qualitative or narrative standards.”

The bituminous coal industry is doing an admirable job in complying with current water quality standards. It is not necessary to add a human health criteria, which has not been proven to be a carcinogen or even toxic, except at unlikely, high levels of intake.

We oppose the unnecessary addition of molybdenum as a human health criteria, and the lack of clarity in the sections we have noted above. Both the DEP and our operators are already burdened with many testing requirements, submission and review of volumes of paperwork, all of which must be done at a time of economic instability and attendant lack of ability to ensure adequate staff to process permit applications and revisions, testing results and questions regarding unclear requirements.

This is not the time to further burden the entire regulated community because of a discharge of molybdenum from one company. DEP should work with the EPA and this company on a one-on-one basis to address the problem.

We thank you for consideration of these comments, and seek your disapproval of Reg. 7-421.

Sincerely yours,

George Ellis, President
The Pennsylvania Coal Association

GE:sg
cc: Hon. Arthur Coccodrilli, Chairman
Interested PCA Members

2659

From: Stephens, Michael J.
Sent: Friday, October 10, 2008 2:02 PM
To: IRRC; Gelnett, Wanda B.
Cc: Wilmarth, Fiona E.
Subject: FW: Resubmission of Comments on Reg 7-421 (IRRC 2659)
Attachments: IRRC Molybdenum Final.doc
Importance: High

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Comment on #2659.

From: Susan Germanio [mailto:sgermanio@comcast.net]
Sent: Friday, October 10, 2008 1:50 PM
To: Stephens, Michael J.
Cc: Arthur Coccodrilli
Subject: Resubmission of Comments on Reg 7-421 (IRRC 2659)
Importance: High

This copy specifically asks for disapproval. Thanks.