

**MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
May 16, 2018**

VOTING MEMBERS OR ALTERNATES PRESENT

Patrick McDonnell, Chairman, Secretary, Department of Environmental Protection
Natasha Fackler, 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
Timothy Collins, alternate for Senator John Yudichak
Nick Troutman, alternate for Senator Gene Yaw
Michael DiMatteo, alternate for Bryan Burhans, Executive Director, Pennsylvania Game Commission
John Walliser, Citizens Advisory Council
Heather Smiles, alternate for John Arway, Executive Director, Pennsylvania Fish and Boat Commission
Andrea Lowery, Executive Director, Pennsylvania Historical and Museum Commission
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 Dr. Rachel Levine, Secretary, Department of Health

DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT

Laura Edinger, Regulatory Coordinator
Jessica Shirley, Policy Director
Robert “Bo” Reiley, Bureau of Regulatory Counsel

CALL TO ORDER AND APPROVAL OF MINUTES

The meeting was called to order at 9:00 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The Environmental Quality Board (EQB or Board) considered its first item of business – the approval of the April 17, 2018, EQB meeting minutes.

**Michael Smith made a motion to adopt the April 17, 2018, EQB meeting minutes.
Andrew Place seconded the motion, which was approved by a majority of the Board.
John Walliser abstained from the vote.**

CONSIDERATION OF PROPOSED RULEMAKING: FEDERAL OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT (OSM) PROGRAM CONSISTENCY RULE (25 Pa. Code Chapters 86, 87, 88, 89 and 90)

This rulemaking proposes to amend the coal mining regulations at 25 Pa. Code Chapters 86 – 90 to eliminate inconsistencies with federal requirements, to allow the Commonwealth to maintain program primacy, to provide clarity to mine operators regarding compliance standards, and to result in properly-sized stormwater facilities. Amendments further correct errors, update information to improve the functions of the regulatory program, or are required by federal law. Amendments also bring the Commonwealth's regulations in line with federal requirements by removing upward time limits after which point the operator must resume operations or reclaim its site. While the revisions take a different approach to regulating temporary cessation, the approach is equally as protective as current requirements and benefits the regulated community by relieving an economic burden.

John Stefanko, Deputy Secretary for Active and Abandoned Mine Operations, provided an overview of the proposed rulemaking. Bill Allen, Acting Director for Bureau of Mining Programs, and Joe Iole, Assistant Counsel for Bureau of Regulatory Counsel, assisted with the presentation.

Richard Fox noted that some of the inconsistencies addressed in the rulemaking were identified in the 1990s. He inquired as to what caused the time delay in addressing these and he inquired if OSM has a required timeframe for which inconsistencies must be addressed. Deputy Secretary Stefanko responded that OSM does not have a strict timeline for adjusting State regulations to comport with Federal regulations. OSM allows time for working through corresponding State-level issues to ensure that any outstanding issues can be resolved. Mr. Allen noted that one of the reasons for the time delay is the volume of required program amendments needed. With 45-50 required programmatic updates, Department staff took the time to systematically reviewing them and determine which required regulatory amendments and which required Program implementation adjustments. The Bureau of Mining Programs worked with the Mining and Reclamation Advisory Board extensively to receive feedback related to these updates and subsequent regulatory amendments.

Andrew Place inquired regarding the use of the National Oceanic and Atmospheric Administration (NOAA) online tool which provides the precipitation amount for various storm events for any location in the Commonwealth. Specifically, he inquired regarding the replacing of tables with the online tool and how that would impact the inclusion of temporary structures. Mr. Allen answered that the tool is inclusive and also accounts for sizing requirements. Generally, the amount of precipitation for each storm event is lower than what is currently listed in the tables in the regulations. So stormwater control facilities may not be properly sized. Replacing the tables with the NOAA data is thus intended to result in properly-sized stormwater controls and reduced cost for mine operators.

Richard Fox made a motion to adopt the proposed rulemaking.

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

CONSIDERATION OF PROPOSED RULEMAKING: UNCONVENTIONAL WELL PERMIT APPLICATION FEES (25 Pa. Code Chapter 78a)

This rulemaking proposes to amend 25 Pa. Code, Chapter 78a to increase the current well permit application fees from \$5,000 for nonvertical unconventional wells and \$4,200 for vertical unconventional wells, to \$12,500 (plus the surcharge) for all unconventional well permit applications to administer the

2012 Oil and Gas Act. The proposed amendments only apply to Chapter 78a which pertains to unconventional wells, and thus do not affect conventional well operators. These amendments are proposed to ensure the solvency of the Oil and Gas Well Plugging Account and the resources necessary for the continued proper management of the Department's Oil and Gas Program.

Scott Perry, Deputy Secretary for Office of Oil and Gas Management, provided an overview of the proposed rulemaking. Kurt Klapkowski, Director for Bureau of Oil and Gas Planning and Program Management, and Elizabeth Davis, Assistant Counsel for Bureau of Regulatory Counsel, assisted with the presentation.

Richard Fox noted that there are 4,860 pipeline sections and over 1,000 Erosion and Sedimentation (E&S) permit reviews but no corresponding fee included in this proposed rulemaking. He inquired if the revenue from those permit (Chapter 102 and 105) fees are allocated to the Office of Oil and Gas Management (OOGM). Deputy Secretary Perry responded that, while OOGM reviews those applications and inspects those facilities, those fees are not allocated to OOGM. The revenue collected from those fees is highly variable ranging from over one million dollars annually to less than \$700,000 depending on the year. For this reason, a policy decision was made that OOGM, instead of receiving revenue from those permit fees, would receive the entire allocation of the six million dollar impact fee. The impact fee could be divided between OOGM, the Air Quality Program, and Clean Water Programs.

Mr. Fox asked why there has been a dramatic decline in the conventional oil and gas industry. Deputy Secretary Perry responded that the decline is largely a result of commodity pricing. DEP's mapping tool shows that conventional drilling has nearly discontinued. The drilling activity is largely limited to oil wells in the Allegheny National Forest area. Some of the operators do not expect those wells to increase revenue. Conventional drillers require \$70-\$75 per barrel in order to be profitable. Profitability also depends on how much brine water is being produced from these wells. Some barrels produce four barrels of brine for every one barrel of oil. Further, options for managing brine are currently limited.

Nick Troutman referenced page six of the Regulatory Analysis Form (RAF), third paragraph. He remarked that the RAF states that it is estimated that less than half of the operators affected by this qualify as small business. Mr. Troutman stated that, in conversation with industry, they state that the number is closer to 75 percent of all operators that should be classified as small businesses. Deputy Secretary Perry and Mr. Klapkowski noted that the definition of a small business, for the purposes of the Regulatory Review Act is 1,250, people. If necessary, that information could be updated in the RAF. Chairman McDonnell further stated that comment on this would be welcome during the public comment period.

Mr. Place inquired why work load is not correlated to bore length. Deputy Secretary Perry explained that well bore length increased the variability corresponding to fee assessment. Evaluating work load and how that corresponds to the number of permits provides a much more easily managed and ascertained number. It provides a level of certainty to both the OOGM and to the regulated community.

Mr. Place commented that this is not a sustainable manner in which to generate revenue and that a statutory amendment will likely be needed to provide for Program sustainability. Even with improved efficiencies in permit review, the variability in how many wells may actually be drilled makes it difficult to assess fees. He stated that he understands the need to move forward with this rulemaking, even though this is not a sustainable way to fund the Program long-term.

Deputy Secretary Perry extended gratitude to Mr. Place for recognizing the challenges the Department faces. The costs of the fees are reasonable and when the Department has sufficient revenue and sufficient staff, the public, industry, and all stakeholders will be provided with an adequate level of protection and safety because the OOGM will be able to meet program goals. These goals include well inspection, policy development, and continuously improving permit review time frames. Finding a reasonable source of revenue to sustain OOGM over the long term will be an ongoing conversation to receive feedback and better ideas as to how to maintain adequate revenue to fund the program. Deputy Secretary Perry also recognized that legislative amendments may be necessary. He stated his intention to, over the course of the next three years, engage with industry and other stakeholders to determine a reasonable source of revenue to provide necessary services to the public and to industry.

**Michael Smith made a motion to adopt the proposed rulemaking.
Denise Brinley seconded the motion.**

Mr. Fox echoed the comments of Mr. Place and Deputy Secretary Perry that additional stakeholder outreach will be necessary over the next three years to better evaluate the fee structure and means of increasing revenue. Chairman McDonnell commented that the Department is more than willing to engage in a discussion to find a better way for funding the program beyond what is essentially the only tool currently available.

**The rulemaking was approved by a majority of the Board.
Nick Troutman and William Fink voted in opposition.**

OTHER BUSINESS:

Anticipated Amendment to California Vehicle Emission Standards:

Kristen Furlan, Assistant Director of the Bureau of Regulatory Counsel, updated the Board on an anticipated amendment to California's vehicle emissions program. The Department's air quality regulations require that the Department advise the Board when California proposes amendments to its low emission vehicle standards that are incorporated by reference in the Department's Clean Vehicles Program regulations in 25 Pa. Code Chapter 126. California published an "information request" on May 7, 2018, seeking suggestions for an anticipated proposed amendment to its regulatory provision that deems compliance by automakers with federal greenhouse gas emissions standards to amount to compliance by automakers with California's greenhouse gas emissions standards. Given the U.S. Environmental Protection Agency has signaled an intention to weaken the federal greenhouse gas vehicle emissions standards, California intends to amend its "deemed to comply" provision to apply only to the *current* federal standards, not to weakened federal standards. The Department will advise the Board when California proposes its rulemaking amendment, and at that time the Department will also submit comments on the proposal to California and will provide the Board and the Legislative environmental oversight committees with a regulatory analysis form assessing the proposed California amendment.

After Ms. Furlan's presentation, Mr. Fox asked, if California moved forward with their regulatory amendment, if Pennsylvania would also need to initiate a regulatory amendment. Ms. Furlan responded that Pennsylvania would not need to amend its regulations in response.

Regulatory Update:

Laura Edinger provided the following updates:

- The proposed Administration of the Storage Tanks and Spill Prevention Program rulemaking was published on February 24, 2018, opening a 30-day public comment period. The public comment period closed on March 26, 2018. Nineteen comments were received. IRRC comments were received on April 25. A draft final Annex A is scheduled for presentation to and discussion with the Storage Tank Advisory Committee at its meeting on May 17, 2018.
- The Disinfection Requirements final rulemaking was published on April 28, 2018, making that rule effective. That was the last of the three rulemakings that were adopted by the EQB in December of 2017. On March 17, 2018, the final-omitted Administration of the Land Recycling Program was published. The final-form Gasoline Volatility Requirements rulemaking was published on April 7, 2018.
- Two final-form rulemakings are scheduled to be considered at the IRRC meeting on Thursday, June 28, 2018: Control of VOC Emissions from Industrial Cleaning Solvents and Safe Drinking Water General Update and Fees. Both rulemakings were adopted by the EQB on April 17, 2018.

OSM Form 23 – Statement of Employment and Financial Interest:

Each board member and alternate is required to complete the OSM Form 23. Forms should be submitted to Laura Edinger by June 1, 2018, either by email or in hard copy.

Next Meeting:

The next meeting of the EQB is tentatively planned for Tuesday, June 19, 2018.

ADJOURN:

With no further business before the Board, Nick Troutman moved to adjourn the meeting. Don Welsh seconded the motion, which was unanimously approved by the Board. The May 16, 2018, meeting of the Board was adjourned at 9:59 a.m.