

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
November 19, 2013

VOTING MEMBERS OR ALTERNATES PRESENT

E. Christopher Abruzzo, Chairman, Acting Secretary, Department of Environmental Protection (DEP)
Eric Kratz, alternate for Julia Hearthway, Secretary, Department of Labor and Industry
Kathryn Tartaglia, alternate for Barry Schoch, Secretary, Department of Transportation
Pamela Witmer, alternate for Robert Powelson, Chairman, PA Utility Commission
Representative Greg Vitali, Pennsylvania House of Representatives
Jonathan Lutz, alternate for Representative Ron Miller
Bill Capouillez, alternate for Carl Roe, Executive Director, PA Game Commission
Burt Waite, Citizens Advisory Council
John Arway, Executive Director, PA Fish and Boat Commission
Doug McLearen, alternate for James Vaughan, Executive Director, Pennsylvania Historical and Museum Commission
Jeff Kazlauskas, alternate for Jennifer Branstetter, Director, Governor's Office of Policy and Planning
Cynthia Carrow, Citizens Advisory Council
William Fink, Citizens Advisory Council
Walter Heine, Citizens Advisory Council
John Walliser, Citizens Advisory Council
Paul Opiyo, alternate for C. Alan Walker, Secretary, Department of Community and Economic Development
James Howes, alternate for George Greig, Secretary, Department of Agriculture
Dr. James Logue, alternate for Michael Wolf, Secretary, Department of Health

DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT

Hayley Book, Director, Policy Office
Doug Brennan, Director, Bureau of Regulatory Counsel
Michele Tate, Regulatory Coordinator

CALL TO ORDER AND APPROVAL OF MINUTES

Chairman Abruzzo called the meeting to order at 9:02 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The Board considered its first item of business – the September 17, 2013, EQB meeting minutes.

Walter Heine moved to adopt the September 17, 2013, EQB meeting minutes.
Cynthia Carrow seconded the motion, which was unanimously approved by the Board.

**THREE-YEAR REGULATORY FEE AND PROGRAM COST ANALYSIS REPORT:
OPERATOR CERTIFICATION PROGRAM FEES (25 Pa Code Chapter 302)**

Kelly Heffner, Deputy Secretary for Water Management, provided an overview of the three-year report. Lisa Daniels, Bureau Director, Safe Drinking Water, and Bill Cummings, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

Following the presentation, Walter Heine asked for the appropriate contact for new operator technical assistance. Ms. Daniels responded that for technical assistance, Kevin Anderson is the contact person and can be reached at the general number for the Bureau of Safe Drinking Water; 717.772.4018. If a referral is made for an individual who needs training or assistance, that person will be offered the assistance that is available, without cost to the individual.

Secretary Abruzzo stated that there are people who have taken the test, unsuccessfully, several times and are included in the number of exams given. Some individuals are placed on a waiting list behind those who have taken and failed the test multiple times. Secretary Abruzzo asked the Board for input about limiting the number of time a person can take the test within a year. Ms. Daniels stated that there is no regulatory standard and such a standard has been suggested before. She continued that the department anticipates with the addition of online exams, which are being piloted, more opportunity will be provided for interested people to take the test. Deputy Secretary Heffner added that there are several well-informed stakeholder groups in the Commonwealth, so this is something that the department will bring to their attention and begin a discussion. Ms. Daniels followed up that the department tracks the reason for failure of the exams as a continuous process to evaluate the questions. In many cases, test failure is due to poor math skills, which is a large component of water treatment through the calculation of chemical dosages.

**CONSIDERATION OF FINAL RULEMAKING: MEASUREMENT AND REPORTING OF
CONDENSABLE PARTICULATE MATTER EMISSIONS (25 Pa Code Chapters 121 and 139)**

Vince Brisini, Deputy Secretary for Waste, Air, Radiation and Remediation, provided an overview of the final rulemaking. Joyce Epps, Director, Bureau of Air Quality, and Bo Reiley, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

Following the presentation, the Board did not pose any questions or comments about the final rulemaking or the Department's presentation.

Pam Witmer moved to adopt the final rulemaking. Bill Capouillez seconded the motion, which was unanimously approved by the Board.

**CONSIDERATION OF PROPOSED RULEMAKING: ADDITIONAL RACT REQUIREMENTS
FOR MAJOR SOURCES OF NOX AND VOCS (25 Pa Code Chapters 121 and 129)**

Vince Brisini, Deputy Secretary for Waste, Air, Radiation and Remediation, provided an overview of the proposed rulemaking. Joyce Epps, Director, Bureau of Air Quality, and Bo Reiley, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

Following the presentation, Secretary Abruzzo asked if there is a legal way to change a facility to being in an attainment zone from a nonattainment zone.

Deputy Secretary Brisini responded that the entire commonwealth treated as being nonattainment by virtue of being in the ozone transport region and, thus, the entire Commonwealth is subject to the RACT requirement. The proposed RACT standards are not just applicable to areas that are monitoring nonattainment of the standard, so the same standard will apply statewide.

Pam Witmer moved to adopt the proposed rulemaking with a 60-day public comment period and three public hearings to be scheduled in Norristown, Harrisburg, and Pittsburgh. Walter Heine seconded the motion, which was unanimously approved by the Board.

CONSIDERATION OF RULEMAKING PETITION: ASHLEY FUNK AND KIDS VS. GLOBAL WARMING

Vince Brisini, Deputy Secretary for Waste, Air, Radiation and Remediation, provided an overview of the rulemaking petition. Joyce Epps, Director, Bureau of Air Quality, and Bo Reiley, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

Following the presentation, the Board did not pose any questions or comments about the rulemaking petition or the Department's presentation.

Mr. Kenneth T. Kristl, Associate Professor of Law and Director of the Environmental and Natural Resources Law Clinic at Widener University School of Law, Wilmington, DE (representing Ashley Funk) followed by giving a brief presentation in support of the petition related to climate change. The petition proposes a regulation that would achieve the reductions of Carbon Dioxide (CO₂) through the regulation and monitoring the sources in the Commonwealth. The petition of the proposed regulation would require that DEP, in connection with the requirements the Pennsylvania Climate Change Act, establish a baseline based on 2012 emissions and determine an annual emission rate reduction of six percent annually.

Following Mr. Kristl's presentation on behalf of the petitioner, John Arway stated that it is great to see a member of the new generation stepping up and engaging on issues of local, regional and global importance. He offered thanks to the Widener Law Clinic for representing the issue and also to Ashley Funk. Mr. Arway also mentioned that the Pennsylvania Fish and Boat Commission had a similar young lady bring attention to issues of the Susquehanna River.

Burt Waite inquired about the process moving forward, if the petition was to be accepted.

Deputy Secretary Brisini responded that if the Board accepts the petition for further study, a notice concerning the Board's action will be published in the Pennsylvania Bulletin within 30-days. He also noted that the Department will have 60 days to prepare a report on the petition and that the report will be provided to the petitioner for comment. At the conclusion of the petitioner's review of the report, the report will be provided to the Board at the next scheduled EQB meeting, where the Department will make a recommendation to the Board on whether the development of a rulemaking is appropriate in order to satisfy the petitioner's request.

Burt Waite asked if 60 days would be enough time and Deputy Secretary Brisini responded that, while it is not a great deal of time, it would be adequate. Mr. Brennan added that if the Department feels more time is needed, it can ask for additional time to study the petition.

Representative Greg Vitali moved to accept the rulemaking petition for further study by the Department. John Arway seconded the motion, which was approved by a majority of the Board members. Jonathan Lutz voted in opposition to the rulemaking petition.

OTHER BUSINESS:

Chairman Abruzzo stated the December 17, 2013 meeting of the EQB would be cancelled. The next meeting of the Board is scheduled for Tuesday, January 21, 2014. The meeting will convene at 9:00 a.m. in Room 105 of the Rachel Carson State Office Building, Harrisburg.

Today is Michele Tate's last EQB meeting as Regulatory Coordinator of DEP.

ADJOURN:

With no further business before the Board, Burt Waite moved to adjourn the meeting. Representative Greg Vitali seconded the motion, which was unanimously approved by the Board. The November 19, 2013, meeting of the Board was adjourned at 9:55 a.m.