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INDEPENDENT REGULATORY REVIEW COMMISSION

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

August 19, 2009

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

Re: Regulation #7-434 (IRRC #2770)
Environmental Quality Board
Environmental Laboratory Accreditation

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 #7-434 (IRRC #2770)

Environmental Laboratory Accreditation

August 19, 2009

We submit for your consideration the following comments on the proposed rulemaking published in the June 20, 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. Records. – Clarity.

Several sections of this regulation require record retention or recording of information. However, it is unclear what method of retention or recording the Board requires and the duration of the required retention is not set forth. The final-form regulation should clarify these requirements. The concern applies to several subsections, including Subsections 252.304 (b)(3)(vi)(E), (b)(3)(vi)(F), 252.306(f)(2)(ii)(C), (f)(4)(v), (f)(5)(iii)(v), (f)(6)(iv), (h)(2), (h)(4), 252.404 (c)(1)(iii), (vii), (c)(2)(ii), (iv) and 252.706(a).

2. Section 252.304. Personnel requirements. – Reasonableness; Clarity.

Subsection (b)(3)(vi)(E)

This subsection allows lab methods used prior to January 1, 2005, to be exempt in certain circumstances from the initial demonstration of capability. How did the Board determine this was an appropriate date?

Subsection (b)(3)(vi)(F)

This subsection requires labs to retain “all data necessary” to reproduce the initial demonstration of capability. What types of data would meet this requirement? The final-form regulation should clarify the Board’s intent.

Subsection (b)(3)(vi)(G)(I)

Under this subsection, a new employee in a work cell must work with an experienced analyst. However, it is not clear how long this must occur. The

final-form regulation should clearly state how long an experienced analyst must work with a new work cell employee.

Subsection (b)(3)(vi)(G)(II)

This subsection mentions “acceptable” quality control performance checks. This term is vague. The final-form regulation should specify what the Board considers “acceptable.”

3. Section 252.306. Equipment, supplies and reference materials. – Reasonableness; Clarity.

Subsection (f)(9)(i)

In this subsection, what does the Board consider an “appropriate” method for checking delivery volumes of mechanical volumetric dispensing devices? This term is vague. The Board should delete this term or set forth the “acceptable” methods.

Subsection (h)(6)

This subsection refers to a “Department approved procedure” to reevaluate and validate certain materials used past their expiration date. The final-form regulation should set forth this procedure or provide a citation to an existing procedure that will be used.

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: August 19, 2009
Pages: 4

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Environmental Quality Board's regulation #7-434 (IRRC #2770). 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:

Karen Yordy

Date:

8-19-09