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INDEPENDENT REGULATORY REVIEW COMMISSION

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

July 8, 2009

Honorable John Hanger, Chairman
Environmental Quality Board
Rachel Carson State Office Building
400 Market Street, 16th Floor
Harrisburg, PA 17101

Re: Regulation #7-428 (IRRC #2755)
Environmental Quality Board
Adhesives, Sealants, Primers and Solvents

Dear Chairman Hanger:

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

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Enclosure

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

Comments of the Independent Regulatory Review Commission



Environmental Quality Board Regulation #7-428 (IRRC #2755)

Adhesives, Sealants, Primers and Solvents

July 8, 2009

We submit for your consideration the following comments on the proposed rulemaking published in the April 4, 2009 *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.

1. Implementation date. – Implementation procedures; Reasonableness.

Numerous subsections within this proposed regulation include a compliance date of April 15, 2010. Because the Board does not know exactly when this regulation will officially be promulgated, it should consider replacing this date with a reference to a specific amount of time after the effective date of the regulation.

Further, commentators are concerned that they will not have enough time to design, build, install, test and obtain permit approvals for add-on pollution control devices or new products that meet the requirements of this regulation. They further assert that two years is an appropriate amount of time to accomplish these things. We agree that the proposed compliance date could be difficult for the regulated community to meet. The Board should consider amending the final-form regulation to allow the industry to have two years from the effective date of the regulation to make the appropriate changes to their operations.

2. Section 121.1. Definitions. – Reasonableness; Clarity.

Metal to urethane/rubber molding or casting adhesive

Commentators assert that this definition is unclear for two reasons. First, they state that the term “heater” should actually be “heated.” Second, they contend that the qualifier at the end of the definition is confusing because the regulated community may assume that it only applies to printing supplies because it only mentions items related to printing. The Board should clarify this definition in the final-form regulation.

Fiberglass

This proposed definition includes an editor's note that a definition of this term was also included in a previous proposed rulemaking. It states: "the later of these two rulemakings to be published as a final rulemaking will include both definitions." Will there be two definitions for "fiberglass"? If so, the Board should make it clear where each definition applies. If the Board's intent is to have only one definition, it should place the singular definition in one location or ensure that the two definitions are verbatim.

3. Section 129.77. Control of emissions from the use or application of adhesives, sealants, primers and solvents. – Statutory authority; Clarity.

Subsection (i)

This subsection states that a person cannot require the use of a material that would result in a violation of this regulation. It further states that this prohibition applies to "all written or oral contracts" under which any of these materials would be used. Does the Board intend to apply this provision retroactively to existing contracts? If so, it should clearly outline its authority to do so. If not, this provision should be clarified to state that it will be applied prospectively. A similar concern applies to Section 130.702(g).

Subsection (l)(4)

Under this subsection, how would the owner/operator record and maintain records that would satisfy the requirements in the last sentence? A similar concern applies to Subsections (n) and (o) and 130.703(b)(4), (e) and (f). The final-form regulation needs to more explicitly set forth the recordkeeping requirements in these subsections.

Subsection (r)(1)

Subsection (r)(1) states that all compliance records should be "maintained" for at least five years. Can these records be electronic or paper copies? The final-form regulation should indicate in what format these records must be maintained.

Subsection (r)(2)

Subsection (r)(2) requires these records to be made available to the Department of Environmental Protection "upon request." Will these requests be made orally or in writing? The final-form regulation should indicate in what format the requests will be made.

4. Section 130.702. Emissions standards. – Clarity.

A commentator suggests that the Board amend subsection (b) to include language that states that use and application of products manufactured after the effective date is prohibited, which would make it consistent with

Subsection (a). To improve clarity, the Board should make the recommended change to the final-form regulation.

Facsimile Cover Sheet



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

To: Debra L. Failor
Agency: Environmental Quality Board
Phone: 7-2814
Fax: 705-4980
Date: July 8, 2009
Pages: 5

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Environmental Quality Board's regulation #7-428 (IRRC #2755). 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: Karyn Gordy **Date:** 7-8-09