

Comments of the Independent Regulatory Review Commission



Environmental Quality Board Regulation #7-566 (IRRC #3325)

Exclusion for Identification and Listing Hazardous Waste at MAX Environmental Technologies, Inc. Bulger and Yukon Facilities

March 24, 2022

We submit for your consideration the following comments on the proposed rulemaking published in the January 8, 2022 *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 (EQB) to respond to all comments received from us or any other source.

Protection of the public health, safety and welfare and the effect on this Commonwealth's natural resources; Reasonableness; Implementation procedures.

The purpose of this proposed rulemaking is to conditionally exclude the wastewater treatment sludge filter cake generated at MAX Environmental Technologies, Inc. Bulger and Yukon facilities (MAX) from the list of hazardous wastes found in 40 CFR 261.31 (relating to hazardous wastes from non-specific sources). This proposed rulemaking is the result of two petitions filed by MAX to conditionally delist the sludge filter cake as hazardous waste for both facilities.

Commentators have raised several concerns with the proposal and the negative impact it could have on the environment. The comments that follow address three of the concerns. First, they contend that MAX has a history of noncompliance which reflects their "lack of ability or intent to consistently comply with the regulatory schemes under which it operates." Second, the rulemaking does not include a testing requirement for radium. Third, commentators believe the reporting requirements are insufficient.

Based on the concerns identified above, we offer the following comments. First, the Preamble provides an explanation of the federal and state statutory and regulatory provisions that guide procedural steps involved with a delisting petition. The explanation includes the following statement, "If the delisting analysis shows that a currently listed waste meets those delisting criteria in 40 CFR 260.22(a), then the Department must move forward with delisting process." We ask the EQB to answer the following questions in the Preamble to the final-form rulemaking. Do the cited statutes and regulations allow the EQB to consider the history of compliance of the petitioner when it considers a petition for delisting? In the interest of adequately protecting the public health, safety and welfare and the Commonwealth's natural resources, are there other

statutes or regulations that would give the EQB the authority to evaluate the compliance history of a petitioner?

Second, the rulemaking requires testing for arsenic, barium, cadmium, chromium, lead, mercury selenium and silver. However, it does not require testing for radium. This appears problematic because both MAX facilities accept oil and gas drilling wastes and radium 226 and 228 are present in this waste stream. We ask the EQB to answer the following questions in the Preamble to the final-form rulemaking. Given the nature of the waste MAX processes at both facilities, what is the reason for not including radium as a constituent that must be tested for in the rulemaking? Does the Department of Environmental Protection currently require testing for radium in any of its waste handling and processing regulations? What assurances can the EQB provide the regulated community that this rulemaking will adequately protect the citizens of the Commonwealth from the dangers associated with radium leaking into the environment and water supplies of those living near the facilities?

Third, the rulemaking requires MAX to keep records of all operating conditions and analytical data for a minimum of three years and to make those records available to the DEP at any time. Commentators are concerned that MAX is only required to submit sampling results to the DEP if the analysis shows that the level of any constituent measured equals or exceeds the levels set forth in the rulemaking. They suggest all analytical results should be submitted to the DEP. Would the suggestion to report all testing results assist DEP with the implementation of the rulemaking and provide a greater level of environmental protection and oversight? If the EQB believes this additional reporting requirement would be beneficial, then we ask that they consider including it in the final-form regulation.