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INDEPENDENT REGULATORY REVIEW COMMISSION

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

November 25, 2009

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

Re: Regulation #7-437 (IRRC #2790)
Environmental Quality Board
Lead and Copper Rule Short Term Revisions

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
wbg
Enclosure

cc: Honorable Mary Jo White, Majority Chairman, Senate Environmental Resources and Energy Committee
Honorable Raphael J. Musto, Minority Chairman, Senate Environmental Resources and Energy Committee
Honorable Camille George, Majority Chairman, House Environmental Resources and Energy Committee
Honorable Scott E. Hutchinson, Minority Chairman, House Environmental Resources and Energy Committee
Robert A. Mulle, Esq., Office of Attorney General
Andrew Clark, Esq., Office of General Counsel

Comments of the Independent Regulatory Review Commission



Environmental Quality Board Regulation #7-437 (IRRC #2790)

Lead and Copper Rule Short Term Revisions

November 25, 2009

We submit for your consideration the following comments on the proposed rulemaking published in the September 26, 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. Section 109.1103. Monitoring requirements. - Need; Fiscal impact; Clarity.

Subsection (e) - Reduced monitoring.

The Preamble to the proposed rulemaking states that certain provisions of § 109.1103(e) are more stringent than the Federal rule on which this proposal is based. The specific provisions are: §§ 109.1103(e)(1)(i)(B) and (C); 109.1103(e)(1)(ii)(B); and 109.1103(e)(3). The Board has explained that these provisions are more protective of the public health than the Federal rule. We ask the Board to explain why the Federal rule is not sufficient to protect the health of the citizens of this Commonwealth.

In addition, a commentator has questioned if these provisions increase the cost for compliance for public water systems. We ask the Board to quantify the costs associated with the provisions that are more stringent than the Federal rule.

Subsection (g) - Sample site location plan.

Subsection (g)(2)(iv) pertains to site selection for community and nontransient noncommunity facilities that operate continuously. The second sentence of this subsection states the following: "These systems shall collect **as many first-draw samples from appropriate taps as possible** and identify sampling times and locations that **would likely** result in the longest standing time for

the remaining sites.” (Emphasis added.) This sentence is vague because it does not establish a binding norm that could be evenly applied to all members of the regulated community and enforced by the Department of Environmental Protection in a uniform manner. We recommend that the sentence be amended to provide more definite parameters for testing.

**2. Section 109.1104. Public education and notification. -
Implementation procedures; Need; Clarity.**

Subsection (a)(2)(i)(B)

This subsection pertains to the delivery of education materials. It is being amended to read as follows:

The water supplier shall deliver education materials meeting the content requirements of paragraph (1) to local public health agencies, such as the county or State Health Department, even if they are not located within the water system's service area, along with an informational notice that encourages distribution to all the potentially affected consumers. The water supplier shall contact the local public health agencies directly by phone or in person. The local public health agencies may provide a specific list of additional community based organizations serving target populations which may include organizations outside the service area of the water system. If a list is provided, the water supplier shall deliver education materials that meet the content requirements of paragraph (1) to all the organizations on the list.

We have three concerns. First, the term “local public health agencies” is unclear. We recognize that the Preamble to the rulemaking lists the agencies that must be contacted and that additional guidance will be provided by the Department. However, as noted above, regulations establish binding norms and also have the full force and effect of law. We recommend that the term either be defined or that the final-form regulation include a reference to a specific guidance document that lists the agencies that must be contacted. This term also appears in Subsection (a)(2)(i)(D).

Second, what is the need for contacting local public health agencies, even if they are not located with the water system’s service area? This requirement also appears in Subsection (a)(2)(i)(D).

Third, we find the third and fourth sentence of this subsection to be problematic. Under these sentences, the Board is delegating its rulemaking authority to local public health agencies and members of the regulated community will be required to comply with the additional requirements. This

approach does not establish a binding norm that could be applied evenly to the regulated community. If the Board believes that other community based organizations should be contacted, those organizations should be listed in the guidance document.

Subsection (a)(2)(i)(D)

This subsection requires water suppliers to make a good faith effort to reach certain organizations. It states that the good faith effort “may” include requesting information from a local public health agency. The use of the word “may” is problematic because it is nonregulatory language which indicates that this provision is optional. It is inappropriate to include optional provisions in a regulation. If the Board believes this provision is necessary, it should change the word “may” to “shall.” If it is not necessary, the provision should be deleted from the regulation.

Facsimile Cover Sheet

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INDEPENDENT REGULATORY REVIEW COMMISSION
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Agency: Environmental Quality Board
Phone: 7-2814
Fax: 705-4980
Date: November 25, 2009
Pages: 5

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INDEPENDENT REGULATORY
REVIEW COMMISSION

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Environmental Quality Board's regulation #7-437 (IRRC #2790). 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:

11-25-09