

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
June 18, 2019

VOTING MEMBERS OR ALTERNATES PRESENT

Patrick McDonnell, Chair, Secretary, Department of Environmental Protection
Joe Lee, alternate for Gerald Oleksiak, Secretary, Department of Labor and Industry
Emma Lowe, alternate for Leslie Richards, Secretary, Department of Transportation
Andrew Place, alternate for Gladys Brown Dutrieuille, Chairman, Public Utility Commission
Representative Greg Vitali, Pennsylvania House of Representatives
Representative Daryl Metcalfe, Pennsylvania House of Representatives
Timothy Collins, alternate for Senator John Yudichak
Michael DiMatteo, alternate for Bryan Burhans, Executive Director, Pennsylvania Game Commission
Terry Dayton, Citizens Advisory Council
Heather Smiles, alternate for Tim Schaeffer, Executive Director, Pennsylvania Fish and Boat Commission
Andrea Lowery, Executive Director, Pennsylvania Historical and Museum Commission
Erin Smith, alternate for Meg Snead, Secretary, Governor's Office of Policy and Planning
John Walliser, Citizens Advisory Council
William Fink, Citizens Advisory Council
Mark Caskey, Citizens Advisory Council
Jim Welty, Citizens Advisory Council
Denise Brinley, alternate for Dennis Davin, Secretary, Department of Community and
Economic Development
Michael Hanna, alternate for Russell Redding, Secretary, Department of Agriculture
Dr. 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 16, 2019, EQB meeting minutes.

Michael Hanna made a motion to adopt the April 16, 2019, EQB meeting minutes.
Dr. Watkins seconded the motion, which was unanimously approved by the Board. (17-0)

Ms. Lowe arrived after the vote.

CONSIDERATION OF PROPOSED RULEMAKING: WATER SUPPLY REPLACEMENT FOR SURFACE COAL MINING (25 Pa. Code Chapters 87-90)

This proposed rulemaking addresses inconsistencies between the Commonwealth's surface coal mining program and Federal requirements relating to water supply replacement so that the Commonwealth may maintain primary regulatory authority over coal mining activities in Pennsylvania. This proposed rulemaking also aligns the language regarding water supply replacement for anthracite and bituminous surface mining with underground coal mining to the extent allowed by statute and ensures that the regulations are otherwise consistent with State law and Department of Environmental Protection (DEP) practice. These measures will provide clarity to mine owners and operators regarding compliance standards for water supply replacement and protect the rights of water supply owners and users.

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

There were no questions following the Department's presentation.

Andrew Place made a motion to adopt the proposed rulemaking.

Andrea Lowery seconded the motion, which was unanimously approved by the Board. (18-0)

CONSIDERATION OF RULEMAKING PETITIONS: HAZARDOUS WASTE DELISTING (MAX ENVIRONMENTAL TECHNOLOGIES, INC. – BULGER AND YUKON FACILITIES)

On May 2, 2019, DEP received two rulemaking petitions submitted by Key Environmental, Inc. on behalf of MAX Environmental Technologies, Inc. These petitions request that the Board amend an existing regulatory exclusion from hazardous waste listing for wastewater sludge generated from the treatment disposal impoundment and landfill leachate and contact stormwater at the MAX Bulger (first petition) and the MAX Yukon facilities (second petition). DEP has reviewed these petitions and determined that they meet the requirements for acceptability as defined in §23.2 of the Board's petition policy.

David Allard (Acting Deputy Secretary for Office of Waste, Air, Radiation and Remediation) provided an overview of the two rulemaking petitions. Walt Harner (Director for Bureau of Waste Management), Tom Mellott (Division Chief for Hazardous Material), and Bill Cumings (Assistant Counsel for Bureau of Regulatory Counsel) assisted with the presentation.

There were no questions following the Department's presentation.

Carl Spadaro (MAX Environmental Technologies, Inc.) and Robert Hubbard (Key Environmental, Inc.) presented to the Board.

Following the presentation, Ms. Lowery inquired regarding the type of waste that is requested for delisting. She noted that it is detailed as associated with the metal industry primarily because it is a closed cell portion of the landfill. She further noted that oil and gas drill cuttings go into a separate section of the landfill. She inquired if the material requested for delisting is characterized as being associated with the metal industry. Mr. Spadaro responded affirmatively that the waste material in the closed cell is generally associated with the metals industry.

Dr. Watkins inquired, given the length of the petitions, if DEP will have the capacity to review the petitions in a reasonable timeframe. Acting Deputy Allard responded affirmatively.

Dr. Watkins made a motion to accept the two petitions for further evaluation.

Mark Caskey seconded the motion, which was unanimously approved by the Board. (18-0)

PRESENTATION OF THREE-YEAR REGULATORY FEE AND PROGRAM COST ANALYSIS REPORT: RADIATION PROTECTION PROGRAM

As required by 25 Pa. Code Section 218.11(l) and Chapter 240, Appendix A, DEP prepared a Three-Year Regulatory Fee and Program Cost Analysis Report (Report) for years 2018 – 2021. The program areas covered by this cost analysis include: Accelerator, X-ray and Vendors/Service Providers; Radioactive Materials and Decommissioning; and Radon. The last fee increase for all program areas was in 2009, and more recently for Radioactive Materials and Radon only in October 2017. No fee increases are recommended for these programs at this time.

David Allard (Acting Deputy Secretary for Office of Waste, Air, Radiation and Remediation) provided an overview of the three-year report. Bryan Werner (Acting Director for Bureau of Radiation Protection), Kris Hoffman (Program Analyst for Bureau of Radiation Protection), and Bobby Schena (Assistant Counsel for Bureau of Regulatory Counsel) assisted with the presentation.

There were no questions following the Department's presentation.

As this was a presentation to the Board, no formal action was required.

OTHER BUSINESS:

Regulatory Update:

Laura Edinger provided the following updates:

- On March 16, 2019, the proposed Additional Requirements for Control of Fine Particulate Matter in the Nonattainment New Source Review Program rulemaking was published in the *Pennsylvania Bulletin*, opening a 64-day public comment period that closed May 20, 2019. Three public hearings were held. No commenters provided testimony at the hearings. Three comments were received in total.
- On March 23, 2019, the proposed Water Quality Standards – Class A Stream Redesignations rulemaking was published in the *Pennsylvania Bulletin*, opening a 45-day public comment period that closed May 7, 2019. One public hearing was held on April 26. Nine unique comments and three form letter comments were received. One form letter came from over 700 commenters, one from over 20, and one from 12, all in support of the redesignations. Two commenters provided testimony at the hearing; both comments were supportive of the rule.
- On March 30, 2019, the proposed Water Quality Management/National Pollutant Discharge Elimination System rulemaking was published in the *Pennsylvania Bulletin*, opening a 45-day public comment period that closed May 14, 2019. One public hearing was held on May 1, 2019. One commenter provided testimony at the hearing. Over 90 comments received including letters from the legislature.

Two form letters received; 13 received for one and 5 received for another. Comments in general opposed the fee increase.

- On April 13, 2019, the proposed Air Quality Fee Schedule Amendments rulemaking was published in the *Pennsylvania Bulletin*, opening a 66-day public comment period that closed June 17, 2019. Three public hearings were held in May. One commenter provided testimony at the Pittsburgh hearing. No other commenters provided testimony at the other hearings. Three form letters were received – all in support of the fee increase; 14 received of the first one; approximately 10 received of a second one and a third was submitted through postal mail that included over 1,300 signatories. Several other unique comments were submitted. As the comment period closed only hours ago, the overall stance of the comments and an exact number is not yet available.
- On May 18, 2019, the final Noncoal Mining Program Fees rulemaking was published in the *Pennsylvania Bulletin*. The new fee schedule will go into effect on January 1, 2020.

GHG Petition Update:

Jessica Shirley provided an update on the petition.

- DEP plans to issue a request for proposal (RFP) related to the greenhouse gas cap and trade petition. DEP is working to develop and finalize that RFP now.
- DEP is seeking a contractor to assist with a detailed analysis of the proposed program and its potential implementation through a comprehensive report. Included in this report will be an analysis of the program structure, overall economy-wide impacts if adopted, and specific impacts in four sectors: electricity, transportation, manufacturing, and energy production. The contractor shall be experienced in modeling the economic, environmental and social outcomes (costs and benefits) of carbon pricing systems similar to those contained in the petition, familiar with the sectors listed in the petition relative to Pennsylvania, and capable of writing a detailed report describing the results.
- The analysis will be presented in two reports. The first report will be a summary report that includes overall potential structure and outcomes of the proposed greenhouse gas cap and trade program. The second will be a supplemental report that presents detailed results of modeling and research including economic, environmental and social costs and benefits on the electricity, manufacturing, transportation, and the energy production and delivery sectors. DEP hopes the report will be provided by the contractor by early next year.

PFOA Petition Update:

Chairperson McDonnell provided an update on the petition.

- On August 15, 2017, a rulemaking petition requesting the setting of an MCL for PFOA was accepted by this Board for further evaluation. At that time, DEP noted it would require toxicology expertise to evaluate the petition. Updates were provided to the Board in June and August of 2018, reaffirming that a toxicologist would need to be hired for the petition to be evaluated. Both updates noted difficulties and delays in the hiring process. DEP was working with the Department of Health (DOH) to hire a toxicologist to be a part of the DOH staff complement. DOH has now hired a toxicologist who is scheduled to start July 22. DOH also posted a second toxicologist position that was advertised until April 4 of this year. DOH toxicologists will help review PFOA public health related data. Additionally, DEP is advertising for toxicology consulting services to assist us in setting an MCL for PFOA, PFOS, and potentially other PFAS compounds.
- On April 12, 2019, Governor Wolf announced that DEP will conduct a statewide PFAS sampling plan to identify impacted drinking water supplies. The sampling plan is underway to test water taken from more than 300 public water systems based on proximity to common sources of PFAS. The plan

includes the same six PFAS compounds to look for in locations beyond the currently known contamination sites. Safe Drinking Water staff were not able to join us at the meeting for this update as they are out sampling today.

- Additionally, DEP Bureau of Labs recently purchased a Liquid Chromatograph with Tandem Mass Spectrometer to meet the testing needs to identify and quantify PFAS compounds in drinking, ground and surface waters, and soils. This lab instrumentation purchase was done through an emergency procurement request by DEP.

Next Meeting:

The next meeting of the EQB is tentatively planned for Tuesday, August 20, 2019. The July 16, 2019, meeting will be cancelled.

EXECUTIVE SESSION:

Chairperson McDonnell asked the Board for a motion to close the public session of the EQB meeting to allow board members to proceed into executive session to discuss two lawsuits with their counsel. One relates to a petition for review filed in Commonwealth Court on May 16, 2019, by Delaware Riverkeeper Network regarding action on the PFOA petition. The other is an update regarding the mandamus action filed in Commonwealth Court on March 29, 2019, regarding the water quality standards for manganese.

John Walliser made a motion to close the public session of the Environmental Quality Board. Michael Hanna seconded the motion, which was unanimously approved by the Board. (18-0)

ADJOURN:

The public session of the June 18, 2019, EQB meeting was adjourned at 9:47 a.m. Everyone except EQB members and alternates in attendance, and EQB Counsel were asked to leave the room at this time. All members of the public, petitioners and other DEP staff and Counsel not on the Board exited so the Executive Session could be held.