

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
April 18, 2017

VOTING MEMBERS OR ALTERNATES PRESENT

Patrick McDonnell, Chairman, Acting Secretary, Department of Environmental Protection
Nsungwe Shamatutu, alternate for Kathy Manderino, Secretary, Department of Labor and Industry
Roger Cohen, alternate for Leslie Richards, Secretary, Department of Transportation
Regi Sam, alternate for Gladys Brown, Chairman, Public Utility Commission
Richard Fox, alternate for Representative Mike Carroll
Representative John Maher, Pennsylvania House of Representatives
Joanne Manganello, alternate for Senator John Yudichak
Adam Pankake, alternate for Senator Gene Yaw
Michael DiMatteo, alternate for Bryan Burhans, Executive Director, Pennsylvania Game Commission
Walter Heine, 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
Jim Sandoe, 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

DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT

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

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 March 21, 2017, EQB meeting minutes.

Mark Hartle made a motion to adopt the March 21, 2017, EQB meeting minutes.
William Fink seconded the motion, which was unanimously approved by the Board.

CONSIDERATION OF FINAL RULEMAKING: ENVIRONMENTAL LABORATORY ACCREDITATION (25 Pa. Code Chapter 252)

Aaren Alger, Chief for Laboratory Accreditation Program, provided an overview of the final rulemaking. Bill Cumings, Assistant Counsel for Bureau of Regulatory Counsel, assisted with the presentation.

This final-form rulemaking amends the Environmental Laboratory Accreditation Regulations in 25 Pa. Code Chapter 252 which set forth the requirements that laboratories must meet to be accredited to perform testing for 12 environmental statutes. This final-form rule amends the following areas of the laboratory accreditation regulations: fee structure; definitions; National Environmental Laboratory Accreditation Program (NELAP) equivalency; laboratory supervisor qualifications; quality assurance/quality control procedures; analytical procedures; record keeping procedures; and notification requirements.

There was no discussion after the presentation.

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

CONSIDERATION OF PROPOSED RULEMAKING: TRIENNIAL REVIEW OF WATER QUALITY STANDARDS (25 Pa. Code Chapter 93)

Dana Aunkst, Deputy Secretary for Water Programs, provided an overview of the proposed rulemaking. Lee McDonnell, Director for Bureau of Clean Water, and Michelle Moses, Assistant Counsel for Bureau of Regulatory Counsel, assisted with the presentation.

This proposed rulemaking is required for Pennsylvania to comply with Section 303(c)(1) of The Clean Water Act. The Clean Water Act requires that states periodically, but at least once every three years, review and revise as necessary, their water quality standards. Pennsylvania's water quality standards are codified in Pa. Code Chapters 93, 16, and 105 and the Delaware River Basin Commission, Administrative Manual – Part II. These standards are designed to implement the requirements of Sections 5 and 402 of The Clean Streams Law and Section 303 of the Federal Clean Water Act. The water quality standards consist of the designated uses of the surface waters of this Commonwealth, along with the specific numerical and narrative criteria necessary to achieve and maintain those uses, and an antidegradation policy. Essentially, water quality standards are in-stream water quality goals that are implemented by imposing specific regulatory requirements such as treatment requirements and effluent limitations on individual sources of pollution.

Mr. Hartle noted that the EPA had urged DEP in 2013 to include a chloride standard in the next update to water quality standards. He acknowledged that a new draft approach for calculating chloride is in development which was the reasoning for not including a chloride standard in this proposed regulation. However, he noted that Iowa had developed a chloride criteria and DEP had funded a study previously to develop a chloride criteria for Pennsylvania. Mr. Hartle asked why the study and the data from Iowa were insufficient to develop a chloride criteria for Pennsylvania. Deputy Secretary Aunkst responded that DEP did spend time and resources on the research and development of a chloride criteria, including studies by the Stroud Research facility as well as evaluating data from Midwestern states like Iowa. Ultimately, DEP determined that the waters of the Midwest were not comparable to Pennsylvania's waters. With regard to the other studies done to develop a Pennsylvania-specific criteria for chloride, while the EPA

acknowledges that work that has been done to date to develop said criteria, the new approach to calculating the criteria under development at the EPA does not comport with the method DEP was suggesting moving forward with. As such, there is little possibility that DEP's method would be approved by the EPA. DEP thus determined it would be best to wait for the EPA to finish developing its approach to developing a chloride criteria. Director McDonnell added that DEP was not confident in the results produced by the equation that DEP had been using, based on the research that had been conducted, as it was generating a wide range of results. Therefore, the best course of action, at this point, is to wait for the EPA to complete their work in this regard and work from there to make it applicable to Pennsylvania.

Mr. Hartle inquired about total dissolved solids and why that criteria was not included in the rulemaking. Director McDonnell explained that this is another case where the EPA is completing its own evaluation. DEP will refer to this study to determine if criteria should be included in the next triennial review.

Mr. Hartle noted that DEP is soliciting information on fish reproduction propagation in the Delaware River. The Delaware River Basin Commission (DRBC) held a hearing on April 6 that spoke to that issue. The Pennsylvania Fish and Boat Commission (PFBC) provided testimony stating that water quality has improved and that existing uses should be upgraded to reflect what is occurring in those waters. That testimony will be made available to the Board.

Representative Maher applauded DEP's efforts in drafting this proposed rulemaking. He noted that the issues covered under this rule are complex and he respects the thoughtful approach taken to the work of evaluating water quality standards. He noted an error on one of the slides in the presentation related to fish consumption. DEP agreed to ensure that same error was not made in any of the rulemaking documents. Representative Maher also relayed a concern with one section of the regulatory language proposed for amendment. While intended to provide clarification, the amendment to the definition of Outstanding National, state, regional, or local resource water, increases ambiguity. The current definition is a single sentence "a surface water for which a National or State government agency has adopted water quality protective measures in a resource management plan, or regional or local governments have adopted coordinated water quality protective measures along a watershed corridor." The phrase "coordinated water quality protective measures" is also a defined term in the current regulation that provides for real estate interests and includes conservation easements. Representative Maher stated concerns related to the potential for exclusion of some easements that may have qualified under the existing definition. He additionally noted concern that the proposed language provides that the water quality protective measures, instead of just being water quality protective measures already defined, must be measures which provide for maintenance and enhancement of water quality. Overall, he stated concern that, while intended to add clarity, the proposed language increases uncertainty. If language is to be added pertaining to easements, it should be added in the section that addresses easements specifically rather than in the global definition. Representative Maher suggested that, for these reasons, the proposed additional language related to easements be removed from the proposed rulemaking.

Deputy Secretary Aunkst thanked Representative Maher for his complimentary remarks regarding the rulemaking package and acknowledged the work of his staff. He noted that the intent of the proposed language was to provide clarification but if that is not how the rule is being read, then perhaps DEP should rewrite that language.

Acting Secretary McDonnell asked Michelle Moses if she would like to explain the reasoning for the addition of this language. Ms. Moses explained that DEP was trying to make it easier for DEP staff and the public to understand which conservation easements would qualify for consideration as measures of

water quality protection. DEP receives several petitions requesting stream redesignations. After reviewing all documentation and data submitted with a petition, DEP makes a determination, using all qualifiers, as to whether a stream should be redesignated as high quality or exceptional value waters; the two most popular requests. In this case, this qualifier is only triggered if a high quality water is requested for redesignation as an exceptional value water. Further, DEP receives a number of conservation easements as part of the total petition package for review. With this additional language, DEP wanted to provide clear guidance to the public regarding the parameters of some of these easements. Many easements are private and thus more difficult to track over time; therefore, the proposed language required that easements identify a government entity as the holder, long-term steward or beneficiary of the easement. DEP wanted to be sure that the only easements considered were those with long-term quality measures and those easements that will exist in perpetuity. With regard to the question of water quality, DEP wanted to ensure that language is included in conservation easements detailing actual practices employed for the perpetual protection of water quality. Some conservation easements mention water quality without providing specific water quality protection measures. The proposed regulatory amendments were intended to ensure greater protection, in this manner. With respect to the requirements that the conservation easement be recorded, DEP added this language to allow for tracking and monitoring. Essentially, DEP intended to resolve some issues that have arisen with regard to easements by adding this regulatory amendment. Ms. Moses added that it is important to note that this is a proposed rulemaking and so DEP would like to receive comment from those who write conservation easements as this is outside of the realm of DEP's expertise.

Ms. Carrow stated that her organization, the Western Pennsylvania Conservancy, writes easements and this discussion has raised questions and concerns for her as well. She inquired if DEP looked at the PALTA model easement. Ms. Moses responded affirmatively noting that DEP looked at the DCNR's easement which was done using that Pennsylvania model easement.

Mr. Cohen, on behalf of Secretary Richards, acknowledged and commended DEP on the hard work on this rulemaking, and particularly shared his gratitude regarding the development of the chloride criteria. He noted that PennDOT looks forward to their continued collaboration with DEP on this matter to protect both the environment and public safety.

Acting Secretary McDonnell called for a motion.

Representative Maher made a motion to accept the proposed rulemaking, but to omit the additional language which was drafted to expand the definition of outstanding national, state regional, or local resource water. Cynthia Carrow seconded the motion.

Mr. Robinson asked for DEP's perspective on this motion. He asked if it is better to give the regulated community something to react to, leaving the current language in the Annex as opposed to removing the language from the Annex and adding it in the preamble. Deputy Secretary Aunkst responded that it is not problematic to remove the language from the Annex as long as a request for comment is included in the preamble to the rule.

Acting Secretary McDonnell clarified that the language would be removed from the Annex and would be added to the preamble. As such, it would be stated in the preamble that the Board is seeking comment on whether this provision should be added to the final-form rulemaking.

Representative Maher's motion was unanimously approved by the Board.

PRESENTATION OF STATEMENT OF POLICY: WATER QUALITY TOXICS MANAGEMENT STRATEGY (25 Pa. Code Chapter 16)

Dana Aunkst, Deputy Secretary for Water Programs, provided an overview of the statement of policy. Lee McDonnell, Director for Bureau of Clean Water, and Michelle Moses, Bureau of Regulatory Counsel, assisted with the presentation.

Amendments to the Water Quality Toxics Management Strategy Statement of Policy were provided as a companion and are intended to be a supplement to the Water Quality Standards - Triennial Review proposed rulemaking. The recommended revisions to the Policy include providing updates to Human Health Criteria development methodologies/protocols. Updates include incorporating the new health and risk factors at to reflect updates used for body weight, and water and fish intakes in the 2015 updates to human health criteria for 94 toxic substances. Body weight will be amended from 70 kilograms (154 lbs.) to 80 kilograms (176 lbs.); drinking water will be amended from 2 liters per day to 2.4 liters per day; and fish consumption will be amended from 17.5 grams per day to 22 grams per day. Also, in Section 16.32, DEP is adding Benchmark Dose Modeling as an alternative way of calculating adverse effect levels for human health criteria development. In addition, amendments are proposed to section 16.21 to clarify endpoints, magnitude, and duration for the acute and chronic protection of aquatic life. Also, in section 16.24, DEP is proposing to incorporate the availability of the Biotic Ligand Model, to determine site-specific metals criteria.

The Chapter 16 Statement of Policy amendments were provided to the Board as an informational item in concert with the Triennial Review proposed rulemaking. Amendments to Policies are DEP actions.

There was no discussion after the presentation.

No formal action needed.

OTHER BUSINESS:

Radiological Health Proposed Rulemaking

Ms. Edinger updated the Board on the Radiological Health proposed rulemaking. At the October 18, 2016 meeting, the Board adopted the proposed Radiological Health rulemaking. This rulemaking has received final approval from the Governor's offices of General Counsel and the Budget, and the Office of Attorney General. It is planned for delivery to the House and Senate Environmental Resources and Energy Committees, to the Independent Regulatory Review Commission, and to the Legislative Reference Bureau. It is anticipated for publication in the *Pennsylvania Bulletin* in mid-May, opening the public comment period.

Marsh Creek Letter of Support

Ms. Edinger provided an update on the Marsh Creek petition and accompanying letters of support. At the last EQB meeting (March 21, 2017), the Board accepted the Marsh Creek petition for further study and asked that additional letters in support of the redesignation be acquired. East Nantmeal Township has submitted such a letter signed by the Chairman of the Board of Supervisors. The petitioner is actively working to secure additional letters of support. Letters of support for this petition will be posted online to the EQB's Rulemaking Petitions webpage.

OSM Form 23

Ms. Edinger reminded the Board that OSM forms are due to be submitted by May 1, 2017. At the last EQB meeting (March 21, 2017), and then in a follow-up email, all Board members and alternates received the Office of Surface Mining Form 23 – Statement of Employment and Financial Interest.

Next EQB Meeting

Acting Secretary McDonnell noted that the next meeting of the EQB is tentatively planned for Wednesday, May 17, 2017. This meeting is scheduled for Wednesday (instead of Tuesday), as we do each year in May to avoid primary election day.

ADJOURN:

With no further business before the Board, Bill Fink moved to adjourn the meeting. Sam Robinson seconded the motion, which was unanimously approved by the Board. The April 18, 2017, meeting of the Board was adjourned at 10:07 a.m.