

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
November 12, 2024

VOTING MEMBERS AND/OR ALTERNATES PRESENT

Jessica Shirley, Acting Chairperson, Acting Secretary, Department of Environmental Protection
Jacob Finkel, alternate for Akbar Hossain, Secretary, Governor's Office of Policy and Planning
Greg Hostetter, alternate for Russell Redding, Secretary, Department of Agriculture
Adam Walters, alternate for Frederick Siger, Secretary, Department of Community & Economic Development
Kristen Rodack, alternate for Dr. Debra Bogen, Secretary, Department of Health
Scott Weiant, alternate for Nancy Walker, Secretary, Department of Labor and Industry
Shane Rice, alternate for Michael Carroll, Secretary, Department of Transportation
Tim Schaeffer, Executive Director, Pennsylvania Fish and Boat Commission
Tim Haydt, alternate for Stephen Smith, Executive Director, Pennsylvania Game Commission
Joe Lauver, alternate for Andrea Lowery, Executive Director, Pennsylvania Historical & Museum Commission
Regi Sam, alternate for Stephen DeFrank, Chair, Public Utility Commission
Matt Osenbach, alternate for Senator Gene Yaw, Senate Environmental Resources & Energy Committee
Emily Eyster, alternate for Senator Carolyn Comitta, Senate Environmental Resources & Energy Committee
Glendon King, alternate for Rep. Martin Causer, House Environmental Resources & Energy Committee
Representative Greg Vitali, House Environmental Resources & Energy Committee
Robert Barkanic, Citizens Advisory Council
Trisha Salvia, Citizens Advisory Council
Thaddeus Stevens, Citizens Advisory Council
John Walliser, Citizens Advisory Council

DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT

High Garst, Policy Director
Laura Campbell, Regulatory Coordinator
Laura Griffin, Regulatory Coordinator
Robert "Bo" Reiley, Bureau of Regulatory Counsel

CALL TO ORDER AND APPROVAL OF MINUTES

The hybrid meeting of the Environmental Quality Board (EQB or Board) was called to order by Acting Chairperson Shirley at 9:00 a.m. The Board considered its first item of business: approval of the September 10, 2024, EQB meeting minutes.

Scott Weiant made a motion to adopt the September 10, 2024, EQB meeting minutes. Tim Schaeffer seconded the motion, which was approved by the Board (17-0).

(Jacob Finkel was not present for voting on the approval of minutes.)

FINAL-OMITTED RULEMAKING: BLAST SITE CLARIFICATION FOR NONCOAL MINING OPERATIONS (25 Pa. Code Chapter 77)

Nathan Houtz (Acting Deputy Secretary for Active and Abandoned Mine Operations) provided an overview of the final-omitted rulemaking. Christopher Catalano (Chief, Explosives and Safety Section, Bureau of Mining Programs) and Richard Marcil (Assistant Counsel, Bureau of Regulatory Counsel) assisted with the presentation.

There was no discussion following the Department's presentation.

Representative Greg Vitali made a motion to adopt the final-omitted rulemaking. Robert Barkanic seconded the motion, which was approved by the Board (17-0).

(Jacob Finkel was not present for voting on the final-omitted rulemaking.)

PROPOSED RULEMAKING: CORRECTIONS TO ADDITIONAL RACT REQUIREMENTS FOR MAJOR SOURCES OF NO_x AND VOCs FOR THE 2015 OZONE NAAQS (RACT 3) (25 Pa. Code Chapter 129)

Ali Tarquino Morris (Deputy Secretary for Waste, Air, Radiation, and Remediation) provided an overview of the proposed rulemaking. Nick Lazor (Director, Bureau of Air Quality) and Jesse Walker (Assistant Director, Bureau of Regulatory Counsel) assisted with the presentation.

There was no discussion following the Department's presentation.

Robert Barkanic made a motion to adopt the proposed rulemaking. Thaddeus Stevens seconded the motion, which was approved by the Board (17-0).

(Jacob Finkel was not present for voting on proposed rulemaking.)

PROPOSED RULEMAKING: NOTIFICATION REQUIREMENTS FOR UNAUTHORIZED DISCHARGES TO WATERS OF THE COMMONWEALTH (25 Pa. Code Chapter 91)

Jill Whitcomb (Acting Deputy Secretary for Water Programs) provided an overview of the proposed rulemaking. Jay Patel (Assistant Director, Bureau of Clean Water), Victor Landis (Program Manager, Bureau of Clean Water), and Adam Duh (Assistant Counsel, Bureau of Regulatory Counsel) assisted with the presentation.

Following the Department's presentation, Glendon King asked what concerns were raised when the draft rulemaking was initially presented to the Water Resources Advisory Committee (Committee) and if any changes were made for subsequent review. Victor Landis responded that members had concerns about reporting and documentation requirements. Adam Duh said the regulation was revised to clarify these requirements. The revised draft regulation was presented for a second review and the Committee supported it.

Glendon King also asked if documentation or notification is required when a substance does not threaten pollution, noting this may be burdensome on small businesses and individuals. Adam Duh explained that the responsible person is required to document their consideration of factors used to determine that reporting is not needed. The draft regulation does not require notification of every incident.

Representative Vitali asked what type of discharges currently required to be reported that under this regulation would no longer need to be reported under the proposed rulemaking. Victor Landis explained that types of discharges will not change, rather the regulation clarifies the factors used to determine if a discharge threatens or causes pollution. Representative Vitali then asked if a responsible person is given more discretion on when to report an incident under the proposed regulation. Acting Chairperson Shirley stated the purpose of the regulation is to provide clarity on which spills need to be reported by listing factors a responsible person shall consider when determining when to report to the Department.

Glendon King and Robert Barkanic each offered hypothetical scenarios of spills and asked for an explanation of how a responsible person would be required to proceed under the draft regulation. Victor Landis and Jay Patel and explained the factors taken into consideration to determine if an incident threatens or causes pollution. Further, Acting Chairperson Shirley stated that the proposed regulation provides three options for determination, notification, and documentation.

In addition, Robert Barkanic asked if the Department has made small businesses aware of this proposed regulation. Jill Whitcomb replied that the Small Business Ombudsman's Office will coordinate outreach to small businesses to notify them about the 60-day public comment period.

Robert Barkanic made a motion to adopt the proposed rulemaking. Matt Osenbach seconded the motion.

Matt Osenbach, on behalf of Senator Yaw, stated appreciation for the Department proposing a modern, practical rule that is protective of the Commonwealth's resources. Senator Yaw has been a prime sponsor of a bill on this topic for a number of sessions. Matt Osenbach said he looks forward to working with the Department to ensure this proposed rulemaking works for the regulated community.

Glendon King stated appreciation for the Department addressing uncertainty in the existing regulation, while noting concern for small businesses and new documentation requirements that may be burdensome.

Trisha Salvia also stated appreciation for the Department's time and energy to clarify existing requirements for the regulated community. Although not opposed, she questioned if the proposed rulemaking is needed because the existing regulation is working as intended, as noted by the Committee, and the Department is not inundated with unnecessary spill reports. She advised that the public is patiently waiting for outdated guidance documents and permits to be updated and suggested the Department's resources would be better allocated toward those documents.

The motion was approved by the Board (17-1). Glendon King voted in opposition.

OTHER BUSINESS

Laura Griffin provided the following regulatory update.

- The Administration of the Land Recycling Program proposed rulemaking public comment period closed on September 11, 2024. Four public comments and a form letter from 19 individuals were received, and IRRC provided comments on October 11, 2024.

NEXT MEETING

Acting Chairperson Shirley announced the December 10, 2024 meeting of the EQB is cancelled and the next meeting is not yet scheduled.

ADJOURN

With no further business before the Board, Representative Greg Vitali moved to adjourn the meeting. Glendon King seconded the motion, which was unanimously approved by the Board. The November 12, 2024, meeting of the Board was adjourned at 9:52 a.m.