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

April 28, 2008

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

Re: Regulation #7-421 (IRRC #2659)
Environmental Quality Board
Triennial Review of Water Quality Standards

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



Environmental Quality Board #7-421 (IRRC #2659)

Triennial Review of Water Quality Standards

April 28, 2008

We submit for your consideration the following comments on the proposed rulemaking published in the January 12, 2008 *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 to respond to all comments received from us or any other source.

We submit for your consideration the following comments on the proposed rulemaking published in the January 12, 2008 *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 (Board) to respond to all comments received from us or any other source.

Section 93.7. Specific water quality criteria. – Reasonableness; Clarity.

Subsection (a)

Under this subsection, the language added to the footnote of “Critical use” states “[o]ther intervening, more sensitive uses may apply at a given location on the waterbody.” This sentence is vague and may lead to inconsistent interpretations across DEP regions. Who determines if “other intervening, more sensitive uses” should be applied to a waterbody? What process and criteria are used to make this determination? How will this process be uniformly applied?

Subsection (d)

This proposed amendment adds Table 5 and Chapter 16, Appendix A Table 1 to the list of aquatic life criteria used to determine the natural quality of surface water. In its comment, the Environmental Protection Agency, Region III (EPA) raised concerns with these changes. EPA requested clarification on how the criteria in Chapter 16, Appendix A Table 1 will be considered by the Board. EPA also noted that “background conditions are site-specific by nature” and it

is not clear how these criteria will be incorporated into Table 5, which appears to only hold state-wide criteria. We agree.

Further, we note that there is no discussion of this particular amendment in the preamble of the regulation. Therefore, the final-form regulation should include a clear explanation of the reasoning behind this amendment.

Section 93.8c. Human health and aquatic life criteria for toxic substances. – Fiscal Impact; Reasonableness.

Commentators expressed numerous concerns pertaining to the proposed addition of the chemical Molybdenum (Mo) to Table 5 of this section. These concerns include assertions that “there is no drinking water standard or federal water quality standard for molybdenum.” They further state that the Human Health Criteria standard of 210 mg/L cannot be attained by Best Available Technology, which would threaten at least one facility’s ability to continue operations.

Additionally, we note that the preamble of the proposed regulation states only that Mo is included because it is “expected to be present in discharges.” There is no discussion of the significance of finding Mo in discharges, how the standard of 210 mg/L was determined or how this level can be attained by the best technology available to the industry.

In the final-form regulation, the Board should clearly provide the justification for the inclusion of Mo in Table 5 of this section and the rationale behind the specific Human Health Criteria standard.

Facsimile Cover Sheet



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

To: Debra L. Failor
Agency: Department of Environmental Protection
Phone: 7-2814
Fax: 705-4980
Date: April 28, 2003
Pages: 4

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of Environmental Protection's regulation #7-421 (IRRC #2659). 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 L. Failor

Date: _____

4-28-08