

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
November 17, 2015

VOTING MEMBERS OR ALTERNATES PRESENT

John Quigley, Chairman, Secretary, Department of Environmental Protection
Eileen Cipriani, alternate for Kathy Manderino, Secretary, Department of Labor and Industry
Roger Cohen, alternate for Leslie Richards, Secretary, Department of Transportation
Pam Witmer, alternate for Gladys Brown, Chairman, PA Utility Commission
Representative Greg Vitali, Pennsylvania House of Representatives
Representative John Maher, Pennsylvania House of Representatives
Richard Fox, alternate for Senator John Yudichak
Adam Pankake, alternate for Senator Gene Yaw
Michael DiMatteo, alternate for Matthew Hough, Executive Director, PA Game Commission
Burt Waite, Citizens Advisory Council
Mark Hartle, alternate for John Arway, Executive Director, PA Fish and Boat Commission
Doug McLearn, alternate for James Vaughan, Executive Director, Pennsylvania Historical and
Museum Commission
Sam Robinson, alternate for John Hanger, Secretary, Governor's Office of Policy and Planning
William Fink, Citizens Advisory Council
Don Welsh, Citizens Advisory Council
John Walliser, Citizens Advisory Council
Denise Brinley, alternate for Dennis Davin, Secretary, Department of Community and
Economic Development
Michael Smith, alternate for Russell Redding, Secretary, Department of Agriculture
Sharon Watkins, alternate for Karen Murphy, Secretary, Department of Health
Jim Sandoe, Citizens Advisory Council

DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT

Kim Childe, Director, Bureau of Regulatory Counsel
Laura Edinger, Regulatory Coordinator

CALL TO ORDER AND APPROVAL OF MINUTES

The meeting was called to order at 9:01 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The Board considered its first item of business – the approval of the September 15, 2015, EQB meeting minutes.

**Adam Pankake made a motion to adopt the September 15, 2015, EQB meeting minutes.
Michael Smith seconded the motion, which was unanimously approved by the Board.**

CONSIDERATION OF FINAL RULEMAKING: ADDITIONAL RACT REQUIREMENTS FOR MAJOR SOURCES OF NO_x AND VOCs (25 Pa. Code Chapters 121 and 129)

Ken Reisinger, Deputy Secretary for Waste, Air, Radiation and Remediation provided an overview of the final rulemaking. Joyce Epps, Director, Bureau of Air Quality, and Robert “Bo” Reiley, Bureau of Regulatory Counsel, assisted with the presentation.

Following the presentation, Representative Vitali noted that he toured the Brunner Island power plant and was concerned that the plant was exempted from the lower NO_x requirements. He additionally noted that the plant will eventually be able to easily switch from coal to gas. If the plant burned gas, it would automatically comply with the lower NO_x requirements. Representative Vitali inquired if it would be possible to require the Brunner Island plant to run only as a gas-fired power plant and eliminate coal-burning at the plant.

Bo Reiley answered that DEP does not have the legal authority to impose such a requirement on the plant. Under its current permit, the plant may only burn coal. The company has voluntarily agreed to submit a plan approval to provide it the option to burn either coal or gas. There exists no legal mechanism for DEP to impose a requirement to burn only gas. Mr. Reiley continued that there are a number of facilities in Pennsylvania that are retaining the option to burn coal along with gas.

Representative Vitali followed up inquiring if the emissions limits were set low enough, if that would force the burning of only gas. Mr. Reiley explained that when the permit modification is approved it is structured in such a way that the facility will be able to burn coal – or burn gas – when it is economically feasible to do so. However, when coal is burned, the facility must comply with RACT limits. Mr. Reiley further explained that the facility will be submitting a plan approval application to DEP to reduce emissions as it begins to also burn gas. DEP received confirmation from the facility a couple of weeks previous to this meeting that the facility will be voluntarily imposing additional restrictions given that it will be burning gas.

Burt Waite inquired as to whether the concerns raised by the Citizens Advisory Council resulted in any changes to the final rulemaking. Joyce Epps responded that the final rulemaking was not changed in response to CAC recommendations. She explained that one of the recommendations would require units with existing controls to meet a certain emissions limit. DEP had discussions with the EPA concerning this issue. The EPA had determined that there was a need for reevaluation and, upon finalizing the rule, the emissions limit was lowered from 0.15 lb. NO_x/million Btu to 0.12 lb./million Btu to address the EPA’s concerns. Ms. Epps continued that technological and economic feasibility of meeting the RACT limit must be taken into consideration. Ms. Epps explained further that clarifications were made in the Order of the rulemaking regarding a second recommendation made by the CAC concerning a provision in the regulation that would require the most stringent applicable emission rate for emission averaging. Specifically, clarification is provided as to which types of limits would be considered most stringent. Ms. Epps further stated that a third recommendation made by the CAC was also addressed through conversation with the EPA – concerning emissions averaging in the same nonattainment area. EPA stated that the language included in the final rulemaking such that emissions averaging would occur in the same ozone nonattainment area is consistent with the NRDC court decision concerning this matter and so changes were not made to the final rule. That being said, Ms. Epps noted that, given the way the regulation is drafted, DEP will have the ability to evaluate averaging on a case by case basis as each case must be submitted to DEP for approval. Given the explanation provided, Ms. Epps affirmed that no regulatory changes were made as a result of the three CAC recommendations.

Richard Fox noted that in the presentations, it was stated that units that have selective catalytic reduction systems (SCR) should operate them. He sought clarification as to when these controls, if installed, need to be operated. Ms. Epps explained that there were a number of units in Pennsylvania and other states that installed selective catalytic reduction systems or selective non-catalytic reduction systems to comply with market-based programs. As a result, the owner/operator of the unit has the flexibility to meet the federal market-based programs by operating those controls or purchasing allowances to meet the requirements. There was an abundance of NOx allowances available so a number of owners of these facilities made a business decision not to operate those controls. Ms. Epps further explained that a plant can purchase allowances in order to meet the emissions cap and can continue to run. With this regulatory amendment, a plan will be required to operate controls once the temperature reaches 600 degrees, regardless if they purchase allowances. A plant would be required to meet those limits.

Roger Cohen made a motion to adopt the final rulemaking.

Richard Fox seconded the motion, which was approved by a majority of Board members by a vote of 17-2. John Walliser and Representative Vitali voted in opposition to the motion.

CONSIDERATION OF PROPOSED RULEMAKING: DISINFECTION REQUIREMENTS **RULE (25 Pa. Code Chapter 109)**

Kelly Heffner, Deputy Secretary for Water Management provided an overview of the proposed rulemaking. Lisa Daniels, Director, Bureau of Safe Drinking Water, and Bill Cumings, Bureau of Regulatory Counsel, assisted with the presentation.

Following the presentation, Representative Maher commented that, given a lack of waterborne disease outbreaks in Pennsylvania's water systems over the last five years, that disease outbreaks should not be a driving force for this rulemaking. He referred to a chart in the Preamble that shows legionella outbreaks that are attributed to premise plumbing issues that he does not believe would have been impacted by something in the distribution system. He further stated that the CDC data regarding waterborne disease outbreaks, as viewed by DEP, is inadequate. He inquired if DEP has additional Pennsylvania data regarding outbreaks.

Lisa Daniels responded that the CDC estimates there are several hundred thousand potential illnesses nationwide attributed to drinking water. DEP noted that these statistics may be inadequate as most cases of illness go unreported. In order for an illness to be included in the CDC statistics, an individual would need to report the illness to her doctor. As most individuals will not go to their doctors to report to link the illness to an event, these unreported illnesses cannot be included in the CDC statistics. Ms. Daniels additionally stated that it is important to understand that there is not much distinction between premise plumbing and distribution systems for the majority of public water systems. The majority of public water systems are buildings – including nursing homes, daycare centers, and hospitals that are themselves public water systems. This proposed rulemaking would protect consumers of all distribution systems - including premise plumbing.

Representative Maher inquired if DEP has other data pertaining to waterborne diseases other than what is included from the CDC in terms of outbreaks in Pennsylvania. He noted that he is inquiring specifically about the frequency of outbreaks that this rule is proposing to prevent. Ms. Daniels explained that only the CDC and health departments have access to that type of data due to HIPAA and other privacy policies. All of DEP's data comes from these two sources – the Department of Health and the CDC.

Representative Maher stated that there is no conclusive data to support the claim that there have been any incidents in the last eight years of waterborne disease outbreaks in Pennsylvania other than those associated with the well-publicized legionella cases which are specific to plumbing on premises. He continued that, while there are no outbreaks, the proposed rulemaking will increase the amount of chlorine in the water system. He further stated his concern that chlorine is unstable and can combine with carcinogenic volatile organic compounds. He is therefore concerned with increasing the amount of chlorine in Pennsylvania's public water systems to significantly more than the federal requirement for residual levels. While he wants to ensure Pennsylvanians have clean drinking water, he is apprehensive about the increase in the chlorine residual levels and the effects that may have. Representative Maher stated that he is amenable to the rulemaking moving forward as long as DEP continues to evaluate all of the science and data to determine what level of chlorine residual is necessary.

Don Welsh commented that about ten years ago, the system which provides clean water for Washington D.C. changed its treatment regimen to comply with the disinfection by-products rule and switched to chloramination. There was a lot of sediment in the water and so they had to use a significant amount of chloramine. In D.C. there are several old lead service lines connecting residences to the mains. The chloramine and the increase in the chloramination resulted in stripping the biofilm off the lead service lines and so the lead concentration that was being monitored for the lead and copper rule suddenly significantly increased. Mr. Welsh inquired if DEP has had the opportunity to look at how many lead service lines there might still be in older systems in Pennsylvania and if the public water suppliers are properly chloraminating, and if DEP has had an opportunity to look at whether an increase in the chloramination in the presence of lead service lines might increase the lead that is coming out of the tap.

Ms. Daniels stated that Mr. Welsh provided an excellent summary of the situation in Washington D.C. and correctly stated that the issues occurred because the system was changing disinfectants. She responded that Pennsylvania has a great deal of information about lead – DEP knows which systems have lead service lines. In addition, Pennsylvania has a lead and copper rule that requires tracking and routine monitoring. She further explained that Pennsylvania's large water systems must operate within water quality parameter ranges. Also, the federal rule and our state rule provide that any time there are changes made to treatment, an assessment has to be done for simultaneous compliance. When a system is anticipating switching disinfectants, an assessment is required and the system must provide DEP with information up front including what changes are expected in terms of lead release levels. This is part of the permitting process – that systems making changes must look at simultaneous compliance.

Mr. Welsh thanked Ms. Daniels and commented that he recommends that the oversight of the lead and copper sampling be vigilant in order to avoid another situation like the one that occurred in Washington D.C. Ms. Daniels concurred.

Mr. Fox inquired as to notification requirements, asking when a system, under this proposed rulemaking, would be required to issue a Tier 2 public notice. He additionally asked for explanation as to the nature of a Tier 2 notice. Ms. Daniels explained that a Tier 2 public notice is a notice for MCL violations that are not acute in nature. Tier 2 notices are disseminated in multiple ways – including direct mail. The goal is to get the notifications to consumers as soon as practical but within 30 days.

Mr. Fox asked what would trigger the notification in the proposed rulemaking. He inquired if a notification would go out if a system fell below the chlorine residual in the system. Ms. Daniels responded that one of the changes made to the proposal in the drafting process was to be more consistent with the federal rule. As such, the way compliance is determined is that small systems would have to be below that minimum residual in more than one sample in two or more months before a violation would be

triggered. Large systems would have to be below that minimum residual for more than five percent of their samples, also over a two-month period before a violation would be generated.

Sharon Watkins stated that the Department of Health would gladly provide more detailed numbers pertaining to waterborne illnesses in Pennsylvania. She commended DEP on the chart included in the Preamble that emphasizes outbreaks, but the absence of outbreaks does not mean the absence of cases. Ms. Daniels concurred and affirmed that the outbreak data is only one piece of the overall picture. There also exists, on an annual basis, CDC reports of the total summaries of illness by any waterborne agent and it would be helpful to provide all available data.

Representative Maher made a motion to adopt the proposed rulemaking to include a 60-day public comment period, two public hearings, and meeting with stakeholders. Sharon Watkins seconded the motion, which was unanimously approved by the Board.

Commissioner Witmer commended Representative Maher for making the motion to adopt the proposed rule. She stated that while we all want to ensure the safety for all consumers of a commodity that is ingested, she is concerned, as a Commissioner representing the Public Utility Commission's perspective, that rate-payers are going to have to bear the cost of implementation of this rule and that more scientific evidence is needed.

CONSIDERATION OF PROPOSED RULEMAKING: WATER QUALITY STANDARDS – CLASS A STREAM REDESIGNATIONS (25 Pa. Code Chapter 93)

Kelly Heffner, Deputy Secretary for Water Management provided an overview of the proposed rulemaking. Josh Lookenbill, Bureau of Point and Non-Point Source Management, and Michelle Moses, Bureau of Regulatory Counsel, assisted with the presentation.

Following the presentation, Bill Fink inquired as to whether DEP notifies stakeholders/permit holders in the watersheds of the impending redesignation. Deputy Secretary Heffner noted that, while DEP does not reach out to permit holders, such actors in the regulated community are likely already in compliance with the higher water quality standard as the higher water quality would be included on an existing use list.

Roger Cohen inquired if DEP has any information regarding what the effects might be on the repair, maintenance, and treatments of state and local bridges that overpass these streams that are proposed for redesignation. He further asked if there are any impacts on permitting or procedures. Deputy Secretary Heffner responded that Chapter 105 requires the maintenance of existing structures and DEP can enforce that requirement through a letter authorization - DEP can do that through a GP-11. As with PennDOT, DEP wants to ensure the traveling public is protected and that structures are operated and maintained. She continued as new structures are proposed, DEP would evaluate whether or not those proposed structures are in HQ and EV.

Mark Hartle made a motion to adopt the proposed rulemaking. Representative Vitali seconded the motion, which was unanimously approved by the Board.

OTHER BUSINESS:

Secretary Quigley provided an update on the Clean Power Plan noting that DEP held a total of 14 listening sessions on the Clean Power Plan allowing Pennsylvanians and all stakeholders to be heard as

we work to prepare a Pennsylvania-centric plan that complies with the federal rule. A total of 273 individuals provided verbal comments at the listening sessions and approximately 2,500 written comments were received – about 1,700 of which were form letters. He noted that DEP is still tallying the final count of comments so these numbers are just estimates. He continued that DEP has found that the majority of comments are supportive of the goals of the Clean Power Plan. All comments will be posted on DEP's eComment web page.

Secretary Quigley also provided an update on the Chapter 78 Oil and Gas Surface Regulations noting that draft final regulatory language was presented to the Oil and Gas Technical Advisory Board (TAB) on October 27 and to the Conventional Oil and Gas Advisory Committee (COGAC) on October 29. He continued that the rulemaking and all documents included therein are undergoing internal review at this time. DEP is planning to provide all rulemaking documents to EQB members in early January. Given the length and complexity of the documents included in this final rule, in order to maximize the review time for EQB members, DEP thought it best to move the January EQB meeting back two weeks from January 19 to February 2. That will give EQB members approximately four weeks of review time rather than the traditional two weeks. This will be the only rulemaking that will be on the agenda for this meeting. Regularly scheduled EQB meetings will then begin March 15 and be held every third Tuesday as is the traditional EQB schedule.

Secretary Quigley continued, explaining that a request was received from COGAC to communicate with the EQB – EQB members received a letter from COGAC requesting the opportunity to provide detailed comments to the EQB in advance of the consideration of the final Chapter 78 rulemaking. He explained that advisory committees may provide written letters (signed by the committee chairs and dated) that include any comments or recommendations concerning rulemakings, that committees have reviewed. Like other advisory committees, COGAC may provide a letter to be included with the rulemaking package that is distributed to the EQB.

Representative Maher called for additional discussion regarding COGAC and TAB, stating that TAB was created by Act 13 of 2012 and, as such, has a statutory provision to address the EQB. COGAC was created by DEP early in 2015, and while the committee may not have a statutory provision to address the EQB, EQB members all received the letter requesting a presentation. He inquired if DEP is not inclined to allow such a presentation but to only have written remarks.

Secretary Quigley responded that the request received by COGAC was to provide detailed information to the EQB. The request was not to provide a presentation. Given the length of the resolution included with the request, it would likely be best for the committee to provide that detailed information to the Board in writing. Representative Maher noted that, while he welcomes the comments in writing, it seems appropriate to also extend an invitation for them to present, perhaps with a time limit.

Kim Childe offered additional clarification, regarding Board practices and procedures noting that the Board does not take public comment at these particular meetings. She further explained that the rulemaking process provides many opportunities for public input. Ms. Childe additionally noted that the practices and procedures of the EQB do not typically include presentations from the public including stakeholder groups such as COGAC. The exception to this is when a petition for rulemaking has been submitted to the Board for consideration – petitioners are invited to present their petitions at the Board meeting at which the petition is being considered for further study. Petitioners are provided five minutes to address the Board, per the Board's Petition Policy. She further commented that Representative Maher is correct in the case of the Oil and Gas Technical Advisory Board – the provision in the statute itself says the chairman of the TAB, representing TAB, shall be invited to participate in the presentation of all

regulations of a technical nature before the Environmental Quality Board to the extent allowed by procedures of the Environmental Quality Board.

Commissioner Witmer commented that, while it may not be routine, during her service on the Board, she believes that those in attendance of an EQB meeting, other than petitioners, have been permitted to offer comment to the Board. Ms. Childe stated that she was providing an overview of typical Board procedures and that the Board does not typically take public comment at these meetings. However, the EQB could certainly vote to permit a presentation of this nature.

Representative Maher noted that the COGAC is an advisory committee and, as such, is different than the general public. He continued that he would make a motion to allow for a presentation by the committee, with a time limit. However, he stated that he believed this decision to be the prerogative of the chairman of the EQB. Secretary Quigley stated that this is a decision to be made by the Board and not by the chairman alone. Representative Maher made an initial motion to allow COGAC to make a ten-minute presentation to the Board. Adam Pankake seconded the motion. Additional discussion ensued.

Burt Waite commented that he sits on COGAC and stated that the intent of the letter, while perhaps not articulated exactly, was to present to the EQB in person – not only in writing.

John Walliser requested that the advisory members to TAB also be provided an opportunity to speak to the EQB. Representative Maher responded that he is not inclined to amend his initial motion as the underlying question is who constitutes TAB. The advisory members to TAB are not by statute part of TAB. Mr. Walliser withdrew his request noting that the advisory members to TAB were added to TAB in the same manner as the creation of COGAC.

Representative Maher made a motion to invite COGAC to make a presentation for up to ten minutes at the next EQB meeting. Adam Pankake seconded the motion, which was unanimously approved by the Board.

Adam Pankake briefly noted, with regard to the changed date of the EQB meeting, that it is possible that the Governor's Budget Address (for the 2016-17 budget) may take place on February 2, 2016. He suggested moving the next EQB meeting to February 3, 2016 in order for all EQB members to be able to fully focus on the regulation and not have to possibly leave to attend the budget address.

Secretary Quigley stated that DEP would look into the date of the budget address to assure no conflict.

NEXT MEETING:

The next meeting of the Environmental Quality Board meeting is tentatively planned for Tuesday, December 15, 2015.

ADJOURN:

With no further business before the Board, the November 17, 2015, meeting of the Board was adjourned at 10:17 a.m.