

June 8, 2009

William C. Early  
Acting Regional Administrator  
U.S. Environmental Protection Agency  
Region 3  
1650 Arch Street  
Philadelphia, PA 19103-2029

**RE: Request for Investigation – Hazardous Waste Training and Medical Monitoring, Pennsylvania Department of Environmental Protection**

Dear Administrator Early:

On behalf of Public Employees for Environmental Responsibility (PEER), I am writing this letter to formally bring to your attention certain violations occurring in the Pennsylvania Department of Environmental Protection's (PADEP) Hazardous Waste Program.

Health and Safety Concerns

On November 14, 2008, PADEP issued a new "Medical Monitoring Policy Guidance and Field Operations Hazardous Material and Hazardous Atmosphere Safety Policy Guidance." The guidance applies to all PADEP Field Operations employees who work at sites outside the PADEP office. The new policy, as outlined in the guidance, does not afford many of the hazardous waste engineers and employees the required HAZWOPER physicals and training. See 29 CFR § 1910.120.

In making these changes, PADEP is authorizing exposure of its personnel to higher levels of harmful substances in the course of their work. The policy has eliminated the old standard based on Occupational Health and Safety Administration (OSHA) permissible limits for carcinogens and now relies on National Institute of Occupational Safety and Health (NIOSH) published exposure limits. This change is significant because NIOSH

published limits are often more stringent than the OSHA permissible limits, thus allowing PADEP employees to enter sites where the published exposure limits may not be exceeded but the OSHA permissible limits are exceeded.

Under the new policy, these employees would be exposed to high levels of carcinogens but would not receive medical monitoring or training. The new guidance affords only employees required to wear respirators at facilities with known contaminant levels above OSHA limits with annual physicals and 8 hour refresher training. As a result, the new guidance no longer gives all engineers and employees entering hazardous waste sites the required HAZWOPER physicals and training, even though they may be exposed to carcinogenic levels above OSHA permissible limits. *See* 29 CFR § 1910.120.

PEER believes that this new policy and guidance by PADEP is illegal under RCRA and the HAZWOPER regulations. The PADEP has taken inadequate actions in response to employee concerns about these violations. As a result, it is time for the EPA to step in and take appropriate action.

### Relevant Statutes

Under 40 CFR § 311, EPA has adopted the OSHA HAZWOPER regulations at 29 CFR § 1910.120 for state and local government employees in cases where the state has not adopted its own approved state OSHA plan. Because Pennsylvania has not adopted such a plan, state and local government employees in Pennsylvania are covered by the HAZWOPER standard as set forth in the EPA regulation. EPA is thus the responsible body for enforcing this standard to ensure that Pennsylvania's state government employees working in hazardous waste are given the correct monitoring and training.

The PADEP receives Performance Partnership Grants (PPGs) from the EPA, as well as additional funds under RCRA and other EPA statutes. Under the PPG regulations, states are obligated to direct the EPA grant funds properly to program needs and must show compliance with 40 CFR Part 31. Moreover, in exchange for receipt of these funds, states are required to use the money in ways that are consistent with the purpose and intent of EPA's statutes and regulations. Here, PADEP has refused to use the EPA granted funds in order to ensure the health and safety of its hazardous waste employees as required by 40 CFR § 311 and 29 CFR § 1910.120. Such behavior amounts to a misappropriation of federal funds in violation of the grant requirements, misuse of taxpayer dollars, and a serious hazard to the health of many of the state's employees.

### Industry Concerns

In addition to violating RCRA and HAZWOPER, the new policy guidance has caused a serious disruption of the hazardous waste treatment industry in Pennsylvania. Typically when regulations are relaxed, industry benefits from it. Here, however, the affected industry has been harmed by the new policy guidance. As a result, the guidance has proven to be not only unlawful, but counterproductive as well.

The PADEP rule changes are forcing many PADEP employees to refuse to go to the facilities because it is extremely dangerous to do so. As a result, some of PADEP's major permitted facilities are being forced to delay operation, which means months of lost income, local jobs, and taxpayer dollars, because the engineers at PADEP are unable to access the facilities to certify the operations.

The new policy, thus, has the paradoxical effect of relaxing safeguards while impeding efficiency at many major waste treatments around Pennsylvania, particularly in and around the Pittsburgh area.

### Remedies

The PADEP must be held accountable for spending of PPG and RCRA funds. PEER strongly urges you to ensure that the PADEP immediately begins affording all hazardous waste employees who enter sites outside the PADEP office yearly medical monitoring and training as required by their grant and by 40 CFR § 311. PEER also recommends that EPA withhold PADEP's PPG and RCRA grant funds under 40 CFR Part 31, until you are convinced that Pennsylvania is in compliance with the HAZWOPER standards.

Thank you in advance for your attention to this matter.

Sincerely,

Christine Erickson  
Staff Counsel  
Public Employees for Environmental Responsibility

Encl.