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KIM KAUFMAN, EXECUTIVE DIRECTOR
LESLIE A. LEWIS JOHNSON, CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

November 25, 2008

Honorable John Hanger, Acting 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 Acting Chairperson Hanger:

The Independent Regulatory Review Commission disapproved your regulation on November 20, 2008. Our order is enclosed and will be available on our website at www.irrc.state.pa.us.

Within 40 days of receipt of our order, Section 7(a) of the Regulatory Review Act requires you to select one of the following options: (1) proceed with promulgation under Section 7(b); (2) proceed with promulgation under Section 7(c); or (3) withdraw the regulation. If you do not take any action within this period, the regulation is deemed withdrawn.

If you or your staff have any questions, please contact me at 783-5506.

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

**INDEPENDENT REGULATORY REVIEW COMMISSION
DISAPPROVAL ORDER**

Commissioners Voting:

Public Meeting Held November 20, 2008

Arthur Coccodrilli, Chairman

Alvin C. Bush, Vice Chairman, by Phone

Nancy Sabol Frantz, Esq.

Karen A. Miller, Dissenting

Regulation No. 7-421 (#2659)

Environmental Quality Board

Triennial Review of Water Quality Standards

On December 21, 2007, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Environmental Quality Board (EQB). This rulemaking amends 25 Pa. Code Chapters 16 and 93. The proposed regulation was published in the January 12, 2008 *Pennsylvania Bulletin* with a 75-day public comment period. The final-form regulation was submitted to the Commission on October 7, 2008.

This final-form regulation represents the EQB's triennial update of its water quality standards. It makes numerous amendments to Chapters 16 and 93. Our sole concern with this regulation is the implementation of a new water quality standard for Molybdenum (Mo).

In our comments issued on April 28, 2008, we requested the EQB "clearly provide the justification for the inclusion of Mo...and the rationale behind the specific Human Health Criteria standard." Further, we referenced concerns raised by commentators concerning the lack of a federal standard for Mo, the inability of these commentators to attain the standards required by this regulation using available technology, and the potential impact of this standard on the continuing operation of at least one business in the Commonwealth.

In its response, the EQB stated that it needs to create a statewide standard for Mo because "Pennsylvania has at least four active major NPDES permits that require Mo monitoring, and at least 2 additional facilities that discharge Mo." It further asserted that Mo is considered a toxic metal, has been labeled a teratogen and can cause "gout-like symptoms." The EQB completed its response by outlining the methodology and data used for developing the water quality criterion for Mo. However, several concerns raised by the regulated community and this Commission remain.

The Regulatory Review Act requires the Commission to consider specific criteria in determining whether the regulation is in the public interest. We have determined the regulation is not in the public interest based on the following criteria: the economic or fiscal impact of the regulation (71 P.S. § 745.5b(b)(1)); protection of the public health, safety and welfare (71 P.S. § 745.5b(b)(2)); need for the regulation (71 P.S. § 745.5b(b)(3)(iii)); reasonableness of the requirements (71 P.S. § 745.5b(b)(3)(iv)); and the comments, objections or recommendations of a committee (71 P.S. § 745.5b(b)(5)).

First, we note the objections and recommendations offered by the Senate Environmental Resources and Energy Committee (Committee). In separate letters dated October 8, 2008, the Committee notified us that it adopted by formal action a recommendation that the Commission disapprove the regulation. The Committee also notified the EQB and us of its intent to further review the regulation after the Commission's final action on the regulation. The Committee stated, "We note that neither the Environmental Protection Agency nor most of our neighboring

states have adopted a similar standard, and its inclusion is not required for Pennsylvania to maintain compliance with federal water quality standards.” It further stated, “Several employers who currently discharge Molybdenum have raised persuasive arguments regarding the rationale, cost and appropriateness of this standard. We question whether DEP has offered sufficient justification regarding the specific interest of the Commonwealth to exceed federal water quality standards.” We agree.

Second, the EQB has not sufficiently addressed the economic and fiscal impact of imposing this water quality criterion on the regulated community. In response to Question 17 in the Regulatory Analysis Form, the EQB states, “[c]osts and savings cannot be determined because of site-specific considerations and because there is no historical accounting of costs that would enable a comparative cost analysis to be conducted.” Commentators have stated that the methods of reducing Mo discharges that currently exist are extremely costly and may not attain the requirements set forth in this regulation. Further, some commentators, including Langeloth Metallurgical (LMC), assert that these requirements will place such an economic burden on the regulated community that “...if implemented, will threaten LMC’s ability to continue to operate its facilities.”

Department of Environmental Protection staff have indicated a willingness to allow time extensions for compliance on a case-by-case basis so that effective technologies for reducing Mo discharges can be identified and implemented. However, we remain concerned that the undefined cost of such a process will be unduly burdensome to existing businesses and could discourage other companies from establishing operations in Pennsylvania.

Finally, the EQB has not fully demonstrated the impact of the consumption of Mo on the public health. The EQB has asserted that Mo is a water toxin, is a teratogen in test animals and has cited numerous studies supporting these positions. However, we note that despite these studies, the federal Environmental Protection Agency (EPA) has not established a water quality standard for Mo. Further, commentators have asserted that this substance has not been categorized as a carcinogen, toxic pollutant or non-priority pollutant by the EPA. In fact, several commentators have indicated that an insufficient intake of Mo would actually have an adverse effect on human health. The EQB has not supplied enough information to adequately refute the commentators’ assertions that a statewide criterion for Mo is not needed. Additionally, the EQB has not provided data demonstrating any documented harm to Pennsylvania residents as a result of ingesting any level of Mo. It concerns us that the EQB would propose a water quality standard for a substance for which there is questionable evidence of its toxicity to humans, particularly in the absence of commercially available and cost-effective means to reduce or eliminate this substance from existing and permitted industrial discharges.

Given the potential costs to businesses for reducing Mo discharges to the level required by this regulation; the lack of EPA regulation of Mo; the lack of data demonstrating the adverse health impacts on Pennsylvanians; and the concerns expressed by the Committee, we find that the EQB has not sufficiently justified the need for and reasonableness of imposing a statewide criterion for Mo. Consequently, we conclude that the criterion for Mo should be removed from the regulation.

We have determined this regulation is consistent with the statutory authority of the EQB (Pennsylvania Clean Streams Law at 35 P.S. § 691.5(b)(1)) and the intention of the General Assembly. However, based upon the information made available to us and after considering all

of the other criteria of the Regulatory Review Act discussed above, we find promulgation of this regulation is not in the public interest.

BY ORDER OF THE COMMISSION:

This regulation is disapproved.



A handwritten signature in black ink, appearing to read "Kim Kaufman".

Kim Kaufman, Executive Director