

**MINUTES  
ENVIRONMENTAL QUALITY BOARD MEETING  
July 21, 2020**

**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  
Emily Watts, alternate for Yassmin Gramian, Secretary, Department of Transportation  
Gladys Brown Dutrieuille, Chairman, Public Utility Commission  
Representative Greg Vitali, Pennsylvania House of Representatives  
Representative Daryl Metcalfe, Pennsylvania House of Representatives  
Senator Steven Santarsiero, Senate of Pennsylvania  
Nick Troutman, alternate for Senator Gene Yaw, Senate of Pennsylvania  
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  
Erin Wachter, alternate for Meg Snead, Secretary, Governor's Office of Policy and Planning  
Cynthia Carrow, Citizens Advisory Council  
Duane Mowery, 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  
Peter Blank, 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 virtual meeting of the Environmental Quality Board (EQB or Board) was called to order by Secretary McDonnell at 9:00 a.m. via Webex. The Board considered its first item of business: approval of the June 16, 2020, EQB meeting minutes.

**Representative Vitali made a motion to adopt the June 16, 2020, EQB meeting minutes. Senator Santarsiero seconded the motion, which was unanimously approved by the Board. (18-0)**

*Michael DiMatteo was not present for roll call or voting of minutes.*

**CONSIDERATION OF RULEMAKING PETITION: TOMS CREEK – ADAMS AND FRANKLIN COUNTIES (25 Pa. Code § 93.9z)**

Aneca Atkinson (Deputy Secretary for Office of Water Programs) provided an overview of the rulemaking petition. Josh Lookenbill (Bureau of Clean Water) and Michelle Moses (Assistant Counsel for Bureau of Regulatory Counsel) assisted with the presentation.

Following the Department's presentation, Representative Metcalfe questioned if this group petitioned for this change back in 2016. Josh Lookenbill confirmed that the petitioner had not previously submitted a petition for the stream to be redesignated to exceptional value. Representative Metcalfe asked if the change in designation would have an impact on any businesses in the immediate area. Mr. Lookenbill replied that it would not cause a change to businesses that are currently operating. Representative Metcalfe stated there is a mining operation in that area and asked if this would impact the continuation of operations for that mine, and would they still be able to continue mining in that area. Mr. Lookenbill answered that it would not impact mining in the area. He also added the Department has completed an existing use evaluation as part of the permitting process for the mines in the area. Representative Metcalfe then asked if redesignating to exceptional value would impact any further development along the waterway. Mr. Lookenbill responded that the stream is already designated high quality and the antidegradation process is currently applied, but that a redesignation from high quality to exceptional value would affect the ability of permittees to pursue social and economic justification as part of the permitting process.

Duane Mowery stated that the petitioner does identify risk from resource extraction and another development that may compromise exceptional water quality uses. He then asked if the Department thinks it is necessary to have an exceptional value classification in order to adequately protect the waterway. Deputy Secretary Atkinson responded that by accepting the petition, it would allow the Department to complete an evaluation to determine whether the stream meets the regulatory requirements for exceptional value. Josh Lookenbill added that currently the question is to accept the petition or not, not to evaluate whether it meets exceptional value qualifications at this time.

Jim Welty asked what steps the Department would take if the EQB were to vote not to accept the petition. Michele Moses answered by stating the Department makes water use decisions on a permit-by-permit basis based on existing use determinations. The EQB makes designated use decisions on whether a stream is redesignated through the regulatory process. If no regulation results from the petition process, the Department would continue to implement the highest, attained use of the stream through permit and approval decisions.

Representative Metcalfe asked if the group provided sampling or their own study to the Department in the past. And if so, did the Department look at this stream in the past, including consideration of a past study that this same group put forth to the Department in 2016. Josh Lookenbill replied that the group has submitted data in response to permitting actions that the Department had taken within the basin and that while the petitioner hadn't put forward a formal petition in the past, they submitted their own studies and weighed in during permit applications in the past. Representative Metcalfe questioned if there was a change that resulted in the current designation of this stream as high quality as a result of the information provided to the Department or did the designated use stay the same. Josh Lookenbill replied that the Department made existing use determinations for specific permits, which is a much smaller area than the petition is addressing. The existing use determinations for those permits was high-quality, cold-water fishes.

Representative Metcalfe asked if the petitioner is asking for redesignation to exceptional value due to concerns regarding expanding operations of a mining operation in the area. Mr. Lookenbill stated the petition lists several reasons but does include concerns for the protection based on permitting activity. Mr. Lookenbill also noted that the petition cites concerns beyond the permitted activities in the basin. Representative Metcalfe stated that the mining operation in the area is asking the Department for an expanded permit. Representative Metcalfe then questioned what the impact would be on that expanded operations permit if Toms Creek were to be redesignated to exceptional value. Josh replied that the permit has already been issued and there would be no impact unless the permittee violates the permit.

Ryan Hamilton, with FairShake Environmental Legal Services and on behalf of the petitioner, Friends of Toms Creek, provided an overview of the petition. No additional questions or discussion followed the presentation.

**Representative Vitali made a motion to accept the petition for further evaluation. Senator Santarsiero seconded the motion, which was approved by a majority of the Board members. Representative Metcalfe, Nick Troutman for Senator Gene Yaw, Mark Caskey, Duane Mowery, John St. Clair and Jim Welty voted in opposition of the motion. Motion passed. (13-6)**

**CONSIDERATION OF PROPOSED RULEMAKING:**  
**DAM SAFETY AND WATERWAY MANAGEMENT (25 Pa. Code Chapter 105)**

Aneca Atkinson (Deputy Secretary for Office of Water Programs) provided an overview of the proposed rulemaking. Pamela Kania, Rich Reisinger, and Andy Klinger (Bureau of Waterways, Engineering and Wetlands) and Jesse Walker (Bureau of Regulatory Counsel) assisted with the presentation.

Following the Department's presentation Representative Metcalfe commented that this change includes a fee for homeowners that have groin structures abutting their property. Representative Metcalfe mentioned an issue along Lake Erie with some property owners that have groin structures designed to keep the shoreline intact and prevent erosion of the shoreline. Representative Metcalfe noted that legislation has been introduced by Representative Wentling to exclude those property owners from being charged fees for these structures as the structures are there to help the environment. Representative Metcalfe noted that although the annual fee would be decreased from the amount they are being assessed currently, many people believe that because of the environmental benefits to the shoreline, these property owners are doing a service for the Commonwealth and shouldn't be charged a fee.

Aneca replied that the fee is included, but it has been reduced from the current fee of \$750 to \$250.

Andy Klinger added that after the program's analysis it was determined that groin structures primarily benefit the adjacent property owner in preserving their beachfront, but – due to wave action – when a groin structure is installed, the downshore property owner would also have to install a similar structure to do the same thing. Mr. Klinger stated that the erosion effectively gets kicked down to the next property owner, and that the groin structures primarily benefit only the property owner and not generally the whole environment. Representative Metcalfe questioned if the state has a right to the area along the shoreline and not on the person's property. Rich Reisinger responded that it is not statewide, but site- and case-specific. Representative Metcalfe then asked where other groin structures are located other than Lake

Erie. Mr. Reisinger replied they are being proposed or are in place at private recreational lakes across the state. Mr. Reisinger noted that while Lake Erie is one area, groin structures are not limited to that location. Representative Metcalfe then stated he would be a “No” vote on the regulations due to the groin structures specifically and the in-depth changes being made currently and that more review needs to be done.

Mr. Klinger also mentioned if a project can be demonstrated to have a significant benefit to the environment, the Department would consider a waiver of the annual charge.

**Senator Santarsiero made a motion to adopt the proposed rulemaking. Representative Vitali seconded the motion, which was approved by a majority of the Board members. Representative Metcalfe voted in opposition of the motion. Motion passed. (18-1)**

**CONSIDERATION OF FINAL RULEMAKING:**  
**AIR QUALITY FEE SCHEDULE AMENDMENTS (25 Pa. Code Chapters 121 and 127)**

Krishnan Ramamurthy (Deputy Secretary for Office of Waste, Air, Radiation and Remediation) provided an overview of the final rulemaking. Viren Trivedi and John Krueger (Bureau of Air Quality) and Jennie Demjanick (Bureau of Regulatory Counsel) assisted with the presentation.

Following the Department’s presentation Mark Caskey asked for clarification regarding the amount of fees going from 40 to zero in the last three years and why less money is coming in. Deputy Secretary Ramamurthy answered that it was a multitude of factors; gas production and market conditions, power generation for coal is decreasing, and emissions are dropping significantly. But largely the power production from coal electric generating units are dropping.

Representative Metcalfe commented that on June 17, 2019, the House Environmental Resources and Energy Committee (Committee) wrote to the Independent Regulatory Review Commission to advise them of the Committee’s disapproval of the regulation in the form it was presented at the time. He added that the final regulation still has significant components that would raise concerns and if it moves forward, it will be brought before the Committee to address it once again. What the Committee understood at that time was that the collections by DEP from the fees had decreased, but the emissions of regulated pollutants decreased 41% since 2000 and it continues to decrease. It’s counterintuitive to what government should be doing when it seems there is success at achieving the mission of reducing pollutants and improving air quality, but DEP continues to charge more to sustain the same level of bureaucracy that was needed when the pollutants were at a higher level. Representative Metcalfe expressed that it’s the wrong time for any agency to be asking for fee increases on the businesses that are trying to survive the current economic conditions resulting from COVID-19. He asked what the Department has seen over the last four months related to fees and the current regulations in place, compared to the regulations now proposed to address the need for higher fees in the future.

Krishnan Ramamurthy replied that one of the reasons for the decrease in fee revenue is the nature of the EPA emission fee program, specifically the Title V program, as established in the Clean Air Act. The statute is clear that if you do not have sufficient revenue generated from the Title V program to sustain the program’s cost, EPA will take away the program and then impose actions. Because the fees are emission-based, if a big emitter shuts down, there will be significant reductions in fee revenue. The Department wanted to improve the stability of the Title V fund, which is one of the reasons why the focus shifted

away from increasing the dollar per ton number. The dollar per ton fee will stay the same. Instead the Department increased the annual maintenance fee to sustain the program by distributing the costs to each of the major facilities. This is why many more facilities are now providing 90% of the revenue as opposed to few facilities supporting the program. This is a significant departure from basing the program funding solely on the emission fee. The other cause is a drop in emissions, which is a good thing. Pennsylvania has reached attainment for many pollutants. The federal Clean Air Act requires DEP to do more than just reduce emissions. The statute has a multitude of programs, like the maximum available control technology, which DEP must implement and requires continued funding for staff. It is critical to not only attain the standard; the Department also has to maintain the standard. To do so, DEP must continue to monitor facility operations and make sure the emission reductions are sustained. Mr. Ramamurthy stated that the Department is currently reviewing the program staffing needs and trying to improve the efficiency of the program to minimize the overall cost of the program. Program staffing has dropped significantly – from 375 full time positions in 2000 to only 265 positions with 17 vacancies in 2019. He explained that the Department cannot sustain the program by using the remaining surplus from previous years.

Mr. Ramamurthy then stated that the Department will not know COVID-19's impact until the end of the year because fee revenue is not collected on a monthly basis. However, the Department is tracking emissions on a monthly basis some of the electric generating units that report to EPA and the Clean Air Market Division. There has been a reduction in emissions, but some units had a significant rebound in emissions in the last month. The Department has been comparing last year's emissions to this year's emissions on a month by month basis to account for seasonal variabilities and found that in June some coal-fired units actually emitted more than in the previous year. Mr. Ramamurthy stated that it is too early to say what the impact will be because power demand over the summer may be high, impacting emissions. He noted that ozone levels in southeast Pennsylvania, the only 5-county nonattainment area in Pennsylvania, were below the national ambient air quality standard level, which is a noteworthy improvement. He concluded that overall the results have been mixed and the Department will not know exactly COVID-19's long-term impact for a while, but DEP continues to track major sources on a month by month basis.

Representative Metcalfe stated that while DEP might not have an understanding of how COVID has impacted what this regulation oversees, we do have an understanding of how it's impacting our economy with a record number of millions signing up for unemployment and businesses that are being rolled back from operations. We want to ensure that Pennsylvania businesses have the ability to move forward, create jobs again and get people back to work. So whatever fee we're increasing is going to have an impact. He added that he will be voting no on these regulations and will be taking action in the future if they move forward.

Mark Caskey commented on the future of the Bureau of Air Quality. Oil and gas did well up until about a year ago and looking at the charts, air quality has never been better in our lifetimes. Air quality has gotten better, but fees are still increasing. Is this the new normal? And looking further into the future, if RGGI passes in the coming months, companies will move to Ohio and West Virginia and Pennsylvania will miss out on those fees as well. He then asked if the Department anticipates the need to keep raising fees in the future.

Krishnan Ramamurthy explained that power generation from coal is going down because of natural gas but the Department will be receiving new revenue in emissions fees from new combined cycle gas plants coming online (nearly 900 megawatt plants) and also maintenance fees.

**Representative Vitali made a motion to adopt the final rulemaking. Senator Santarsiero seconded the motion, which was approved by a majority of the Board members. Representative Metcalfe and Mark Caskey, voted in opposition of the motion. Motion passed. (17-2)**

### **OTHER BUSINESS:**

Laura Edinger provided a regulatory update.

- On December 17, 2019, this Board adopted two proposed rulemakings. The Control of VOC Emissions from Oil and Natural Gas Sources is open for comment through July 27, 2020. Three virtual public hearings were held on June 23, 24, and 25. More than 100 commenters in total provided testimony at the hearings. Over 1,000 form letter comments and over 30 unique comments were received. Written comments are available online at eComment and testimony will also soon be available. The Water Quality Standards for Manganese and Implementation is set for publication in the *Pennsylvania Bulletin* on Saturday, July 25, 2020, opening a 64-day public comment period. Three virtual public hearings are scheduled for September 8, 9, and 10. Additional information including registration for the hearings will be available on the EQB's website. The public comment period will end September 25, 2020.
- On January 21, 2020, this Board adopted three rulemakings: final-omitted Hazardous Waste Generator Improvement Rule, final-form Unconventional Well Permit Application Fees and final-form Revision of the Maximum Allowable Sulfur Content Limit No.2 and Lighter Commercial Fuel Oil. The Independent Regulatory Review Commission unanimously approved all three rulemakings on Thursday, June 18, 2020. The final-omitted rule was published in the *Pennsylvania Bulletin* on July 18, 2020. The fuel oil rulemaking is set for publication in the *Pennsylvania Bulletin* on July 25, 2020. And the fees rulemaking is planned for publication in the *Pennsylvania Bulletin* on August 1, 2020.

Ms. Edinger announced that this would be her final EQB meeting as Regulatory Coordinator for the Department. She accepted a senior policy analyst position with the Pennsylvania Utility Law Project and will be leaving the Department at the end of July.

Secretary McDonnell expressed his thanks and noted the amount of work that goes on in the regulatory process and generally throughout the Department. He added his appreciation of her work over the years.

Jessica Shirley provided an update regarding the Cap and Trade petition:

- ICF is in the process of modeling the final three sectors of the macroeconomic analysis. Work continues with ICF and anticipates having results within the next few months; possibly September/October timeframe.

Jim Welty asked the Department to share the specific methodology for the calculations. Policy Director Shirley explained that information would be shared when the report is presented. Hayley Book added that background calculations of how the reductions and emissions were attributed will be shared.

Mark Caskey asked when RGGI would be voted on. Secretary McDonnell answered that RGGI will be on the September 15, 2020, EQB agenda.

**NEXT MEETING:**

The next meeting of the EQB is scheduled for Tuesday, September 15, 2020. The August meeting is cancelled.

**ADJOURN:**

With no further business before the Board, Representative Vitali moved to adjourn the meeting. Andrea Lowery seconded the motion, which was unanimously approved by the Board. The July 21, 2020, meeting of the Board was adjourned at 10:33 a.m.