

**MINUTES**  
**ENVIRONMENTAL QUALITY BOARD MEETING**  
**April 19, 2016**

**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  
Emma Lowe, 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 Sarah Galbally, Secretary, Governor's Office of Policy and Planning  
Cynthia Carrow, Citizens Advisory Council  
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  
Farhad Ahmed, alternate for Karen Murphy, Secretary, Department of Health  
*\*arrived late – Jonathan Lutz, alternate for Representative John Maher, was present for roll-call.*

**DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT**

Laura Edinger, Regulatory Coordinator  
Patrick McDonnell, Policy Director  
Kim Childe, Director, Bureau of Regulatory Counsel

**CALL TO ORDER**

The meeting was called to order at 9:01 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

Chairman Quigley announced the approval of minutes from February's meeting would be considered later, as a courtesy to Representative Maher, so that he could be present to offer amendments.

Before beginning with the first rulemaking, Chairman Quigley recognized Commissioner Witmer, noting that this would be her last meeting. He thanked her for her service.

**CONSIDERATION OF PROPOSED RULEMAKING: WATER QUALITY STANDARDS – SOBERS RUN ET AL. STREAM REDESIGNATIONS (25 Pa. Code Chapter 93)**

Lee McDonnell, Director for Bureau of Clean Water provided an overview of the proposed rulemaking. Josh Lookenbill, Monitoring Section Chief, Water Quality Standards, and Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

After the presentation Mr. Fox noted that he supports the proposed rulemaking but inquired as to the number of outstanding petitions. Mr. McDonnell stated there are currently nineteen active petitions. Mr. Fox asked if the petitions are prioritized in a specific way. Mr. Lookenbill responded that the petitions are acted on in the order they are received. He noted that petitions vary in their level of difficulty and can take more or less time and resources to work on depending on the complexity.

Mr. Fox commented that it would appear that several petitions have been active for quite some time and perhaps the Board needs to take responsibility in some manner to ensure that the petition process is efficient. He noted that the Board may want to more carefully consider which petitions to accept for further study. He remarked that he is not speaking to work habits or amount of effort applied by DEP staff to petitions, but he commented that it may be helpful for the Board, going forward, to also consider the current backlog of petitions as well as DEP staffing resources when considering what stream redesignation petitions should be accepted for further study.

Secretary Quigley responded that Mr. Fox raised an excellent point. He noted that management decisions were made during the previous administration to place some of the stream redesignation petitions on hold. He continued that DEP would like to, and is working to, eliminate the backlog but staffing resources are constrained. The same program staff are working on multiple important simultaneous projects. As an example, he noted that the same DEP staff work on projects such as studying the Susquehanna River and the small mouth bass population in addition to studying streams for redesignation. Secretary Quigley stated that in order to eliminate the petition backlog, DEP will need more staff. He remarked that DEP continues to work on streamlining processes and employing efficient means of accomplishing agency objectives. However, the need for additional staffing must be elevated. The staff lost over the course of the last decade has had consequences. The fundamental work of stream protection and redesignation is a facet that has been impacted. Without the proper staffing resources, everything suffers.

Mr. Hartle stated that the Fish and Boat Commission evaluated DEP's reports and were in concurrence with what is being proposed.

**Representative Vitali made a motion to adopt the proposed rulemaking.  
Richard Fox seconded the motion, which was unanimously approved by the Board.**

**APPROVAL OF MINUTES**

The Board considered the approval of the February 3, 2016, EQB meeting minutes.

Representative Maher commented that he has identified, perhaps, an inconsistency in the February 3, 2016, minutes as compared to what was actually stated at the meeting. He stated that he had briefly discussed this potential inconsistency at an information briefing the day before this (April 19) EQB meeting which did not allow enough time to prepare amendments to the minutes to provide to the Board. For this reason, he requested that the consideration of the February 3<sup>rd</sup> minutes be deferred until the next EQB meeting.

**Representative Maher made a motion to defer consideration of the February 3, 2016, EQB meeting minutes to the next EQB meeting. Pam Witmer seconded the motion, which was unanimously approved by the Board.**

**CONSIDERATION OF PROPOSED RULEMAKING: RADIOLOGICAL HEALTH AND RADON CERTIFICATION FEES; AND PENNSYLVANIA RADON MITIGATION SYSTEM TAG (25 Pa. Code Chapters 218 and 240)**

Ken Reisinger, Deputy Secretary for Waste, Air, Radiation and Remediation provided an overview of the proposed rulemaking. Dave Allard, Director of the Bureau of Radiation Protection, and Keith Salador, Bureau of Regulatory Counsel, assisted with the presentation.

After the presentation, Mr. Fox requested clarification as to the one fee that would be decreasing. Deputy Secretary Reisinger confirmed that the fee for Source Material – Metal Extraction is decreasing. Mr. Allard noted that DEP evaluated its fees against the Nuclear Regulatory Commission’s (NRC) fees. DEP set its fees in 2008 for Source Material – Metal Extraction. Currently, there are no licensees in this fee category and DEP believes that the NRC overestimated the cost associated with that and so this rulemaking proposes a fee reduction for this fee category.

Mr. Fox noted that DEP has demonstrated why the tag fee is needed but questioned the deployment of the tags. Deputy Secretary Reisinger explained that the tag will be affixed to the mitigation system. Essentially, it is a piece of paper that provides the mitigation system installer’s name, the date of installation and other pertinent information. DEP recommends that these systems be retested every four years. The tag provides relevant contact information for the current owner of the home in which the mitigation system is installed so that appropriate contacts can be made for needed testing and/or repairs.

Commissioner Witmer inquired as to the program cost drivers for this proposed regulation. Deputy Secretary Reisinger responded that the primary cost driver is staffing support.

Representative Maher noted that the Radiation Protection Advisory Committee (RPAC) recommendation letter pertaining to this proposal was signed in 2014. He asked if RPAC had met since the time of the issuance of that letter. Mr. Allard responded that RPAC met in April of this year. Representative Maher asked if RPAC expressed an opinion on this proposal. Mr. Allard responded that RPAC previously reviewed the proposal in 2014 and supported the regulation moving forward in the rulemaking process and so did not review it at the last meeting, but RPAC was provided with a status update on the rulemaking.

Representative Maher inquired if the composition of RPAC is different now than in 2014. Mr. Allard responded that the Committee is essentially the same now as it was at the time it approved the proposal moving forward.

Representative Maher inquired as to why it has taken a couple of years for the proposed rulemaking to be presented to the EQB. He noted that two years had passed since RPAC approved it moving forward and since the EQB had been presented with the fee report. Deputy Secretary Reisinger responded that, with the change of administration, there was a lull in the process for this proposed rule. He remarked that he took on the role of Deputy in January of 2015 and worked hard to learn and understand the program and what and why changes were being proposed to the fees. He stated that he wanted to be comfortable with the proposal before it moved forward and that took some time.

**Representative Vitali made a motion to adopt the proposed rulemaking.  
Doug McLearn seconded the motion, which was unanimously approved by the Board.**

**CONSIDERATION OF FINAL RULEMAKING: ADMINISTRATION OF THE LAND  
RECYCLING PROGRAM (25 Pa. Code Chapter 250)**

Ken Reisinger, Deputy Secretary for Waste, Air, Radiation and Remediation provided an overview of the final rulemaking. George Hartenstein, Director of the Bureau of Environmental Cleanup and Brownfields, and Keith Salador, Bureau of Regulatory Counsel, assisted with the presentation.

After the presentation, Ms. Brinley inquired as to how DEP will deal with cases that have been closed under Act 2 on the previous Methyl Tertiary Butyl Ether (MTBE) standard. She asked if there will be reopeners to address those particular cases. Deputy Secretary Reisinger responded that would not happen. Mr. Hartenstein added that the MTBE groundwater medium-specific concentration (MSC) will not be changing. He further indicated that for any MSCs that will change DEP will implement the new MSCs the same way changes have been implemented in the past. Mr. Hartenstein continued that every three years DEP evaluates the toxicity values of these standards to ensure that they are current with the latest scientific information. If a remediator submits a final report that demonstrates compliance before the final rule is published, they will not have to redo a cleanup. Those reports would be approved based on the previous standards. Should DEP receive a report after the final rule is published, the remediator would be expected to meet the new standard.

Representative Maher commented that what stood out to him was that the focus of the comments on this rule was something that was not proposed to change. He requested clarification noting that it appears that there is no EPA maximum contaminant level (MCL) for MTBE. Mr. Hartenstein stated that to be correct – there is no EPA MCL for MTBE.

Representative Maher further inquired as to the statutory authority. He contended that the statutory authority does not provide for regulations based upon study considerations. Mr. Hartenstein responded that that statute allows for the health advisory level (HAL) to be the MSC. HAL is a non-regulatory EPA designation set by EPA guidance.

Representative Maher commented that this is DEP's recognition of an advisory by EPA. Mr. Hartenstein affirmed his comment. Representative Maher inquired if it is true that there is no advisory from the EPA regarding MTBE. Mr. Hartenstein responded that the EPA originally issued a draft health advisory in 1997 indicating that it is going to continue to study MTBE in order to eventually promulgate a federal rule. This has not yet transpired.

Representative Maher inquired that if this is a health advisory from 1997, why both advisory boards would comment that the 20-year-old standard needs to be changed. Mr. Hartenstein responded that the EPA changed the name in its drinking water advisory publication from a draft health advisory level to what it refers to as a drinking water advisory. This could lead one to believe that the actual drinking water advisory now is not a health advisory level. Because EPA did not provide any new data with this change of the name and it provided no change to data on MTBE, EPA does not believe that there is toxicology available to actually issue a drinking water enforceable contaminant level MCL. For those reasons, it was the decision of the former administration and now this one, to maintain the MTBE drinking water advisory as the MSC.

**Representative Maher made a motion to adopt the final rulemaking.  
Richard Fox seconded the motion, which was unanimously approved by the Board.**

**PRESENTATION OF THREE-YEAR REPORT: REGULATORY FEE AND PROGRAM COST ANALYSIS REPORT – LABORATORY ACCREDITATION PROGRAM FEES**

Aaren Alger, Chief of the Laboratory Accreditation Program provided a summary of the three-year report. There were no questions or discussion after the presentation.

**No action needed on this item.**

**OTHER BUSINESS:**

Each Board member and alternate is required to complete and submit the OSM Form 23 – Statement of Employment and Financial Interest – to Laura Edinger by the end of May.

The next meeting of the EQB is tentatively planned for Tuesday, May 17, 2016.

**EXECUTIVE SESSION:**

Secretary Quigley announced it was time to enter the executive session. He stated as members of the Board know, the Pennsylvania Independent Petroleum Producers Association (PIPP) filed a lawsuit in Commonwealth Court on March 24, 2016, against the EQB, along with DEP and the Independent Regulatory Review Commission seeking to stop the rulemaking process for the Chapter 78 and 78a final form regulations approved by the EQB at our last meeting. Secretary Quigley asked the Board for a motion to close the public session of the meeting to allow board members to proceed into executive session to discuss the pending litigation with counsel.

**Mark Hartle made a motion to close the public session of the Environmental Quality Board.  
Michael DiMatteo seconded the motion.**

Representative Maher inquired if questions regarding procurement and other matters could be discussed in executive session or if that would best be discussed in open session. Ms. Childe responded that those questions could be discussed in executive session.

**The motion was unanimously approved by the Board.**

The public session of the April 19, 2016, EQB meeting was adjourned at 9:55 a.m. Chairman Quigley asked that EQB members and alternates in attendance proceed to the 16<sup>th</sup> floor Delaware Room in order to hold executive session.

**ADJOURN:**

At the close of Executive Session, with no further business before the Board, Doug McLearn moved to adjourn the meeting. Representative Greg Vitali seconded the motion, which was unanimously approved by the Board. The April 19, 2016, meeting of the Board was adjourned at 10:18 a.m.