

October 28, 2004

Krishnan Ramamurthy, Chief
Division of Compliance and Enforcement
Bureau of Air Quality
Pennsylvania Department of Environmental
Protection
Twelfth Floor
Rachel Carson State Office Building
P.O. Box 8468
Harrisburg, PA 17105-8468

Re: Comments on Draft Guidelines for Identifying,
Tracking and Resolving Violations for Air Quality

Dear Mr. Ramamurthy:

On behalf of its over 10,000 members, representing the spectrum of Pennsylvania industry, business and commercial enterprises, the Pennsylvania Chamber of Business and Industry appreciates the opportunity to provide comments to the Pennsylvania Department of Environmental Protection concerning the Bureau of Air Quality's draft Guidelines for Identifying, Tracking and Resolving Violations for Air Quality.

We recognize the merits of increasing the uniformity with which the Department conducts air quality compliance and enforcement activities, so that decision making and procedures are relatively predictable and permit regulated entities to factor those factors into business planning with some degree of reliability. This being said, it still remains crucial for these Guidelines to preserve flexibility to allow the Department to act reasonably on a case-by-case basis as individual circumstances warrant, since it is impossible to anticipate all relevant variables for all cases in advance. The draft Guidelines already make a noticeable effort to preserve this flexibility in many cases, such as the recognition in Sections II.A.1 and 2 that alternate time frames extending beyond 14 days may be appropriate for determining whether a violation has occurred or for issuing a notice of violation. This Guidance should emphasize that Department personnel should be open to implementing the Guidance with flexibility so as to promote and facilitate reasonable decisions and outcomes which protect the environment and avoid unreasonable impacts on the regulated community.

In Sections I.A.3 and I.B, the draft Guidance affirms that implementation of a comprehensive environmental management system (“EMS”) reviewed and/or certified by a third party is a bona fide basis for reducing the frequency of inspections or the extent of reporting (and possibly recordkeeping) responsibilities to which a regulated entity is subject. The Chamber supports the linkage between EMS implementation and reduced regulatory oversight burden here and elsewhere. We would like to work with the Department further to clarify and implement the procedures through which this kind of quid pro quo exchange will occur, and we encourage the Department to look for opportunities to support independent environmental management through incentives like these. We would also support the Department working these concepts into the Section 105 grant commitments in negotiations with EPA.

Section I.E references a “regulatory revision action plan” to address the adequacy of the existing fee structure for the air quality program. The Chamber would be interested in working with the Department on potentially refining and implementing that plan to help make sure that any fee revisions are warranted and equitable.

The draft Guidelines set forth regular procedures and desired timetables for debriefing facilities on the findings and results of an inspection, for providing documented findings by the end of the inspection, where possible, and for providing any follow-up notice regarding inspection findings. The Chamber supports these measures as useful in reducing uncertainty in the regulatory process.

Similarly, the Chamber strongly supports procedures such as those prescribed in Sections II.B.3 and 3.C, which call for the timely updating of compliance and enforcement databases, particularly those that are available to the public. The demands of a full case docket often divert attention from this kind of activity. The Chamber is pleased that the Guidance affirms the importance of this effort to ensure that information ascribed to individual facilities accurately reflects valid defenses, corrective measures, or resolution of alleged violations by other means.

Finally, the Chamber believes that these Guidelines should be reconsidered with respect to how the term “violation” is used. After the Department has conducted an inspection or otherwise reviewed compliance information, it may indeed conclude that a violation has occurred, and that a facility should be notified and called upon to respond. However, in working through such a finding with a facility, it is not at all uncommon for the Department’s finding of violation to be disputed. Additional facts of which the Department was not previously aware may come out and/or differing interpretations of relevant regulations may be brought to light. The Chamber believes that these Guidelines would benefit by using the terminology “apparent violation”, “alleged violation”, or something similar to clarify that some uncertainty remains in the Department’s finding. In our experience, we have found that recognition of this uncertainty can help lead to quicker resolution of disputed compliance findings, and conveys to the public a more accurate description of the facility’s precise compliance status.

Thank you once again for the opportunity to comment on these Guidelines, and to work with you on the follow-up actions we have identified in our comments.

Krishnan Ramamurthy, Chief
September 30, 2004
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Sincerely,

Gene Barr
Vice President, Political and Regulatory Affairs

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