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INDEPENDENT REGULATORY REVIEW COMMISSION

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

February 19, 2009

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

Re: Regulation #7-427 (IRRC #2736)
Environmental Quality Board
Safe Drinking Water (Stage 2 Disinfectants and Disinfection Byproducts Rule)

Dear Acting Chair 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
wbg
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 #7-427 (IRRC #2736)

Safe Drinking Water (Stage 2 Disinfectants and Disinfection Byproducts Rule)

February 19, 2009

We submit for your consideration the following comments on the proposed rulemaking published in the December 20, 2008 *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.

1. General - Possible conflict with existing regulation; Protection of the public health, safety and welfare; Economic impact.

In the Preamble, the EQB states:

The draft proposed amendments were submitted for review to the Small Water Systems Technical Assistance Center Advisory Board (TAC) for review and discussion on November 15, 2007. The TAC Board noted that the revisions are required for the Department to receive primacy and are not more stringent than the Federal rule. The TAC Board approved the proposed revisions in a letter dated December 12, 2007.

Additionally, the EQB approved this proposed regulation on August 19, 2008.

However, the Environmental Protection Agency (EPA) filed comments on this regulation and a clarification of its comments, both dated January 20, 2009. The EPA cited what it characterized as concerns related to six “major changes,” ten “minor changes” and “other changes” to the existing regulation. In light of the EPA concerns, the final-form regulation should include an explanation of how these EPA concerns were addressed and a summary of the communications the EQB had with the EPA to make sure Pennsylvania will maintain primacy with the implementation of the final-form regulation.

2. Section 109.701. Reporting and recordkeeping. - Protection of the public health, safety and welfare; Clarity.

There are three discrepancies in this section between the regulatory package submitted by the EQB on November 24, 2008, and the publication in the December 20, 2008 edition of the *PA Bulletin*. First, Subparagraph (a)(8)(ii) is missing a bracket, and therefore, it is unclear what language the EQB proposes to delete. Second, Paragraph (a)(9) in the *PA Bulletin* has a missing bracket, as it appears that the EQB intended to delete (9) in its entirety and renumber (10) to (9). Finally, in Paragraph (a)(10) in the *PA Bulletin*, the word “precursors” should not be shown in bold type.

These discrepancies may have caused confusion and impacted public comment. Ideally, a correction would have been published in the *PA Bulletin* before the close of the public comment period. Since the opportunity for that correction has passed, the EQB should make efforts to ensure that the regulated community is both aware of the discrepancies and has had the opportunity to address any concerns before the final-form regulation is submitted.

Also, the City of Philadelphia commented that the requirement to make written reports of operational evaluation levels available to the public under clauses 109.701(g)(2)(iii)(B) and (C) could present security concerns. These reports are required to include “an examination of system treatment and distribution operational practices, including storage tank operations....changes in sources....” See § 109.701(g)(2)(iii)(C). The EQB should explain how it considered security concerns in relation to this requirement and how the requirement will not make information available to the public that could be used for nefarious purposes.

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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: February 19, 2009
Pages: 4

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Environmental Quality Board's regulation #7-427 (IRRC #2736). 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:

Date:

2-19-09