

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
March 21, 2017

VOTING MEMBERS OR ALTERNATES PRESENT

Patrick McDonnell, Chairman, Acting Secretary, Department of Environmental Protection (DEP)
Nsungwe Shamatutu, alternate for Kathy Manderino, Secretary, Department of Labor and Industry
Emma Lowe, alternate for Leslie Richards, Secretary, Department of Transportation
Andrew Place, alternate for Gladys Brown, Chairman, Public Utility Commission
Richard Fox, alternate for Representative Mike Carroll
Jonathan Lutz, alternate for Representative John Maher
Joanne Manganello, alternate for Senator John Yudichak
Adam Pankake, alternate for Senator Gene Yaw
Michael DiMatteo, alternate for Matthew Hough, Executive Director, Pennsylvania Game Commission
Jim Sandoe, Citizens Advisory Council
Mark Hartle, alternate for John Arway, Executive Director, Pennsylvania 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
Paul Opiyo, 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

OTHER STAFF PRESENT

Laura Edinger, DEP Regulatory Coordinator
Jessica Shirley, DEP Policy Director
Kim Childe, Director, DEP Bureau of Regulatory Counsel

CALL TO ORDER AND APPROVAL OF MINUTES

The meeting of the Environmental Quality Board (Board or EQB) was called to order at 9:04 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 October 18, 2016, EQB meeting minutes.

**William Fink made a motion to adopt the October 18, 2016, EQB meeting minutes.
Jim Sandoe seconded the motion, which was unanimously approved by the Board.**

CONSIDERATION OF PROPOSED RULEMAKING: CONTROL OF VOC EMISSIONS FROM INDUSTRIAL CLEANING SOLVENTS; GENERAL PROVISIONS; AEROSPACE MANUFACTURING AND REWORK; AND ADDITIONAL RACT REQUIREMENTS FOR MAJOR SOURCES OF NOX AND VOCS (25 Pa. Code Chapters 121 and 129)

George Hartenstein, Acting DEP Deputy Secretary for Waste, Air, Radiation and Remediation, provided an overview of the proposed rulemaking. Krishnan Ramamurthy, Acting Director of the DEP Bureau of Air Quality, and Jesse Walker, Assistant Counsel, assisted with the presentation.

The proposed amendments to Chapters 121 and 129 (relating to general provisions; and standards for sources) recommended by DEP would add § 129.63a (relating to control of VOC emissions from industrial cleaning solvents) to adopt reasonably available control technology (RACT) requirements and RACT emission limitations for stationary sources of volatile organic compound (VOC) emissions from industrial cleaning solvents not regulated elsewhere in Chapters 129 or 130 (relating to standards for products). These amendments are consistent with recommendations in the U.S. Environmental Protection Agency (EPA) *Control Techniques Guidelines: Industrial Cleaning Solvents*, EPA 453/R-06-001, September 2006. This proposed rulemaking would also amend §§ 121.1 and 129.51 (relating to definitions; and general) to support the addition of § 129.63a; § 129.73 (relating to aerospace manufacturing and rework) to correct a numbering error in the table of VOC content limits; and §§ 129.96, 129.97, 129.99 and 129.100 under the recently promulgated regulations for additional RACT requirements for major sources of nitrogen oxides (NO_x) and VOCs (RACT 2) to update the list of presumptive VOC RACT regulations for which RACT 2 does not apply and to clarify certain requirements.

After the presentation, Mr. Fox noted that companies that use solvents with a higher VOC content would likely opt to switch to a compliant solvent with lower VOC content, if the businesses have not already taken such action. Since the Federal guidelines that are the basis for the proposed regulation have been in place since 2006, he inquired, if non-compliant solvents with higher VOC content are still on the market and could even be purchased. Mr. Hartenstein advised that DEP does not have information on the type of solvents currently being used by businesses that will be subject to the proposed rulemaking. Mr. Ramamurthy added that a market for higher VOC solvents still exists because the requirement to use solvents with a lower VOC content is only applicable in non-attainment areas.

Mr. Place noted that this proposal is applicable to those facilities that emit 2.7 tons of VOC emissions annually, so a market for solvents with higher VOC content may also exist among smaller businesses that are not subject to this proposed rulemaking.

Andrew Place made a motion to adopt the proposed rulemaking.

Mark Hartle seconded the motion, which was unanimously approved by the Board.

CONSIDERATION OF RULEMAKING PETITION: MARSH CREEK; CHESTER COUNTY (25 Pa. Code § 93.9g)

Dana Aunkst, Deputy Secretary for Water Programs, provided an overview of the rulemaking petition. Josh Lookenbill, Section Chief for Division of Water Quality Standards, assisted with the presentation.

The French and Pickering Creeks Conservation Trust submitted a petition for rulemaking to the Board requesting that Marsh Creek in Chester County be given the special protection use designation of

Exceptional Value Waters in Chapter 93 (relating to water quality standards). Marsh Creek currently has the special protection designated use of High Quality Waters in § 93.9g. DEP advised the Board that the petition was complete and recommended that it be accepted for further evaluation.

After DEP's presentation, Mr. Lutz noted that this review and recommendation, at this stage, is based primarily on the completeness of the petition. However, he inquired if DEP has conducted any outreach to landowners, permittees, or municipal officials to let them know the petition was submitted. He noted that the Board is being asked to take an action on a petition that could potentially impact several thousand people, and he wishes to ensure proper notification is provided. Mr. Aunkst explained that, at this preliminary stage in the process, that type of notification is not a requirement. He noted that DEP will publish notice in the *Pennsylvania Bulletin* of its intent to assess Marsh Creek if the Board accepts the petition. Mr. Lutz stated that he understands that it is not a requirement but informal outreach to the municipalities involved in the petitioned area could be a helpful action to take to strengthen a petition.

Mr. Pankake inquired as to the current list of pending stream redesignations. Given the number of petitions submitted over the last few years, including one that covered nearly the entire Delaware River Basin, he requested a status update. Mr. Lookenbill responded that DEP is currently evaluating approximately 15 and 20 stream petitions and working diligently to clear the backlog. DEP is currently finalizing a Class A Stream Redesignation rulemaking, which it expects to present to the EQB for consideration this summer. In addition, four additional stream redesignations proposed as part of the Sobers Run rulemaking package will also likely be presented to the EQB in a final-form rulemaking this summer. Further, 11 draft reports are currently going through the public comment process.

Mr. Lutz inquired if DEP has the resources to manage both the pending petitions in addition to the petition before the Board for consideration today. Mr. Aunkst responded that the stream assessment staff within the Bureau of Clean Water has not been impacted as much as other areas by the funding cuts and assured Mr. Lutz that DEP has the resources available to manage the stream redesignation petitions process.

Mr. Hartle asked if DEP could comment on the amount of information submitted for this petition, particularly the ten years of invertebrate data, as compared to other petitions. Specifically, he asked if a minimum amount of information must be submitted for a petition to be accepted. Mr. Lookenbill responded that no minimum data requirement exists to submit a petition. He continued that DEP receives various types of biological data, and DEP has the responsibility to confirm and verify that data. If DEP is unable to verify the submitted data, DEP collects additional data.

Mr. Hartle further inquired how the data is verified and if DEP conducts a quality control analysis based on previous studies and data collection. Mr. Lookenbill responded that verifying the quality of data submitted by others can be difficult. He explained that DEP typically uses the petitioner's data to develop its own survey to verify the petitioner's results.

Mr. Aunkst reinforced that DEP must confirm and verify all data before recommending a change in a stream's designated use.

Patrick Gardner, who submitted the petition on behalf of French Pickering, provided a brief presentation following the Board's discussion on DEP's presentation.

Mr. Lutz inquired of Mr. Gardner if the petitioners conducted any outreach to the affected landowners or point and nonpoint source permittees or local municipal officials. Mr. Gardner responded that the

petitioner did reach out to municipal officials and advised that the municipalities supported this petition. He noted that the petitioner was seeking letters to include with the petition, but did not have time to obtain them prior to petition submittal. Further, he stated that the petitioner also reached out to local landowners, land trusts, and environmental advisory councils, and that those in the local community were aware of the petition.

Mr. Lutz asked if Mr. Gardner could still forward any additional letters of support obtained to DEP and Mr. Gardner agreed to work with the petitioner to do so. Mr. Lutz asked that it be included in the record that he requests additional information in the form of letters in support of the petition be submitted to be included in the file for this petition.

Mr. Place inquired as to the acreage of Marsh Creek. Mr. Gardner responded that the watershed encompasses 5,000 acres. He referred to a map included in the petition that highlights the area. Mr. Place asked how well the state of Delaware protects the downstream portion of the watershed. Mr. Gardner responded that much of the Brandywine is protected by the Brandywine Conservancy. He also noted that the owner of about 700 protected acres within the watershed on the border "Great Marsh" area, who was in attendance, supported the petition.

John Walliser made a motion to accept the rulemaking petition for further study. Andrew Place seconded the motion, which was approved by all Board Members, with the exception of Don Welsh, who abstained.

Mr. Welsh abstained because he serves on the Board of the Chester County Water Resources Authority. He noted that while he is not aware of any actual conflict of interest, to avoid any appearance of conflict, he wished to be recorded as an abstention.

OTHER BUSINESS:

Chapter 78a Litigation

Ms. Childe provided an update concerning the Chapter 78a litigation. She noted that, at the October 18, 2016 meeting of the EQB, Nels Taber provided an update to the Board on a petition for review that had just been filed in Commonwealth Court. The petition, which was filed by the Marcellus Shale Coalition, challenges the validity of certain provisions in the new Chapter 78a unconventional well regulations. Mr. Taber is the lead attorney for the Office of General Counsel representing DEP and the EQB. She noted that Mr. Taber was unavailable to attend this EQB meeting and so she is providing this update on his behalf. She continued that, in addition to filing the petition for review, the Marcellus Shale Coalition filed an application for expedited special relief asking the Commonwealth Court to enjoin DEP's implementation of the challenged Chapter 78a provisions while it considers the merits of the petition for review. A hearing on this application was held before Commonwealth Court Judge Brobson on October 25th and 26th, and he issued an order and opinion granting the request in part and denying it in part on November 8th. As a result, DEP cannot currently implement certain provisions of the Chapter 78a regulations and has appealed the Commonwealth Court's decision to the Pennsylvania Supreme Court. The briefing related to this appeal will conclude March 24th, and oral argument will likely be scheduled. Ms. Childe relayed to EQB members that if they are interested in more detail about the regulatory provisions that have been preliminarily enjoined, DEP has posted information on its website under Oil and Gas Frequently Asked Questions related to Chapter 78a. As for the Commonwealth Court case on the merits of the petition for review, the parties are currently engaged in discovery. The Sierra Club, the Damascus Citizens for Sustainability, the Natural Resource Defense Council and Earthworks filed a joint motion to intervene in the matter on January 18th. Commonwealth Court Judge Brobson presided over a

hearing on this motion on February 22nd and he issued an order and opinion denying the motion on March 3rd.

Public Hearings for Repeal of Gasoline Volatility Requirements

Acting Secretary McDonnell relayed to the EQB that on February 25, 2017, the proposed rulemaking to repeal the gasoline volatility requirements in Chapter 126, which was approved by the Board at its last meeting, was published in the *Pennsylvania Bulletin*, opening a 66-day public comment period that will close on May 1. All comments received will be available on eComment. He also noted that three public hearings would be held during the comment period on March 28 at the DEP Southwest Regional Office in Pittsburgh; on March 29 at the DEP Southeast Regional Office in Norristown; and on March 30 in room 105 of Rachel Carson. He stated that currently only one comment has been received on the proposed rulemaking and it was in support of the repeal. Further, he noted that while Board members are often given the opportunity to chair hearings, no one had expressed interest in attending these hearings, so DEP would staff them.

OSM Form 23 – Statement of Employment and Financial Interest

Acting Secretary McDonnell advised that Board members and alternates need to complete OSM Form 23, a copy of which was provided. He asked that each Board member and alternate fill out the form and submit it to Laura Edinger by May 1. Ms. Edinger advised that she would also send a follow-up email to all the members and alternates with an electronic copy of the form.

Next Meeting of the EQB

The next meeting of the EQB is tentatively planned for Tuesday, April 18, 2017.

ADJOURN:

Don Welsh moved to adjourn the meeting.

Jim Sandoe seconded the motion, which was unanimously approved by the Board.

The March 21, 2017 meeting of the Board was adjourned at 9:40 a.m.