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TESTIMONY OF ROBERT DORFLER ON PROPOSED ADOPTION AMENDMENTS TO CHAPTER 93 OF TITLE 25 Pa.Code WHICH WOULD ESTABLISH STATEWIDE WATER QUALITY HUMAN HEALTH AND AQUATIC PROTECTION STANDARDS FOR MOLYBDENUM, PUBLISHED JULY 7, 2012 (42 Pa.B.4367-4390).

Good afternoon.

My name is Robert Dorfler. I am the Manager of Langeloth Metallurgical Company's Langeloth, Washington, County Pennsylvania molybdenum processing facility, which employs over 170 individuals in skilled, high-paying jobs.

My testimony today will focus on LMC's opposition to the proposed adoption of statewide human health and aquatic life water standards for Molybdenum ("Mo").

MOLYBDENUM IS NOT A TOXIC SUBSTANCE

First, let me give you a little background on Mo. Molybdenum is not a "toxic" substance. Neither EPA nor any other state classifies Mo as a "toxin." Instead, Mo is recognized as an essential micro-nutrient necessary for the proper development of humans, plants and animals and is present in milk, dried beans, peas, nuts, seeds and variety of vegetables and meats. By way of example, one cup of navy beans can contain up to 0.196 mg of Mo. See <http://www.diet.com/g/molybdenum>.

Mo is also not classified as a human carcinogen and EPA has never seen the need to establish drinking water standards for molybdenum. In addition, recently published studies on the effects of molybdenum on aquatic life confirm that the chronic standard proposed by the Commonwealth of 1.9 mg/L is far, far too low and, in fact, no statewide standard is needed based on available stream monitoring data collected by the Department.

THERE IS NO FEDERAL REQUIREMENT THAT A STATEWIDE WATER QUALITY STANDARD FOR MO BE DEVELOPED AND THERE IS NO EVIDENCE THAT MO IS PRESENT ON A STATEWIDE BASIS IN WATERS OF THE COMMONWEALTH

The Secretary of the Pennsylvania Department of Environmental Protection has on numerous occasions made the statement that Pennsylvania should not impose environmental regulatory standards which are not otherwise required by Federal law or regulation unless there is a clear need to protect a unique Pennsylvania interest.

There are no federal water quality standards for molybdenum.

Furthermore, there is no evidence that molybdenum in waters of the Commonwealth is a statewide concern.

Indeed, the evidence purportedly relied upon by the Department to suggest that Molybdenum is a "statewide" concern confirms just the opposite---this data confirms that Mo was rarely found in waters of the Commonwealth and when detectable levels were found, they were present in only a handful of isolated locations----there is simply no statewide Mo problem in Pennsylvania. The proposed human health standard for Mo is a classic example of an agency proposing a "solution that is looking for a problem."

A STATEWIDE HUMAN HEALTH WATER STANDARD FOR MO CANNOT BE JUSTIFIED BY THE DEPARTMENT BECAUSE THERE IS NO NEW EVIDENCE THAT IT PRESENTS A RISK OF HARM TO HUMANS

The proposed human health standard for Mo of 0.210 mg/L is not a new proposal. It was first proposed for adoption in 2008 during the last triennial review. However, that proposal was not codified because, after it was "approved" by the EQB, the Independent Regulatory Review Commission issued an order (a copy of which is attached to my testimony), disapproving the standard. When doing so, the Review Commission stated, and I quote:

“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 had 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.”

Significantly, since 2008, no new studies have been done on the effects of molybdenum on humans in this Country or elsewhere, which support a standard of 0.210 mg/L. Therefore, the Department is attempting to justify, in 2012, the very same proposal it was unable to justify to the Regulatory Review Commission in 2008, using the very same “evidence” the Commission found was “questionable” in 2008. Also, what was the case in 2008, the absence of any technology capable of achieving the proposed standard for Mo, is still the case today.

**RECENT DATA CONFIRMS THAT THERE IS ALSO NO NEED FOR STATEWIDE
MO AQUATIC LIFE STANDARD**

The proposed statewide aquatic water quality standards for Mo were based on a study done several years ago for the State of Nevada (Tetra Tech Inc.2008).

However, since the Tetra Tech study was finalized significant new, high quality, scientific data on the aquatic effects of Mo has been generated, which were not carefully, if at all, reviewed by the Department before submitting the proposed standards for adoption.

More importantly, the principle author of the 2008 Nevada Study, Henry Latimer, was recently asked by LMC to review this new data and to advise LMC whether, in light of this data, the proposed statewide aquatic water quality standards for Mo were still justifiable.

And, in a recent report provided to LMC (which will be submitted to the EQB with LMC's formal written comments), Tetra Tech concluded, after reviewing both the new data on the aquatic life impacts of Mo, and the statewide water quality monitoring data gathered by the Department relating to the "presence" of Mo in the Waters of the Commonwealth, as follows:

"Thus the data released by Pennsylvania show that in general, samples analyzed for molybdenum are unlikely to contain detectable concentrations. Although 10% of the samples did contain detectable concentrations of molybdenum, 95% of the samples containing elevated levels (>550 ug/L) were associated with a single industrial facility [not LMC's]. Finally, all samples presented in the state monitoring data were well below the recalculated criterion presented in this report and the vast majority of samples were orders of magnitude lower than the suggested chronic criterion [30.8 mg/L]. Therefore, it is clear that observed concentrations of molybdenum in Pennsylvania State waters are at levels well below levels that might negatively impact aquatic life."

Given Tetra Tech's conclusions (which were provided to the Department earlier this year in a tentative format) the Department should withdraw its current proposal to establish statewide aquatic life Mo standards and undertake a thorough and complete review both of Tetra Tech's more recent work, and the data which Tetra Tech reviewed (and which the Department has yet to fully consider, if at all) before again submitting any proposals.

CONCLUSION

I urge you to:

Reject the adoption of a statewide human health standard for Mo in 2012 because the 2012 proposal is the same as the 2008 proposal and is based on the same “questionable” science as the 2008 proposal, which was rejected by the Independent Regulatory Review Commission; and because the Department’s own statewide stream monitoring data do not document the statewide presence of Mo in the waters of the Commonwealth.

I further urge you to:

Reject the adoption of statewide aquatic life standards for Mo because the proposal is based on a 2008 study which is no longer current and the principle author, Henry Latimer, has said, that in light of more recent data, the Nevada study does not justify the standards being proposed by the Department.

You simply cannot justify a statewide standard by reliance on a study when the principle author of such study has publicly stated “reliance” thereon is no longer justified.

Thank you for your time.

Robert Dorfler

August 8, 2012

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INDEPENDENT REGULATORY REVIEW COMMISSION

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

November 25, 2008

Robert R. Dorfler
Vice President and General Manager
Langeloth Metallurgical Company
Langeloth, PA 15054

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

Dear Mr. Dorfler:

On November 20, 2008, the Commission voted to disapprove this regulation for the reasons outlined in the enclosed order.

On November 25, 2008, we delivered our order. The Environmental Quality Board can resubmit the regulation without modification as prescribed by Section 7(b) of the Regulatory Review Act (71 P.S. § 745.7(b)) or alternately resubmit the regulation with modifications in 40 days, as prescribed by Section 7(c) of the Regulatory Review Act (761 P.S. § 745.7(c)). If the Department fails to resubmit the regulation within the 40-day period, it will be deemed withdrawn. You may also review information regarding this regulation at our Commission's website www.irc.state.pa.us.

If you have any further questions on this matter, please contact Michael J. Stephens at 717-787-8491. He is the analyst assigned to review this regulation.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

**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 "K. Kaufman".

Kim Kaufman, Executive Director