

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
February 20, 2007

VOTING MEMBERS OR ALTERNATES PRESENT

Kathleen A. McGinty, Chairperson, Secretary, Department of Environmental Protection
Kenneth Graham, alternate for Secretary Stephen M. Schmerin, Department of Labor and Industry
Eric Madden, alternate for Secretary Allen D. Biehler, Department of Transportation
William Hall, alternate for Chairman Wendell F. Holland, Public Utility Commission
Elizabeth Dunn, alternate for Representative Camille George
Joseph Deklinski, alternate for Representative Scott E. Hutchinson
Richard Fox, alternate for Senator Raphael J. Musto
Patrick Henderson, alternate for Senator Mary Jo White
William Capouillez, alternate for Executive Director Carl Roe, Pennsylvania Game Commission
Richard Manfredi, Citizens Advisory Council
David Day, alternate for Dr. Douglas J. Austen, Executive Director, Pennsylvania Fish and Boat Commission
Dr. Walter Meshaka, alternate for Executive Director Barbara Franco, Pennsylvania Historical and Museum Commission
Joanne Denworth, alternate for Secretary Donna Cooper, Governor's Office of Policy and Planning
Jolene Chinchilli, Citizens Advisory Council
Bruce Tetkoskie, Citizens Advisory Council
Walter Heine, Citizens Advisory Council
David Strong, Citizens Advisory Council
Paul Opiyo, alternate for Secretary Dennis Yablonsky, Department of Community and Economic Development
Michael Pechart, alternate for Secretary Dennis C. Wolff, Department of Agriculture
Dr. James Logue, alternate for Secretary Calvin B. Johnson, Department of Health

DEPARTMENT STAFF PRESENT

Richard P. Mather, Sr., Deputy Chief Counsel
Patrick McDonnell, Policy Office Director
Marjorie Hughes, Regulatory Coordinator

CALL TO ORDER AND APPROVAL OF MINUTES

Chairperson McGinty called the meeting to order at 9:00 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg. The members introduced themselves and the Board considered its first item of business - the January 17, 2007 EQB meeting minutes.

With no corrections or additions, Chairperson McGinty called for a motion to adopt the minutes of the January 17, 2007, EQB meeting.

David Strong moved to adopt the January 17, 2007, EQB meeting minutes. Richard Fox seconded the motion, which was unanimously approved by the Board.

PETITION TO REDESIGNATE UPPER PERKIOMEN WATERSHED (BERKS, BUCKS AND MONTGOMERY COUNTIES)

Cathy Curran Myers, Deputy Secretary, Office of Water Management, presented a summary of the petition. Michelle Moses, Assistant Counsel, assisted.

Deputy Secretary Myers reported that on December 22, 2006, the EQB received a petition from the Delaware Riverkeeper Network in partnership with the Perkiomen Valley Trout Unlimited, the Lehigh County Conservation District, the Montgomery County Conservation District, and the Perkiomen Watershed Conservancy requesting the upgrade of various creeks in the Upper Perkiomen Watershed in the Delaware Riverkeeper Network. The petition requests the EQB approve the following redesignations: Hosensack Creek (Montgomery County) from CWF to EV; Perkiomen Creek (Bucks County) from HQ-CWF to EV; Perkiomen Creek (Montgomery County) from TSF to EV; West Branch Perkiomen (Berks County) from CWF to EV; West Branch Perkiomen Creek (Montgomery County) from CWF to EV; and Macoby Creek (Montgomery County) from TSF to HQ.

Following DEP's overview and recommendation, Faith Zerbe, Monitoring Director of the Delaware Riverkeeper Network, Chaz MacDonald, President of Perkiomen Valley Trout Unlimited, and, Crystal Gilchrist, Perkiomen Watershed Conservancy made brief presentations to the Board in support of the petition. Ms. Zerbe mentioned additional letters of support received from local municipalities and legislators.

Following the petitioners' presentations, David Strong moved to accept this petition for further study. Walter Heine seconded the motion, which was unanimously approved by the Board.

PROPOSED RULEMAKING – BIG BROOK, et al. STREAM REDESIGNATION

Deputy Secretary Myers presented a summary of the proposed rulemaking reporting that some streams in this regulatory package had not been previously designated, some designations are changed in the proposal and others are different than the current designations. Michelle Moses, Assistant Counsel, assisted.

This proposed rulemaking includes amendments to 25 Pa. Code Chapter 93 for designation of eight streams. These streams were evaluated in response to five petitions, as well as requests from the Department's Regional and Central Offices: Petitions: Big Brook - (Lebanon Township Board of Supervisors; Wayne County); Brooke Evans Creek - (Larry Piasecki; Montgomery County); Wissahickon Creek - (Upper Gwynedd Township; Montgomery County); Furnace Run - (Students from Conestoga Valley High School; Lancaster County); Clarion River - (Iron Furnace Chapter of Trout Unlimited, the Alliance for Wetlands and Wildlife, the Commissioners of Clarion County, and Reliant Energy Mid-Atlantic Power Holding LLC); Department: Beaver Creek (Chester County), Mill Creek (Berks County), Stone Creek (Bedford County).

Deputy Secretary Myers noted that the proposed regulatory changes were developed as a result of aquatic studies conducted by the Department where the physical, chemical, and biological characteristics and other information on these water bodies were evaluated to determine the appropriateness of the current and requested designations using applicable regulatory criteria and definitions.

The Department recommended that the EQB adopt this proposed rulemaking with a 45-day public comment period.

Following DEP's presentation, Eric Madden moved to adopt this proposed rulemaking with a 45-day comment period. Michael Pechart seconded the motion, which was unanimously approved by the Board.

PROPOSED RULEMAKING – CLEAN AIR INTERSTATE RULE (CAIR)

Deputy Secretary Thomas K. Fidler, Office of Waste, Air and Radiation Management, presented a summary of the proposed rulemaking. Joyce Epps, Air Quality Bureau Director, Jim Stoner of the Stationary Sources Section, and Kirsten Campfield, Assistant Counsel, assisted.

These proposed amendments to 25 *Pa. Code* Chapters 121, 129 and 145 will establish the requirements for implementing and enforcing the federal Clean Air Interstate Rule (CAIR) promulgated by Environmental Protection Agency (EPA) on May 12, 2005. The CAIR requires 28 states (including Pennsylvania) and the District of Columbia to adopt and submit revisions to their state implementation plans (SIPs). The SIP revisions are required under the Clean Air Act (CAA) to reduce SO₂ and NO_x emissions that significantly contribute to nonattainment of the fine particulate matter (PM_{2.5}) and 8-hour ozone National Ambient Air Quality Standards (NAAQS) in downwind states. Each state may independently determine which emissions sources to subject to controls and which control measures to adopt. The CAIR also contains model rules, many of which the proposed amendments incorporate by reference.

The Air Quality Technical Advisory Committee (AQTAC) discussed the CAIR regulatory concepts at several meetings in 2006, and voted at its January 4, 2007 meeting to advance the proposal to EQB for consideration. In addition, the proposed amendments were reviewed with the Citizens' Advisory Council on January 17, 2007, and the Small Business Compliance Advisory Committee on January 24, 2007. The Department recommends that the EQB adopt this proposed rulemaking with a 60-day public comment period and three public hearings.

Patrick Henderson moved to adopt the proposed rulemaking with the condition that it be considered by EQB as final at the May or September 2007 EQB meeting so that it can be delivered to the Standing Committees while the Legislature is in session.

Secretary McGinty indicated that the Department's goal is to return to EQB with a final rule as soon as possible, and that September might be a reasonable time frame. However, she noted that it would be difficult for the Department to support delivery restrictions that are in addition to those contained in the Regulatory Review Act.

Walter Heine asked what portion of the fine particles (PM_{2.5}) problem is generally attributed to out-of-state sources, and will this proposal significantly impact the south-central PA non-attainment area. Deputy Secretary Fidler indicated that this is a nationwide concern with over 20 states moving in the same direction as PA. Another national effort that will have a positive impact is the required diesel engine modification 2010 deadline. Jim Stoner noted that the federal CAIR program was developed essentially to address the specific issue of intrastate particulate transport. In addition the Ozone Transport Commission is discussing emissions from the remaining larger sources of emissions such as cement plants, glass plants and asphalt production facilities and the Department anticipates bringing those proposals to EQB within the next year or so.

Patrick Henderson asked about the possible challenge to the proposal because it appears that the waste coal industry is receiving an allocation seemingly as a property right. Jim Stoner replied that it is not being allocated as a property right but limited to historical information and capped at 13,000 tons. Joyce Epps noted that this allocation is an option that was laid out by EPA.

William Hall asked how the Department verifies energy efficiency allowances and if it is piggybacked with alternative energy portfolio standards. Jim Stoner replied that yes, it is used to verify the standards.

Following additional discussion and clarification, Patrick Henderson modified his original motion and moved to adopt the proposed rulemaking with a 60-day comment period and 3 EQB hearings. Richard Fox seconded the motion, which was unanimously approved by the Board.

Secretary McGinty indicated that the Department would make every effort to work with the Legislature regarding delivery of proposed regulations with a goal of delivery while the Legislative is in session. She offered that the Department would provide the Board with a schedule on this proposal once it is further in the process and will include an estimated timeframe.

FINAL RULEMAKING – NONATTAINMENT NEW SOURCE REVIEW

Deputy Secretary Fidler presented a summary of the final rulemaking. Joyce Epps, John Slade of the Permits Division, and Bo Reiley, Assistant Counsel, assisted.

These final amendments to 25 *Pa. Code* Chapters 121 and 127 revise the state New Source Review (NSR) program - which is a pre-construction air quality permitting program mandated under the federal Clean Air Act. The owners and operators of new or modified major facilities must comply with the lowest achievable emissions rate (LAER) technology and the emission offset requirements which are based on the nonattainment classification of the area in which the new or modified air contamination source is located. The purpose of this final rulemaking is to revise the existing NSR regulation to incorporate certain changes required by the U.S. Environmental Protection Agency and to revise the State Implementation Plan.

The EQB approved the proposed amendments on December 20, 2005. They were subsequently published in the *Pennsylvania Bulletin* on April 29, 2006. The EQB held three public hearings - in Harrisburg (June 6, 2006), Pittsburgh (June 13, 2006), and Norristown (June 19, 2006) - and received comments from 33 commentators during the public comment period

The AQTAC reviewed the proposed regulatory revisions at several meetings in 2005 and 2006. In addition, presentations were made to the Citizens Advisory Council meetings (September 27 and October 17, 2006). On January 4, 2007, AQTAC concurred on the final-form regulation with two recommendations for changes. These recommended changes involved extending the time period for submittal of an Emission Reduction Credit (ERC) Registry application from one year to three years and reducing the aggregation period for de minimis emission increases that are not significant from 15 years to 10 years. The final-form regulation provides for the submission of applications within two years after the ERC-generating reductions are initiated. In addition, the aggregation of de minimis emission increases will be limited to 10 years.

The Department recommends that the EQB adopt this final rulemaking with a revision to § 127.207 as follows: Section 127.207 CREDITABLE EMISSIONS DECREASE OR ERC generation and creation.

(2) [For facilities subject to this subchapter], EXCEPT AS PROVIDED IN §127.206(r) (RELATING TO ERC GENERAL REQUIREMENTS), an ERC registry application shall be submitted to the Department within [1] 2 years of the initiation of an emissions reduction used to generate ERCs. FOR DEACTIVATED SOURCES OR FACILITIES THE FOLLOWING SHALL ALSO APPLY:

(i) THE OWNER OR OPERATOR OF AN ERC-GENERATING SOURCE OR FACILITY SHALL SUBMIT A WRITTEN NOTICE TO THE DEPARTMENT WITHIN 1 YEAR AFTER THE DEACTIVATION OF A SOURCE OR FACILITY TO REQUEST PRESERVATION OF THE EMISSIONS IN THE INVENTORY.

(ii) WITHIN TWO YEARS AFTER ERC-GENERATING EMISSION REDUCTIONS ARE INITIATED, THE OWNER OR OPERATOR OF A SOURCE OR FACILITY THAT IS COVERED UNDER A MAINTENANCE PLAN SUBMITTED TO THE DEPARTMENT IN ACCORDANCE WITH § 127.11a (RELATING TO REACTIVATION) OR § 127.215 ((RELATING TO REACTIVATION) MAY PERMANENTLY DEACTIVATE THE SOURCE OR FACILITY AND SUBMIT AN ERC REGISTRY APPLICATION TO THE DEPARTMENT IF THE EMISSIONS ARE PRESERVED IN THE INVENTORY.

Since the SIP revisions were due to EPA in January 2006, Patrick Henderson asked if there is a deadline the Department must meet to avoid federal sanctions. Joyce Epps replied no, EPA has not issued a sanctions letter.

Following the discussion, Michael Pechart moved to adopt the final rulemaking. Joanne Denworth seconded the motion, which was unanimously approved by the Board.

OTHER BUSINESS

Chairperson McGinty announced that the next EQB meeting is scheduled for March 20, 2007.

ADJOURNMENT:

With no further business before the Board, Kenneth Graham moved to adjourn the meeting. Eric Madden seconded the motion. The February 20, 2007, meeting of the EQB was adjourned at 10:23 a.m.