

**MINUTES**  
**ENVIRONMENTAL QUALITY BOARD MEETING**  
**August 20, 2019**

**VOTING MEMBERS OR ALTERNATES PRESENT**

Ramez Ziadeh, Acting Chairperson, Executive Deputy Secretary for Programs,  
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  
Matthew Wurst, alternate for Gladys Brown Dutrieuille, Chairman, Public Utility Commission  
Representative Greg Vitali, Pennsylvania House of Representatives  
Leda Lacomba, alternate for Representative Daryl Metcalfe  
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 St. Clair, 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  
Alain Xiong-Calmes, alternate for Meg Snead, Secretary, Governor's Office of Policy and Planning  
Cynthia Carrow, Citizens Advisory Council  
James Schmid, 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 June 18, 2019, EQB meeting minutes.

**Andrew Lowery made a motion to adopt the June 18, 2019, EQB meeting minutes.  
Michael Hanna seconded the motion, which was unanimously approved by the Board. (19-0)**

**CONSIDERATION OF FINAL RULEMAKING: ADDITIONAL REQUIREMENTS FOR CONTROL OF FINE PARTICULATE MATTER IN THE NONATTAINMENT NEW SOURCE REVIEW PROGRAM (25 Pa. Code Chapters 121 and 127)**

This rulemaking incorporates Federal requirements regulating volatile organic compound (VOC) and ammonia as precursor emissions to the formation of fine particulate matter. On August 24, 2016, the U.S. Environmental Protection Agency (EPA) published a final rule requiring states with nonattainment areas for particulate matter less than or equal to 2.5 micrometers in diameter (PM<sub>2.5</sub>) to amend their nonattainment new source review (NSR) regulations to include emissions of VOC and ammonia as PM<sub>2.5</sub> precursors. This rulemaking amends 25 Pa. Code Chapters 121 and 127 to incorporate federal requirements regulating PM<sub>2.5</sub> precursor emissions. Consistent with EPA's State Implementation Plan (SIP) Requirements Rule, EPA issued an Implementation Rule, defining a major facility as having the potential to emit 100 tons per year (TPY) of emissions of VOC or ammonia, or both, in a moderate PM<sub>2.5</sub> nonattainment area and 70 TPY of VOC or ammonia emissions, or both, in a serious PM<sub>2.5</sub> nonattainment area. The Implementation Rule also established a VOC significance threshold of 40 TPY. States are required to determine the ammonia significance threshold and the VOC and ammonia offset ratio.

David Allard (Acting Deputy Secretary for Waste, Air, Radiation and Remediation) provided an overview of the final rulemaking. Krishnan Ramamurthy (Director for Bureau of Air Quality) and Jennie Demjanick (Assistant Counsel for Bureau of Regulatory Counsel) assisted with the presentation.

Following the Department's presentation, Dr. Watkins inquired if DEP could define offset ratios and explain impacts. Mr. Ramamurthy explained that if a major source emitter is in a nonattainment area, then nonattainment new source review obligations are triggered and certain technology requirements will then need to be met. The facility will also need to provide emission offsets to ensure that emission reductions offset the potential increase. Facilities can purchase credits to offset their emissions increases.

Ms. Lowery inquired if offsets can be purchased outside of Pennsylvania. Mr. Ramamurthy responded that requirements are different for different pollutants. Facilities are encouraged to purchase credits from the same designated area. If credits are not available in the facility's designated area, they can be purchased from an equally designated nonattainment area but it must be a meaningful exchange. The facility must demonstrate that the exchange is comparable through modeling.

Mr. Caskey inquired what type of industries are the noted seventeen regulated facilities. Mr. Ramamurthy responded that the facilities impacted are those that emit ammonia.

Ms. Lowery asked about Allegheny County's plan; specifically she inquired if DEP is coordinating with the County for their plan. Mr. Ramamurthy responded that DEP is working closely with the county and both DEP and the county are working closely with the EPA.

**James Schmid made a motion to adopt the final rulemaking.**

**Andrea Lowery seconded the motion, which was unanimously approved by the Board. (19-0)**

## **PRESENTATION OF THREE-YEAR REGULATORY FEE AND PROGRAM COST ANALYSIS REPORT: UNIFORM ENVIRONMENTAL COVENANT ACT**

The Uniform Environmental Covenants Act (UECA) was a model law developed by the National Conference of Commissioners on Uniform State Laws and subsequently signed into law on December 18, 2007. Environmental covenants are property interests granted to an individual to ensure the long-term stewardship of a remediated site. A property with an environmental covenant has Activity and Use Limitations (AULs) that are authorized under the Land Recycling and Environmental Remediation Standards Act (Land Recycling Act) and the Storage Tank and Spill Prevention Act (Tank Act). AULs are restrictions on the use of a remediated property (institutional controls) or on the maintenance of a structure needed to control the movement of regulated substances through the environment (engineering controls). Environmental Covenants can be transferred and enforced by multiple parties, including DEP. The county recorder of deeds maintains the covenant records, providing future landowners and developers with access to AUL notices.

The fee that remediators submit with their environmental covenant supports DEP's Land Recycling Program, which reviews and maintains an electronic registry for the environmental covenants. DEP is required to develop and maintain this formal registry under Section 6512 of UECA. Under UECA, remediators must pay a \$500 fee to DEP on submission of their environmental covenant. The UECA program is effective as enacted, and DEP does not recommend a fee increase for environmental covenants at this time.

David Allard (Acting Deputy Secretary for Waste, Air, Radiation and Remediation) provided an overview of the fee report. Troy Conrad (Director for Bureau of Environmental Cleanup and Brownfields) 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:**

Laura Edinger provided the following updates:

- The Revisions of the Maximum Allowable Content Limit for No. 2 and Lighter Commercial Fuel Oil was published in the *Pennsylvania Bulletin* on July 6, 2019, opening a 66-day comment period. This Board adopted the proposed rulemaking on April 16, 2019. Thus far, nearly 20 comments have been received on the rulemaking, including testimony provided at three public hearings. All comments to date are supportive of the proposed regulatory amendments. The comment period will close on Monday, September 9, 2019. Comments can be viewed on both the Department's eComment webpage and the Independent Regulatory Review Commission's (IRRC) webpage.
- At the June 18, 2019, EQB meeting, this Board voted to accept two petitions for further study. The petitions were submitted by Key Environmental on behalf of MAX Environmental Technologies. The petitions requested 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 and the MAX Yukon facilities. DEP's Hazardous Waste Program is currently in the process of evaluating the petitions. Additional time is necessary to

properly evaluate and prepare a report. DEP will keep the Board informed on progress toward completion of the evaluation and the report.

Jessica Shirley provided the following update on the draft proposed rulemaking for Control of VOC Emissions from Oil and Natural Gas Sources:

- At its April 11, 2019, meeting, the Air Quality Technical Advisory Committee voted 10-4-1 for DEP to proceed further with this draft proposed rulemaking. This is one of the prongs of the Governor's methane reduction strategy. On August 10, 2019, the Governor's Regulatory Agenda was published in the *Pennsylvania Bulletin* stating this rulemaking would be considered by the EQB the fourth quarter of this year. DEP intends to meet that goal. DEP is working to have a proposed regulation to this Board by the end of the year.

Representative Vitali acknowledged the great work DEP does, and under tough circumstances. However, he was dismayed to learn that the proposed rulemaking for Control of VOC Emissions from Oil and Natural Gas Sources would not be considered by the EQB until after October of this year. He noted that Governor Wolf proposed his methane strategy in December of 2016. Further, he commented that there are 11,000 leaking existing for which there are no proposed regulations. Once the regulatory amendments are proposed, it will still take a couple years to move through the regulatory process. Representative Vitali further stated his concern related to climate change and the need to act quickly to reduce greenhouse gas emissions by 45% and to be carbon neutral by 2050. The IFCC report states meeting these goals is necessary to avoid the worst impacts of climate change. He stated that he would like DEP to prioritize this regulation as a part of the climate change mitigation strategy.

Acting Chairperson Ziadeh assured Representative Vitali that DEP is prioritizing all issues related to climate change. With the limited staff resources available, DEP is going above and beyond to get this important work done. Ms. Shirley additionally noted that DEP's Bureau of Air Quality arguably writes more regulations than any other bureau in all of state government. They have regulations at almost every EQB meeting. In fact, the Board adopted one today. This is not about a lack of prioritization. DEP must ensure that, with every regulation, the science is sound and defensible. With the rulemaking in question, DEP has evaluated the science, drafted regulatory amendments, and is now preparing the corresponding rulemaking documents including the preamble and the regulatory analysis form. The supporting documentation includes the explanation of the science behind the proposed amendments and provides the explanation for why these amendments are necessary. DEP is committed to providing this rulemaking to the Board by the end of 2019.

Mr. Welty responded to Representative Vitali's comments. He refuted the assertion that there are 11,000 leaking wells in Pennsylvania, stating that the claim is inaccurate. He noted his support of DEP taking the time to ensure the science and the impact to industry are properly evaluated.

**Next Meeting:**

The next meeting of the EQB is tentatively planned for Tuesday, October 15, 2019. The September 17, 2019, meeting will be cancelled.

Jim Welty asked for an update on the Cap and Trade Petition. Ms. Shirley responded that the ITQ is currently available for qualified contractors. It closes on August 22<sup>nd</sup>. After that date, DEP will review the quotes received and will make a selection. DEP hopes to have a report from the selected contractor by the end of this year.

Dr. Watkins asked if there is an update on any legal challenges before the Board. Mr. Reiley responded that oral argument is scheduled for September 9, 2019 for the petition related to the manganese rule. Regarding the PFOA petition case, preliminary objections were filed. No oral arguments are scheduled at this time. DEP will continue to update the Board as there are new developments.

**ADJOURN:**

With no further business before the Board, Dr. Watkins moved to adjourn the meeting. Michael Hanna seconded the motion, which was unanimously approved by the Board. The August 20, 2019, meeting of the Board was adjourned at 9:36 a.m.